



# Dallas City Council Agenda

Mayor Brian Dalton, Presiding

TUESDAY, February 17, 2015

7:00 pm

Dallas City Hall

187 SE Court St.

Dallas, OR 97338

All persons addressing the Council will please use the table at the front of the Council. All testimony is electronically recorded. If you wish to speak on any agenda item, please sign in on the provided card.

## City Council

Mayor  
Brian Dalton

Council President  
Jim Fairchild

Councilor  
Kelly Gabliks

Councilor  
Micky Garus

Councilor  
Bill Hahn

Councilor  
Jackie Lawson

Councilor  
Kevin Marshall

Councilor  
Murray Stewart

Councilor  
LaVonne Wilson

Councilor  
Ken Woods, Jr.

## City Staff

City Manager  
Ron Foggin

City Attorney  
Lane Shetterly

Community  
Development/  
Operations Director  
Jason Locke

Finance Director  
Cecilia Ward

Fire Chief  
Fred Hertel

Police Chief  
Tom Simpson

Director of Engineering  
& Environmental  
Services  
Fred Braun

City Recorder  
Emily Gagner

Recording Secretary  
Jeremy Teal

AGENDA ITEM	RECOMMENDED ACTION
1. ROLL CALL	
2. PLEDGE OF ALLEGIANCE	
3. EMPLOYEE RECOGNITION/INTRODUCTION	
4. POLK COUNTY COMMISSIONERS PUBLIC SAFETY LEVY PRESENTATION	Presentation
5. COMMENTS FROM AUDIENCE <i>This time is provided for citizens to comment on municipal issues and any agenda items other than public hearings. The Mayor may place time restrictions on comments. Please supply 14 copies of the material brought to the meeting for distribution.</i>	
6. PUBLIC HEARINGS <i>Public comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.</i>  a. <i>Public Hearing on Dallas Comprehensive Plan: Chapter 1 Intro (Public Involvement)</i> PG. 3  b. <i>Public hearing regarding the sale of unimproved real property located immediately west of 1501 SE Marionberry Street, Dallas, Oregon.</i> PG. 19	Public Hearings
7. CONSENT AGENDA <i>The following items are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which case the item will be removed from the Consent Agenda and considered separately.</i>  a. Approve minutes of February 2, 2015 City Council meeting PG. 20	
8. ITEMS REMOVED FROM CONSENT AGENDA	
9. REPORTS OR COMMENTS FROM MAYOR AND COUNCIL MEMBERS  a. General Comments from the Councilors and Mayor	



**Our Vision**

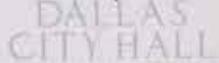
Our vision is to foster an environment in which Dallas residents can take advantage of a vital, growing, and diversified community that provides a high quality of life.

**Our Mission**

The mission of the City of Dallas is to maintain a safe, livable environment by providing open government with effective, efficient, and accountable service delivery.

**Our Motto**

Commitment to the Community.  
 People Serving People.



**City Hall**

Dallas City Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the City Manager's Office, 503-831-3502 or TDD 503-623-7355.

**10. REPORTS FROM CITY MANAGER AND STAFF**

- a. CH2M Hill – OMI 2014 Annual Report
- b. January financial report PG. 23
- c. Renew City Attorney contract PG. 49
- d. Council goal update
- e. Other

Information  
 Information  
 Motion  
 Information  
 Information

**11. RESOLUTIONS**

- a. Resolution No. 3315: A Resolution authorizing a grant application under the Oregon Parks and Recreation Department Local Government Grant Program for park improvements on the Rickreall Creek Trail System; and committing available local matching funds. PG. 50
- b. Resolution No. 3316: A Resolution extending workers' compensation coverage to certain classes of city volunteer workers; and repealing Resolution 3055. PG. 52
- c. Resolution No. 3317: A Resolution declaring real property described as the easterly portion of River Gleann Estates, Phase 6, Tract B, Dallas, Polk County, Oregon, Polk County Tax Account No. 571606, being 4,245 square feet, more or less, in area, not needed for public use and authorizing the sale thereof. PG. 55
- d. Resolution No. 3318: A Resolution Adopting Amendments to the Dallas City Council Rules of Procedure. PG. 60

Roll Call Vote  
 Roll Call Vote  
 Roll Call Vote  
 Roll Call Vote

**12. FIRST READING OF ORDINANCE**

- a. Ordinance No. 1775: An ordinance approving and authorizing a franchise agreement with Astound Broadband, LLC, for telecommunications services within the City of Dallas; and declaring an emergency. PG. 79

First Reading

**13. SECOND READING OF ORDINANCE**

- a. Ordinance No. 1774: An Ordinance repealing Ordinance 1735, relating to oath of office. PG. 105

Roll Call Vote

**14. OTHER BUSINESS**

**15. ADJOURNMENT**

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 6a</b>	<b>Topic:</b> Chapter1, Citizen Involvement Public Hearing
<b>Prepared By:</b> Jason Locke, Community Development/ Operations Director	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin, City Manager		

**RECOMMENDED ACTION:** Prepare an Ordinance amending the Dallas Comprehensive Plan and adopting Chapter 1, Citizen Involvement

**BACKGROUND:** See Staff Report

**FISCAL IMPACT:** Propose \$1000 in Planning Budget for Citizen Involvement Plan Line Item next fiscal year

**DALLAS 2030 VISION IMPACT:** This matter is consistent with Objective 1- Our Growth and Development, which specifies that the City will update the Dallas Comprehensive Plan.

**ATTACHMENTS:**

Staff Report  
Proposed Chapter 1  
Statewide Planning Goal 1  
Revisions to existing Comp Plan

**CITY OF DALLAS**  
**City Council**

**APPLICATION COMPLETE:**  
**N/A**

**STAFF REPORT**  
**Date: February 9,**  
**2015**

<b>FILE NO.</b>	<b>N/A</b>
<b>HEARING DATE</b>	<b>February 17, 2015 7:00 P.M. CITY HALL 187 SE COURT STREET DALLAS, OREGON 97338</b>
<b>APPLICANT</b>	<b>City of Dallas</b>
<b>OWNER</b>	<b>N/A</b>
<b>REQUEST</b>	<b>Amend the Comprehensive Plan, Adopt Chapter 1 – Citizen Involvement</b>
<b>LOCATION</b>	<b>N/A</b>
<b>RECOMMENDATION</b>	<b>Prepare an Ordinance amending the Dallas Comprehensive Plan and adopting Chapter 1, Citizen Involvement</b>

**BACKGROUND INFORMATION:**

The current version of the Dallas Comprehensive Plan was adopted in 1998. It has not been significantly amended since adoption, aside from some housekeeping and the adoption of the Transportation System Plan in 2008. There is no Citizen Involvement Plan (CIP) currently in place nor are there clear policies for ensuring public participation in the current Comp Plan. Statewide Planning Goal 1 requires that there be a Citizen Involvement Plan (CIP) and associated mechanisms for ensuring citizen participation in the land use planning process. The Planning Commission has discussed this draft on at least 3 occasions, and has made a number of changes in order to increase the effectiveness of the Chapter. After holding a public hearing, they are recommending adoption of Chapter 1, and the

**DISCUSSION:**

The proposed Chapter 1 is formatted to follow the formatting of Statewide Planning Goal 1, (See Attached). The proposal is consistent with the requirements of Goal 1, and even adds mechanism to measure the success of the CIP, and specifies that a budget line item be added to fund the program. By putting this new chapter in place, it will allow the staff and the public to move forward with the much-needed update of the Dallas Comprehensive Plan.

**RECOMMENDATION:**

Staff recommends that the City Council hold a public hearing, make any changes that may be necessary, and direct staff to prepare an Ordinance amending the Dallas Comprehensive Plan and adopting Chapter 1, Citizen Involvement.

# CITY OF DALLAS COMPREHENSIVE PLAN

## CHAPTER 1

### CITIZEN INVOLVEMENT



***GOAL: TO ENSURE MEANINGFUL CITIZEN INVOLVEMENT AND PARTICIPATION IN THE LAND USE PLANNING PROCESS***

## **INTRODUCTION**

Goal 1 of the Statewide Planning Goals is Citizen Involvement. The City of Dallas, its elected and appointed officials, and city staff, are dedicated to involving citizens in the planning process. This Chapter contains the mechanisms and requirements for Citizen Involvement in Dallas

### **The Planning Process**

The Planning Commission is primarily responsible for making land use decisions and recommending amendments to the Comprehensive Plan and land use regulations.

The City Council is responsible for policy decisions relating to the planning process and for adopting amendments recommended by the Planning Commission. In addition, the Council is responsible for overseeing and giving direction to the Committee for Citizen Involvement (CCI) to ensure that the goal of the citizen involvement program is being met. Citizens are responsible for participation in the planning process, becoming educated about land use issues, and in assisting the City in its evaluation of the planning processes and the Citizen Involvement Program.

The following sections address the Committee for Citizen Involvement, the components of Statewide Planning Goal 1, and contain policy statements and measures to implement the policies. This Chapter constitutes the city of Dallas Citizen Involvement Program (CIP).

## **COMMITTEE FOR CITIZEN INVOLVEMENT**

The Planning Commission shall function as the Committee for Citizen Involvement (CCI) for the city of Dallas. The CCI may recommend that the City Council appoint, from time to time, a Citizen Advisory Committee (CAC) to assist the CCI in matters related to long range planning, specific projects, and/or Comprehensive Plan review.

### **Responsibilities**

1) The CCI, under the direction of the City Council, shall ensure that the Citizen Involvement Program is being implemented.

2) The CCI shall make an annual written report to the City Council that assesses the effectiveness and overall implementation of the Citizen Involvement Program. Copies will be distributed to all Standing Committee members. The annual report should incorporate both quantitative and qualitative measures of citizen involvement efforts (e.g. number and types of communication methods used; number of participants at public hearings; number of website hits; number of non-required citizen involvement

events; citywide survey results measuring community attitudes on public information and awareness).

3) The CCI shall assist citizens and citizen groups in becoming aware of opportunities provided by the Citizen Involvement Program.

4) The CCI shall make recommendations to the City Council for improving the Citizen Involvement Program, as necessary.

5) The CCI shall perform such other duties as directed by the City Council.

## **TWO-WAY COMMUNICATION**

***Policy: To provide mechanisms which will promote effective two-way communication between citizens and the policy/decision makers.***

Implementation Measures:

1) All meetings shall be open to the public as required by State law, and as appropriate to the body.

2) All public meetings shall be scheduled at times and in places which are conducive to citizen participation.

3) Appropriate notice of all public meetings shall be given, including the date and agenda of the meeting. Notice shall be given through advertisements in local newspapers and by posting notices in public places. In no case shall a meeting be noticed less than 24 hours before it is scheduled to occur.

4) The City will maintain City Bulletin Boards in public places that contain meeting agendas and other information.

5) The City will promote the City website as a source of information as well as a communication tool for residents to communicate with the City. In addition, the City will continue to expand the use of social media and technology to interact with citizens.

6) The City will conduct, at least every two years, a citywide survey regarding city issues.

7) The City Council will host an annual Town Hall meeting to discuss selected topics of interest to the public.

8) The City will continue to develop outreach programs with service clubs, schools, and other organizations in order to provide planning information and education.

9) A City Newsletter will be sent out via e-mail and distributed by other appropriate methods.

### **CITIZEN INFLUENCE**

***Policy: To provide citizens an opportunity to be involved in the planning process.***

Implementation Measures:

1) In addition to topics scheduled for discussion, there shall be an opportunity at meetings of public bodies for the public to provide input for items which do not appear on the meeting's agenda.

2) Staff will hold informal, well-publicized educational workshops on proposed revisions to the Comprehensive Plan, Land Development Regulations and other planning topics that have potential widespread impact prior to the hearing. Workshops will be open to the public for participation and discussion. Questions and concerns will be conveyed to the decision-making bodies.

### **TECHNICAL INFORMATION**

***Policy: To ensure that all documents and information which will assist citizens in effectively participating in the planning process are available to the public in an understandable form subject to the requirements of state and local laws.***

Implementation Measures:

1) The City shall place appropriate planning documents on the website in a timely manner.

2) The City will continue to update planning counter materials, maps, and development pamphlets to reflect regulation and policy changes.

### **FEEDBACK MECHANISMS**

***Policy: To ensure that the governing bodies will respond to citizens land use planning questions and concerns.***

Implementation Measures:

- 1) The City will continue to implement established mechanisms for responding to questions at Planning Commission and City Council meetings.
- 2) All specific written questions from citizens will be responded to in writing in a timely fashion, with an initial response not to exceed 20 calendar days from the date of receipt.
- 3) The rationale used by a governing body for making policy decisions shall be recorded and made available for review by the general public.

**FINANCIAL SUPPORT**

***Policy: To ensure that there are adequate resources devoted to the Citizen Involvement Program.***

Implementation Measures:

- 1) The City budget shall contain a Citizen Involvement Program line item. The amount budgeted shall be recommended yearly by the CCI. The Community Development Director shall include this recommendation in the appropriate Department Budget.
- 2) City staff will assist the CCI in implementing the Citizen Involvement Program and will provide technical assistance to citizens.

Adopted by Ordinance \_\_\_\_\_, Date : \_\_\_\_\_

# Oregon's Statewide Planning Goals & Guidelines

## GOAL 1: CITIZEN INVOLVEMENT

### OAR 660-015-0000(1)

#### **To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies and special-purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

#### **1. Citizen Involvement -- To provide for widespread citizen involvement.**

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly

representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process.

The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for, development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.

**2. Communication -- To assure effective two-way communication with citizens.**

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

**3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.**

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

**4. Technical Information -- To assure that technical information is available in an understandable form.**

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

**5. Feedback Mechanisms -- To assure that citizens will receive a response from policy-makers.**

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The

rationale used to reach land-use policy decisions shall be available in the form of a written record.

**6. Financial Support -- To insure funding for the citizen involvement program.**

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

**GUIDELINES**

**A. CITIZEN INVOLVEMENT**

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).

2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.

3. In the selection of members for the committee for citizen involvement, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on the CCI; committee appointees should receive official notification of their selection; and

committee appointments should be well publicized.

## **B. COMMUNICATION**

Newsletters, mailings, posters, mail-back questionnaires, and other available media should be used in the citizen involvement program.

## **C. CITIZEN INFLUENCE**

**1. Data Collection** - The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the plans.

**2. Plan Preparation** – The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

**3. Adoption Process** – The general public, through the local citizen involvement programs, should have the opportunity to review and recommend changes to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

**4. Implementation** - The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan. The

general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

**5. Evaluation** - The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

**6. Revision** - The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

## **D. TECHNICAL INFORMATION**

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and one changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

## **E. FEEDBACK MECHANISM**

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

## **F. FINANCIAL SUPPORT**

1. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

## **INTRODUCTION: Organization & Implementation**

### ***Citizen Involvement and Plan Update Goals***

- ~~A. Encourage citizen involvement in all phases of the comprehensive planning and development review processes.~~**
- ~~B. To periodically review and update the Dallas Comprehensive Plan and Dallas Development Code.~~**

### ***Citizen Involvement and Plan Update Policies***

The following policies govern comprehensive plan and development code amendments:

- ~~1. The comprehensive plan and implementation measures should be comprehensively reviewed every 7-10 years, in accordance with the LCDC's periodic review schedule.~~
- ~~2. The Dallas Planning Commission shall serve as the Committee for Citizen Involvement and shall be assigned the task of coordinating the citizen involvement program.~~
- ~~3. In addition to the Planning Commission, the Dallas Citizens Advisory Committee shall be involved in the review of legislative plan amendments and revisions to the Dallas Comprehensive Plan Map #1.~~
- ~~4. Proposed amendments to the comprehensive plan and implementation measures shall be considered on an annual basis, and shall be grouped together to allow consideration of cumulative impacts.~~
  - ~~a) The City shall set a certain time period each year, or every other year, for the consideration of minor changes to the Comprehensive Plan.~~
  - ~~b) In addition to the comprehensive plan and statewide planning goals, special studies or other information shall be used as the factual basis to support the change.~~
- ~~1. The City will ensure that the public notification and citizen participation opportunities are provided in the review of all quasi-judicial land use decisions, in accordance with state law.~~

### ***The Dallas Comprehensive Plan***

The Dallas Comprehensive Plan is the controlling land use document for the City and its Urban Growth Boundary (UGB). From a land use perspective, the comprehensive plan is like a state or federal constitution: it provides the legal framework and long-term vision for implementing plans and land use regulations. The Dallas Comprehensive Plan has been found by the Land Conservation & Development Commission (LCDC) to comply with the 14 applicable "Statewide Planning Goals," which are, in effect, state planning requirements that must be met by each city and county in Oregon.

The Dallas Comprehensive Plan includes three volumes: Volume I includes goals and policies that provide specific direction in making "quasi-judicial" land use decisions; *i.e.*, decisions that require

judgment in the application of general policies to specific situations, such as zone changes, annexations, conditional use permits and major variances. Goals set a general direction and are not intended to be decision criteria. Policies that are written in mandatory language (e.g., “shall,” “must,” “will”) are mandatory in character: they must be followed when Dallas makes a “quasi-judicial” land use decision. In cases where mandatory policies conflict, the City Council may balance these policies in making a decision. Policies that are written in permissive language (e.g., “should,” “may,” “encourage”) indicate the preferred direction of the City, but are not binding on the Council.

Volume I also includes the Comprehensive Plan Map #1, which indicates on a parcel-specific basis, what land uses will be allowed in the long-term. Where Volume I plan policies conflict with the map #1, the specific text of these policies shall control.

Legislative land use decisions (e.g., changes in the text of Volume I or to the Comprehensive Plan Map #1 that apply generally to the City, and not to a specific property or small group of properties) adopted by the City Council must also conform with Volume I goals, policies and maps; or affected goals, policies and maps must be amended by the City Council to be consistent with the Statewide Planning Goals.

Volume II of the Dallas Comprehensive Plan includes background information that served as the basis for Volume I goals and policies. For example, maps of environmentally-significant stream corridors and the justification for the Dallas UGB is included in Volume II. Thus, Volume II forms a part the “legislative history” that supports the goals, policies and plan map.

### ***Principal Implementing Documents***

The Dallas Comprehensive Plan is implemented by two principal documents:

1. The **Dallas Development Code (DDC)** sets forth zoning, land division and environmental protection requirements, and is a chapter of the Dallas City Code. The DDC is the land use law of Dallas, unless it is found to be inconsistent with the Dallas Comprehensive Plan. Consistency with DDC requirements is a pre-condition to granting of building permits under the City’s Building Safety Codes, which are based on state building safety regulations.
2. The **Dallas Public Facilities Plan (PFP)** describes sanitary sewer, water, and storm drainage which must be made in order to provide adequate public facilities to support the types and levels of development prescribed in the Dallas Comprehensive Plan. The public facilities plan is supported by adopted facilities master plans and sets priorities for facilities construction through the six-year capital improvements program and the City’s annual budget. The City Engineering staff also maintain construction specification standards documents which set minimum construction standards for public improvements, such as sewer, water and streets.

### ***Public & Private Participation***

Implementation of the comprehensive plan ultimately depends upon the combined efforts of private citizens, businesses, and local, state and federal governments. The private sector implements the plan by giving it their support and continuous input to the planning process of the plan; by developing their businesses and homes in conformance with the plan; and by initiating community projects such as clean-up, fix-up or paint-up campaigns. Government implements the plan through regulatory controls such as zoning and subdivision ordinances; through the timely placement of

public facilities and establishment of public programs; through inducements such as low-interest loans, tax exemptions and direct subsidies; by joint cooperative agreements between one another; and by providing for financing through special grant-in-aids or other financial aids.

One method of implementing the policies of the plan is through intergovernmental cooperative agreements between the City and other public agencies or cities. Many of the policies which the plan encourages the City to perform can best be met through joint arrangements with other agencies. In many cases the burden of solving a problem does not rest entirely with the City. Therefore, the City should seek to join with other agencies in implementing the policies and recommendations of the plan. In other situations, it may be to the City's financial advantage to join with other cities or agencies in an effort to solve a problem common to each of the communities. Through this method, programs and projects that cannot be implemented economically by one community may be initiated by sharing the cost between different cities or agencies. The City of Dallas has worked closely with other municipalities and the County in mutual aid, economic development, and sharing equipment.

Advice and consultation on the part of the Planning Commission, City staff and other City officials can be a very effective tool of implementation. In the course of conducting day-to-day business, individuals can be made aware of the importance of the Comprehensive Plan and a number of alternatives presented to guide development. On a more formal basis, advice and consultation is also given to the City Council.

#### ***1.4—Active Citizen Involvement***

The success of this and past planning efforts in Dallas is due in large part to the degree of citizen involvement. Local citizens have long had a strong voice in major community projects. Citizen participation will play an even larger role in the future. The first of 14 applicable Statewide Planning Goals and Guidelines (ORS Chapter 197) established by the Land Conservation and Development Commission, requires the development of "...a citizens involvement program that insures the opportunity for citizens to be involved in all phases of the planning process".

In response to this requirement and because of the City's past accomplishment in the area of citizen involvement, the plan proposes, for routine planning matters through its public hearing process, that the Dallas Planning Commission be assigned the task of coordinating the citizen involvement program. However, when items of a more significant nature, such as plan or ordinance revision or specific studies that are recommended in the plan are involved, it is expected that the Dallas City Council and Planning Commission will draw upon the considerable expertise of the local citizenry—just as it has in the past. In implementing this goal the City has continued its reliance upon the Citizen's Advisory Committee for the Comprehensive Plan. The value of this approach is, of course, that it allows more flexibility as to membership, and that it also allows a greater number of citizens to become involved with the planning process.

#### ***1.5—Comprehensive Plan and Development Code Revisions***

The Dallas Comprehensive Plan should not be perceived as a static document -- a one-time guide to the development of a community. In fact, state law requires that the comprehensive plan and its implementing measures be re-considered every 7-10 years, through the "Periodic Review" process.

Thus, the comprehensive plan should be viewed as a dynamic instrument capable of change to meet the needs of the community. The plan and implementation measures should be revised when public needs and desires change, when state and federal land use laws change, and when development is

different in character or rate than originally contemplated. At the same time, because the comprehensive plan was preceded by an extensive citizen and agency involvement effort, it should be given a chance to work. For this reason, major revisions to the plan that would result in a widespread and significant impact beyond an immediate local area should be considered during the “periodic review” process. In contrast, minor plan amendments may be considered on a regular basis, but should be grouped together so that the cumulative effects of plan amendments can be more fully understood.

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 6b/11c</b>	<b>Topic:</b> Sale of Unimproved Real Property
<b>Prepared By:</b> Ron Foggin	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Authorize the sale of the public open space property by passing Resolution No. 3317.

BACKGROUND:

When the Barberry Node was developed, the developer donated property to meet open space requirements. Some of the open space was set aside to accommodate a trail that would connect to the Rickreall Creek Trail. The subdivision trail was set to run from the Rickreall Creek Trail to Barberry Avenue. The public open space designated for the trail behind the house located at 1501 SE Marionberry drains onto the aforementioned property. This drainage issue has been a source of frustration for the property owners, because there is often standing water and marshy conditions. The standing water is causing landscaped plants to die or has served to stunt plant growth.

The homeowner approached the City in 2014 and offered to purchase part of the property so they could expand their back yard and remedy the drainage problem. The City staff has looked at the property in question to determine how the drainage problem could be corrected. We also evaluated the ability to place a trail on the property. To fix the drainage issue the City would have to install a drain system on the edge of the property, which would be costly. The topography of the property will not support an approved trail without thousands of dollars of grading and retaining walls. City staff has calculated a much easier and cost effect route for the trail.

FISCAL IMPACT:

Revenue increase of \$14,008.50

DALLAS 2030 VISION IMPACT:

Our Community & Identity: 1.e, 1.k

ATTACHMENTS:

These minutes are supplemented by electronic recordings of the meeting, which may be reviewed upon request to the City Recorder. Audio files from City Council meetings from February 2, 2015, forward can be found online at <http://www.dallasor.gov/archive> under the corresponding agenda date. Staff reports, resolutions, ordinances, and other documents related to this meeting are also available at that site in the "Council Agendas" archive.

<b>DALLAS CITY COUNCIL</b>	<b>Monday, February 2, 2015</b>
<p>The Dallas City Council met in regular session on Monday, February 2, 2015, at 7:00 p.m. in the Council Chambers of City Hall with Mayor Brian Dalton presiding.</p>	
<p><b>Council:</b></p> <p>Council President Jim Fairchild, Councilor Kelly Gabliks, Councilor Micky Garus, Councilor Bill Hahn, Councilor Jackie Lawson, Councilor Murray Stewart, Councilor LaVonne Wilson, and Councilor Ken Woods, Jr. Excused: Councilor Kevin Marshall.</p>	
<p><b>Staff:</b></p> <p>City Manager Ron Foggin, City Attorney Lane Shetterly, Chief of Police Tom Simpson, Fire Chief Fred Hertel, Community Development/Operations Director Jason Locke, Director of Engineering and Environmental Services Fred Braun, HR Manager Emily Gagner, and Recording Secretary Jeremy Teal.</p>	
<p><b>Pledge of Allegiance:</b></p> <p>Mayor Dalton led the Pledge of Allegiance.</p> <p>Councilor Lawson arrived at 7:01 p.m.</p>	

AGENDA	ACTION
<b>1:09 EMPLOYEE INTRODUCTION/RECOGNITION</b>	<p>Chief Simpson congratulated Carlotta Hall for earning a Master's Degree. Chief Simpson read from Sergeant Hatchell's letter nominating Detective Josh Calef for the Excellence Award.</p> <p>Deputy Chief Brumfield presented a Letter of Commendation for life saving skills to Chad Paoli, Paul McCallum, Kyle Rutherford, and Thoren Sode.</p> <p>Mr. Foggin recognized Tom Gilson for his outstanding work on the interactive City street condition map for the website.</p> <p>Mayor Dalton read the School Board Recognition Month proclamation.</p>
<b>12:30 COMMENTS FROM THE AUDIENCE</b>	<p>Chelsea Metcalfe, Executive Director, Dallas Area Chamber of Commerce and Visitors Center, 119 SW Court St, Dallas, announced the Community Awards would take place at the Nesmith Center on February 20.</p> <p>Joe Koubek, 565 SE Mifflin St, Dallas, reported on the Ford Institute project involving signs for the Rickreall Trail System.</p>
<b>PUBLIC HEARINGS</b>	<p>There were none.</p>

<p><b>18:14 CONSENT AGENDA</b></p> <p>Items approved by the Consent Agenda: a) approve minutes of January 20, 2015 City Council meeting: b) appoint Tory Banford and Paul Trahan and reappoint Pete Christensen to the Budget Committee.</p>	<p>It was moved by Councilor Gabliks <i>to approve the Consent Agenda as submitted</i>. The motion was duly seconded and carried with a vote of 8-0.</p>
<p><b>ITEMS REMOVED FROM CONSENT AGENDA</b></p>	<p>There were none.</p>
<p><b>18:49 REPORTS OR COMMENTS FROM THE MAYOR AND COUNCIL MEMBERS</b></p> <p>REPORT OF THE JANUARY 26, 2015, ADMINISTRATION COMMITTEE</p> <p>REPORT OF THE JANUARY 26, 2015, BUILDING &amp; GROUNDS COMMITTEE</p>	<p>Mayor Dalton announced that Councilor Woods received the Gwen VanDenBosch Regional Leadership Award at the COG Awards Ceremony. Councilor Woods stated he was honored to be selected.</p> <p>Councilor Gabliks reported the Committee reviewed the Council Rules of Procedure, Fraud Policy, and Economic Development Policy and approved the Council Rules with revisions.</p> <p>Mr. Shetterly indicated the review of the fraud and economic policy by the committee satisfied the policy review requirement.</p> <p>Councilor Gabliks reported the Committee discussed the park restroom project, the purchase of the playground equipment for the Academy Park and Roger Jordan Park, and the senior center building.</p>
<p><b>REPORTS FROM CITY MANAGER AND STAFF</b></p>	
<p><b>31:20 COUNCIL RULES OF PROCEDURE UPDATE</b></p>	<p>Mr. Foggin noted the revisions had been made and the rules were ready for approval.</p> <p>It was moved by Councilor Lawson to direct staff to draft a resolution adopting amendments to the Council Rules of Procedure, effective July 1, 2015. The motion was duly carried by a vote of 8-0.</p>
<p><b>32:12 DALLAS COMPREHENSIVE PLAN: CHAPTER 1 INTRO</b></p>	<p>Mr. Locke stated the Planning Commission found this an important place to start with public involvement. He stated the State had requirements and recommendations for planned land use and goals associated with them. He reported there would be a public hearing regarding the matter at the February 17 Council meeting.</p>
<p><b>38:45 LEGISLATIVE UPDATE</b></p>	<p>Mr. Foggin noted the League of Oregon Cities had released their top five priorities for 2015. He indicated the City Day at the Capital would be February 26.</p>

<b>42:15 COUNCIL GOAL UPDATE</b>	Mr. Foggin stated the Citizens Academy had been filled and there were people on a waiting list for the next session.
<b>42:50 OTHER</b>	Mr. Foggin announced the interactive street map showing pavement conditions and cost to repair or replace was on the City website.  Mr. Foggin shared that Mark Johnson, Library Manager, was duct taped to the wall to raise money for the teen area at the library, noting they raised over \$200.
<b>RESOLUTIONS</b>	
<b>50:42 FIRST READING OF ORDINANCE</b>  <b>Ordinance No. 1774</b> – A Ordinance repealing Ordinance 1735 relating to oath of office.	Mayor Dalton declared Ordinance No. 1774 to have passed its first reading.
<b>SECOND READING OF ORDINANCE</b>	
<b>EXECUTIVE SESSION</b>	
<b>OTHER BUSINESS</b>	There was none.

<b>ADJOURNMENT</b>	There being no further business, the meeting adjourned at 7:51 p.m.
Read and approved this _____ day of _____ 2015.	
ATTEST:	_____ Mayor
_____ City Manager	

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# DALLAS CITY COUNCIL REPORT

To: DALLAS CITY COUNCIL

<i>City of Dallas</i>	<b>Agenda Item No. 10b</b>	<b>Topic:</b> January 2015 Financial Report
<b>Prepared By:</b> Cecilia Ward	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Information Only

BACKGROUND:

Provided is the monthly financial reports for the month of January 2015.

For January :

- Percent collected/spent should be at 58.33%. This can vary up or down depending on seasonal or one-time revenues and expenditures.
- The following budgeted capital improvement payments were made in January:  
Capital Projects Fund - Building Improvements - vault remodel \$3,414  
Capital Projects Fund - Equipment - chemical feed controller (Aquatic Center) \$9,725

FISCAL IMPACT:

None

ATTACHMENTS:

January 2015 Financial Report

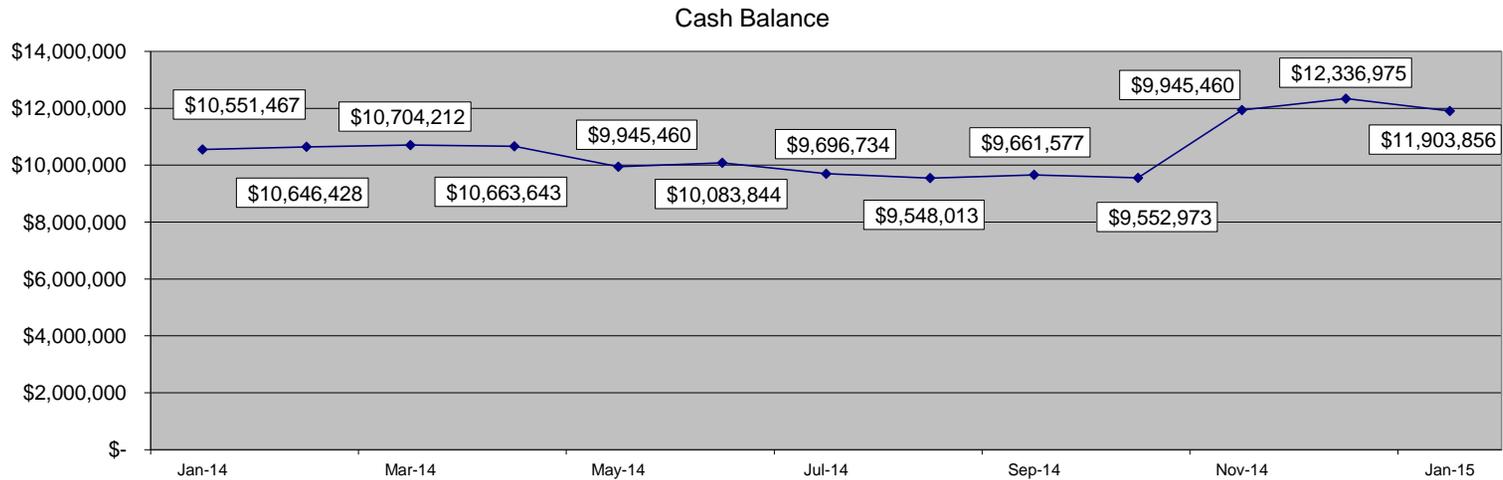


**Monthly Financials**  
**for the Month of**  
**January 2015**

**CITY OF DALLAS**  
**Cash Report**  
**For the Period Ending January 31, 2015**

Cash on hand	\$ 645
Cash in Investments	10,139,604
Cash in Bank	1,763,607
Total Cash Balance as of 1/31/2015	<u>\$ 11,903,856</u>

Restricted/Committed	\$ 7,509,246
Unrestricted	4,394,610
	<u>\$ 11,903,856</u>



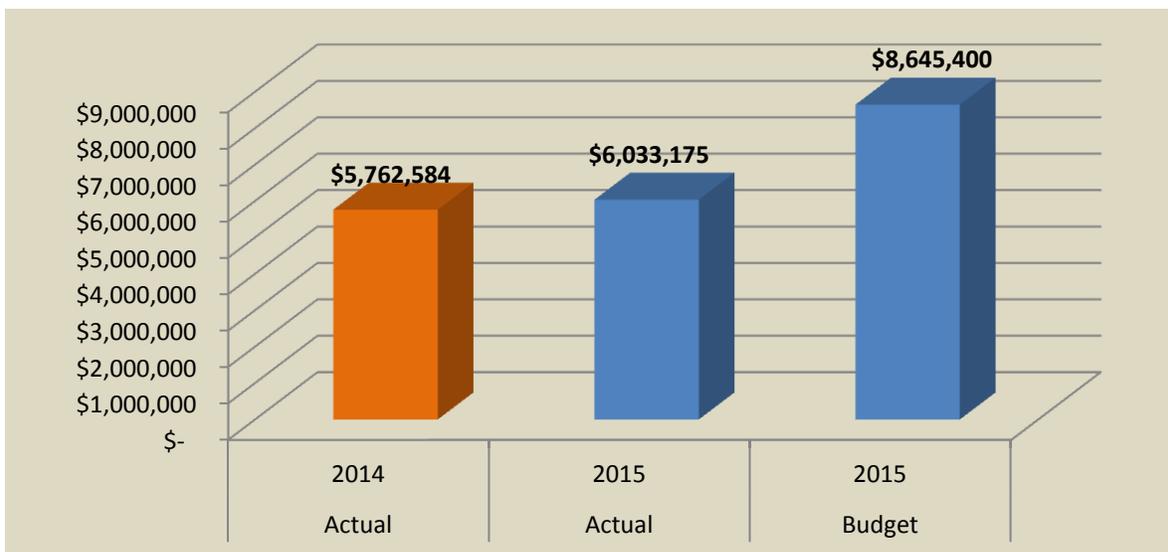
Investment Breakdown

	<u>Ending Bal</u>	<u>Interest YTD</u>
LGIP	\$ 8,961,055	\$ 26,564
Wells Fargo Savings	1,178,549	\$ 178
	<u>\$ 10,139,604</u>	<u>\$ 26,742</u>

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**General Fund Revenue**

Description	Year-to-Date	Year-to-Date	Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
Licenses, Permits and Fees	\$ 747,362	\$ 897,997	\$ 1,419,500	\$ 521,503	63.3%
Fines and Forfeitures	61,442	103,462	220,000	116,538	47.0%
Recreation Fees	257,715	266,281	485,000	218,719	54.9%
Library Fees	42,350	42,510	81,500	38,990	52.2%
Property Taxes	3,131,796	3,302,632	3,495,000	192,368	94.5%
Miscellaneous Taxes	135,015	125,195	231,000	105,805	54.2%
Franchise Fees	496,198	426,706	1,095,000	668,294	39.0%
Inter-governmental	93,628	110,928	192,000	81,072	57.8%
Miscellaneous Revenue	35,581	43,355	40,000	(3,355)	108.4%
Interest Earnings	6,902	7,251	15,000	7,749	48.3%
Transfers	754,595	706,858	1,371,400	664,542	51.5%
	<b>\$ 5,762,584</b>	<b>\$ 6,033,175</b>	<b>\$ 8,645,400</b>	<b>\$ 2,612,225</b>	<b>69.8%</b>

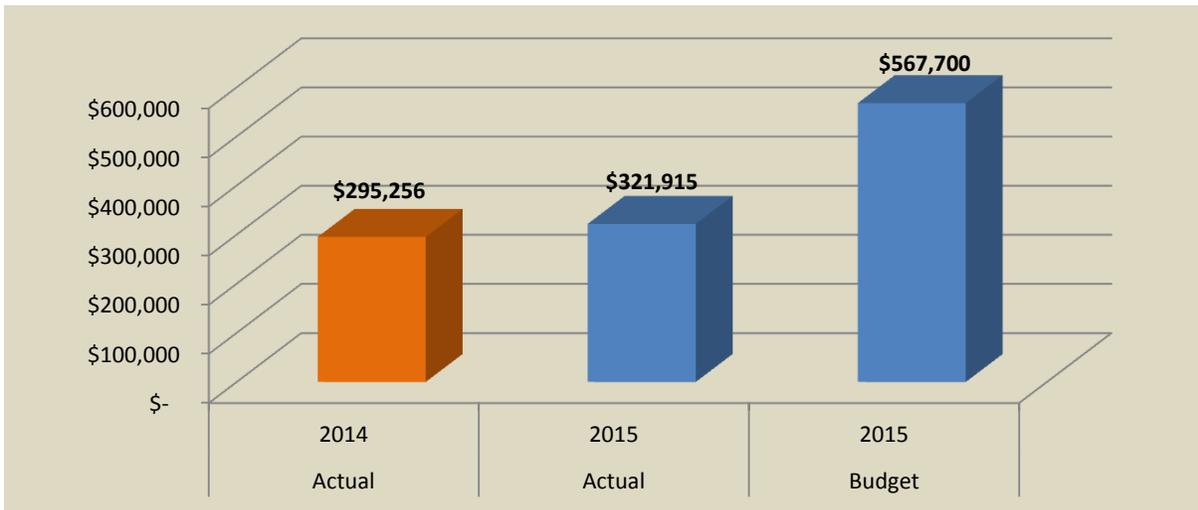


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Administration**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 220,671	\$ 244,839	\$ 396,000	\$ 151,161	61.8%
Materials and Supplies	74,585	77,075	171,700	94,625	44.9%
	<b>\$ 295,256</b>	<b>\$ 321,915</b>	<b>\$ 567,700</b>	<b>\$ 245,785</b>	<b>56.7%</b>

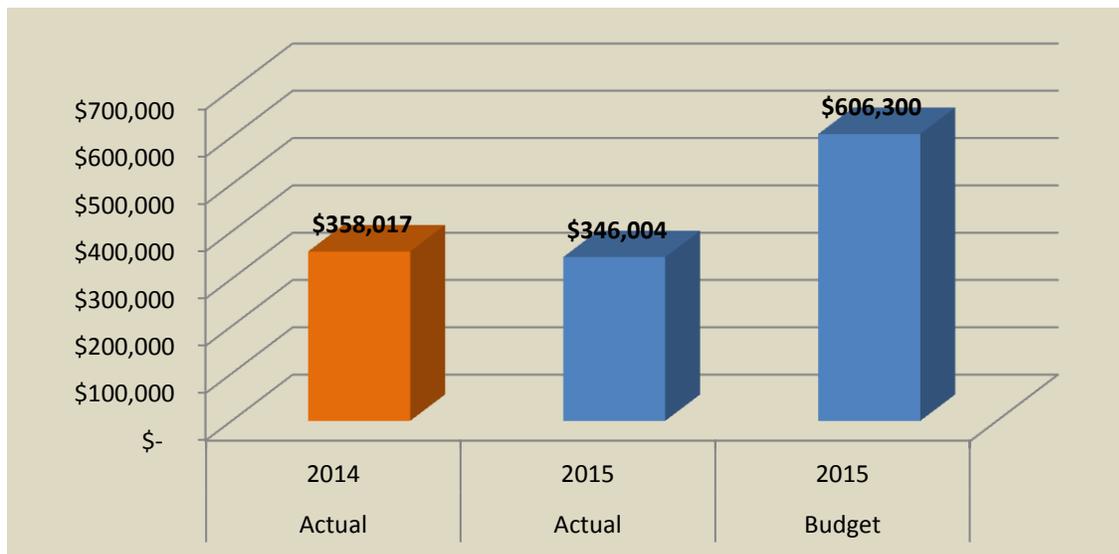


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Finance**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 212,968	\$ 200,401	\$ 384,000	\$ 183,599	52.2%
Materials and Supplies	145,049	145,603	222,300	76,697	65.5%
	<b>\$ 358,017</b>	<b>\$ 346,004</b>	<b>\$ 606,300</b>	<b>\$ 260,296</b>	<b>57.1%</b>

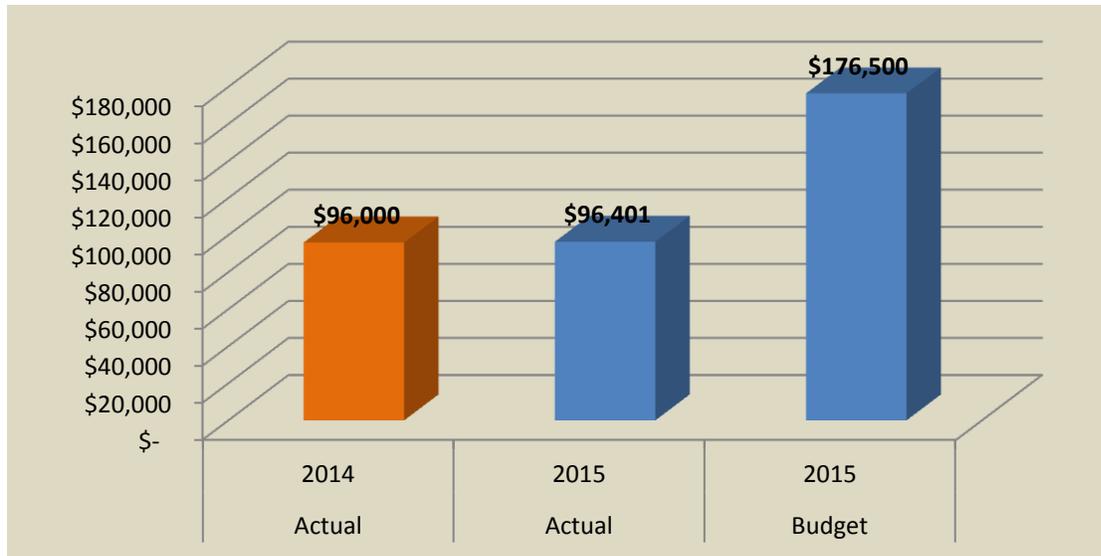


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Facilities**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 63,928	\$ 61,967	\$ 111,000	\$ 49,033	55.8%
Materials and Supplies	32,072	34,434	65,500	31,066	52.6%
	<b>\$ 96,000</b>	<b>\$ 96,401</b>	<b>\$ 176,500</b>	<b>\$ 80,099</b>	<b>54.6%</b>

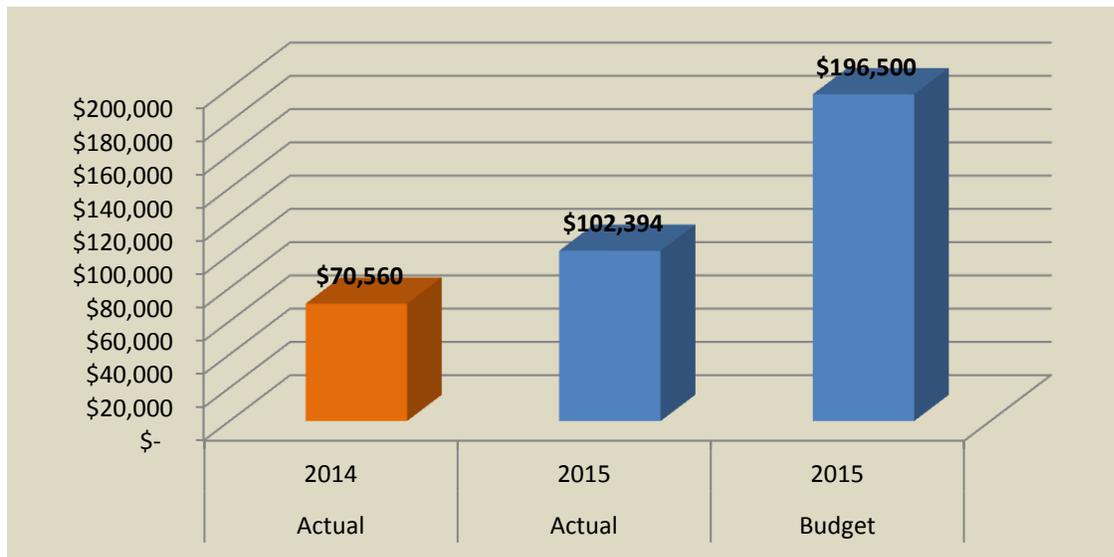


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Municipal Court**

Description	Year-to-Date	Year-to-Date	Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 61,288	\$ 60,744	\$ 120,000	\$ 59,256	50.6%
Materials and Supplies	9,272	41,650	76,500	34,850	54.4%
	<b>\$ 70,560</b>	<b>\$ 102,394</b>	<b>\$ 196,500</b>	<b>\$ 94,106</b>	<b>52.1%</b>

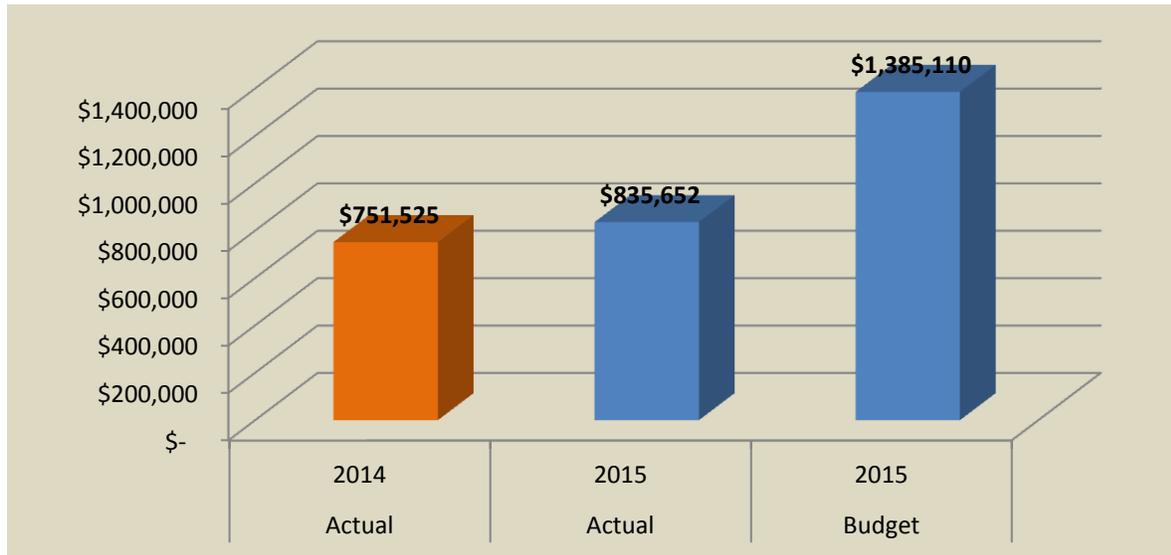


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Ambulance**

Description	Year-to-Date		Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015	Actual 2015	Budget 2015			
Personnel Services	\$ 527,954	\$ 589,527	\$ 997,000	\$ 407,473		59.1%	
Materials and Supplies	169,578	187,815	317,300	129,485		59.2%	
Debt Service	36,493	40,810	40,810	-		100.0%	
Transfers	17,500	17,500	30,000	12,500		58.3%	
	<b>\$ 751,525</b>	<b>\$ 835,652</b>	<b>\$ 1,385,110</b>	<b>\$ 549,458</b>		<b>60.3%</b>	

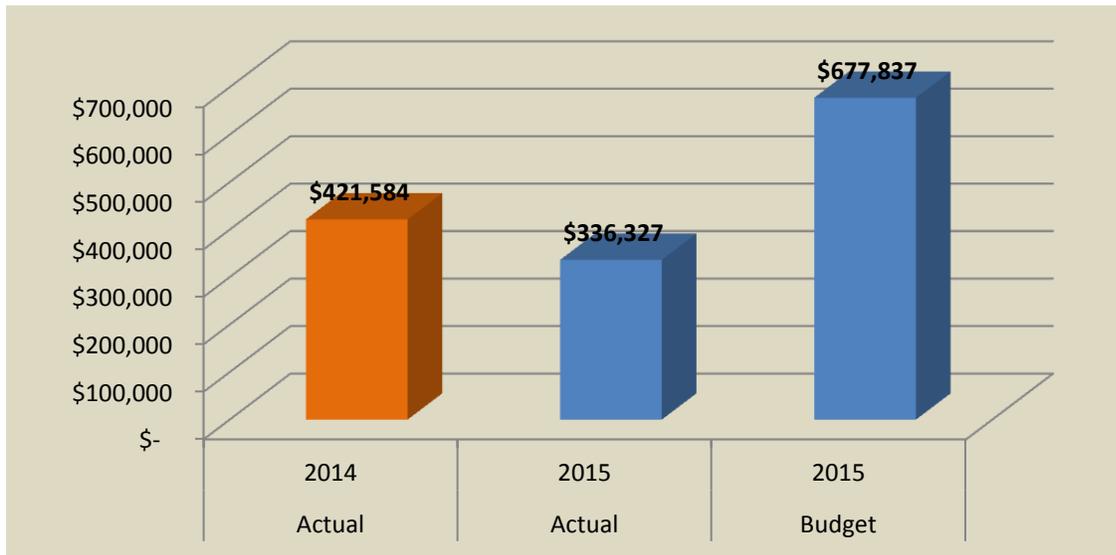


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Fire**

Description	Year-to-Date	Year-to-Date	Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 256,658	\$ 147,503	\$ 265,000	\$ 117,497	55.7%
Materials and Supplies	147,776	171,674	358,500	186,826	47.9%
Debt Service	-	-	24,937	24,937	0.0%
Transfers	17,150	17,150	29,400	12,250	58.3%
	<b>\$ 421,584</b>	<b>\$ 336,327</b>	<b>\$ 677,837</b>	<b>\$ 341,510</b>	<b>49.6%</b>

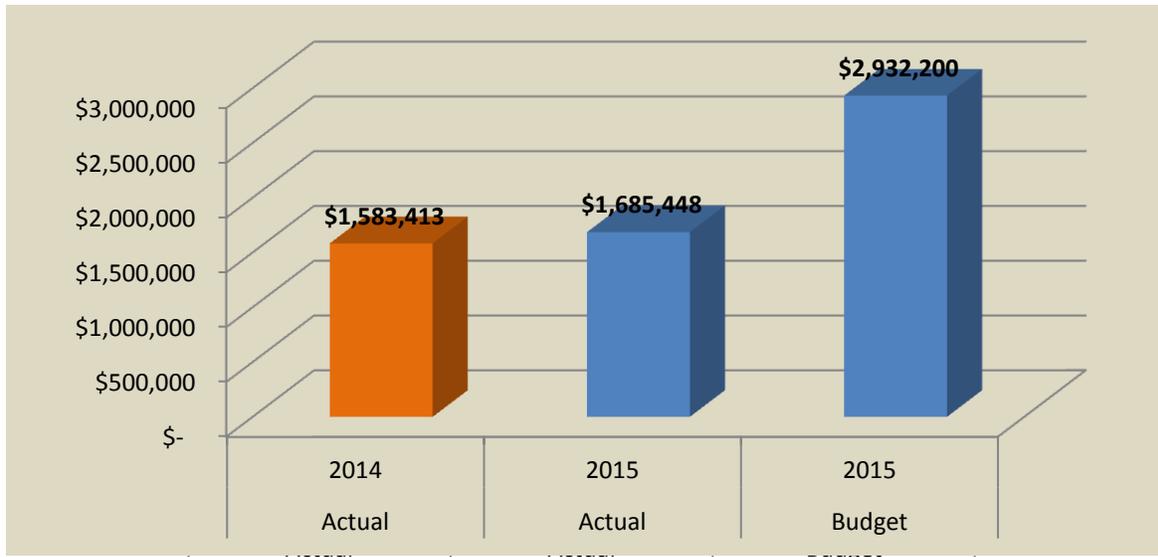


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Police**

Description	Year-to-Date Actual 2014	Year-to-Date Actual 2015	Budget 2015	Budget Remaining	Percent Spent
Personnel Services	\$ 1,368,941	\$ 1,422,736	\$ 2,444,000	\$ 1,021,264	58.2%
Materials and Supplies	198,722	238,795	447,200	208,405	53.4%
Transfers	15,750	23,917	41,000	17,083	58.3%
	<b>\$ 1,583,413</b>	<b>\$ 1,685,448</b>	<b>\$ 2,932,200</b>	<b>\$ 1,246,752</b>	<b>57.5%</b>

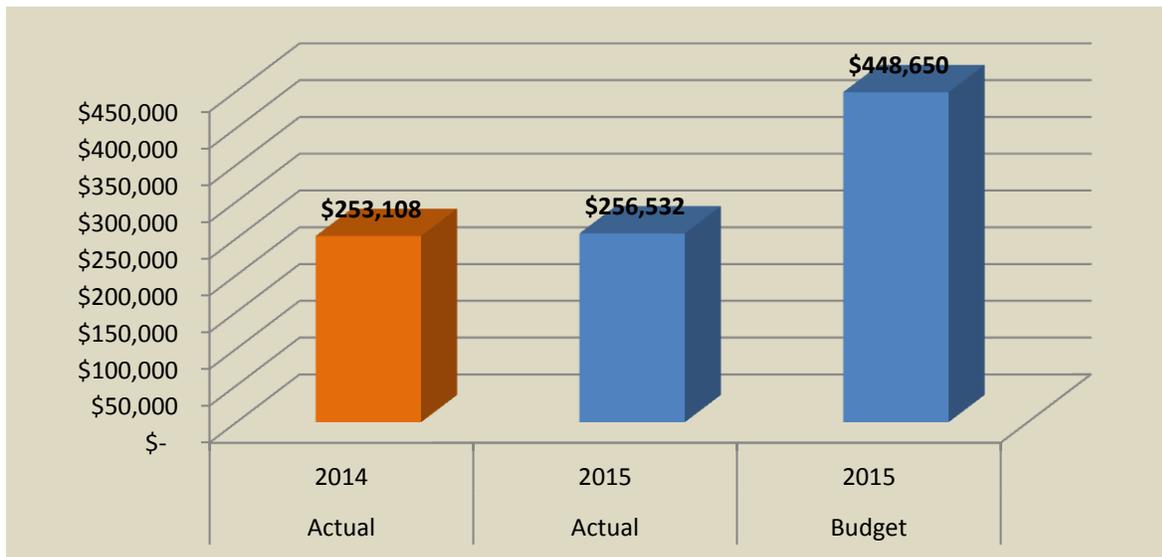


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Library**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 204,915	\$ 216,569	\$ 366,000	\$ 149,431	59.2%
Materials and Supplies	48,193	39,963	82,650	42,687	48.4%
	<b>\$ 253,108</b>	<b>\$ 256,532</b>	<b>\$ 448,650</b>	<b>\$ 192,118</b>	<b>57.2%</b>

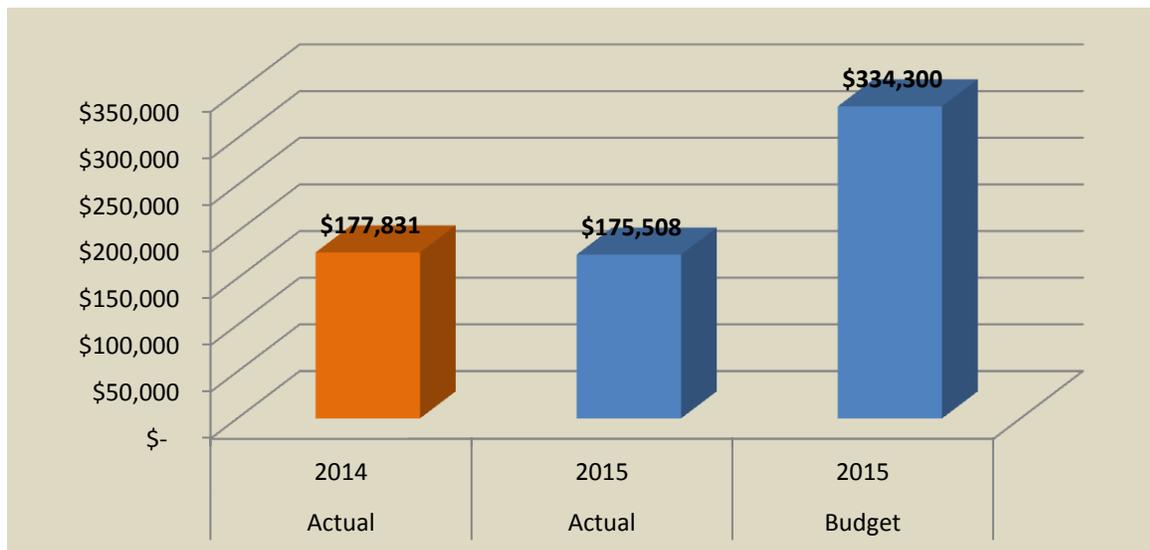


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Parks**

Description	Year-to-Date	Year-to-Date	Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 126,881	\$ 132,716	\$ 220,000	\$ 87,284	60.3%
Materials and Supplies	48,033	37,950	106,000	68,050	35.8%
Transfers	2,917	4,842	8,300	3,458	58.3%
	<b>\$ 177,831</b>	<b>\$ 175,508</b>	<b>\$ 334,300</b>	<b>\$ 158,792</b>	<b>52.5%</b>

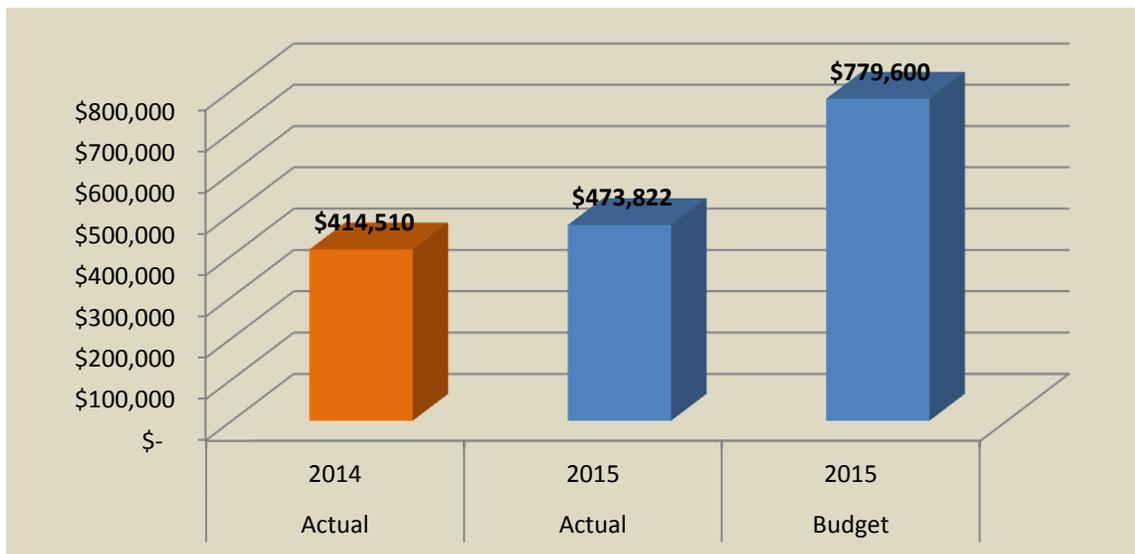


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Aquatic Center**

Description	Year-to-Date	Year-to-Date	Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 249,644	\$ 268,797	\$ 422,000	\$ 153,203	63.7%
Materials and Supplies	164,866	188,359	307,600	119,241	61.2%
Transfers	-	16,667	50,000	33,333	33.3%
	<b>\$ 414,510</b>	<b>\$ 473,822</b>	<b>\$ 779,600</b>	<b>\$ 305,778</b>	<b>60.8%</b>

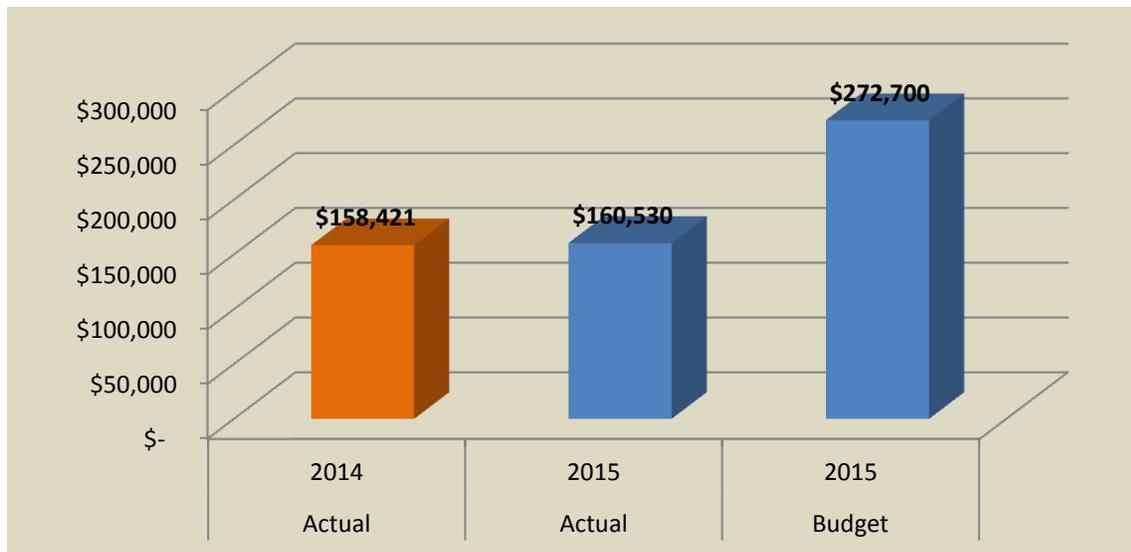


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Building Inspections**

Description	Year-to-Date	Year-to-Date	Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 149,775	\$ 148,707	\$ 253,000	\$ 104,293	58.8%
Materials and Supplies	8,646	9,490	15,700	6,210	60.4%
Transfers	-	2,333	4,000	1,667	58.3%
	<b>\$ 158,421</b>	<b>\$ 160,530</b>	<b>\$ 272,700</b>	<b>112,170</b>	<b>58.9%</b>

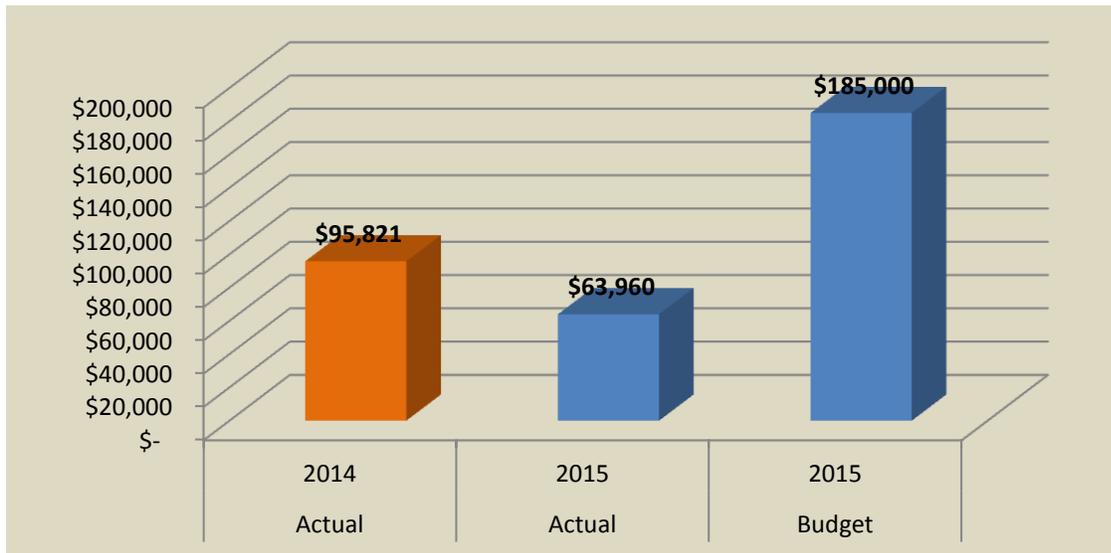


**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Planning**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
Personnel Services	\$ 85,518	\$ 52,075	\$ 122,000	\$ 69,925	42.7%
Materials and Supplies	8,320	9,902	59,600	49,698	16.6%
Transfers	1,983	1,983	3,400	1,417	58.3%
	<b>\$ 95,821</b>	<b>\$ 63,960</b>	<b>\$ 185,000</b>	<b>\$ 121,040</b>	<b>34.6%</b>



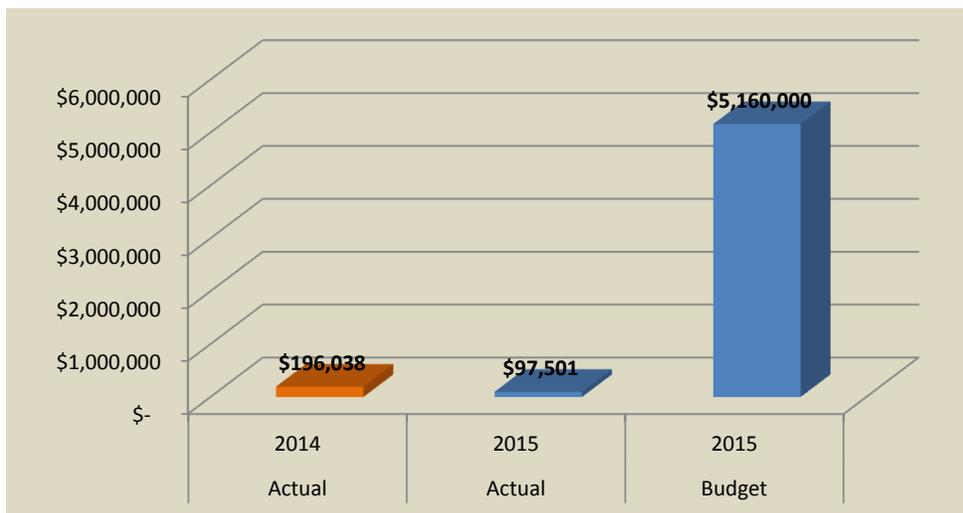
**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

Department: System Development Fund

Description	Year-to-Date Actual 2014	Year-to-Date Actual 2015	Budget 2015	Budget Remaining	Percent Collected
<b>Revenue</b>					
Streets SDC	\$ 34,878	\$ 24,705	\$ 50,000	\$ 25,295	49.4%
Parks SDC	68,166	48,687	100,000	51,313	48.7%
Water SDC	124,476	82,012	175,000	92,988	46.9%
Sewer SDC	129,204	83,837	175,000	91,163	47.9%
Storm Water SDC	27,852	19,140	40,000	20,860	47.9%
Transfers	135,483	55,417	95,000	39,583	58.3%
	<b>\$ 520,059</b>	<b>\$ 313,798</b>	<b>\$ 635,000</b>	<b>\$ 321,202</b>	<b>49.4%</b>

Description	Year-to-Date Actual 2014	Year-to-Date Actual 2015	Budget 2015	Budget Remaining	Percent Spent
<b>Expenditures</b>					
Street SDC Projects	\$ -	\$ -	\$ 290,000	\$ 290,000	0.0%
Park SDC Projects	-	27,657	365,000	337,343	7.6%
Water SDC Projects	-	-	515,000	515,000	0.0%
Sewer SDC Projects	196,038	4	3,870,000	3,869,996	0.0%
Storm Water SDC Projects	-	69,840	120,000	50,160	58.2%
	<b>\$ 196,038</b>	<b>\$ 97,501</b>	<b>\$ 5,160,000</b>	<b>\$ 5,062,499</b>	<b>1.9%</b>



**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Streets**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Highway Reimbursement & Appropriations	\$ 666,424	\$ 615,059	\$ 1,020,000	\$ 404,941	60.3%
Miscellaneous Revenue and Interest	65,107	3,390	5,000	1,610	67.8%
	<b>\$ 731,531</b>	<b>\$ 618,449</b>	<b>\$ 1,025,000</b>	<b>\$ 406,551</b>	<b>60.3%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Personnel Services	\$ 172,182	\$ 173,594	\$ 302,000	\$ 128,406	57.5%
Materials and Supplies	147,015	140,032	276,700	136,668	50.6%
Capital Outlay	54,866	11,581	421,250	409,669	2.7%
Transfers	46,667	48,708	83,500	34,792	58.3%
	<b>\$ 420,730</b>	<b>\$ 373,915</b>	<b>\$ 1,083,450</b>	<b>\$ 709,535</b>	<b>34.5%</b>

Capital Expenditures:

Contractual Overlays - \$350,000  
Sidewalks - \$20,000  
Equipment - \$51,250



**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

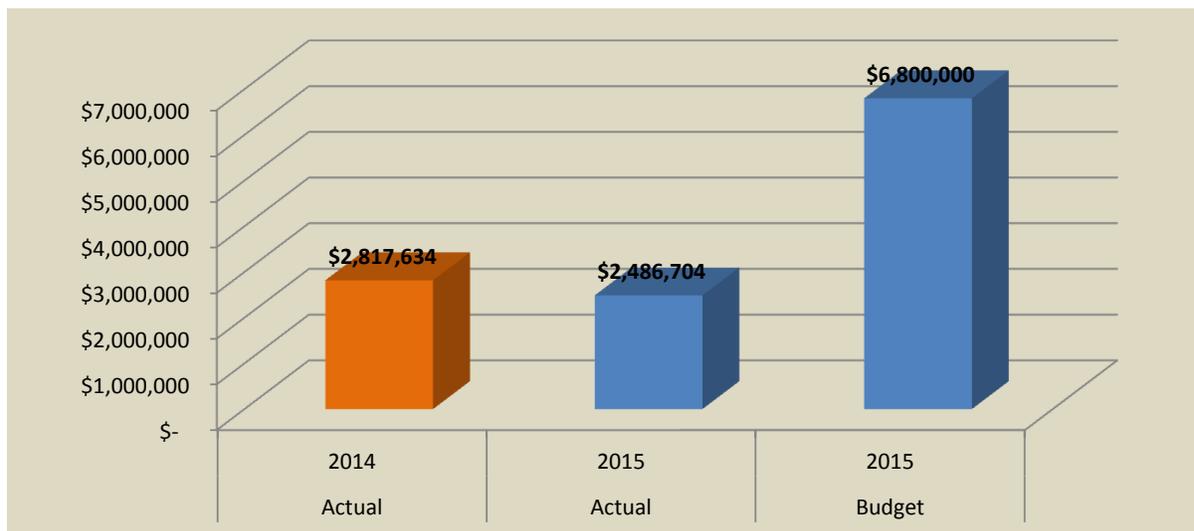
Department: Sewer

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Service Charges and Hook Up Fees	\$ 1,808,972	\$ 1,826,077	\$ 3,140,000	\$ 1,313,923	58.2%
Miscellaneous Revenue and Interest	328,791	116,748	2,340,000	\$ 2,223,252	5.0%
	<b>\$ 2,137,763</b>	<b>\$ 1,942,825</b>	<b>\$ 5,480,000</b>	<b>\$ 3,537,175</b>	<b>35.5%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Personnel Services	\$ 350,901	\$ 354,317	\$ 617,000	\$ 262,683	57.4%
Materials and Supplies	550,360	652,586	1,128,000	475,414	57.9%
Capital Outlay	591,005	143,318	866,250	722,932	16.5%
Transfers	320,833	338,333	580,000	241,667	58.3%
Debt Service	1,004,534	998,150	3,608,750	2,610,600	27.7%
	<b>\$ 2,817,634</b>	<b>\$ 2,486,704</b>	<b>\$ 6,800,000</b>	<b>\$ 4,313,296</b>	<b>36.6%</b>

Capital Expenditures:

- Equipment - \$16,250
- Rickereall Crk Interceptor CIP - \$500,000
- Siphon Replacement - \$100,000
- I & I - \$50,000
- Pump Station Upgrade - \$100,000
- WWTF Equipment Replacement - \$50,000
- Sewer Replacement Projects - \$50,000



**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

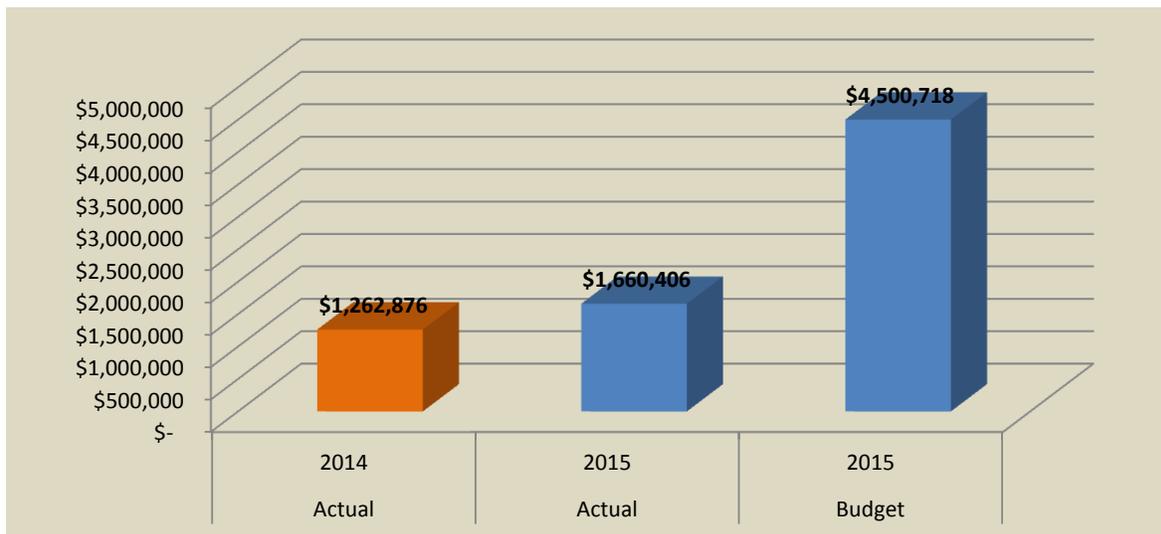
Department: Water

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Service Charges and Connection Fees	\$ 1,376,045	\$ 1,492,965	\$ 2,255,000	\$ 762,035	66.2%
Miscellaneous Revenue and Interest	60,941	419,822	4,085,000	3,665,178	10.3%
	<b>\$ 1,436,986</b>	<b>\$ 1,912,787</b>	<b>\$ 6,340,000</b>	<b>\$ 4,427,213</b>	<b>30.2%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Personnel Services	\$ 237,987	\$ 237,690	\$ 422,000	\$ 184,310	56.3%
Materials and Supplies	429,005	423,490	744,500	321,010	56.9%
Capital Outlay	-	391,675	2,216,250	1,824,575	17.7%
Transfers	347,967	259,583	445,000	185,417	58.3%
Debt Service	247,917	347,967	672,968	325,001	51.7%
	<b>\$ 1,262,876</b>	<b>\$ 1,660,406</b>	<b>\$ 4,500,718</b>	<b>\$ 2,840,312</b>	<b>36.9%</b>

Capital Expenditures:

- Equipment - \$16,250
- WTP Weir Replacement - \$50,000
- Land Acquisition - \$800,000
- Transmission Water Line - \$100,000
- AMR Project- \$1,200,000
- Water Line Replacement Project - \$50,000



**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

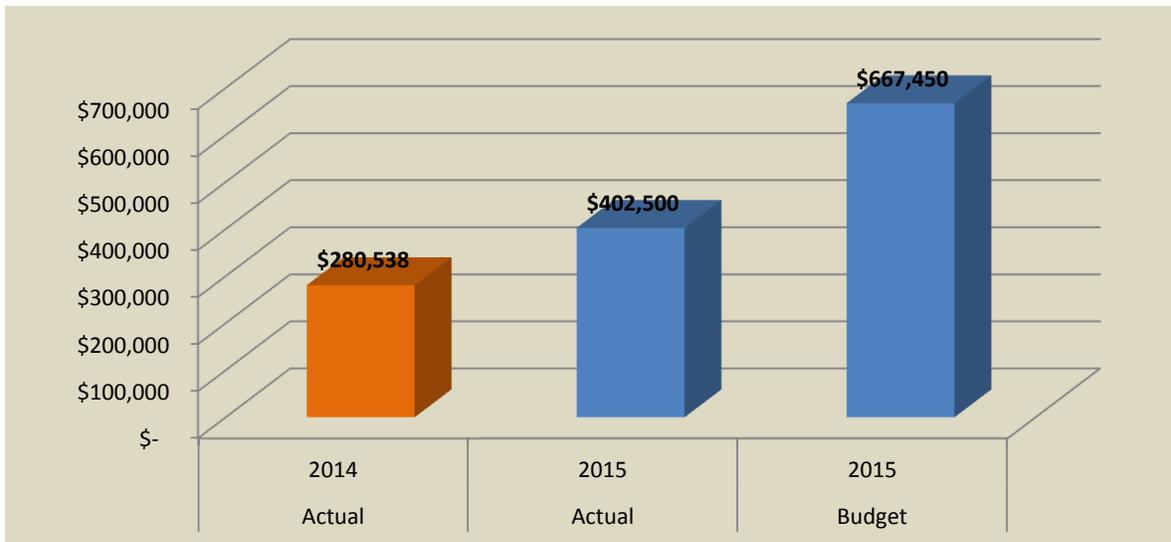
Department: Fleet

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Service Charges and Total Care	\$ 253,073	\$ 265,090	\$ 495,000	\$ 229,910	53.6%
Miscellaneous Revenue	46,550	61,017	104,600	43,583	58.3%
	<b>\$ 299,623</b>	<b>\$ 326,106</b>	<b>\$ 599,600</b>	<b>\$ 273,494</b>	<b>54.4%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Personnel Services	\$ 117,857	\$ 117,832	\$ 211,000	\$ 93,168	55.8%
Materials and Supplies	116,024	114,634	215,200	100,566	53.3%
Capital Outlay	(10)	123,368	161,250	37,882	76.5%
Transfers	46,667	46,667	80,000	33,333	58.3%
	<b>\$ 280,538</b>	<b>\$ 402,500</b>	<b>\$ 667,450</b>	<b>\$ 264,950</b>	<b>60.3%</b>

Capital Expenditures:

Equipment - \$41,250  
 Vehicles - \$90,000 (Police, Planning)  
 Building Improvements - \$30,000



**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

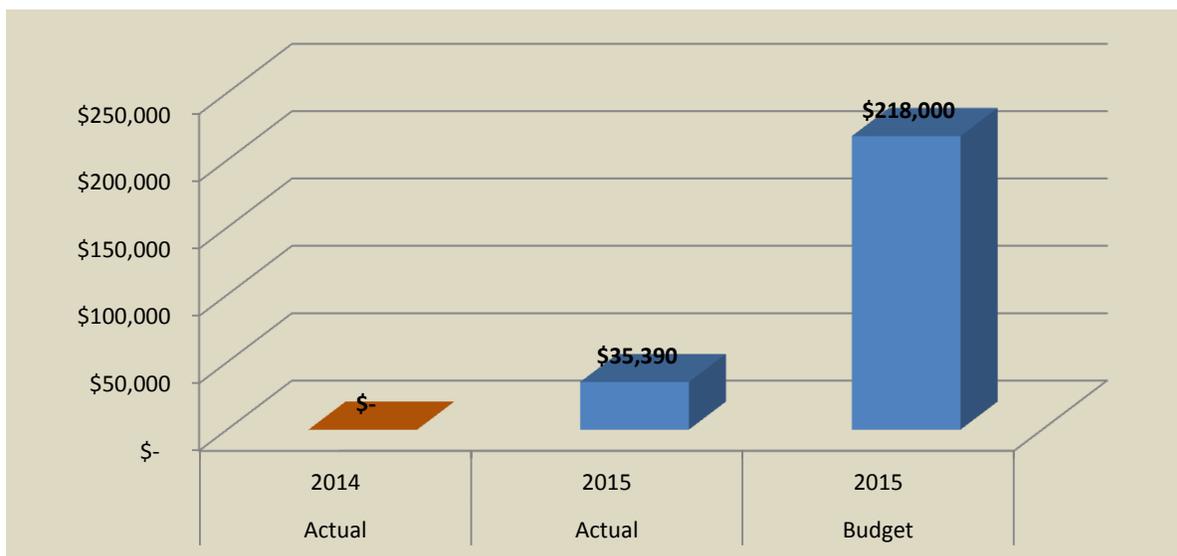
**Department: Capital Projects**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Transfers	\$ -	\$ 35,390	\$ 218,000	\$ 182,610	16.2%
	<b>\$ -</b>	<b>\$ 35,390</b>	<b>\$ 218,000</b>	<b>\$ 182,610</b>	<b>16.2%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Capital Outlay	-	35,390	218,000	182,610	16.2%
	<b>\$ -</b>	<b>\$ 35,390</b>	<b>\$ 218,000</b>	<b>\$ 182,610</b>	<b>16.2%</b>

General Fund Capital Projects:

- Fire Department - \$24,000 match for training facility grant
- Aquatic Center - \$12,000 upgrade chemical feed controllers
- Police Department - \$8,000 tasers; \$15,000 storage improvements
- Library - \$14,000 furniture and building upgrades
- Parks - \$75,000 restroom rehab
- Finance/Court - \$15,000 vault filing system upgrades
- Facilities - \$7,000 replace upstairs flooring



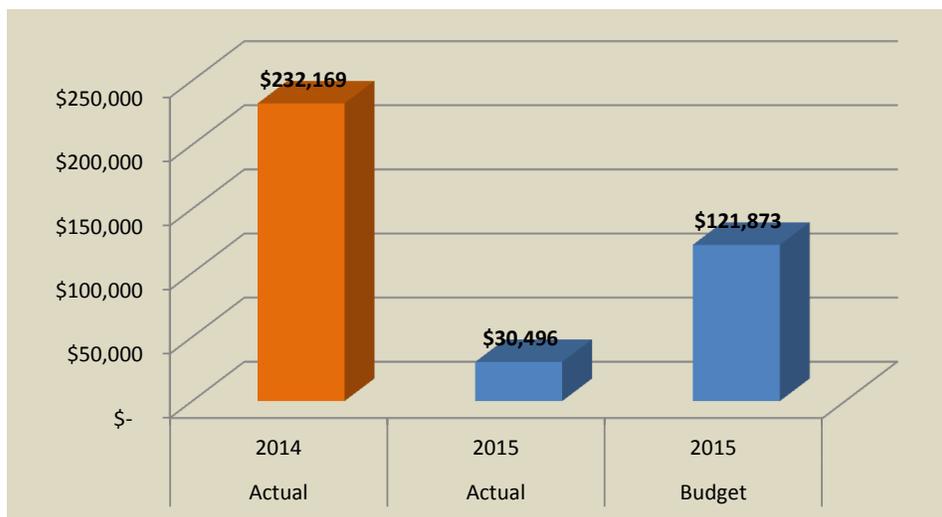
**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Trust Fund**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Fire and Ambulance	\$ 18,766	\$ 19,509	\$ 29,500	\$ 9,991	66.1%
Miscellaneous	591	389	500	111	77.8%
Economic Development	20,000	17,000	20,000	3,000	85.0%
Park	2,719	60	3,000	2,940	2.0%
Library	17,134	9,697	20,000	10,303	48.5%
	<b>\$ 59,210</b>	<b>\$ 46,655</b>	<b>\$ 73,000</b>	<b>\$ 26,345</b>	<b>63.9%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Fire and Ambulance	\$ 22,947	\$ 20,952	\$ 67,048	\$ 46,096	31.2%
Miscellaneous	1,732	94	1,325	1,231	7.1%
Economic Development	26,919	1,032	23,500	22,468	4.4%
Park	1,736	-	8,000	8,000	0.0%
Library	9,108	8,418	22,000	13,582	38.3%
Transfers	169,727	-	-	-	0.0%
	<b>\$ 232,169</b>	<b>\$ 30,496</b>	<b>\$ 121,873</b>	<b>\$ 91,377</b>	<b>25.0%</b>



**58.33% Through the Fiscal Year**

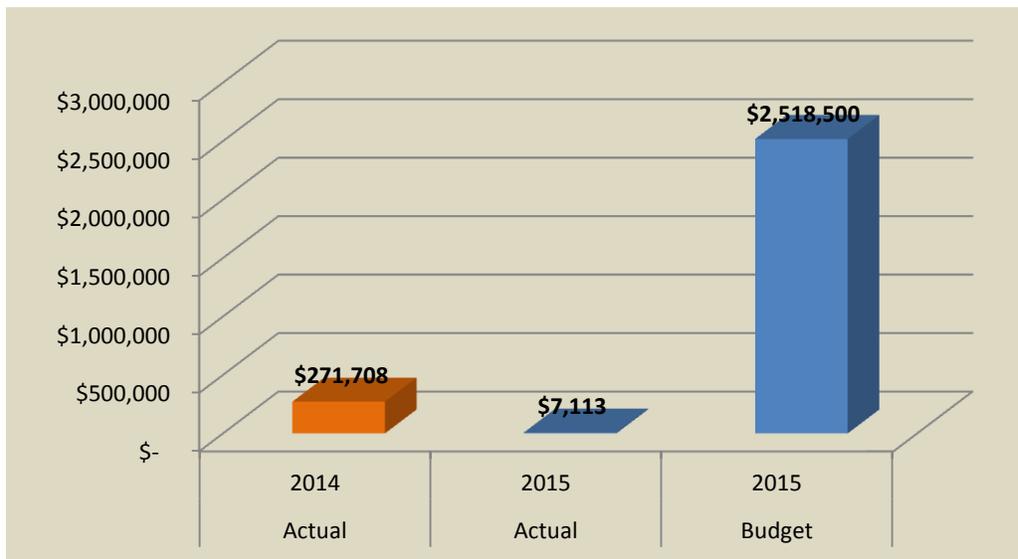
**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: Grant Fund**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Police	\$ 5,393	\$ 7,203	\$ 3,000	\$ (4,203)	240.1%
Fire	-	-	456,000	456,000	0.0%
Parks and Trails	-	-	550,000	550,000	0.0%
Miscellaneous	24,731	7,413	1,503,000	1,495,587	0.5%
	<b>\$ 30,124</b>	<b>\$ 14,616</b>	<b>\$ 2,512,000</b>	<b>\$ 2,497,384</b>	<b>0.6%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Police	\$ -	\$ 860	\$ 9,000	\$ 8,140	9.6%
Fire	135,493	-	456,000	456,000	0.0%
Parks and Trails	134,743	-	550,000	550,000	0.0%
Miscellaneous	1,471	6,253	1,503,500	2,803	0.4%
	<b>\$ 271,708</b>	<b>\$ 7,113</b>	<b>\$ 2,518,500</b>	<b>\$ 1,016,943</b>	<b>0.3%</b>

Grant Projects: Police - vests, misc.  
 Fire - training facility  
 Parks and Trails - Rickreall Crk Trail System  
 Miscellaneous - CDBG; Ready to Read



**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

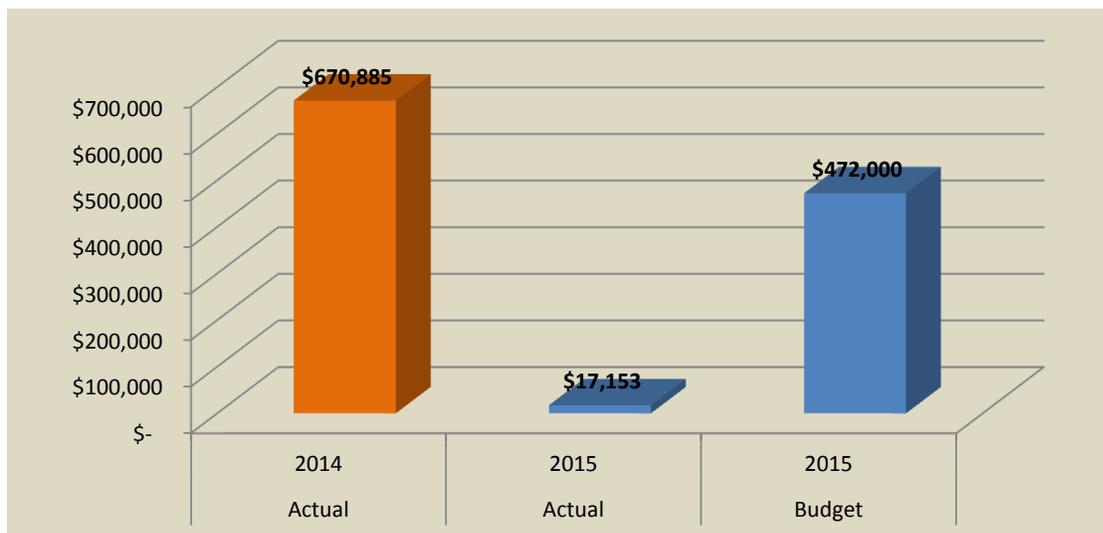
**Department: Urban Renewal Fund**

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Collected
	Actual 2014	Actual 2015			
<b>Revenue</b>					
Property Taxes	\$ 127,403	\$ 136,383	\$ 135,000	\$ (1,383)	101.0%
Interest Earnings	1,556	1,906	1,000	(906)	190.6%
Miscellaneous Revenue	50	-	1,000	1,000	0.0%
Finance Proceeds	750,000	-	-	-	0.0%
	<b>\$ 879,008</b>	<b>\$ 138,289</b>	<b>\$ 137,000</b>	<b>\$ (2,289)</b>	<b>100.9%</b>

Description	Year-to-Date		Budget 2015	Budget Remaining	Percent Spent
	Actual 2014	Actual 2015			
<b>Expenditures</b>					
Personal Services	\$ 9,665	\$ 9,621	\$ 16,000	\$ 6,379	60.1%
Materials and Services	15,798	7,533	36,000	28,467	20.9%
Debt Service Reserve	-	-	86,395	86,395	0.0%
Capital Expenditures	635,454	-	195,000	195,000	0.0%
Operation Contingencies	-	-	52,210	52,210	0.0%
Transfers	9,969	-	86,395	86,395	0.0%
	<b>\$ 670,885</b>	<b>\$ 17,153</b>	<b>\$ 472,000</b>	<b>\$ 454,847</b>	<b>3.6%</b>

Capital Expenditures:

Special Projects  
Property Acquisition



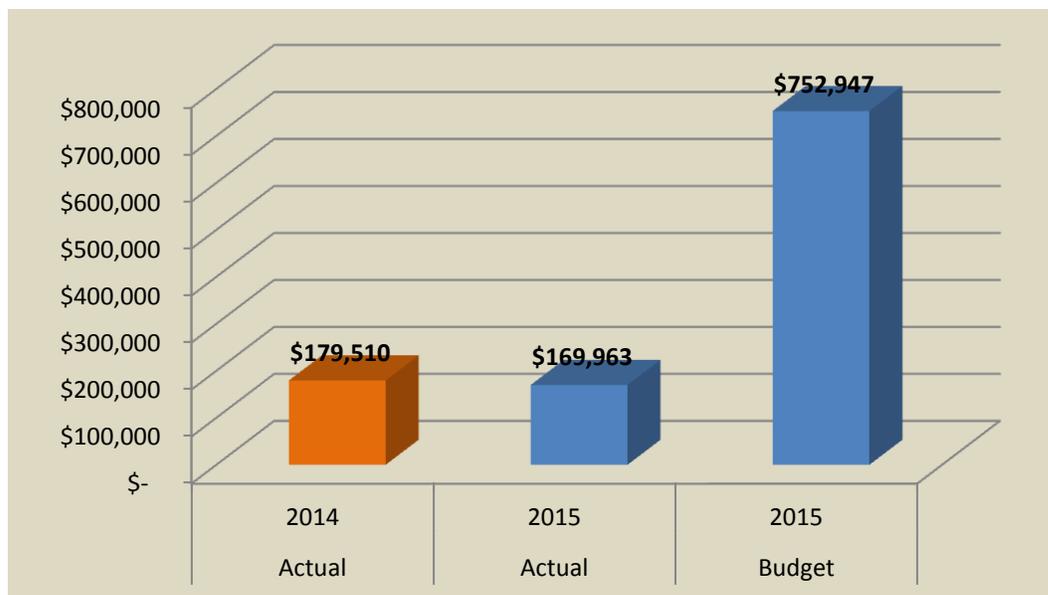
**58.33% Through the Fiscal Year**

**City of Dallas**  
**Monthly Financials**  
**January 2015**

**Department: General Obligation and Long Term Debt Funds**

Description	Year-to-Date Actual 2014	Year-to-Date Actual 2015	Budget 2015	Budget Remaining	Percent Collected
<b>Revenue</b>					
Property Taxes	\$ 665,862	\$ 633,529	\$ 670,000	\$ 36,471	94.6%
Transfers	62,545	65,913	112,994	47,081	58.3%
	<b>\$ 728,407</b>	<b>\$ 699,442</b>	<b>\$ 782,994</b>	<b>\$ 83,552</b>	<b>89.3%</b>

Description	Year-to-Date Actual 2014	Year-to-Date Actual 2015	Budget 2015	Budget Remaining	Percent Spent
<b>Expenditures</b>					
Principal	\$ 75,000	\$ 80,000	\$ 575,000	\$ 495,000	13.9%
Interest	104,510	89,963	177,947	87,984	50.6%
	<b>\$ 179,510</b>	<b>\$ 169,963</b>	<b>\$ 752,947</b>	<b>\$ 582,984</b>	<b>22.6%</b>



**58.33% Through the Fiscal Year**

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 10 c</b>	<b>Topic:</b> Renewal of City Attorney's contract
<b>Prepared By:</b> Emily Gagner	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Motion to extend the City Attorney's contract through December 31, 2016

BACKGROUND:

In 2012, the City entered into an agreement with Lane Shetterly for city attorney services. That contract expired December 31, 2014. However, the contract allows for a 2-year extension of the contract "...by motion of the City Council..."

Lane has told me he doesn't seek any changes to the current contract, and I'm sure you'd all agree his performance has been more than acceptable.

Staff recommends extending the City Attorney's contract by 2 years.

FISCAL IMPACT:

None

DALLAS 2030 VISION IMPACT:

NA

ATTACHMENTS:

None

# DALLAS CITY COUNCIL

## REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 11 a</b>	<b>Topic:</b> Resolution 3315 authorizing grant application
<b>Prepared By:</b> Emily Gagner	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Adopt Resolution 3315

BACKGROUND:

The City has the opportunity to apply for the 2015 Local Government Grant Program (LGGP) grant cycle. We have been awarded LGGP grants in the past for previous trail construction.

This grant application is for trail around Central Bark dog park and extending to the west along Azalea Street. Additionally, the grant seeks funds to install a section of trail from the dog park area to Miller Avenue through a vacant lot owned by the City on Miller. Finally, to connect these two areas, the grant would install decking on the sewer siphon being installed across the creek between the Aquatic Center and the dog park.

Because we can do this project in conjunction with the sewer crossing, we are able to leverage sewer SDC funds (which would be expended anyway) as our match portion of this grant.

FISCAL IMPACT:

The grant application is asking for \$321,500 in grant funds, with a \$372,550 match – which is mostly coming from Sewer SDC funds for the cost of the new sewer line across Rickreall Creek.

DALLAS 2030 VISION IMPACT:

Our Community & Identity: 1a, 1g  
Our Health & Safety: 5f

ATTACHMENTS:

Resolution 3315

RESOLUTION NO. 3315

A Resolution of the City of Dallas authorizing a grant application under the Oregon Parks and Recreation Department Local Government Grant Program for park improvements on the Rickreall Creek Trail System; and committing available local matching funds.

WHEREAS, the Oregon Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

WHEREAS, the City of Dallas desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation acquisitions, improvements and enhancements; and

WHEREAS, the Dallas City Council has identified improvements to the Rickreall Creek Trail System as a high priority need in the City of Dallas; and

WHEREAS, the proposed improvements identified by the Dallas City Council include a paved pathway, landscaping, and interpretive signs; and

WHEREAS, the City of Dallas has determined that the share of local funds required to be committed for the proposed improvements under the terms of the Local Government Grant Program is readily available, NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. The City Manager is hereby authorized and directed to prepare, sign, and submit an application for a Local Government Grant to the Oregon Parks and Recreation Department to seek funding for park improvements on the Rickreall Creek Trail System as set forth in the foregoing recitals.

Section 2. There is hereby committed a share of local available funds for the proposed improvements in an amount sufficient to satisfy the terms of the Local Government Grant Program.

Section 3. This Resolution shall take effect upon its passage and approval.

Adopted: February 17, 2015  
Approved: February 17, 2015

\_\_\_\_\_  
BRIAN W. DALTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
RONALD W. FOGGIN, CITY MANAGER

\_\_\_\_\_  
LANE P. SHETTERLY, CITY ATTORNEY

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 11 b</b>	<b>Topic:</b> Resolution 3316- Workers Comp for Volunteers
<b>Prepared By:</b> Emily Gagner	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Adopt Resolution 3316

BACKGROUND:

For many years, the City of Dallas has provided workers’ compensation coverage for our volunteers. This past year, CIS, our insurance provider, began offering cities a bonus program for, among other things, revamping their volunteer program. This bonus provides up to \$1,000 of credit on next year’s workers’ compensation premium.

With a great deal of assistance from Daniel Adatto, our administrative intern, we have written a city-wide volunteer policy and created position descriptions for our volunteer positions. CIS is also requiring cities to revisit their workers compensation resolutions in order to qualify for the bonus. This resolution, for the most part, reaffirms what the City was already doing, but does add workers’ comp coverage for community service workers assigned by our court to “volunteer” to commute their sentence.

FISCAL IMPACT:

Up to \$1,000 credit on next year’s workers’ compensation premium

DALLAS 2030 VISION IMPACT:

1f / 1i – Our Community and Identity

ATTACHMENTS:

Resolution 3316

RESOLUTION NO. 3316

A Resolution extending workers' compensation coverage to certain classes of city volunteer workers; and repealing Resolution 3055.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. Pursuant to ORS 656.031, the City will provide workers' compensation coverage to the classes of city volunteer workers listed in this resolution, noted on CIS payroll schedule, and verified at audit:

A. **Public Safety Volunteers.** An assumed monthly wage of \$1,750 shall apply to volunteer members of the Dallas Fire Department and Dallas Police Department Reserves.

B. **Mayor.** An assumed monthly wage of \$800 shall apply to the Mayor.

C. **City Council, Planning Commission, and all other City boards, commissions, and committees.** An aggregate assumed annual wage of \$2,500 will be used per each volunteer board, commission or council member for the performance of administrative duties. The covered bodies are: City Council, Planning Commission, Budget Committee, Economic Development Commission, Library Board, Parks Advisory Board, and Urban Renewal District Advisory Committee.

D. **Non-public safety volunteers.** All non-public safety volunteers will track their hours and the Oregon minimum wage will serve as the assumed wage for both premium and benefits calculations. These volunteers include library, aquatic center, non-public safety police, administration, parks, and recreation volunteers.

E. **Community Service Volunteers.** Pursuant to ORS 656.041 workers' compensation coverage will be provided to community service volunteers commuting their sentences by performing work authorized by the City of Dallas and assigned by Dallas Municipal Court. Oregon minimum wage, tracked hourly, will be used for both premium and benefit calculations, verifiable by providing a copy of the roster and/or sentencing agreement from the court.

F. **Other Volunteers.** Volunteers not otherwise addressed herein will have workers' compensation coverage if, prior to the onset of their work:

1. The City provides at least two weeks' advance written notice to CIS underwriting requesting the coverage;
2. CIS approves the coverage and date of coverage; and
3. CIS provides written confirmation of the coverage.

G. The City of Dallas agrees to maintain verifiable rosters for all volunteers including volunteer name, date(s) of service, and hours of service and make them available at the time of any claim or audit to verify coverage.

Section 2. Resolution 3055 is hereby repealed.

Section 3. This Resolution shall be effective upon its passage and approval.

Adopted: February 17, 2015

Approved: February 17, 2015

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BRIAN W. DALTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

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RONALD W.FOGGIN, CITY MANAGER

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LANE P. SHETTERLY, CITY  
ATTORNEY

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 6b/11c</b>	<b>Topic:</b> Sale of Unimproved Real Property
<b>Prepared By:</b> Ron Foggin	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Authorize the sale of the public open space property by passing Resolution No. 3317.

BACKGROUND:

When the Barberry Node was developed, the developer donated property to meet open space requirements. Some of the open space was set aside to accommodate a trail that would connect to the Rickreall Creek Trail. The subdivision trail was set to run from the Rickreall Creek Trail to Barberry Avenue. The public open space designated for the trail behind the house located at 1501 SE Marionberry drains onto the aforementioned property. This drainage issue has been a source of frustration for the property owners, because there is often standing water and marshy conditions. The standing water is causing landscaped plants to die or has served to stunt plant growth.

The homeowner approached the City in 2014 and offered to purchase part of the property so they could expand their back yard and remedy the drainage problem. The City staff has looked at the property in question to determine how the drainage problem could be corrected. We also evaluated the ability to place a trail on the property. To fix the drainage issue the City would have to install a drain system on the edge of the property, which would be costly. The topography of the property will not support an approved trail without thousands of dollars of grading and retaining walls. City staff has calculated a much easier and cost effect route for the trail.

FISCAL IMPACT:

Revenue increase of \$14,008.50

DALLAS 2030 VISION IMPACT:

Our Community & Identity: 1.e, 1.k

ATTACHMENTS:

- Resolution No. 3317
- Site Plan Map
- Sale Agreement

RESOLUTION NO. 3317

A Resolution declaring real property described as the easterly portion of River Gleann Estates, Phase 6, Tract B, Dallas, Polk County, Oregon, Polk County Tax Account No. 571606, being 4,245 square feet, more or less, in area, not needed for public use and authorizing the sale thereof.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

WHEREAS, the City of Dallas owns real property located at and commonly known as the easterly portion of River Gleann Estates, Phase 6, Tract B, Dallas, Polk County, Oregon, Polk County Tax Account No. 571606, being 4,245 square feet, more or less, in area, as more particularly shown on the map attached hereto as Exhibit A, and by reference incorporated herein; and

WHEREAS, the City Council of the City of Dallas has declared, and hereby declares, said property not needed for public use; and

WHEREAS, the City of Dallas has entered into with Robert J. Pettina and Katherine M. Pettina, a Sale Agreement and Receipt for Earnest Money for the purchase of said property by them, for the purchase price of \$14,008.50, subject to the terms and conditions thereof, a copy of the first page of which is attached hereto as Exhibit B and by reference incorporated herein; and

WHEREAS, after publication of notice in the Polk County Itemizer Observer on February 11, 2015, and a public hearing duly held on February 17, 2015, the City Council of the City of Dallas has approved said sale, pursuant to and in accordance with ORS 221.725;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS AS FOLLOWS:

Section 1. That the sale to Robert J. Pettina and Katherine M. Pettina, of that real property of the City of Dallas located at and commonly known as the easterly portion of River Gleann Estates, Phase 6, Tract B, Dallas, Polk County, Oregon, Polk County Tax Account No. 571606, being 4,245 square feet, more or less, in area, as more particularly shown on the map attached hereto as Exhibit 1, which property the City has declared and hereby declares not needed for public use, for the purchase price of \$14,008.50, subject to the terms and conditions of that certain Sale Agreement and Receipt for Earnest Money the first page of which is attached hereto as Exhibit 2, be, and it hereby is, approved.

Section 2. That the City Manager or his designee is hereby authorized to execute and deliver a deed and all documents and instruments that may be necessary or appropriate to conclude the sale of said property when all conditions of said sale have been met and satisfied.

Adopted: February 17, 2015  
Approved: February 17, 2015

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BRIAN W. DALTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

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RONALD W. FOGGIN,  
CITY MANAGER

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LANE P. SHETTERLY,  
CITY ATTORNEY



EXHIBIT B

**SALE AGREEMENT AND  
RECEIPT FOR EARNEST MONEY**

DATE: February \_\_, 2015

SELLER: City of Dallas, Oregon  
Dallas City Hall  
187 SE Court St.  
Dallas, OR 97338

BUYERSS: Robert J. Pettina and Katherine M. Pettina  
1501 SE Marionberry St.  
Dallas, OR 97338

**Recital**

Seller desires to sell to Buyers and Buyers desire to purchase from Seller certain unimproved real property, being a portion of River Gleann Estates, Phase 6, Tract B, Dallas, Polk County, Oregon, Polk County Tax Account No. 571606, more particularly identified as "Exchange Parcel" on the map attached hereto as Exhibit 1, being 4,245 square feet in area.

**Agreement**

Now, therefore, for valuable consideration, the parties agree as follows:

**1. Sale and Purchase.** Buyers agree to purchase the Property from Seller and Seller agrees to sell the Property to Buyers for the sum of \$14,008.50 (the "Purchase Price").

**2. Earnest Money.** Seller hereby acknowledges receipt of the sum of \$500 paid by Buyers as earnest money. The earnest money will be applied to the Purchase Price on the Closing Date, as that term is defined below.

**3. Payment of Purchase Price.** The Purchase Price must be paid as follows:

**3.1** At closing, the earnest money will be credited to the Purchase Price.

**3.2** At closing, Buyers must pay the balance of the purchase price by cashier's or certified check.

**4. Closing.** Time is of the essence. Closing must take place on or before the later of (a) April 1, 2015, or (b) 30 days after all of the conditions described in Section 5 have been satisfied or waived (the "Closing Date"). The terms *closed*, *closing* or *closing date* mean when the deed or contract is recorded and funds are available to Seller. Closing will occur at Seller's City Hall.

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 11 d</b>	<b>Topic:</b> Resolution 3318 – Amending Council Rules of Procedure
<b>Prepared By:</b> Emily Gagner	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Adopt Resolution 3318

BACKGROUND:

As discussed at our last workshop, there are some changes we’re required to make in order to make a smooth transition to our newly adopted Charter in July of this year. Some of those changes can be made by changes to the Council Rules of Procedure.

At the February 2 Council meeting, the Council directed staff to draft a resolution adopting the proposed amendments. This is that resolution.

FISCAL IMPACT:

The grant application is asking for \$ in grant funds, with a \$ match – which is mostly coming from Sewer SDC funds for the cost of the new sewer line across Rickreall Creek

DALLAS 2030 VISION IMPACT:

NA

ATTACHMENTS:

Resolution 3318

RESOLUTION NO. 3318

A Resolution Adopting Amendments to the Dallas City Council Rules of Procedure.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. The amendments to the Rules of Procedure for the City Council attached hereto as Exhibit 1, and by reference incorporated herein, are hereby approved and adopted and made a part thereof.

Section 2. This Resolution shall take effect on July 1, 2015.

Adopted: February 17, 2015  
Approved: February 17, 2015

\_\_\_\_\_  
BRIAN W. DALTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
RONALD W.FOGGIN, CITY MANAGER

\_\_\_\_\_  
LANE P. SHETTERLY, CITY  
ATTORNEY



# City Council Rules of Procedure

First Review Date January 27, 2009  
Adopted by Council December 5, 2011  
Amended by Council February 4, 2013  
Amended by Council November 3, 2014  
Amended by the Council February 17, 2015 (Effective July 1, 2015)

## SECTION 1 – PURPOSE

The purpose of this document is to outline the rules of the Council and procedures for Council proceedings.

## SECTION 2 – AUTHORITY

The Charter of the City of Dallas provides that the Council shall adopt rules for the government of its members and proceedings. The following rules shall be in effect upon their adoption by the Council and shall remain in effect until they are amended or new rules are adopted. These rules shall be presented to all City Council members during the first work session in January of odd-number years following general elections. Within 30 days of taking office, each appointed or elected Councilor shall sign that they have reviewed and received a copy of these rules. The City Recorder shall retain the signature copy.

## SECTION 3 – GENERAL RULES

### 3.1 Open Meetings

All meetings will be held in accordance with the Oregon public meeting requirements of Oregon law (ORS 192.610 to 192.690) which is herein incorporated by reference into these rules. To the extent that any local procedure conflicts with the Public Meetings Law, the latter shall prevail. No final action of the Council shall have legal effect unless the motion and the vote by which it is disposed of take place at a proceeding that is open to the public.

### 3.2 Quorum; Compelling Attendance

A majority of the members of the Council shall constitute a quorum for its business. Chapter IV, Section 14 of the City Charter provides that if less than a quorum is present for a meeting, a smaller number may meet and compel the attendance of absent members in a manner provided by ordinance or the rules of the council. In that case, a majority of the members present may direct the Chief of Police, or a city police officer under the direction of the Chief, to undertake a search for the absent members and bring them to the council meeting. Council members consent to be brought by the Chief of Police or a city police officer under the direction of the Chief when acting under the authority of this rule.

### 3.3 Rules of Order

Proceedings of the Council shall be conducted according to the provisions of the City's Charter, the City Code, these rules, and, when not so governed, in accordance with the parliamentary procedure contained in *Robert's Rules of Order*. However, strict adherence to the requirements of these rules is not required. No action of the Council shall be in violation of this section or deemed invalid for the reason that the action was not in conformance with *Robert's Rules of Order*. Any Councilor may move a question, second a motion, debate and vote.

### 3.4 Address by Council Members

Every Councilor desiring to speak to an issue will address the Presiding Officer and upon recognition, will confine remarks to the issue under debate. Councilors questioning, seeking clarification, or soliciting a recommendation from staff will direct the concern to the City Manager or the City Attorney. The City Manager may respond directly or may redirect the inquiry to a staff member.

## **SECTION 4 – COUNCIL MEETINGS**

### **4.1 Regular Meeting**

The Dallas City Council will meet in regular session at least once per month. The regular meeting shall be held on the first and/or third Monday of each month at such place and hour as the Council may prescribe. If the regular meeting falls on a legal holiday, the meeting shall be convened at the same time and place on the next business day, unless the meeting has been cancelled by the Council in accordance with Rule 4.7

### **4.2 Work Sessions**

In addition to the regular meetings of the Council under Rule 4.1, a meeting, or any portion thereof, may be designated as a work session. The City Council may hold a work session at a time and place in the City that the Council may prescribe. Work sessions will be used to review forthcoming projects of the City, determine goals for the ensuing year, receive progress reports on current programs or projects, or to hold open discussions on any City-related subject. Typically, a work session designation indicates that matters of substance will be discussed, but that final action will not be taken. Notice of work sessions shall be given in the same manner as notice of regular meetings. Work sessions shall be open to the public, however an opportunity for public testimony will only be allowed at the discretion of the Presiding Officer by a majority vote of the Council members.

### **4.3 Special Meetings**

The Mayor upon his own motion may, or at the request of three members of the Council shall, by giving notice thereof to all members of the Council, call a special meeting of the Council for a time not earlier than three nor later than forty-eight hours after the notice is given. Only the subject(s) listed on the special meeting agenda may be acted upon.

### **4.4 Emergency Meetings**

In the case of an actual emergency, an emergency meeting of the Council may be called by common consent of all available Councilors upon such notice as is appropriate to the circumstances. The minutes of the emergency meeting shall describe the emergency justifying less than 24 hours notice. Attempts will be made to contact the media to provide notice of the emergency meeting. Chapter IV, Section 13 of the City Charter provides that In the absence or incapacity of the mayor, an emergency meeting may be called by the council president or, in the absence of the council president, by the most senior member of the council available to call the meeting.

#### 4.5 Executive Session

The Mayor may call any regular, special, or emergency meeting into executive session by citing the specific provision of ORS 192.660 which authorizes the session. Executive sessions may also be separately scheduled pursuant to the requirements for special meetings. Prior to opening an executive session, the Presiding Officer shall announce:

- a) The purpose of the executive session;
- b) The state statute authorizing the executive session; and
- c) Notification to all present, including the media, that matters discussed in executive session are not to be disclosed or reported to the public.

Executive sessions shall be held in accordance with the Oregon Public Meetings Law. Matters discussed in executive session shall be exempt from public disclosure pursuant to state statutes. No formal or final action may be taken during an executive session, but an opinion or consensus of the Council may be gathered. To make a final decision, the Presiding Officer shall call the meeting into open session or place the decision on the agenda of a future open session. Executive session shall be closed to all persons except:

- a) The City Council;
- b) Persons reporting to the Council on the subject of the executive session;
- c) The City Manager unless directed otherwise by the Council;
- d) News media representatives, unless excluded by the Public Meeting Law (The Presiding Officer shall instruct any media representatives present not to disclose the substance of any discussion during executive session);
- e) And other persons authorized by the City Council to attend.
- f) No elected official who declares an actual conflict of interest on a topic to be discussed in executive session shall remain in the room during such executive session discussion.

Council members will keep all written materials and verbal information provided to them in executive session or on matters of confidentiality under law in complete confidence to insure that the City's position is not compromised. No mention of the information read or heard should be made to anyone other than other Council members, the City Administrator or the City Attorney, except that a Councilor may describe generally the purpose for which an executive session was held.

If the Council, pursuant to an executive session provides direction or consensus to staff on proposed terms and conditions for any type of negotiations whether it be related to property acquisition or disposal, pending or likely claim or litigation, or employee negotiations, all contact with the other parties shall be made by designated staff or representatives handling the negotiation or litigation. A Council member shall not have any contact or discussion with any other party or its representative nor communicate any executive session discussion.

#### 4.6 Attendance by Telephone or Other Electronic Media

Any Council or committee meeting may, upon Council or committee approval or, in the event of an emergency, upon determination by the Mayor (or, in the case of a committee of the council, by the committee chair), be conducted by telephonic conference call or other electronic communication, and any Councilor may participate in such a meeting by telephone or other electronic communication, as available. Notice and opportunity for public access to a meeting held by telephonic conference call or other electronic communication shall be provided, and such meeting shall be conducted in accordance with the Oregon Public Meetings Law. For non-executive sessions of the Council or committee, meetings held by telephonic conference call or other electronic communication must provide at least one place where members of the public can hear (or hear and see) the meeting by speakers or other devices. For executive sessions at which media attendance is provided under the Public Meetings Law, the media must be provided with at least one place where the media can hear (or hear and see) the meeting by speakers or other devices.

#### 4.7 Cancellation of Meeting

Upon a majority vote of the members of the City Council present, a meeting may be cancelled when deemed appropriate. The Charter requires one regular meeting be held each month. Notice of cancellation shall be posted on the bulletin board at City Hall, distributed to members of the media, and to interested citizens.

#### 4.8 Americans With Disabilities Act

All meetings of the Council shall be held in compliance with the Americans with Disabilities Act.

#### 4.9 Attendance Duty

It is the duty of each member of the City Council to attend all meetings of the Council. The Charter provides in Chapter VII, Section 28(b)(3) that a Council office shall be deemed vacant upon a Councilor's absence from the city for 30 days without the consent of Council or upon the absence from meetings of the Council for 60 days without like consent. Consent will be given for good cause.

Good cause shall include, but is not limited to:

- a) Illness;
- b) Family obligations;
- c) Employment requirements;
- d) Scheduled vacations; or
- e) Other City business

#### 4.10 Excused Absence

When a Council member cannot attend a meeting of the Council for one of the reasons described in Rule 4.9 a) – e), the member shall notify the City Recorder prior to the meeting and the member's absence shall be deemed excused. If the member's absence is for a reason other than described in Rule 4.9. a) – e), the member shall notify the Council President prior to the meeting, and must state the reason for his or her absence. If the Council President determines the reason is for good cause, as identified in Rule 4.9, above, the Council President will excuse the absence and notify the City Clerk and, if there are no objections from other Councilors, the absence shall be listed in the minutes as excused. If the Council President does not excuse the absence the Council President will notify the City Clerk and inform the Council at the meeting and, if there are no objections from other Councilors, the absence shall be listed in the minutes as unexcused. If a Councilor objects to the Council President's determination that another Councilor's absence is excused or unexcused, the Council will determine the question by vote. A Councilor whose absence has been determined to be unexcused may, at the next meeting at which the Councilor is in attendance, ask the Council to reconsider its determination.

## **SECTION 5 – THE PRESIDING OFFICER**

### 5.1 Mayor

The Mayor shall preside at all regular and special meetings, work sessions, and executive sessions of the City Council. The Mayor is entitled to vote in case of a tie vote of the Council, except on the final passage of an ordinance. The Mayor shall preserve order and enforce the rules of the Council.

### 5.2 Council President

At the first meeting of the Council in each odd-numbered year, the Council will elect a Council President from its membership. In the Mayor's absence from a Council meeting, the President shall preside over it. Whenever the Mayor is unable to perform the functions of his office, the President shall act as Mayor.

### 5.3 Sergeant at Arms

The Sergeant at Arms will be the Council President. It will be the duty of the Sergeant at Arms to assist the Presiding Officer, as appropriate, to maintain the order and decorum at all meetings. The Council President may appoint a designee to act as the Sergeant at Arms.

### 5.4 Absence of Mayor and Council President

In the absence of the Mayor and Council President, the Council shall elect a Councilor to serve as presiding officer as its first order of business. The Presiding Officer will immediately assume the duty of Sergeant at Arms, or appoint a designee to do so. Any Councilor may call a meeting to order for the purpose of electing a presiding officer.

## **SECTION 6 – DECORUM AND ORDER**

### 6.1 Presiding Officer

The Presiding Officer shall enforce the rules of the Council. In addition, the Presiding Officer has the authority to preserve decorum and decide all points of order, subject to the appeal to the Council. The Presiding Officer shall enforce order, prevent personal attacks or impugning members' motives, and restrict in debate to the question under discussion.

### 6.2 Councilors

Councilors shall maintain order and decorum during Council meetings, and shall not by conversation or other action, delay or interrupt the proceedings or refuse to obey the order of conduct or these Rules. Councilors shall when addressing staff or members of the public, confine themselves to questions or issues then under discussion, shall not engage in personal attacks, shall not impugn the motives of any speaker, and shall at all times, while in session or otherwise, conduct themselves in a manner appropriate to the dignity of their office.

### 6.3 Staff and Public

All persons attending Council meetings shall observe the same rules of procedure, decorum, and good conduct applicable to the members of the Council.

### 6.4 Removal of Any Person

The Presiding Officer may eject from the meeting any person in attendance, including any Councilor, who becomes disorderly, abusive, or disruptive, or who fails or refuses to obey the matter of order or procedure. The Presiding Officer or Sergeant at Arms may summon the assistance of the City of Dallas Police to assist in maintaining order. In case the Presiding Officer should fail to act, any member of the Council may obtain the floor and move to require enforcement of this rule.

**SECTION 7 – AGENDA AND ORDER OF BUSINESS; STAFF REPORTS AND CITY ATTORNEY  
REVIEW OF CERTAIN ACTIONS**

7.1 Setting the Agenda

The Mayor and City staff shall determine the business to be placed on the Council meeting agenda. Any Councilor may request that an item be placed on the Council agenda.

7.2 Consent Agenda

A consent agenda will be among the first items on the Council agenda. At the beginning of the Council meeting, the Presiding Officer will ask if any Council member wishes to have any item removed from the consent agenda for deliberation. If any Council member requests that an item be removed, it will be removed. Any item removed from the consent agenda shall be discussed and acted upon following approval of other consent agenda items. When there are no more items to be removed, the Presiding Officer will ask the Council for a motion to approve the consent agenda.

7.3 Agenda Distribution

Promptly after it is developed, the agenda for a regular meeting or work session shall be distributed with any supporting materials not later than 48 hours prior to the meeting to members of the Council, staff, news media, and interested citizens who have requested the agenda. The agenda for a special or emergency meeting shall be made available as appropriate under the circumstances.

7.4 Special Accommodations

All Council meeting agendas shall contain proper notice of the City's intent to conduct the meeting in accordance with the Americans with Disabilities Act and that persons needing accommodations may contact the City Manager's office at least 48 hours prior to the meeting time to request necessary accommodations. Such notice shall provide the telephone number at which the City Manager may be contacted.

7.5 Alteration of the Agenda

- a) New Matters: Except in emergency meetings, matters not on the printed agenda may come before the Council as determined by the Presiding Officer or a majority of the Council.

## 7.6 Order of Business

The general rule to the business at regular meetings of the City Council will be:

- a) **Call to Order** – The Presiding Officer shall call the meeting to order.
- b) **Roll Call** – The City Recorder shall call the name of each Councilor and note each Councilor’s attendance or absence in the record, under the guidelines set forth in Section 4.8 and 4.9 to establish a quorum is present to conduct business.
- c) **Pledge of Allegiance** – The Presiding Officer or designee may lead the Council and audience in the Pledge of Allegiance.
- d) **Comments from the Audience** – An opportunity for members of the audience shall be given to address the Council on any matter, other than those issues on the agenda scheduled for public hearing, during this portion of the meeting. Participants must state their name and address for the record prior to addressing the Council. Testimony will be limited to three minutes unless additional time is granted by the Presiding Officer. Items brought before the Council from the public during public testimony should be referred to the staff for appropriate action and a report returned to the Council if requested.
- e) **Public Hearings** – A public hearing shall be held on each matter required by state law or City policy. Written and oral testimony shall be heard prior to Council action.
- f) **Consent Agenda** – The consent agenda shall consist of a list of routine, non-controversial matters, not typically requiring discussion, presented for Council approval by a single motion.
- g) **Items Removed from Consent Agenda** – Any item removed from the consent agenda will be discussed, and if appropriate, acted upon.
- h) **Reports or Comments from the Council Members** – Special reports from various boards and commissions may be given at this time. In addition, awards, proclamations, or Council liaison reports may also be presented.
- i) **Reports from City Manager and Staff** – Time provided for City staff to bring administrative action (items that require formal action or Council direction) before the Council.
- j) **Resolutions** – Resolutions shall be read and a roll call vote taken.
- k) **First Reading of Ordinances** – The Mayor shall declare an Ordinance to have passed its first reading.
- l) **Second Reading of Ordinances** – Unless an emergency was declared, an Ordinance will be brought for a second reading at the Council meeting following the first reading. After the Mayor has declared the Ordinance to have passed its second reading, a roll call vote will be taken.
- m) **Other Business** – Time provided for members of the Council or City staff to bring new or old matters before the Council. These matters need not

be specifically listed on the agenda, but formal action on these matters should be deferred until a subsequent Council meeting.

- n) **Adjournment** – Following completion of all matters listed on the agenda, the Presiding Officer shall declare the meeting adjourned.

## 7.7 Recess

The Presiding Officer may recess any meeting of the Council upon the consensus of the majority of the members present. The Presiding Officer shall announce the time in which the meeting shall reconvene.

## 7.8 Staff Reports

Each item of business that comes before the council for action will be presented with a staff report that explains the item and provides a recommended action, including options for action, where appropriate. The staff report will be distributed to the Council with the agenda prior to the meeting at which it is to be presented for action. The Council may grant exceptions to this requirement for good cause, as the Council may determine.

## 7.9 Legal Counsel Review

All resolutions, ordinances and contracts brought before the Council for approval will be reviewed first for legal sufficiency by the City Attorney, and will bear the attestation "Approved as to Form" for the City Attorney's signature.

## SECTION 8 – MINUTES

### 8.1 Recording of minutes

Minutes are the official record of the City Council meetings. They record the substance of a meeting and should be a clear, accurate, concise, informative record of the proceedings. Minutes will generally follow the chronological order of items considered during a meeting. Minutes are not a verbatim transcript. It is general practice to sound record the meetings of the City Council for back up reference. Minutes will be made available to the public within a reasonable time after the meeting. The minutes are to include, at a minimum:

- a) Councilors present;
- b) All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;
- c) The result of all votes and the vote of each Councilor by name;
- d) The substance of any discussion on any matter; and
- e) A reference to any public document discussed.

### 8.2 Distribution of Minutes

Draft minutes are distributed to the City Council with the agenda on which those minutes appear as an item for approval.

### 8.3 Correction and Approval of the Minutes

Approval of the minutes usually takes place at the next regular meeting following the date of the minutes under approval. Generally, minutes appear on the agenda under the consent agenda. If minor changes are made to the minutes, a Councilor may offer such amendment prior to the consent agenda being approved. For extensive amendments, the minutes should be pulled off the consent agenda for consideration. All corrections will appear in the minutes of the meeting when the changes took place.

If a Councilor has a concern over the reporting of minutes, it is that Councilor's responsibility to review the tape of the meeting and bring corrections forward to the City Council at the next regular meeting with the tape cued, ready to be played if necessary. It is not appropriate to expend staff time when only one member of Council is requesting the review.

## **SECTION 9 – VOTING**

### 9.1 Method of Voting

The vote on any question shall be taken by voice or by roll call vote. The vote shall be taken by roll call at the direction of the Mayor or at the request of any Councilor. The minutes shall reflect the vote of each Councilor by name. The Mayor is entitled to vote in case of a tie vote of the City Council, except on the final passage of an ordinance.

### 9.2 Order of Voting

Roll call votes shall be called in alphabetical order by last name, on a rotational basis.

### 9.3 Vote Required

Except as otherwise provided in the City Charter, the concurrence of a majority of the whole number of the council is necessary to decide a question. Chapter IV, Section 19 of the City Charter provides that a council member who is present for a vote of the council may not abstain from voting, but must vote aye or nay, and the council may postpone a vote, or recess or adjourn a meeting of the council, to compel an absent council member to attend and vote. A majority of the council present may compel an absent member to attend and vote in the manner provided in Rule 3.2.

## **SECTION 10 – CONFLICT OF INTEREST / BIAS / EX-PARTE CONTACT**

### 10.1 Conflict of Interest

Prior to participating in any decision, a Councilor shall declare any potential or actual conflict of interest. No Councilor shall participate in any manner regarding an agenda item if doing so would create an actual conflict of interest, except as otherwise provided by state law.

- a) "Potential Conflict of Interest" means any action by a Councilor which could be to the private pecuniary benefit or detriment of the Councilor or a member of the Councilor's household, or a business with which the Councilor or member of the Councilor's household is associated. "Potential conflict of interest" does not include pecuniary affects arising out of:
  - i. Membership in a particular occupation or class required by law as a prerequisite to holding the office of Councilor; or
  - ii. An action which would affect to the same degree a class consisting of an industry, occupation, or other group to which the Councilor or a member of the Councilor's household belongs.
- b) "Actual Conflict of Interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in (a) of this section.

### 10.2 Bias

No Councilor shall participate in any manner in a quasi-judicial decision if the Councilor has actual bias regarding the decision.

- a) "Quasi-judicial decision" means a decision involving the application of existing criteria to identified persons or properties.
- b) "Actual Bias" means prejudice or prejudgment of facts to such a degree that a Councilor is incapable of rendering an objective decision on the merits of the case.

### 10.3 Ex-Parte Contact

Before participating in any quasi-judicial decision, a Councilor shall declare any ex-parte contacts. An ex-parte contact is an oral or written communication by a member of the public with a member of the Council regarding the facts of the case made outside of the public hearing process during the pendency of a proceeding. (Communication with staff is not an ex-parte contact). Effective declaration of an ex-parte contact shall include identification of the party and disclosure of the nature of the communication.

**SECTION 11 – COUNCIL STANDING COMMITTEES (DCC 2.050)**

The Mayor shall at the first regular meeting in January of each year, or as soon thereafter as convenient, appoint Council standing committees. Each Council standing committee shall comply with the Council Rules of Procedure, subject to the following exceptions and additions:

- a) The Mayor shall appoint a chair of the Council standing committees to serve as presiding officer.
- b) Council standing committees shall consist of:
  - i. Committee on public works.
  - ii. Committee on public safety.
  - iii. Committee on public building and grounds.
  - iv. Committee on public administration.
- c) At the regular meeting of the council following a committee meeting, the committees shall make a report of their activities.

**CITY OF DALLAS**  
**CITY COUNCIL RULES OF PROCEDURE**  
**ACKNOWLEDGMENT**

I have received, read and understand the contents of the City Council Rules of Procedure. I agree to comply with the provisions of the City Council Rules of Procedure.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_ Date \_\_\_\_\_

(This form should be signed, dated and returned to the City Recorder.)

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 12a</b>	<b>Topic:</b> Franchise Agreement with Astound Broadband
<b>Prepared By:</b> Ron Foggin	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

I recommend the Council approve and authorize the franchise agreement with Astound Broadband.

BACKGROUND:

In 2013 the City entered into a utility easement agreement with Astound Broadband. At the time, Astound was running fiber to cellular towers on the north end of the City. With the fiber backbone in place, Astound is now interested in providing high speed fiber service to businesses and government organizations that are located next to or near Astound’s fiber infrastructure. This means we need to transition from the utility easement agreement to a franchise agreement, which will help the City capture more revenue as Astound adds users.

FISCAL IMPACT:

A slight increase in franchise fee revenue

DALLAS 2030 VISION IMPACT:

Our Growth & Development: 4.e. Upgraded and modernized its utilities and infrastructure to support community and economic development, including broadband and wireless access.

ATTACHMENTS:

- Master Services Agreement
- Master Services Agreement Addendum
- Ordinance No. 1775
- Franchise Agreement
- Agreement for Right of Way

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**MSA**”) is entered into as of August 20, 2014 (“**Effective Date**”) by and between WAVE BUSINESS SOLUTIONS, LLC (“**Provider**”) and THE CITY OF DALLAS (“**Customer**”). Provider and its affiliates provide various facilities-based telecommunications, competitive local exchange and related services (collectively, “**Provider Affiliates**”). This MSA sets forth the general terms and conditions applicable to Customer’s purchase, from time to time, of certain communications and related services (“**Services**”). Customer acknowledges that Services may be provided by a Provider Affiliate or a third-party service provider selected by Provider, but Provider will remain responsible to Customer for the delivery and performance of the Services as set forth in the applicable Order.

### ARTICLE 1. ORDERS FOR AND PROVISION OF SERVICE

**1.1 Submission and Acceptance of Orders.** This MSA is not an agreement to purchase or commitment to provide Services. Customer may, from time to time, request Provider provide certain Services by submitting a separate order, in a form provided by Provider (each, an “**Order**”). Each Order will set forth the specific terms and conditions that apply to the applicable Services, and shall incorporate by reference, and be subject to, the terms of this MSA. Additional terms and conditions that apply to each type of Service (e.g., Internet, data transport, or telephone services) shall be set forth in Provider’s standard form of Service Level Agreement for such Service, which shall be included with and constitute an integral part of each Order. Customer shall be responsible for providing complete and accurate information on each Order, which shall include all information requested by Provider for provision of the Services, including Customer’s requested duration for Services (“**Service Term**”). Each Order shall be subject to acceptance by Provider, in its sole discretion, which will be the earlier to occur of (i) Provider delivering written notice to Customer of the date by which Provider shall endeavor to install Services (the “**Install Date**”) or (ii) Provider commencing provision of the Services.

**1.2 Order of Precedence.** Upon acceptance of an Order by Provider, such Order will become part of this MSA, and this MSA and all accepted Orders are collectively referred to as the “**Agreement**.” In the event of a conflict between the provisions of this MSA and those of an Order, the provisions of this MSA shall prevail unless the applicable Order clearly and conspicuously states that such conflicting term or condition is intended to supersede and replace the terms and conditions of this MSA.

### ARTICLE 2. BILLING AND PAYMENT

**2.1 Commencement of Billing.** Provider shall deliver written notice (a “**Connection Notice**”) stating when Services were installed either as part of Customer’s first invoice for particular Services or in a separate notification. If Customer notifies Provider earlier than three days after delivery of the Connection Notice that Services are not functioning properly, Provider shall correct any deficiencies and, on Customer’s request, credit Customer’s account in the amount of 1/30 of the applicable MRC for each day the Services did not function properly.

**2.2 Payment of Invoices and Disputes.**

(A) Customer shall be responsible for payment for Services in accordance with the applicable Order, including all recurring and non-recurring fees, usage-based fees and other amounts payable to Provider by Customer (collectively, the “**Fees**”). Fixed Fees are billed in advance and usage-based Fees are billed in arrears. Generally, unless otherwise provided in an Order, invoices will be sent to Customer within 30 days of the implementation of the applicable Services for fixed Fees and within 30 days of the conclusion of the month for which recurring or usage-based Fees are assessed. All amounts due to Provider are payable in full within 30 days after the invoice date (“**Due Date**”). Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Acceptance of any such interest charges paid by Customer will not constitute a waiver by Provider of any Customer Default (as defined below) with respect to any such overdue amount. Provider’s failure to submit an invoice will not relieve Customer of its obligation to pay all amounts owed when due. Customer is responsible for all Fees with respect to the Services, even if incurred as the result of unauthorized use.

(B) If Customer in good faith disputes any Fees or other charges invoiced by Provider, Customer shall promptly pay all undisputed charges and shall notify Provider in writing of any such disputed amounts within 90 days after the invoice date, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely and appropriately disputed within 90 days after the invoice date shall be deemed final, not subject to further dispute, and immediately payable in full with interest from the Due Date. The parties shall use all reasonable efforts to resolve such dispute promptly and, in any event, within 30 days after Customer provides written notification of such dispute to Provider. If the dispute is not resolved within such 30-day period, Customer and Provider must promptly submit the dispute to a senior executive officer (vice president or above) of each party, who shall negotiate in good faith to resolve the dispute within 14 days after its submission. If such officers are unable to reach agreement to the satisfaction of each party within such 14-day period, Provider will have the right to terminate the applicable Order under which such dispute arose, in addition to any other right or remedy under this Agreement. If a disputed amount is determined to be a legitimate charge, Customer shall pay such amount within 15 days of such determination. If a disputed amount is determined to be billed in error, a credit for the amount billed incorrectly will be made to the next invoice.

(C) Billing for partial months is prorated. The first billing cycle may include a partial month's recurring fee and a full month's recurring fee if Provider provides Services for a partial month.

(D) Provider may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.

(E) Customer will be responsible for all expenses, including reasonable attorneys' fees and collection costs, Provider incurs in collecting any unpaid amounts due under the Agreement.

**2.3 Taxes.** Customer is responsible for the determination, calculation, collection and payment of all taxes, surcharges and other fees (including FCC fees such as universal service fees, TRS, etc.) that may be imposed on Provider, any Provider Affiliate or Customer, arising in any jurisdiction, imposed on or incident to the provision, sale or use of Services, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges) (collectively "**Taxes**"). Taxes shall not include Provider's taxes based on Provider's net income. Some Taxes are recovered through imposition of a percentage surcharge on the charges for Services. If either party is audited by a taxing authority or other governmental authority, the other party agrees to reasonably cooperate with the party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit or any resulting controversy may be resolved expeditiously. If Customer is entitled to an exemption from any Taxes, Customer is responsible for presenting Provider with a valid exemption or resale certificate as authorized or required by statute or regulation of the jurisdiction providing such resale or other exemption, and Provider will give effect thereto prospectively. If applicable law excludes or exempts a purchase of Services from Taxes but does not also provide an exemption procedure, then Customer is responsible for presenting Provider with a letter signed by a senior executive officer of Customer claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate. If subsequently it is determined that Customer is not exempt, Customer will defend, indemnify and hold Provider harmless from any and all costs, claims, Taxes, expenses (including reasonable attorneys' fees), and penalties levied by a taxing authority against Provider relative to Customer's lack of exempt status.

**2.4 Regulatory and Legal Changes.** If changes in applicable law, regulation, rule or order materially affect delivery of Services, the parties shall negotiate in good faith appropriate changes to any applicable Order. If the parties cannot reach agreement within 30 days after Provider's notice requesting renegotiation: (A) Provider may, on a prospective basis after such 30 day-period, pass any increased delivery costs on to Customer, and (B) if Provider does so, Customer may terminate the affected Services on written notice to Provider delivered within 30 days of the increased costs.

## ARTICLE 3. TERM

**3.1 MSA Term.** This MSA shall be in effect for a period of three years from the Effective Date, unless terminated earlier as provided in this MSA, and shall automatically renew for successive terms of one-year unless written notice of non-renewal is provided by either party 90 days prior to expiration of the initial term or any renewal term. Notwithstanding the foregoing, in the event any Order remains in effect following termination or non-renewal of this MSA, this MSA shall govern and continue in effect with regard to such Order until the termination or non-renewal of such Order.

**3.2 Order Term.** Unless expressly stated otherwise in the applicable Order, at the expiration of the Service Term, Services will automatically continue for successive terms of one-year (each, a “**Renewal Term**”), unless written notice of non-renewal is provided by either party 90 days prior to expiration of the Service Term or Renewal Term. Provider may increase the rates and charges for any Renewal Term upon 90 days’ prior written notice to Customer. In addition, Customer shall pay Provider’s then-current rates and charges for moves, adds or changes agreed to by Provider with respect to any Order or Services.

## ARTICLE 4. TERMINATION OR SUSPENSION OF SERVICE

**4.1 Order Cancellation Prior to Install Date.** No later than 10 days prior to the Install Date with respect to any Order, Customer may cancel such Order by providing notice to Provider both (i) by email to [disconnects@wavebroadband.com](mailto:disconnects@wavebroadband.com) and (ii) by written notice pursuant to Section 8.3. Customer shall not incur any liability or charges for such cancelled Order other than (a) such reasonable costs incurred by Provider prior to cancellation to design, engineer and install the Services and (b) any cancellation or termination charges for which Provider becomes liable to any third party in an effort to provide the Services. Provider will use its commercially reasonable efforts to mitigate any such third-party cancellation or termination charges.

**4.2 Order Termination for Customer Convenience.** Customer may discontinue any Services and terminate any Order upon not less than 30 days’ notice to Provider both (i) by email to [disconnects@wavebroadband.com](mailto:disconnects@wavebroadband.com) and (ii) by written notice pursuant to Section 8.3 (“**Termination for Customer Convenience**”).

**4.3 Termination or Suspension for Customer Default.**

(A) Customer will be in default under the Agreement (“**Customer Default**”) upon the occurrence of any the following (each, a separate Customer Default): (i) Customer fails to pay any amount required under the Agreement within five days of its due date; (ii) Customer breaches any material term of the Agreement and, if curable, Customer fails to correct such breach within 30 days of receipt of written notice from Provider identifying with reasonable particularity the nature of the breach; (iii) Customer files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days; or (iv) Provider reasonably determines that the use of Services by Customer or any end-user of Customer is resulting or will result in significant damage to Provider’s network or property or create a significant risk of harm to Provider or its employees or representatives.

(B) In the event of Customer Default, Provider may, at its option, and in addition to any other remedies it may have at law or in equity, take any or all of the following actions: (i) immediately suspend any or all Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer’s on-going obligation to pay Provider all Fees and other amounts due under the Agreement, as if such suspension of Services had not taken place); (ii) terminate any or all Services or Orders; or (iii) after the occurrence of any two Customer Defaults in any 12 month period, or after the occurrence of any Customer Default pursuant to subsection (A)(iii) above, terminate this MSA.

(C) Customer hereby forever waives, releases and discharges Provider and its affiliates from any and all claims, demands, actions, damages and causes of action related in any way to, or arising out of, any suspension or termination in accordance with this Section 4.3.

#### **4.4 Termination for Provider Default.**

(A) Provider will be in default under the Agreement (“**Provider Default**”) upon the occurrence of any of the following (each, a separate event of Provider Default): (i) Provider substantially breaches any material term of the Agreement and Provider fails to correct each such noncompliance within 30 days of receipt of written notice from Customer identifying with reasonable particularity the nature of the breach; or (ii) Provider files or initiates proceedings or has proceedings filed or initiated against it seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within 60 days.

(B) In the event of Provider Default, Customer’s sole and exclusive remedies will be (i) termination of any applicable Services and Order and (ii) reimbursement by Provider of any pre-paid, unused monthly service Fees attributable to such terminated Services or Order.

**4.5 Other Termination by Provider.** Provider may terminate any Services or Order without incurring further liability hereunder, at any time during the Service Term, upon reasonable notice to Customer if Provider, in its reasonable discretion, determines that: (i) Provider’s installation or provision of Services is resulting or will result in significant damage to Provider’s network or property or create a significant risk of harm to Provider or its employees or representatives; (ii) Provider does not have all rights necessary to provide the Services or Provider is advised by counsel that termination of the Agreement is advisable given current or then-pending laws, regulations or ordinances, whether federal, state or local; (iii) Provider is legally or contractually prohibited from providing the Services; or (iv) delivery of the Services becomes technically infeasible due to equipment changes and reconfiguration or other technical issues. In the event of termination pursuant to this Section 4.5, Customer’s sole and exclusive remedies will be reimbursement by Provider of any pre-paid, unused monthly service Fees attributable to such terminated Services or Order.

**4.6 Termination Charges.** Customer shall pay a Termination Charge to Provider in the event of (a) Termination for Customer Convenience or (b) any termination for Customer Default. The “**Termination Charge**” shall equal the sum of: (1) all unpaid amounts for Services provided under the terminated Order, including any unpaid non-recurring Fees; plus (2) all non-recurring, disconnection or other third-party termination charges reasonably incurred by Provider or related to the termination of Services to Customer; plus (3) the sum of all remaining monthly recurring Fees and other charges payable for the remainder of the Service Term. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider’s actual damages and is not a penalty. The Termination Charge will be due and payable within 15 days after the effective date of termination. In the event of termination due to Customer Default, payment of the Termination Charge shall not limit any of Provider’s others rights or remedies available to it at law or in equity.

**4.7 Substitution of Services.** At any time during the Agreement, Customer may elect to substitute new Services for then-existing Services. Provider will waive the Termination Charge associated with the termination of the then-existing Services, provided: (A) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services, (B) Customer commits to retain the substitute Services for the remainder of the Service Term for the discontinued Services, (C) Customer pays all applicable installation and other non-recurring charges, if any, for provision of the substitute Services, and (D) Customer reimburses Provider for all reasonable and documented engineering and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

**4.8 Effect of Termination.** No termination pursuant to this Article 4 will relieve Customer of any of its obligations under the Agreement that are intended to continue. Further, each of the sections in Article 5 and Article 8 of this MSA will survive any termination or non-renewal of the Agreement.

## **ARTICLE 5. LIABILITIES AND INDEMNIFICATION**

**5.1 Limited Warranty.** At all times during the Service Term, Provider shall use commercially reasonable efforts, in keeping with normal industry standards, to cause the Services to be available to Customer. ***The foregoing limited warranty is exclusive and in lieu of all express and implied warranties whatsoever.*** Customer must make any warranty claim within 30 days after the occurrence of non-compliance with respect to the applicable Services. Unless expressly stated otherwise in the applicable Order, Provider's sole obligation and Customer's sole remedy with respect to any breach of the limited warranty set forth in this section is a prorated refund of the Fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty.

**5.2 Disclaimer of all other Warranties.** ***Provider makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties or merchantability, fitness for a particular purpose or title or non-infringement of third party rights, except those expressly set forth in the Agreement. No advice or information given by Provider, its affiliates or its contractors or their respective employees will create a warranty. If, under the applicable Order, Provider provides any Equipment in order to provide Services to Customer, Customer (i) shall pay for and accept all such Provider provided equipment "as is"; (ii) irrevocably and forever waives any right or claim it or any of its affiliates may now have or may hereafter acquire against Provider regarding such Equipment or the installation, maintenance, replacement or the use thereof; and (iii) shall look only to the warranty provided by the manufacturer of such Equipment for any issues, damages, problems or concerns that may arise in connection therewith. Notwithstanding the foregoing, if Customer discovers any material defect in any such Equipment within five days following delivery of the Equipment to Customer, and Customer does not cause such defect, Customer may return such Equipment to Provider. If Provider determines in its sole and absolute discretion that such returned Equipment contains a material defect not caused by Customer, Provider shall make commercially reasonable efforts to replace the defective Equipment at no additional cost to Customer except for any applicable shipping and handling costs associated with the return and replacement.***

**5.3 Limitation of Provider Liability.** ***Notwithstanding anything to the contrary herein, Provider's total cumulative liability to Customer under the Agreement is limited to the aggregate amount of Fees actually paid by Customer to Provider during the immediately preceding six months for the Service affected. Customer hereby irrevocably and forever releases Provider and its affiliates from all obligations, liability, claims or demands in excess of the foregoing limitation.***

**5.4 No Special Damages.** ***Without limiting any express provisions provided elsewhere in the Agreement, except for Customer's Indemnification obligations set forth in Section 5.5 of this MSA, neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under the Agreement or, even if the party has been advised, knew or should have known of the possibility of such damages.***

### **5.5 Liability and Indemnification.**

(A) In addition to its specific indemnification responsibilities set forth elsewhere in the Agreement, Customer shall, at its own expense, indemnify, defend and hold harmless Provider, the Provider Affiliates and their respective members, managers, officers, employees, representatives and agents (the "**Provider Indemnified Parties**") against any and all claims, liabilities, lawsuits, damages, losses, judgments, settlements, costs, penalties, fees and expenses incurred by any Provider Indemnified Party, including but not limited to, reasonable attorneys' fees and court costs, to the full extent that such arise from (i) Customer's misrepresentation with regard to or noncompliance with the terms of the Agreement, (ii) Customer's failure to comply with applicable law, or (iii) Customer's negligence or willful misconduct. Provider Indemnified Parties will have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Provider Indemnified Parties in such case.

(B) Customer accepts full responsibility for all actions taken by its employees, contractors and agents for work performed on any property of Provider and for any Equipment used in connection with the Services, and Customer shall indemnify Provider Indemnified Parties from any actions of such employees, contractors and agents or arising from such Equipment.

(C) Provider accepts full responsibility for all actions taken by its employees, contractors or agents for work performed on any property of Customer and for any Provider-owned Equipment used in connection with the Services, and Provider shall indemnify Customer from any actions of such employees, contractors and agents or arising from such Provider-owned Equipment.

**5.6 Risk of Use of Services.** CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK FOR CUSTOMER'S AND ITS END USERS' USE OF ANY SERVICES PROVIDED BY PROVIDER. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER AND CUSTOMER'S END USERS ACCESS THE SERVICES AT THEIR OWN RISK. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY AND CONFIDENTIALITY OF INFORMATION IT TRANSMITS OR RECEIVES USING ANY SERVICES.

## **ARTICLE 6. EQUIPMENT, NETWORK, INSTALLATION AND SITE VISITS**

### **6.1 Equipment and Network; Title to Equipment.**

(A) **"Equipment"** means components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables, and software. **"Network"** means the network of Provider-provided Equipment, facilities and materials necessary to provide the Services.

(B) Unless expressly stated otherwise in the applicable Order, Customer is solely responsible for the acquisition, installation, maintenance and repair of any and all Equipment necessary to receive Services.

(C) Unless expressly stated otherwise in the applicable Order, if Provider provides Equipment, network facilities or other property in order to provide Services, title to all such Equipment, facilities and property shall remain solely and exclusively with Provider, and nothing in the Agreement will give or convey to Customer any right, title or interest whatsoever in any such Equipment, facilities or property. Customer shall not sell, lease, assign or create or permit to be created any liens, encumbrances or security interests on any Provider Equipment, and shall use its reasonable best efforts to promptly discharge any such lien, encumbrance or security interest. No Provider Equipment shall become fixtures of any Customer premises.

(D) Upon termination of any Order or Services, Customer, at its sole cost and expense, shall immediately (i) deliver or cause to be delivered to Provider all Provider-owned or Provider-controlled Equipment or other property located on any premises of Customer, in the condition in which they were received subject to ordinary wear and tear, and (ii) remove all Customer-owned or Customer-controlled Equipment or other property located on any premises of Provider. Failure of Customer to return all Provider Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the full retail cost of replacement of the unreturned Equipment. In addition, Customer shall pay for the repair or replacement of any damaged Equipment (whether or not caused by Customer's negligent act, except for such repairs or replacements as may be necessary due to ordinary wear and tear or material/workmanship defects), together with any costs incurred by Provider in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

**6.2 Customer Premises.** Customer is responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services at such site (the “Service Site”). If access to non-Provider facilities is required for the installation, maintenance or removal of Provider Equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance of electrical, HVAC or other utility service as needed for the proper installation and operation of such Equipment.

**6.3 Installation.**

(A) Provider may perform an installation review of each Service Site prior to installation of Services. Upon request, Customer shall provide Provider with accurate site or physical network diagrams or maps of a Service Site prior to installation. Provider may directly or through its agents inspect the Service Site before beginning installation, and reserves the right to satisfy itself that safe installation and proper operation of its Equipment and the Services are possible at the Service Site. If Provider determines, in its sole discretion, that safe installation or activation of one or more of the Services will have negative consequences to Provider’s personnel or Network or cause technical difficulties to Provider or its customers, Provider may terminate the applicable Order without liability upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

(B) Provider shall schedule one or more installation visits with Customer. Customer’s authorized representative must be present during installation. During installation, Provider shall test to confirm that the Services can be accessed from the Service Site. If, during the course of installation, Provider determines additional work is necessary to enable Provider to deliver the Services to the Service Site, Provider shall notify Customer of any new or additional charges that may be necessary. If Customer does not agree to pay such charges by executing a revised Order reflecting such new charges (and superseding the underlying applicable Order) within five business days of receiving the revised Order, Customer or Provider may terminate the applicable Order. Customer will be responsible for access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for Provider to install, access and maintain the Services and Equipment. Customer is responsible for connecting Equipment to Customer’s computer or network to enable access to the Services. With respect to any excavation, Provider will be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.

**6.4 Interference.** If, during the Service Term of an Order, (i) proper operation of Provider’s Equipment or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any force majeure event (as defined in Section 8.1), or (ii) Provider determines, in its sole discretion, such interference/obstruction or the cause thereof will have negative consequences to Provider’s personnel or Network or cause technical difficulties to Provider or its customers, Provider may terminate any affected Order(s) without liability upon written notice to Customer.

**6.5 Ongoing Visits; Repairs.**

(A) Provider may access the Service Site from time to time to inspect, construct, install, operate and maintain Provider’s Network facilities, Equipment or materials or any related facilities. Except in emergency situations, Provider shall obtain approval from Customer (not to be unreasonably withheld, conditioned or delayed) before entering the Service Site. At Provider’s request, Customer, or a representative designated by Customer, shall accompany Provider’s employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, or removing the Equipment.

(B) If Customer’s misuse, abuse or modification of the Services, Equipment or Network facilities supplied by Provider necessitates a visit to a Service Site for inspection, correction or repair, Provider may charge Customer a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Services.

**6.6 Scheduled Maintenance and Local Access.** Scheduled maintenance will not normally result in Services interruption. If scheduled maintenance requires Services interruption, Provider shall: (i) provide Customer reasonable advance notice; (ii) work with Customer to minimize such interruptions, and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time.

**6.7 Equipment Maintenance.**

(A) Except as expressly otherwise provided in this MSA or an Order, neither party is responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party, provided, however, that subject to the indemnification provisions of this MSA and the Order, each party will be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

(B) Customer shall (i) use its commercially reasonable efforts to safeguard Provider-provided Equipment; (ii) not add other equipment or move, modify, disturb, alter, remove, or otherwise tamper with any portion of the Equipment; (iii) not hire or permit anyone other than personnel authorized by Provider acting in their official capacities to perform any work on the Equipment; and (iv) not move or relocate Equipment to another location or use it at an address other than the Service Site(s) without the prior written consent of Provider.

(C) Any unauthorized connection or other tampering with the Services, Equipment, any system or its components will be cause for immediate (without opportunity to cure) disconnection of Services, termination of the Order and other legal and equitable relief, and Provider will be entitled to recover damages, including, but not limited to, the value of any Services and Equipment obtained in violation of the Order in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees. If any antenna or signal amplification system for use in connection with communication equipment hereafter installed on the Service Site interferes with the Services Provider provides under an Order, Provider will not be obligated to distribute a quality signal to the Service Site better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

**ARTICLE 7. REPRESENTATIONS AND OBLIGATIONS**

**7.1 Mutual Representations.** Each party represents to the other that

(A) (i) it has the power and legal authority to execute, deliver and carry out the terms of the Agreement, (ii) the execution and delivery of the Agreement and the performance of such parties' obligations hereunder have been duly authorized, (iii) the individual signing this MSA and any Order has the authority to do so; and (iv) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms.

(B) to the best of its knowledge and belief, it has all permits, licenses and authorizations that may be required under contract and applicable federal, state and local law, rules, regulations and ordinances to install, operate and maintain any Equipment used in connection with the Agreement, including without limitation, if applicable, the contractual right of entry to any properties on which any such Equipment is or will be located;

(C) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business;

(D) it shall comply with all applicable laws and regulations when carrying out its respective duties under the Agreement; and

(E) it has not and shall not during the Service Term enter into an agreement or arrangement that could materially limit its performance or the fulfillment of its obligations under the Agreement.

**7.2 Customer Obligations.** Customer shall be responsible to ensure that any person who accesses or uses any Services, including through Customer's or Provider's Equipment, network or facilities, will be an authorized user, will use the Services and Equipment only in an appropriate and legal manner and will not interfere with or impair service over Provider's network or facilities. Customer shall not use or permit third parties to use the Services, including but not limited to any Equipment or software provided by Provider, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall be responsible for securing its network or facilities to prevent and protect against unauthorized access from third parties that may cause harm or damage to Provider's Equipment, network, vendors or customers. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Provider Network, backbone, nodes or other Services. Customer shall not use or permit third parties to use Services in any manner that violates applicable law or causes Provider to violate applicable law. Violation of any part of this Section 7.2 is grounds for immediate (without opportunity to cure) termination of any Order in addition to any other rights or remedies Provider may have hereunder.

## ARTICLE 8. GENERAL TERMS

**8.1 Force Majeure.** Neither party will have any claim or right against the other for any failure of or delay in performance by the other party (other than Customer's payment obligations under Article 2) if the failure or delay is caused by or the result of any act of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, vandalism, cable cut or other similar catastrophe, any law, order, regulation, direction or action of any governmental, civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, strike, lockout or other similar occurrence beyond the control and without the fault or negligence of the affected party. Notwithstanding the foregoing, if the force majeure delay exceeds 30 days, either party may terminate the Agreement or applicable Order immediately on written notice without incurring any liability hereunder.

### **8.2 Assignment and Resale.**

(A) The parties' rights and obligations under the Agreement will bind and inure to the benefit of the parties and each of their respective permitted successors and assigns.

(B) Customer shall not assign, delegate or otherwise transfer the Agreement or its obligations, in whole or in part, whether by operation of law or otherwise, without the prior written consent of Provider, which will not be unreasonably withheld, delayed or conditioned. Any assignment will be contingent on the assignee or transferee agreeing in writing to assume and to perform all of Customer's obligations under the Agreement. Notwithstanding the foregoing, Customer may assign the Agreement to any parent, subsidiary or affiliate of Customer controlling, under the control of or under common control with Customer (a "**Customer Affiliate**"); provided, that Customer shall continue to remain liable for the obligations under the Agreement. If Customer transfers the Agreement, in whole or in part, to a Customer Affiliate or a Customer Affiliate otherwise purchases Services, Customer will be jointly and severally liable for all claims and liabilities related to Services ordered by any Customer Affiliate.

(C) Unless otherwise provided in an Order, Customer may use the Services in connection with goods or services provided by Customer to third parties ("**Customer Provided Services**") provided that Customer shall indemnify, defend and hold Provider and its affiliates harmless from any claims arising from or related to any Customer Provided Services. If Customer sells telecommunications services, Customer shall file all required documentation and at all times have the requisite authority with appropriate regulatory agencies respecting the same.

**8.3 Notices.** Any notice to be given to either party under the Agreement will be in writing and deemed received (A) when received, if hand delivered, (B) three days after being sent by certified mail, postage prepaid and return receipt requested, (C) when received, if sent by email or facsimile during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time) with confirmation of delivery, or (D) the next day, when sent by reliable, commercial overnight courier

providing receipt of service to a party at such party's address set forth below. Notice received after 5:00 p.m. (recipient's time) will be effective the next regular business day:

**If To Provider:**

Wave Broadband  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Paul Koss  
Email: [pkoss@wavebroadband.com](mailto:pkoss@wavebroadband.com)

**If To Customer:**

THE CITY OF DALLAS  
187 SE Court St, Dallas  
Dallas, OR 97338  
Attn:  
Email:

**With A Copy To:**

WaveDivision Holdings, LLC  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Jim Penney  
Email: [jpenney@wavebroadband.com](mailto:jpenney@wavebroadband.com)

For billing inquiries/disputes, requests for Service credits and/or requests for disconnection of Services (other than for default):

**If To Provider:**

Wave Business Solutions, LLC  
401 Kirkland Parkplace, Suite 500  
Kirkland, WA 98033  
Attn: Julie Caldwell  
Email: [jucaldwell@wavebroadband.com](mailto:jucaldwell@wavebroadband.com)

If no Customer address is provided above, notices may be provided to any electronic or physical address identified on any applicable Order. Either party may change its notice address by giving notice to the other party in accordance with this section.

**8.4 Business Services Subscriber Agreement and Privacy Policy.**

(A) Customer's use of Internet and Telephone Services shall comply with the term and conditions of Provider's Business Services Subscriber Agreement (the "**Subscriber Agreement**"), found at [www.wavebroadband.com](http://www.wavebroadband.com) (or the applicable successor URL) (and the Subscriber Agreement is hereby incorporated by reference into each applicable Orders). If Provider is providing Internet Services to Customer, Customer represents and warrants that Customer has read the Subscriber Agreement and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that Provider may update or modify the Subscriber Agreement from time to time, with or without notice to Customer. Provider may discontinue or disconnect Internet Services immediately for any violation of the Subscriber Agreement with or without notice to Customer.

(B) Provider treats private communications on or through its Network or using any Services as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Provider also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy can be found on Provider's website at [www.wavebroadband.com](http://www.wavebroadband.com) (or the applicable successor URL). Customer represents and warrants that Customer has read the Privacy Policy and agrees to be bound by its terms. Customer expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by Provider, with or without notice to Customer.

**8.5 Intellectual Property and Publicity.** Nothing in the Agreement or its performance grants either party, by implication, estoppel or otherwise, any right, title, interest or license in or to the other party's names, logos, logotypes, trade dress, designs, or other trademarks, patents, patent applications, trade secrets, copyrights, mask work rights or other intellectual property rights of the other party or its affiliates.

**8.6 Confidential Information.** “**Confidential Information**” means the specific terms of the Agreement and any information, data or other materials provided by one party to the other under or in connection with the Agreement that is (A) clearly and conspicuously marked as “confidential” or with a similar designation; (B) identified by the disclosing party as confidential or proprietary before, during or promptly after presentation or communication; or (C) disclosed in a manner which the disclosing party reasonably communicated, or the receiving party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation “confidential” or any similar designation is used. Except with the prior written consent of the disclosing party, the receiving party shall not (i) use or disclose any Confidential Information other than to employees and contractors who have a need to know the Confidential Information, with any disclosure only to contractors who have signed a non-disclosure agreement to protect the confidential information of third parties, or (ii) make copies or allow others to make copies of such Confidential Information except as is reasonably necessary for internal business purposes. Nothing in the Agreement prohibits or limits either party's use or disclosure of information (1) previously known to it without obligation of confidence; (2) independently developed by or for it without use of or access to the other party's Confidential Information; (3) acquired by it from a third party which is not under an obligation of confidence with respect to such information; (4) which is or becomes publicly available through no breach of the Agreement; or (5) is required to be disclosed by operation of law, court order or other governmental demand. The parties further acknowledge and agree that exposure to Confidential Information of disclosing party will inevitably enhance receiving party's knowledge and understanding of disclosing party's industry and business activities, including without limitation discoveries, ideas, concepts, know-how and techniques related to or used by disclosing party (collectively, “**General Knowledge**”) in a way that cannot be separated from Receiving Party's other industry and business related knowledge. Each party agrees that, without limiting the non-disclosure obligations under this Section, this Section shall not restrict a party's use of such General Knowledge for its own internal purposes so long as such use does not incorporate Confidential Information that is specific to the disclosing party. Neither party shall take any action, including intentional memorization of Confidential Information, with the intent or purpose of evading obligations contained in this Section. The parties acknowledge and agree that breach of this Section may cause irreparable injury for which monetary damages are not an adequate remedy. Accordingly, each party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Section, without posting a bond if otherwise required by law. Neither party shall issue any press release or other public statement relating to the Agreement, except as may be required by law or agreed between the parties in writing. Any non-disclosure agreement between the parties applicable to the Agreement supersedes this Section.

**8.7 Dispute Resolution by the Parties; Arbitration; Governing Law; Forum Selection.**

(A) The parties will use their reasonable efforts to resolve any dispute, claim or controversy (a “**Dispute**”) arising out of or relating to this Agreement through good faith negotiation in the spirit of mutual cooperation. Either party (“**Notifying Party**”) may give the other party (“**Noticed Party**”) written notice of a Dispute. Within 15 days after delivery of such notice, the Noticed Party will submit to the other a written response. The notice and the response will include (A) a statement of each party's position and a summary of arguments supporting that position, and (B) the names and titles of the persons representing each party who will participate in such discussions. Such persons shall include a senior level executive (vice president or above) who has authority to settle the Dispute. Within 15 days after delivery of the parties' respective positions and arguments the executives of both parties will confer at a mutually acceptable time and place to attempt to resolve the Dispute. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above. Such closure shall not preclude continuing or later negotiation. All negotiations and documents exchanged pursuant to this section are confidential and inadmissible for any purpose, in any legal proceeding involving the parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the

negotiation. If the parties are unable to resolve the Dispute through negotiation, then the Dispute may be submitted to the Seattle, Washington offices of Judicial Arbitration & Mediation Services, Inc. (“JAMS”) or its successor for non-binding mediation in Seattle, Washington before a single mediator. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. Any dispute that cannot be resolved through mediation, and any dispute with respect to which a party is claiming equitable relief, shall be resolved by arbitration as provided in Section 8.7(B).

(B) Any Dispute not resolved as provided in Section 8.7(A), including whether a particular Dispute is arbitrable hereunder, or the performance, enforcement, breach, termination or validity of it, including the scope of the agreement to arbitrate, shall be finally resolved exclusively by submission to binding arbitration in accordance with this Section 8.7(B). Unresolved Disputes shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or federal or state regulatory law or administrative regulations. Any arbitration hearing shall be before a single neutral arbitrator and held in the Seattle, Washington office of JAMS. The arbitration shall be administered pursuant to the JAMS Comprehensive Rules and Procedures then in effect. The parties shall equally share the fees of the arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes. The parties shall submit any documents requested by the arbitrator in advance of the hearing date specified by the arbitrator. The selected arbitrator may grant discovery as required by the reasonable needs of the case and determine motions filed (including motions for preliminary or ancillary relief and for summary disposition), but shall do so in accordance with the parties’ desire to economically and quickly resolve any Dispute between them. As soon as practicable after the hearing, the arbitrator shall issue a written decision specifying such relief as may be appropriate. The arbitrator’s award shall be final and non-appealable. Any award rendered shall be limited to actual damages sustained by the party in whose favor the judgment is rendered, subject to the limitation of damages in this MSA. The arbitrator may not award relief in excess of or inconsistent with the provisions of the Agreement, order consolidation or arbitration on a class-wide basis or award any damages other than the prevailing party’s actual damages. The arbitrator’s award shall be final and binding and may be enforced solely in the courts provided in Section 8.7(C). Each party shall bear its own costs and attorneys’ fees. A demand for arbitration shall be forever barred unless made within one year from the date when the alleged Dispute arose, and shall be made by written notice given to the other party as provided in Section 8.7(A). No party may act as a representative of other claimants or potential claimants in any dispute, and two or more individuals’ disputes may not be consolidated or otherwise determined in one proceeding, without the prior written consent of both parties. The parties agree that the arbitration shall be kept confidential and the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted and exchanged, and testimony or other oral submission and any awards) shall not be disclosed beyond the arbitrator, the parties, their counsel and any person necessary to conduct the proceeding, except as may be ordered by a court of competent jurisdiction.

(C) The laws of the State of Washington govern all matters arising out of the Agreement. The state and federal courts located in King County, Washington will have exclusive jurisdiction and be the exclusive venue of any lawsuit between the parties arising out of this business relationship, including disputes when they arise following termination of the Agreement. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. Customer acknowledges and agrees that this Section 8.7 serves as a material inducement for Provider to enter into the Agreement. ***Each party waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Agreement.***

**8.8 Further Actions.** The parties shall, at their own costs and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intended purposes of the Agreement.

**8.9 Amendment.** The Agreement constitutes the entire and final agreement and understanding between the parties with respect to the Services and supersedes all prior agreements relating to the Services. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party.

**8.10 Waiver.** No failure by either party to enforce any rights hereunder will constitute a waiver of such rights. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer. No express or implied waiver by Provider of any event of default will in any way be a waiver of any further subsequent event of default.

**8.11 Relationship.** The Agreement is a commercial contract between Provider and Customer and the relationship between the parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the parties or any of their affiliates, agents or employees for any purpose.

**8.12 Legal Expenses.** If any proceeding is brought by a party to enforce or interpret any term or provision of the Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that party's reasonable attorneys' and experts' fees and expenses.

**8.13 Severability.** The invalidity under applicable law of any provision of the Agreement will not affect the validity of any other provision of the Agreement, and if any provision herein is determined to be invalid or otherwise illegal, the Agreement will remain effective and will be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

**8.14 No Inference Against Author.** No provision of the Agreement will be interpreted against any party because the party or its legal representative drafted the provision.

**8.15 No Third Party Beneficiaries.** The Agreement is not intended and does not confer any rights or remedies on any entity or person other than Provider, the Provider Affiliates and Customer.

**8.16 Headings; Section and Article References.** The article and section headings in this MSA are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of the Agreement. All article and section references herein are to articles and sections of this MSA.

**8.17 Counterparts.** This MSA and any Order may be executed in several counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Any executed documents sent via facsimile or portable document format (pdf) images will be considered originals.

The parties are signing this MSA as of the Effective Date.

THE CITY OF DALLAS

WAVE BUSINESS SOLUTIONS, LLC

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## ADDENDUM TO MASTER SERVICES AGREEMENT

This Addendum to that Master Services Agreement (“MSA”) dated \_\_\_\_, 2015, entered into by and between the City of Dallas, Oregon (referred to in the MSA and herein as "Customer") and Wave Business Solutions, LLC (referred to in the MSA and herein as "Provider") modifies and amends the MSA as provided herein.

### RECITALS

A. Customer entered into an Agreement for Use of Right of Way dated December 18, 2013. (the “ROW Use Agreement”), with WaveDivision Holdings, LLC, a Delaware limited liability company (“WDH”), of which Provider is an Affiliate within the meaning of the ROW Use Agreement.

B. Section 12 of the ROW Use Agreement provides that WDH and its Affiliates would pay to Customer the sum of \$5,566 per year, beginning with the first such payment on December 16, 2014, and continuing with a like payment on each December 16 during the term of the ROW Use Agreement.

C. On \_\_\_\_\_, 2015, Customer entered into a Telecommunications Franchise Agreement (the “Franchise Agreement”) with Astound Broadband, LLC, an Affiliate of Provider and wholly owned subsidiary WDH. Section 3 of the Franchise Agreement provides that Sections 2 and 3 thereof supersede Section 12 of the ROW Use Agreement, subject to the terms of Section 3 of the Franchise Agreement.

D. The parties acknowledge that, as of the Effective Date of the Franchise Agreement, as the term is defined therein, there was accrued to WDH, under Section 12 of the ROW Use Agreement, a pro-rated credit balance of \$\_\_\_\_\_.

E. The parties have agreed that the discount provided by Provider on charges for services, otherwise due and payable by Customer to Provider under Article 2 of the MSA, will be offset against any franchise fee owing to Customer by WDH or an Affiliate, as such charges may accrue pursuant to the terms of the Franchise Agreement, as further provided in this Addendum.

### AGREEMENT

Now, therefore, in consideration of the foregoing and the mutual covenants and obligations set forth herein, the MSA is modified and amended by this Addendum as follows:

1. Pursuant to Section 3 of the Franchise Agreement, as charges for services are assessed to Customer by Provider, the value of discounts provided by Provider to Customer, otherwise due and payable by Customer to Provider under Article 2 of the MSA, shall offset and apply as a credit against the franchise fee owing by Provider's Affiliate to Customer under Section 2 of the Franchise Agreement. If the offset value available to Provider for any calendar year exceeds the amount of the franchise fee due to Customer for such calendar year, Provider may not carry over the excess offset amount into the next calendar year.

2. If the Franchise Agreement and MSA are terminated before the amount owing by WDH to Customer under Section 12 of the ROW Use Agreement would have been reduced to zero pursuant to the terms of the Franchise Agreement and the ROW Use Agreement, WDH and its Affiliates will be jointly and severally liable to Customer for the remaining balance then owing under the ROW Use Agreement, and shall pay such balance to Customer in full within thirty (30) days following written demand.

3. Customer shall refund the credit balance amount in Section D to WDH within thirty (30) days of the Effective Date of the Franchise Agreement.

4. This Addendum modifies and amends and is made a part of the MSA.

Dated \_\_\_\_\_

Dated \_\_\_\_\_

City of Dallas, Oregon

Wave Business Solutions, LLC

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

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

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

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

APPROVED AS TO FORM:

WaveDivision Holdings, LLC

\_\_\_\_\_  
Lane P. Shetterly  
City Attorney

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

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

ORDINANCE NO. 1775

An Ordinance approving and authorizing a franchise agreement with Astound Broadband, LLC, for telecommunications services within the City of Dallas; and declaring an emergency.

WHEREAS, the City of Dallas and WaveDivision Holdings, LLC, (WDH) entered into an Agreement for Use of Right of Way, dated December 16, 2013, granting to WDH and its affiliates certain rights within the City's public ways for the purpose of providing cellular telephone backhaul service for a telecommunications carrier; and

WHEREAS, Section 2 of the Right of Way Agreement provides that the parties would enter into good faith negotiations for a franchise agreement if WDH desires to provide services to customers within the city limits of City; and

WHEREAS, Astound Broadband, LLC, a wholly owned subsidiary of WDH, desires to provide telecommunications services to customers within the city limits under a franchise agreement, and the City has negotiated a franchise agreement for such services, a copy of which is attached hereto as Exhibit A, and by reference incorporated herein; and

WHEREAS, the City Council of the City of Dallas hereby finds that such franchise agreement is reasonable and in the best interest of the City and the residents of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DALLAS:

Section 1. The Telecommunications Franchise Agreement between the City of Dallas and Astound Broadband, LLC attached hereto as Exhibit A, including the copy of the Agreement for Use of Right of Way made a part thereof, is hereby approved, and the City Manager is hereby authorized to execute such Franchise Agreement on behalf of the City.

Section 2. This ordinance being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this ordinance shall take effect on final passage and approval by the Mayor.

Read for the first time on: February 17, 2015  
Read for the second time on: March 2, 2015  
Adopted by the City Council on: March 2, 2015

Approved by the Mayor on: March 2, 2015

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BRIAN W. DALTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

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RONALD W. FOGGIN,  
CITY MANAGER

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LANE P. SHETTERLY,  
CITY ATTORNEY

## EXHIBIT A

### TELECOMMUNICATIONS FRANCHISE AGREEMENT

This Agreement (the “Agreement”) is made and entered into by and between the City of Dallas, Oregon, an Oregon municipal corporation (the “City”) and Astound Broadband, LLC, a wholly-owned subsidiary of WaveDivision Holdings, LLC, a Delaware limited liability company (“WDH”).

#### RECITALS

- A. The City and WDH entered into an Agreement for Use of Right of Way, dated December 16, 2013 (the “ROW Agreement”), granting to WDH and its Affiliates (capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the ROW Agreement) certain rights within the City’s Public Ways for the purpose of providing cellular telephone backhaul service for a telecommunications carrier. A copy of the ROW Agreement is attached hereto and by reference made a part hereof.
- B. Section 2 of the ROW Agreement requires the parties to enter into good faith negotiations for a franchise agreement if Wave desires to provide services to customers within the city limits of City.
- C. Astound Broadband, LLC desires to provide services to customers within the city limits and the parties have in good faith negotiated this Agreement.

#### AGREEMENT

##### Section 1: Franchise Grant.

- a. Subject to the terms and conditions contained herein, the City hereby grants to Astound Broadband, LLC (“Grantee”) a telecommunications franchise to locate its telecommunications facilities within the Public Ways of the City.
- b. Such grant is subject to all of the laws and ordinances of the City and the State of Oregon in existence at the time of this franchise grant or hereafter enacted or amended.
- c. The scope of this grant allows the installation, maintenance and repair of telecommunications facilities by Grantee in the City’s Public Ways to provide telecommunications services and internet access services. In the event the Grantee intends to provide services other than telecommunications services or internet access services, Grantee shall be required to obtain an additional or revised franchise from the City to the extent required by law.

Section 2: Franchise Fee. The annual franchise fee payable to the City shall be five percent (5%) of Grantee’s gross revenues earned from the provision of telecommunications

## EXHIBIT A

services to customers in the City. "Gross revenues" shall mean any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations imposed by federal or state law. The franchise fee shall be paid quarterly, in arrears, for each quarter during the term of this Agreement. The franchise fee shall be due and payable within forty-five (45) days of the end of each calendar quarter. All amounts paid under this Section 2 shall be subject to review and audit by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the Grantor notifies Grantee of its intent to conduct a review shall be subject to such review and audit. Notwithstanding any provision to the contrary, at any time during the term of this Agreement, Grantor may elect to increase the franchise fee amount as may then be allowed by state law. Grantor shall provide Grantee with prior written notice of such increase following adoption of the change in percentage by Grantor. The increase shall be effective sixty (60) days after Grantor has provided such written notice to Grantee.

### Section 3: Service to Public Buildings.

During the term of this Agreement Grantee shall provide and maintain Internet access service, at a speed level selected by Grantor, to the following public building, owned by Polk County, Oregon, provided that Polk County does not object to the installation of such services:

- Polk County, 121 SW Academy, Dallas, OR

Grantee will provide the Internet access service at a discounted rate. The Internet access service provided pursuant to this section may be shared by Polk County with Grantor, however it shall not be used by Grantor for any commercial purpose, nor shall Grantor permit any other entity to use such service for a commercial purpose.

a. The value of the discount provided by Grantee will offset against franchise fees described in Section 2. Grantee will present an annual accounting of franchise fees owed and offset achieved through discounts for services. The amount of any discounted services provided by Grantee under this section shall only be applicable to the franchise fee due from Grantee for the calendar year in which the discounted services are provided. If the offset value available to Grantee for any calendar year exceeds the amount of the franchise fee due from Grantee for said calendar year, Grantee may not carry over the excess offset amount into the next calendar year.

b. Sections 2 and 3 of this Agreement supersede Section 12 of the ROW Agreement, and Grantee's obligation to pay the franchise fee and provide service to public buildings under this Agreement supersede and replace the payment obligations under the ROW Agreement; provided, if Grantee fails or is unable, for any reason, to provide or thereafter maintain Internet access service to the Polk County building identified above with a discount off its standard rates, then, in such event, Section 12 of the ROW Agreement shall be reinstated from and after termination of provision of such services.

EXHIBIT A

Section 4: Term. This Agreement shall expire upon the expiration or termination of the ROW Agreement.

Section 5: ROW Agreement. The ROW Agreement remains in full force with respect to the rights granted in it. Except as set forth in this Agreement, the ROW Agreement is not amended or superseded.

Section 6: Effective Date. The Effective Date (“Effective Date”) of this Agreement shall be the date of last signature in the space provided immediately below.

Dated \_\_\_\_\_, 2015

Dated \_\_\_\_\_, 2015

City of Dallas, Oregon

Astound Broadband, LLC

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

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

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

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_

Lane P. Shetterly

City Attorney

## AGREEMENT FOR USE OF RIGHT OF WAY

This Agreement is made and entered into by and between the City of Dallas, Oregon, an Oregon municipal corporation (City), and WaveDivision Holdings, LLC, a Delaware limited liability company (WDH).

### RECITALS

A. City is an Oregon municipal corporation, with its offices located at 187 SE Court Street, Dallas, Oregon.

B. WDH is a Delaware limited liability company engaged in the business of providing fiber-optic cable and telephone and related services, registered to do business in the State of Oregon, with its Oregon offices located at 669 Glatt Circle, Woodburn, Oregon.

C. WDH desires to obtain rights for itself and its Affiliates (as defined below) to utilize City's right of way to construct, operate and maintain a fiber-optic or copper wire transmission trunk line for the purpose of providing cellular telephone backhaul service for a telecommunications carrier through City and such other services not prohibited by City or federal law, along the course shown on Exhibit A, attached hereto and by reference incorporated herein. The term "Affiliate" means any entity controlled by or under common control with WDH. The term "control" means the power to vote more than fifty percent (50%) of the securities or other equity interests of an entity. The term "controlled" has a meaning correlative thereto. The term "Wave" means WDH and any Affiliates.

D. City is willing to allow Wave to use its right of way for such purpose, according to the terms and conditions set forth in this agreement.

### AGREEMENT

Now, therefore, in consideration of the foregoing and the mutual covenants and obligations set forth herein, it is hereby agreed as follows:

1. City hereby grants to Wave the right, privilege and authority to construct, operate and maintain a fiber-optic or copper wire transmission trunk line and related appurtenances, including underground conduits and structures, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Facilities") in, under, along, over and across the streets, alleys, bridges, public ways and public places (collectively referred to herein as "Public Ways") within City, along the course shown on Exhibit A, for the purpose of providing cellular telephone backhaul service for a telecommunications carrier and such other services not prohibited by City or

federal law. To the fullest extent possible, Wave's Facilities shall be collocated on or with Facilities owned and operated by PacifiCorp under and pursuant to PacifiCorp's separate Franchise agreement with City, and Wave shall not construct any poles, towers or other installations without City's prior consent.

2. The term of this Agreement is for six (6) years commencing on December 16, 2013 and ending December 15, 2019; provided, Wave may terminate this Agreement for convenience by providing written notice to City. If, during the term of this Agreement, Wave desires to begin providing fiber-optic or other services to customers within the city limits of City, Wave will notify City and the parties agree to enter into good faith negotiations for a franchise agreement. Such a franchise agreement will provide, among other things, that the amount of the annual fee payable by Wave under this Agreement (or any extension or renewal of this Agreement) at the time such franchise agreement is entered into will constitute the initial minimum annual payment to be paid to City under the franchise agreement, and that if the total of franchise fee revenue paid to City for any year under the franchise agreement is less than the amount of such minimum annual payment, Wave will pay the difference directly to City. The amount of the minimum annual payment will be subject to renegotiation and adjustment over the term of the franchise.

3. The right to use and occupy the Public Ways City is nonexclusive and City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences; provided, however, that such use shall not unreasonably interfere with Wave's Facilities or rights granted herein.

4. In addition to the provision herein contained, City reserves the right to adopt such ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

5. City shall not be responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by Wave of its Facilities. Wave shall indemnify, defend and hold City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind brought by third parties on account of Wave's use of the Public Ways within City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder by a third party, provided that City (a) gives prompt written notice to Wave of any claim, demand or lien with respect to which City seeks indemnification hereunder; and (b) permits Wave to assume the defense of such claim, demand, or lien. If such defense is not assumed by Wave, Wave shall not be subject to liability for any

settlement made without its consent. Notwithstanding any provision hereof to the contrary, Wave shall not be obligated to indemnify, defend or hold City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of City or any of its officers or employees.

6. Wave shall maintain automobile, general liability, including bodily injury and property damage insurance protecting Wave and City, as well as City's officers, agents, and employees, from injuries and damages resulting from the operations related to this agreement, for which Wave is legally liable. The insurance shall provide coverage in the amounts of the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this agreement. These insurance policies may provide coverage in excess of self-insured retentions or deductibles in reasonable amounts that may exceed the maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds City and its officers, agents, and employees. The insurance policies shall provide that the insurance shall not be canceled or amended without thirty (30) days' prior written notice first being given to City. Each party agrees to waive subrogation against the other for any claims described in this section to the extent that the claim is covered by the responsible party's insurance, or would have been covered but for the application of an insurance deductible.

7. All Facilities installed or used under authority of this agreement shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

8. Except in the case of an emergency, Wave shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from City, which permit shall not be unreasonably withheld, conditioned, or delayed. Wave will abide by all applicable ordinances and all reasonable rules, regulations and requirements of City, and City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance.

9. All Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

10. If, during the course of work on its Facilities, Wave causes damage to or alters any Public Way or public property, Wave shall, at its own cost and expense and in a manner reasonably approved by City, replace and restore it to a condition comparable to that which existed before the work commenced.

11. The parties acknowledge that the Franchise Agreement between City and PacifiCorp reserves to City the right to require PacifiCorp to relocate its overhead Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. In the event City exercises such authority with respect to PacifiCorp's Facilities as to which Wave is collocated, Wave shall likewise relocate its Facilities at no cost to City.

12. In consideration of the rights and privileges hereby granted, Wave shall pay to City the sum of \$5,566 per year, payable in advance; provided that City waives payment of the foregoing sum for the first year of this Agreement. The first such payment shall be made not later than December 16, 2014, and a like payment shall be made thereafter on each December 16 during the term of this Agreement.

13. This Agreement shall automatically renew for an additional period of six (6) years unless either party provides notice of non-renewal at least one (1) year prior to the expiration of the initial term.

14. Neither party will be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

15. Wave shall not transfer or assign any rights under this Agreement to another entity, except transfers and assignments by operation of law, or to Affiliates, parents or subsidiaries of Wave which assume all of its obligations hereunder, or for collateral security purposes to its lenders from time to time, unless City shall first give its approval in writing, which approval shall not be unreasonably withheld.

16. At any time during the term of this Agreement, the City, either party may propose amendments to this Agreement by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment to the Agreement shall be effective until mutually agreed upon in writing.

17. City may terminate this Agreement upon the willful failure of Wave to perform promptly and completely any term, condition or obligation imposed upon it under or pursuant to this Agreement. City shall provide Wave written notice of any such failure and Wave shall have sixty (60) days from receipt of notice to cure the failure, or if the failure cannot reasonably be cured within sixty

(60) days, to commence and diligently pursue curing the failure. If Wave does not cure the failure within the sixty day period, or does not commence and diligently pursue curing the failure to City's satisfaction within the 60 day period, then City may declare the Agreement terminated.

18. In the event of suit or action arising under or relating to the terms of this Agreement, the prevailing party shall be entitled to recover such party's reasonable attorney fees, as may be awarded by the court in which such suit or action may be tried, heard or decided, and on any appeal therefrom.

19. All notices from Wave to City pursuant to or concerning this Agreement shall be delivered to the City Manager's Office at the address provided above. Unless otherwise directed, all notices from City to Wave shall be delivered to 669 Glatt Circle, Woodburn, Oregon 97071 with a copy to 401 Kirkland Parkplace, Suite 500, Kirkland, WA 98033 Attention: Jim Penney, E.V.P.

20. If any provision of this Agreement is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Agreement or any renewal or renewals thereof.

Dated December 18, 2013

City of Dallas, Oregon

By: [Signature]

Name: Don Foppin

Title: City Manager

Dated December 12, 2013

WaveDivision Holdings, LLC

By: [Signature]

Name: James A. Penney

Title: Executive Vice President

APPROVED AS TO FORM:

[Signature]

Lane P. Shetterly  
City Attorney

# DALLAS CITY COUNCIL REPORT

**TO: MAYOR BRIAN DALTON AND CITY COUNCIL**

<i>City of Dallas</i>	<b>Agenda Item No. 13a</b>	<b>Topic:</b> Ordinance 1774 – Repealing Oath of Office Ord.
<b>Prepared By:</b> Emily Gagner	<b>Meeting Date:</b> February 17, 2015	<b>Attachments:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>Approved By:</b> Ron Foggin		

RECOMMENDED MOTION:

Adopt Ordinance 1774

BACKGROUND:

As discussed at our last workshop, once the new Charter goes into effect, our current Oath of Office ordinance will no longer be needed (the new charter spells out the requirements of the oath). This ordinance simply repeals Ordinance 1735, effective July 1. This is a “housekeeping” item only.

FISCAL IMPACT:

None

ATTACHMENTS:

Ordinance 1774

ORDINANCE NO. 1774

An Ordinance repealing Ordinance 1735, relating to oath of office.

THE CITY OF DALLAS DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance 1735, relating to oath of office, is hereby repealed.

Section 2. This ordinance shall take effect July 1, 2015.

Read for the first time: February 2, 2015  
Read for the second time: February 17, 2015  
Passed by the City Council: February 17, 2015  
Approved by the Mayor: February 17, 2015

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BRIAN W. DALTON, MAYOR

ATTEST:

APPROVED AS TO FORM;

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RONALD L. FOGGIN,  
CITY MANAGER

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LANE P. SHETTERLY,  
CITY ATTORNEY