

# **Tarrant County Interlocal Agreements October 2009**

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City Auditor's Office

October 9, 2009

Honorable Mayor and Members of the City Council:

I am pleased to present the City Auditor's Office's report on Tarrant County Interlocal Agreements pertaining to infrastructure improvements around the new Cowboys Stadium. The purpose of the audit was to ensure that the interlocal agreements and fund disbursements meet regulations set forth by Chapter 791 of the Texas Government Code (Interlocal Cooperation Contracts) and that payments were disbursed in accordance with the interlocal agreements.

This review focused only on funds provided by Tarrant County for public infrastructure improvements around the new Cowboys Stadium. The audit did not include voter-approved bond funds of \$325 million for the construction of the stadium.

Management's responses to our audit findings and recommendations, as well as target implementation dates and responsibilities, are included in the following report.

We would like to thank the City Manager's Office and Treasury Management personnel for their full cooperation and assistance during the project.

A handwritten signature in cursive script that reads 'Patrice Randle'.

Patrice Randle, CPA  
City Auditor

- c: Jim Holgersson, City Manager  
Fiona Allen, Deputy City Manager  
Bob Byrd, Deputy City Manager  
Gilbert Perales, Deputy City Manager  
Trey Yelverton, Deputy City Manager  
April Nixon, Director of Financial and Management Resources

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# Tarrant County Interlocal Agreements



Office of the City Auditor  
Patrice Randle, CPA  
City Auditor

Project # 09-05

October 9, 2009

## ***Executive Summary***

***The interlocal agreements  
meet guidelines  
established by Chapter 791  
of the Texas Government  
Code***

***The City did not assign its  
responsibilities under  
some agreements***

## ***Opportunities for Improvement***

***Allocate expenses and  
monitor balances by  
project***

***Assign project  
responsibilities***

***Verify that  
disbursements are made  
in compliance with  
interlocal agreements***

***Establish written policies  
and procedures for wire  
transfers***

As part of the Fiscal Year 2009 Annual Audit Plan, the City Auditor's Office conducted an audit of interlocal agreements with Tarrant County, pertaining to public infrastructure improvements around the new Cowboys Stadium. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The objectives of the audit were to determine whether:

- interlocal agreements and fund disbursements meet regulations set forth by Chapter 791 of the Texas Government Code;
- disbursements to vendors are verified, authorized and accurate; and,
- internal controls relating to the banking and fund deposit process were adequate.

The City Auditor's Office noted that the interlocal agreements met compliance requirements set forth by Chapter 791 of the Texas Government Code. However, the following were noted as needing improvement.

- Expenditures exceeded available funds for one project.
- Some expenses were allocated to the incorrect interlocal project.
- The City did not assign its responsibilities under some interlocal agreements.
- Fund disbursements lacked a methodology necessary to ensure contract compliance and existence of required documentation.
- Written policies and procedures for wire transfers do not exist.

These findings and recommendations are discussed in the Detailed Audit Findings section of this report.

## *Audit Scope and Methodology*

Documentation, correspondence and transactions from October 2005 through December 2008 were included in the scope of this audit. The audit was conducted in accordance with generally accepted government auditing standards. The following methodology was used in completing the audit.

- Interviewed staff from the City Manager's Office and the Treasury Management Division to gain an understanding of interlocal agreements with Tarrant County and the fund disbursement process.
- Contacted the Tarrant County Auditor's Office to obtain information on interlocal agreements with fund deposits.
- Contacted the City Attorney's Office to obtain information on interlocal agreements with Tarrant County for public infrastructure improvements around the new Cowboys Stadium.
- Assessed contract compliance with Chapter 791 of the Texas Government Code, with assistance from the City Attorney's Office.
- Obtained records pertaining to interlocal agreements from City staff.
- Reconciled manual financial records to the City's financial software (Lawson).
- Interviewed Wells Fargo Bank staff that process fund transfers to vendors.
- Reconciled fund transfer records at Wells Fargo Bank to vendor payment records retained by the City's Treasury Management Division.
- Visited project sites around the new Cowboys Stadium, where infrastructure improvements have been made.
- Reviewed a statistical sample of fund disbursements to assess validity, accuracy, transaction authorization and contract compliance.
- Reviewed interlocal agreements to ensure City of Arlington responsibilities are assigned to third parties, as stated in agreements with Tarrant County and as authorized by City Council.

## ***Background***

Beginning in September 2005, the City of Arlington entered into multiple interlocal agreements with Tarrant County to improve public infrastructure such as roads, drainage and underground utilities near the new Cowboys Stadium.

Chapter 791 of the Texas Government Code regulates interlocal agreements between governmental entities. The Chapter is designed to “increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state.” Chapter 791 states that agreements should:

- be authorized by the governing body of each municipality;
- state the duties of each party; and,
- be in amounts that fairly compensate the parties performing stated activities.

Records in the City Secretary’s Office show approximately 13 interlocal agreements with Tarrant County pertaining to the new Cowboys stadium. The City has entered into two types of interlocal agreements with Tarrant County.

Agreements with fund deposits – Tarrant County provided funds to the City of Arlington to disburse for projects described in interlocal agreements between the two entities. The City of Arlington and Tarrant County executed seven interlocal agreements with fund deposits totaling \$13.625 million. City of Arlington responsibilities include construction management, oversight and quality assurance.

Like Services Agreements – Tarrant County and the City of Arlington contracted to perform tasks at their own cost, for public infrastructure improvements near the new Cowboys Stadium.

The table below lists the seven interlocal agreements with Tarrant County fund deposits.

<b>Resolution</b>	<b>Date</b>	<b>Deposit Amount</b>	<b>Description</b>
05-567	09/13/05	\$250,000	Design and construction of Baird Farm Road
06-050	02/14/06	2,200,000	Construction of Baird Farm Road
06-367	08/08/06	275,000	Design of Rogers Road
06-583	11/28/06	4,700,000	Construction of storm drainage on Rogers Road
06-606	12/13/06	3,000,000	Construction of Baird Farm Road
07-612	09/25/07	500,000	Construction of storm drainage on Rogers Road
08-317	08/19/08	2,700,000	Infrastructure improvements near new stadium
<b>Total</b>		<b>\$13,625,000</b>	

Funds received from Tarrant County were recorded in an escrow account within the City’s financial system. Invoices supporting expenses incurred from the projects listed above were submitted to the City of Arlington by Blue Star Construction. Blue Star Construction was responsible for managing construction activity at the new stadium. Upon receipt, a Deputy City Manager reviewed and approved Blue Star invoices for payment. The City’s Treasury Management staff then transferred

funds from the Tarrant County escrow account to Wells Fargo Bank, with wire instructions for vendor payments.

The table below lists the like-services agreements between the City of Arlington and Tarrant County, per records retained by the City Secretary's Office.

<b>Resolution</b>	<b>Date</b>	<b>Project Description</b>	<b>Arlington Responsibilities</b>
05-572	09/13/05	Demolition and site preparation	Property acquisition, traffic control, assist with debris removal
06-520	10/17/06	Baird Farm Road Construction	Traffic control, quality assurance, soil testing
06-582	11/28/06	Parking Lot Construction	\$2,500 for each lot, materials, traffic control, quality assurance
07-092	02/27/07	Sanford Street Construction	Traffic control, preparation, quality assurance, dispose waste
07-490	08/14/07	Rogers Road Construction	Project oversight, waste disposal, traffic control and quality assurance
08-080	03/04/08	Parking Lots	Project oversight, waste disposal, traffic control and quality assurance, \$2,500 per lot

It appears that the City intended to assign its responsibilities, outlined in the aforementioned 13 interlocal agreements. Fund deposit and like-services agreements require Arlington to perform various tasks that require additional resources and funding, therefore necessitating the assignment of stated tasks.

The City Auditor's Office found four agreements with Tarrant County that authorized the use of unused funds from earlier projects. These contracts allowed remaining funds to be used towards the construction and all necessary improvements around the new stadium. Improvements included road construction, drainage, installation of utilities, and restoration of rights of ways.

## *Detailed Audit Findings*

### **1. Individual interlocal project expenditures exceeded available funds.**

Tarrant County funds were contractually allocated by project, with a total of seven infrastructure improvement projects around the new Cowboys Stadium. The City Auditor's Office noted that expenditures for the design of Rogers Road exceeded the budgeted contract amount by \$6,943 through October 2008. The City obtained approval to reallocate unspent funds in December 2008. A spreadsheet maintained by the City's Treasury Management staff shows a January 2009 fund transfer to offset the project overrun.

The City recorded monies received from Tarrant County for the seven infrastructure improvement projects in one escrow account. Since the City's financial system does not disallow disbursements from escrow accounts with insufficient balances, Treasury Management staff manually monitors project balances in Excel spreadsheets. Disbursements are controlled manually to ensure they do not exceed the allocated amount for the project. Establishing separate escrow accounts would have simplified the fund monitoring process and would have helped prevent project disbursements from exceeding the authorized project amount.

#### ***Recommendation:***

The Director of Financial and Management Resources should consider establishing individual escrow accounts for each project and ensure disbursements do not exceed allocated funds. Authorization for fund reallocations should be obtained prior to incurring expenditures.

#### ***Management's Response:***

*Concur. These funds for the Tarrant County projects have almost all been disbursed. However, going forward, this is the direction Financial and Management Resources [FMR] will take on disbursements like these.*

*Target Date: October 1, 2010 for all new disbursements like these*  
*Responsibility: Ethan Klos, Treasury Manager*

### **2. Some expenses were allocated to the wrong project.**

The City of Arlington is responsible for primary oversight and management of the project contracts. Construction expenditures for Tarrant County-funded infrastructure improvements are approved and allocated to projects by a Deputy City Manager. Individual interlocal agreements require that funds be disbursed for the specific projects listed.

Project expenditure analysis identified five instances where inappropriate expense items were allocated to the design of Rogers Road and construction of Baird Farm Road.

- Two invoices from a contractor related to electrical expenditures from Baird Farm Road were allocated to design of Rogers Road.

- Two invoices related to the design of Baird Farm Road (Nolan Ryan to Copeland) were allocated to the project associated with the construction of Baird Farm Road (Nolan Ryan to Randol Mill).
- One invoice related to the design of Randol Mill Road was allocated to the construction of Baird Farm Road.

Disbursements were approved without a process to ensure that expenditures complied with agreement clauses. As a result, some fund disbursements did not comply with interlocal agreements. In order to ensure that funds committed by Tarrant County were spent on public improvements around the new stadium, additional agreements were drafted in December 2008. The new agreements allowed unused funds from selected projects to be allocated to other infrastructure improvements around the new stadium. Expenditures related to the five exceptions noted above were made between March and October 2008, before authorization to use unused funds from other projects was granted. A secondary review of invoices prior to disbursement would have increased contract compliance.

***Recommendation:***

The Financial and Management Resources Director should allocate resources to review all escrow fund payments prior to disbursement in order to ensure compliance with the contract requirements.

***Management's Response:***

*Do Not Concur. Typically, an operating department, like Public Works, assigns a management staff member to notify FMR to pay an invoice through receipting on a Purchase Order or the submission of a Payment Authorization. This is the control that lets FMR know that work has been completed and contract requirements have been met. Because FMR does not manage City construction contracts, but handles the financial payments, departments have the responsibility to ensure that the work has been completed within contract parameters, prior to the contractors being paid.*

*Concur. FMR will review escrow funds prior to disbursement to ensure funds are available to pay.*

*Target Date: October 1, 2010 on future disbursements*

*Responsibility: Ethan Klos, Treasury Manager*

***Audit Comment:***

Under normal circumstances, user departments would be responsible for ensuring that payments are in compliance with contracts, prior to authorizing payment. However, the interlocal agreements with Tarrant County were administered differently than other contracts at the City. The City Auditor's Office noted that the Treasury Management Division of the Financial and Management Resources Department was responsible for monitoring payments made from the escrow account.

### 3. The City did not assign its responsibilities under seven interlocal agreements.

Generally, the interlocal agreements gave the City of Arlington the option to perform, enter into a contract to perform, or assign the performance of duties listed in the agreement. For the seven interlocal agreements listed below, the City Auditor's Office noted that the City did not perform or enter into a contract to perform the contract responsibilities. It appears that the City assigned its responsibilities to Blue Star Construction. Assigning the contract relieves the City of costs that would be incurred to perform tasks outlined in the agreement.

<b>Council Resolution</b>	<b>City of Arlington Responsibilities</b>	<b>Tarrant County Responsibilities</b>
05-567	Primary oversight and management of the design process. Enter into a contract to perform or assign the performance of the design and construction plans for Baird Farm Road from Nolan Ryan Expressway to Randol Mill Road.	\$250,000
06-050	Primary oversight and management of the design process. Perform, enter into a contract to perform or assign the performance of the design and construction plans for Baird Farm Road from Nolan Ryan Expressway to Randol Mill Road.	\$2,200,000
06-367	Primary oversight and management of the design process. Perform, enter into a contract to perform or assign the performance of the design and construction plans for Rogers Road from North Collins Street to future Baird Farm Road.	\$275,000
06-582*	Necessary materials; \$2,500 per parking lot (Lots A, B and H) for labor and equipment; traffic control, inspection, soil lab testing, and utility location.	\$7,500
06-583*	Primary oversight and management of the design process. Perform, enter into a contract to perform or assign the performance of the construction and installation of box culverts and relocation of utilities on Rogers Street and Randol Mill Road.	\$4,700,000
07-612	Primary oversight and management of the design process. Perform, enter into a contract to perform or assign the performance of the construction and installation of box culverts and relocation of utilities on Rogers Street and Randol Mill Road.	\$500,000
08-080	Necessary materials. Primary oversight and management of the design process; necessary traffic control, designate site for waste materials, verify utility locations; furnish quality assurance inspections; provide stockpile site for project materials and soil lab testing; \$2,500 per lot for labor and equipment.	Equipment and manpower

\* Assignment contract drafted but not executed

Resolutions 06-582 and 06-583 consisted of assignments that were drafted, but not signed by all parties. As stated by the City Attorney's Office, the drafted assignments show that the City intended to enter into assignment contracts.

The following interlocal agreements did not include clauses granting the City an option to assign its responsibilities. However, the City Auditor's Office noted that the City did not perform nor contract to perform its responsibilities under the interlocal agreements. It appears that the City assigned its responsibilities to Blue Star Construction. However, the City Auditor's Office did not locate any executed contract documents assigning its responsibilities.

<b>Council Resolution</b>	<b>Agreement Details</b>	<b>City of Arlington Responsibilities</b>	<b>Tarrant County Responsibilities</b>
05-572	Demolition of structures and pavement removal	Assist Tarrant County in debris removal, property acquisition, preparation for demolition and traffic control	Demolish properties, debris removal, debris disposal
07-490	Construct Rogers Road, from North Collins to Baird Farm	Review plans, traffic control, waste disposal, verify utility locations, inspections and soil lab testing	Equipment, manpower, and materials

The City has not established an adequate methodology to ensure that contract clauses within interlocal agreements are met. Multiple, successive interlocal agreements pertaining to the new stadium require dedicated resources to ensure all contract clauses are met.

The City Attorney's Office stated that the lack of assignments does not necessarily result in contractual non-compliance between Tarrant County and the City of Arlington. The assignment clauses in the interlocal agreements were included to notify Tarrant County of the City's intentions. Since the projects described in each agreement were completed satisfactorily, the City of Arlington complied with each interlocal agreement. However, an assignment would provide additional protection to the City of Arlington from future liability related to individual projects.

The City Auditor's Office did not find any evidence that the City of Arlington incurred additional costs as a result of not having executed contract assignments. The City Auditor's Office examined payments to Tarrant County and interviewed Public Works management personnel to determine if the City made any payments under the eight agreements noted above. None were identified. However, the City received an invoice from Tarrant County for \$15,000 for the City's portion of paving parking lots (Resolution 06-582). Management intends to use bond funds set aside for stadium expenditures (part of the \$325 million) to pay for the \$15,000 parking lot expense.

***Recommendation:***

The City Manager should request that the City Attorney execute assignment contracts, as intended, for the nine interlocal agreements between the City of Arlington and Tarrant County.

***Management's Response:***

*Partially Concur. It is understood that in discussions between representatives of the City Auditor's Office and the City Attorney's Office, the Assistant City Attorney informed the Internal Auditor that assignments were not needed for all the Interlocal Agreements. Specifically, for Interlocal Agreements approved by Resolution Number 05-567, 05-572, 06-367, and 07-490, assignments were not necessary. Interlocal Agreements approved by Resolution Number 06-582, 06-583, and 08-080 do have authorized assignments, however executed copies are not found. For Interlocal Agreements approved by Resolution Number 06-050 and 07-612, it is questionable as to whether assignments are needed. However, to be consistent with previous actions it is probably preferable.*

*The City Manager, or his designee, will request the City Attorney review whether assignments for Interlocal Agreements approved by Resolution Number 06-050 and 07-612 are needed and if so, the City Manager, or his designee, will work with the City Attorney's Office to create the documentation for consideration by the Arlington City Council. The City Manager, or his designee, will also work with the City Secretary's Office to ensure executed copies of resolutions are filed appropriately.*

*Target Date: October 15, 2009 for request to City Attorney*

*Responsibility: Deputy City Manager*

**4. A methodology to ensure legal documents are received and retained in the City Secretary's Office does not exist.**

Two contracts pertaining to interlocal agreements with Tarrant County were not available at the City Secretary's Office. In addition, the City Secretary's Office was unable to provide the City Auditor's Office with signed copies of five interlocal agreements. Section 4.09 of the City Code requires that the City Secretary's Office retain legal documents, including contracts related to City business and information pertaining to City Council activity.

City Secretary's Office staff indicated that individual City departments retain legal and contractual documentation pertaining to their department, including documentation for agreements that do not require City Council approval. A follow-up methodology to ensure that legal documents and contracts requiring signatures are returned in a timely manner does not exist. As a result, some legal and contractual documents are not available at the City Secretary's Office for internal and public use.

Currently, the City Secretary's Office utilizes Microsoft Office Sharepoint Services (MOSS) to offer City Council minutes and other legal documents to internal users. It appears that data fields could be added to the application to accommodate a document follow-up date, linked to a calendar. Enhancement to MOSS would enable City Secretary's Office staff to monitor the status of legal documents that require signatures and ensure signed documents are received and retained.

***Recommendation:***

The Financial and Management Resources Director should require that data fields be added to the MOSS portal software and that the City Secretary's Office use the software as a tool to follow up on outstanding documents.

***Management's Response:***

*Concur. The City Secretary's Office is currently working to create a portal/MOSS based system to provide the needed protocol to actively follow and track contracts as they work their way through the system.*

*Target Date: September 30, 2010*

*Responsibility: Karen Barlar, City Secretary*

*Jennifer Wichmann, Administrative Services Manager*

***Recommendation:***

The City Manager should require that the City Secretary's Office obtain and retain all contracts, documents, etc. resulting from City Council action.

***Management's Response:***

*Concur. The City Secretary's Office currently retains an original of all contracts and documents resulting from City Council action after they have been circulated for all required signatures. In some instances, including these examples of interlocal agreements, when contracts are sent to outside entities for signature, they are not returned to the City Secretary's Office. In FY2010, the City Secretary's Office will develop a protocol to actively follow and track contracts as they work through the system and issue reminders when contracts have not been returned within a reasonable period of time.*

*Target Date: September 30, 2010*

*Responsibility: Karen Barlar, City Secretary*

*Jennifer Wichmann, Administrative Services Manager*

**5. Disbursement of Tarrant County interlocal funds lacked methodology to ensure existence of necessary documentation and contract compliance.**

City management indicated that a cover letter from Blue Star Construction, a valid payment certificate or a vendor invoice was required for payment from Tarrant County funds. The interlocal agreements also include specific disbursement requirements for funds provided by Tarrant County, based on the type of infrastructure improvement.

A sample of 35 fund disbursements related to Tarrant County interlocal agreements resulted in the following exceptions.

- Work detail listed in the invoices did not match projects and tasks outlined in interlocal agreements.

The interlocal agreements with Tarrant County list details of the construction project and use of funds for projects listed in the contract. Details shown in eight paid invoices did not appear to match the tasks outlined in the interlocal agreement. Exceptions include project design costs expensed from funds for construction projects; street paving costs expensed from funds for drainage and utility relocation; traffic signal costs expensed from funds for storm drainage and construction of a traffic deceleration lane expensed from funds allocated for storm water drainage. The invoices with exceptions were paid between November 2006 and November 2008.

- A signed and itemized cover letter from Blue Star Construction was not included with invoices.

When utilized, a signed cover letter from Blue Star Construction includes invoice detail, invoice dollar amounts, project information and verbiage certifying the completion of invoiced tasks. The City Auditor's Office noted that the City paid 12 invoices that did not include a cover letter that was signed and certified by Blue Star Construction. Management indicated that a valid cover letter is required prior to payment of an invoice.

- Valid payment certificates were not included at time of disbursement.

A payment certificate is required prior to payment of an invoice and is intended to certify the validity of the goods and services provided for projects that utilize Tarrant County funds. The payment certificate is signed by Blue Star management, who oversees the construction of the stadium and attests to the completion of tasks. A total of six disbursements without a signed payment certificate were noted during the review of invoices. Another seven disbursements did not have an itemization for the amounts being disbursed.

- The payment approval process for invoices pertaining to interlocal agreements was informal.

The invoice approval process for these interlocal agreements was inconsistent with the City's normal accounts payable process. City of Arlington accounts payable procedures require written approval on designated forms intended to offer internal controls to the City's fund disbursement process. For expenditures related to the Tarrant County interlocal agreements, the Deputy City Manager approved payments by simply initialing and attaching yellow sticky notes or by initialing the cover letter from Blue Star Construction. Deputy City Manager approvals included instructions on which project to allocate documentation expenses. The City Auditor's Office could not locate approval for two disbursements in the sample. Lack of supporting documentation results in the inability to verify that proper review and authorization was obtained prior to payment.

***Recommendation:***

The Director of Financial and Management Resources should ensure future disbursements from escrow funds are subjected to policies and procedures that apply to City's account payable functions.

***Management's Response:***

*Concur. These particular Interlocal Agreements with Tarrant County that were examined in this audit were unusual or were managed in a non-traditional manner. Authorization to disburse funds was given from the City Manager's Office [CMO] instead of the operating departments, who were actually overseeing the projects. The Financial Services Department (in place at the time this process was designed) worked with CMO to develop the process that was used to make these disbursements. When Financial Services merged with Management Resources in later 2008, these processes were re-examined and some changes were made.*

*Typically and in the future, these projects would have been handled as they are traditionally, using a model similar to our existing Accounts Payable methodology.*

*Target Date: October 1, 2010 on future disbursement*

*Responsibility: Ethan Klos, Treasury Manager*

**6. Written policies and procedures for wire transfers do not exist.**

Formal written policies and procedures for wire transfers do not exist. The City's Treasury Management staff is responsible for processing wire payment requests for vendors under the Cowboys interlocal agreements. The City requires that critical information, such as bank routing numbers, be included on company letterhead as a means of authentication. Staff also verifies bank routing numbers using an account number database maintained by Chase Bank. The procedures followed by the City's Treasury Management staff are not included in any written document.

Written policies and procedures offer formal methodology and direction to perform critical tasks, with consideration given to adequate internal controls. Adequate written policy and procedures for wire transfers generally include:

- instructions on how to initiate wire transfers;
- required supporting documentation;
- required formal approval process;
- measures to prevent fraud;
- penalties for non-compliance; and,
- authorization from the Department Director and City Controller.

The City's Treasury Management staff has not utilized formal written policies and procedures for wire transfers. Written policies and procedures offer guidance to new employees, establish a formal approval process and document penalties for non-compliance. Even though written policies and procedures did not exist, exceptions were not noted during the review of wire transfers.

***Recommendation:***

The Financial and Management Resources Director should ensure written policies and procedures are established for wire transfers.

***Management's Response:***

*Concur. All wire transfers require two approvals before being released by the bank. Treasury requires wire instructions on a company's letterhead and approval of the initiating department. A written procedure for wires has been included in a recently updated policy for the Treasury Division.*

*Target Date: Completed (September 2009)*

*Responsibility: Treasury Division*