

ORIGINAL

CAUSE NO. 380-02570-2011

CITY OF ANNA, TEXAS

Plaintiff,

v.

CITY OF WESTON, TEXAS

Defendant.

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IN THE DISTRICT COURT

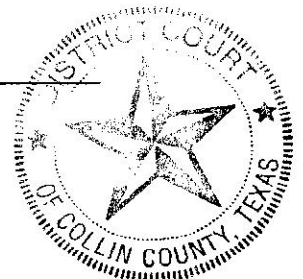
380th JUDICIAL DISTRICT

COLLIN COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this 24TH day of OCTOBER 2012, after the filing of the Agreed Motion for Entry of Agreed Final Judgment; and the court having duly considered said motion and the papers on file with the court, the court makes the following findings and declarations:

- a. This Court has jurisdiction over the Parties and the subject matter of this case;
- b. By and through appropriate actions of their respective City Councils, the cities of Anna, Texas, and Weston, Texas (collectively "the Parties"), have agreed to and ratified a "Boundary Contract", under the authority of applicable law, as granted by and pursuant to applicable provisions in Chapters 42 and 43 of the Texas Local Government Code and Chapter 791 of the Government Code (all as amended), which resolves all claims, causes of action, counter-claims, and cross-actions which were or could have been asserted in this lawsuit;
- c. The Boundary Contract and all of its exhibits, attached hereto as Exhibit "A", are hereby incorporated as part of the final judgment of this Court, and the Cities' respective corporate boundaries and extraterritorial jurisdictions and other related rights and obligations shall be as set forth in the Boundary Contract.



Further, it is hereby ORDERED, ADJUDGED, DECLARED, and DECREED that all terms of the Boundary Contract are binding upon the Parties and have the full force and authority accorded to final judgments under Texas state law, and the Parties are entitled to any writs and processes as may be necessary to enforce this judgment. This Court will retain all powers necessary and appropriate to enforcement of the terms of this final judgment and the Boundary Contract, including but not limited to plenary power.

It is ORDERED that all court costs and attorney's fees should be taxed against the party incurring the same.


The court ORDERS, ADJUDGES and DECREES that all relief as to any party not expressly granted in this Final Judgment is hereby denied.

This Final Judgment is entered by the Court on this 24TH day of OCTOBER, 2012.


PRESIDING JUDGE

AGREED:

WOLFE, TIDWELL & MCCOY, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034
Telephone: 972.712.3530
Facsimile: 972.712.3540

By: 
Clark McCoy
State Bar No. 90001803

ATTORNEY FOR CITY OF ANNA

Mr. Bryn Meredith
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone: 817.332.2580
Facsimile: 817.332.4740

By: 
Bryn Meredith
State Bar No. 24013158

ATTORNEY FOR CITY OF WESTON



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Exhibit A

Boundary Contract

This Boundary Contract, effective as of the date last executed hereinbelow (the "Effective Date"), is entered into by and between the **City of Anna**, a home rule municipality located in Collin County, Texas ("Anna"), and the **City of Weston**, a general law municipality located in Collin County, Texas ("Weston") (each individually referred to as "City" or "Party" and collectively referred to as the "Cities" or "Parties"), each acting by and through their duly authorized representatives.

WHEREAS, Anna and Weston are adjacent municipalities that currently have certain common or nearby boundaries and said Cities are empowered by state law and the Constitution to establish their respective incorporated areas and extraterritorial jurisdictions ("ETJs" and singularly "ETJ"); and

WHEREAS, Anna and Weston have agreed to release certain portions of their ETJs to the other; and

WHEREAS, the Cities seek to avoid conflicts and uncertainty regarding the extent and location of their respective incorporated areas and ETJs, and further litigation involving the same; and

WHEREAS, each of the Cities has reviewed their respective incorporated areas and ETJs, and the location of any such areas released hereunder and each City has determined that the areas released would be better served by the municipal services of each City as set forth herein; and

WHEREAS, the Cities find and determine it necessary for the health, safety and welfare of their inhabitants to confirm and/or make certain adjustments regarding their respective boundaries as set forth herein; and

WHEREAS, this Boundary Contract is made under the authority of the Cities operating under applicable law and as granted by and pursuant to applicable provisions in Chapters 42 and 43 of the Texas Local Government Code, as amended, providing for boundary agreements and/or Chapter 791 of the Texas Government Code, as amended, providing for the cooperation between local governmental bodies for beneficial governmental purposes; and

WHEREAS, the Cities have or will submit to their respective governing bodies companion ordinances approving this Boundary Contract which, together, confirm and adjust the incorporated areas and/or ETJs of the Cities, as set forth herein and as depicted in the attached boundary map ("Boundary Map") which depicts the areas being released by each City to the other, and certain other boundaries, said Boundary Map being labeled and attached hereto as Exhibit 1 and incorporated herein by reference;

NOW THEREFORE, for and in consideration for the mutual covenants and agreements contained herein, the Cities agree as follows:

**SECTION 1
INCORPORATION OF PREMISES**

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**SECTION 2
OBLIGATIONS AND AGREEMENTS OF THE CITIES**

2.01 Release of ETJs.

(a) Weston forever releases:

- (1) any portion of its ETJ and/or incorporated areas that are located within any portion of the areas marked "Area – A" or "Area – C" on the Boundary map to Anna for inclusion into Anna's ETJ (present or future), and/or Anna's incorporated area (present or future); and
- (2) any claim(s) whatsoever—present or future, known or unknown—that all or any portion of the areas marked "Area – A" or "Area – C" on the Boundary Map are within Weston's ETJ or its incorporated area.

(b) Anna forever releases:

- (1) any portion of its ETJ and/or incorporated areas that are located within any portion of the area marked "Area – B" on the Boundary map to Weston for inclusion into Weston's ETJ (present or future), and/or Weston's incorporated area (present or future); and
- (2) any claim(s) whatsoever—present or future, known or unknown—that all or any portion of the area marked "Area – B" on the Boundary Map are within Anna's ETJ or its incorporated area.

2.02 Restrictions on Incorporation, ETJ Expansion and Authority to Regulate.

(a) The Cities covenant and agree that from and after the approval and execution of this Boundary Contract and adoption of the above-referenced companion ordinances by each of the respective Cities:

- (1) Weston shall never incorporate any area within, or expand its ETJ into, any portion of the areas marked "Area – A" or "Area – C" on the Boundary Map; and
- (2) Anna shall never incorporate any area within, nor expand its ETJ into, any portion of the area marked "Area – B" on the Boundary Map.

(b) Weston acknowledges and agrees that it will not challenge the validity of any annexation or ETJ expansion by Anna in any portion of the area marked "Area – A" or "Area – C" on the Boundary Map.

- (c) Weston shall at no time assert any police powers or other governmental powers in the area(s) that Weston is releasing herein without Anna's written consent expressed by ordinance.
- (d) Anna shall at no time assert any police powers or other governmental powers in the area(s) that Anna is releasing herein without Weston's written consent expressed by ordinance.
- (e) Except as restricted under this Boundary Contract, the Cities may otherwise expand their respective incorporated areas and ETJs in accordance with state law.

2.03 Official Map.

- (a) Weston represents that the map being labeled and attached hereto as Exhibit 2 shows most of Weston's claimed incorporated area and ETJ prior to the date that Weston's duly authorized representative executed this Boundary Contract. Inclusion of said Exhibit 2 is for reference only, to generally demonstrate Weston's claim prior to the Effective Date. In the event of any conflict between Exhibit 2 and Exhibit 1, it shall be Exhibit 1 that prevails with respect to the agreed boundaries between the Cities. Any errors or inaccuracies with regard to any of the information shown in Exhibit 2 shall in no way affect the meaning or validity of this Boundary Contract. Without limiting the foregoing, the line(s) shown in Exhibit 2 that are labeled "Ultimate Mutual Boundary Agreements" are not intended to and do not form any type of boundary between the Cities that are parties to this Boundary Contract, it being the intention of the Cities that upon the Effective Date and thereafter the boundaries between the Cities shall be solely as set forth in Exhibit 1 and as such boundaries may thereafter be modified in accordance with state law and this Boundary Agreement.
- (b) Anna represents that the map being labeled and attached hereto as Exhibit 3 shows most of Anna's claimed incorporated area and ETJ prior to the date that Anna's duly authorized representative executed this Boundary Contract. Inclusion of said Exhibit 3 is for reference only, to generally demonstrate Anna's claim prior to the Effective Date. In the event of any conflict between Exhibit 3 and Exhibit 1, it shall be Exhibit 1 that prevails with respect to the agreed boundaries between the Cities. Any errors or inaccuracies with regard to any of the information shown in Exhibit 3 shall in no way impact the validity of this Boundary Contract.
- (c) Within sixty (60) days after the Effective Date, the respective governing bodies of the Cities shall take all appropriate action necessary to effectuate the terms of this Boundary Contract through the adoption of respective official maps ("Official Map") showing each City's respective Boundaries and ETJ. The Official Map of each City shall show the boundaries of their respective incorporated areas and ETJ in a manner that does not conflict with the Boundary Map.
- (d) The Official Map of each City shall be filed by each City with the Collin County Clerk within thirty (30) days after adoption of that City's Official Map; and, each City

shall file a copy of its ordinance adopting and authorizing the execution of this Boundary Contract within thirty (30) days after the Effective Date of this Boundary Contract, in the deed records of Collin County.

- (e) The failure of the Cities or either one of them to adopt an Official Map or timely file an Official Map or ordinance shall not hinder or impact the validity of this Boundary Contract or the validity of either City's incorporated areas and/or ETJs as adjusted by this Boundary Contract.

- 2.04 Agreed Judgment. Within thirty (30) days after the Effective Date of this Boundary Contract, the Parties shall cause to be filed a proposed agreed judgment in the lawsuit styled *City of Anna, Texas v. City of Weston, Texas*, Cause No. 380-02570-2011, now pending in the 380th Judicial District of Collin County, Texas ("Agreed Judgment"). Said Agreed Judgment will incorporate the essential terms of this Boundary Contract, including the Boundary Map, and the Parties agree that the terms of this Boundary Contract will therefore be fully enforceable by the court. To the fullest extent under law, the failure for any reason of the Parties to seek said Agreed Judgment, and/or the failure of the Court to enter said Agreed Judgment shall not hinder or impact the validity of this Boundary Contract or the validity of either City's incorporated areas and/or ETJs as adjusted by this Boundary Contract. The Parties further agree that each shall bear its own costs, attorney's fees and expenses related to the Agreed Judgment and the lawsuit identified above.
- 2.05 Prior Actions Repealed, Releases. The Cities covenant and agree that all prior ordinances, resolutions, annexations, agreements, or actions by the Cities or either of them in conflict with this Boundary Contract are hereby rescinded, voided, and repealed only to the extent of such conflict, and the Cities relinquish any conflicting ETJ under Texas Local Government Code Section 42.023, as amended. Except to the extent required to enforce the terms and provisions of this Boundary Contract, each City fully waives and releases any and all past and current claims of every conceivable nature against the other City and their respective City Council members, officers, officials, employees, agents, attorneys, and representatives regarding this Boundary Contract, the ordinance adopting and authorizing this Boundary Contract, any and all incorporated areas, ETJs, and annexation issues, claims, demands, controversies or causes of action between the Cities—to the extent any of such claims would conflict with any of the terms or provisions of this Boundary Contract—including but not limited to any challenges involving the type of municipality of either City, and including but not limited to any claim under the Declaratory Judgment Act.
- 2.06 Anna City Limits. The Cities further recognize that this Boundary Contract does not include or incorporate metes and bounds descriptions of any areas affected by this Boundary Contract and the Parties covenant and agree to determine and establish the final and precise ETJs and boundaries of their respective incorporated areas as depicted on the Boundary Map along property lines, waterways, and public roads wherever practicable, and to use their best efforts to resolve issues relating to the fixing or setting of the exact location of the incorporated areas and ETJs, if same should become necessary, in a manner that is consistent with the Boundary Map.

**SECTION 3
TERM / CONSIDERATION**

- 3.01 Term. The term of this Boundary Contract shall be permanent unless amended in accordance with the provisions of this Boundary Contract.
- 3.02 Consideration. The Cities covenant and agree that the mutual covenants and agreements contained herein, and the actions taken by each of the Cities in fulfilling its agreements hereunder are good and valuable consideration for this Boundary Contract. The Cities further agree that the ETJ boundary and other boundary adjustments made hereunder constitute additional good and valuable consideration and serve the valid governmental purpose of establishing and confirming municipal incorporated areas and ETJs serving to allow for more efficient and effective provision of governmental services than would otherwise be practicable.

**SECTION 4
GENERAL PROVISIONS**

- 4.01 Default. In the event of a claimed breach of this Boundary Contract, written notice of the breach shall be given by the other City to the allegedly breaching City, with a thirty (30)-day opportunity to cure any claimed breach. If the claimed breach is not remedied within the thirty (30)-day period, the City claiming the breach may pursue only injunctive relief, specific performance, or a suit for declaratory judgment. The Cities waive and release all other remedies, including but not limited to claims to attorney's fees and expenses related to any claim or cause arising from the claimed breach.
- 4.02 Additional Documents. The Cities agree to cooperate fully and in good faith to execute any and all supplementary documents and to take all actions which are reasonably necessary to give full force and effect to the basic terms of this Boundary Contract.
- 4.03 Relationship of Parties. The Parties understand and agree that each of the Cities performing obligations required by this Boundary Contract is acting as an independent entity and that the execution of this Boundary Contract shall not be construed as creating a joint venture or agency relationship by or between the Cities. Each Party hereto is an independent governmental entity acting pursuant to the state laws and local ordinances regulating its conduct, and by execution of this Boundary Contract, the Parties make no representations regarding the validity of the actions taken by the other Party hereto.
- 4.04 Third Party Beneficiaries. Nothing in this Boundary Contract shall be construed to create any right in any third party who is not a signatory to this Boundary Contract, and the Parties do not intend to create any third party beneficiaries by entering into this Boundary Contract.
- 4.05 Immunity. Nothing in this Boundary Contract shall be deemed a waiver of the governmental, sovereign, or official immunity afforded by law to the Cities and their officials and agents, either individually or collectively. The Parties stipulate that this

Boundary Contract is not subject to the terms of Local Government Code Ch. 271, Subchapter I.

- 4.06 Notices. All written notices required under this Boundary Contract must be hand delivered with signature receipt or sent by certified mail (return receipt requested) addressed to the proper Party at the following addresses:

City of Anna:

Attention: City Manager, City of Anna
Address: 111 N. Powell Parkway
Anna, TX 75409

With a copy to City Attorney: Clark McCoy
2591 Dallas Parkway
Suite 205
Frisco, TX 75034

City of Weston:

Attention: Mayor, City of Weston
Address: 301 Main Street
Weston, TX 75097

With a copy to City Attorney: Bryn Meredith
6000 Western Place
Suite 200
Fort Worth, TX 76107

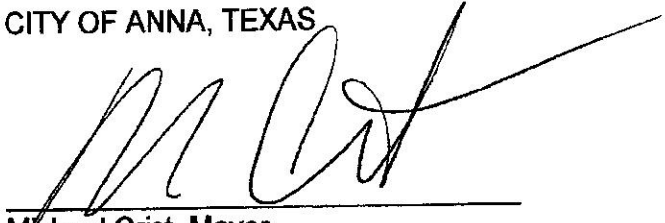
Each Party may change the address to which notices are sent by giving the other Party ten days' written notice of the new address in the manner provided by this paragraph.

- 4.07 Capacity. Each of the signatories below hereby represents that this Boundary Contract has been approved by his or her City Council and that he/she has full capacity and authority to sign this Boundary Contract on behalf of his/her City.
- 4.08 Waiver of Breach. Forbearance or waiver of one or more instances of breach of this Boundary Contract by any Party shall not constitute a continuing forbearance or a waiver of any subsequent breach of this Boundary Contract.
- 4.09 Applicable Law. This Boundary Contract shall be construed under, and in accordance with the laws of the State of Texas.
- 4.10 Legal Construction/Severability. In case any section, article, paragraph, provision, sentence, clause, phrase or word contained in this Boundary Contract shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not

affect any other provision of this Boundary Contract, and this Boundary Contract shall be construed as if the invalid, illegal, or unenforceable provision had not been included in this Boundary Contract. Such holding shall not affect the validity of the remaining portions of this Boundary Contract, and the respective governing body of each of the Cities hereby declares it would have passed and approved such remaining portions of this Boundary Contract despite such invalidity, which remaining portions shall remain in full force and effect. The Parties expressly agree that if, as of the Effective Date of this Boundary Contract, any portion of the incorporated areas or ETJ of either City shown on the Boundary Map is within the incorporated areas or ETJ of any other city that is not a Party to this Boundary Contract, the remainder of the Boundary Contract shall remain in full force and effect as if such property had not been included.

- 4.11 No Actions Inconsistent with this Agreement. Neither Anna nor Weston shall release any portion of their incorporated areas or extraterritorial jurisdiction that is in any way inconsistent with the Boundary Contract and Boundary Map—including but not limited to release of the areas depicted as “Area – A” and/or “Area – B” and/or “Area – C” as depicted on the Boundary Map—to any city or other governmental entity that is not a party to this Boundary Contract.
- 4.12 Entire Agreement. This Boundary Contract constitutes the sole and entire agreement of the Cities and supersedes any prior understandings or written or oral agreements between the Cities relating to the subject matter of this Boundary Contract. No verbal agreement or conversation with any officer, agent or employee of either City before or after the execution of this Boundary Contract shall affect or modify any of the terms or obligations herein contained.
- 4.13 Construction. This Boundary Contract has been negotiated by the Parties and shall be deemed drafted equally by the Parties hereto. The language of all parts of this Boundary Contract shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.
- 4.14 Amendment. No amendment, modification, or alteration of the terms of this Boundary Contract shall be binding unless it is in writing, dated subsequent to the date of this Boundary Contract; duly approved by ordinance by the City Councils of Anna and Weston; and executed by the authorized representative of those the Cities as a modification to this Boundary Contract. However, a City may adjust its boundaries with another city without the written consent of the other Party to this Boundary Contract, if and only if the adjustment is not inconsistent with the Boundary Contract and Boundary Map.
- 4.15 Counterparts. This Boundary Contract may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

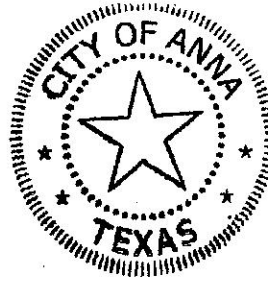
CITY OF ANNA, TEXAS




Michael Crist, Mayor
City of Anna, Texas

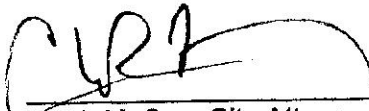
DATE EXECUTED: 10/2/12

ATTEST:




Natha Wilkison, City Secretary
City of Anna, Texas

APPROVED AS TO FORM:


Clark McCoy, City Attorney
City of Anna, Texas

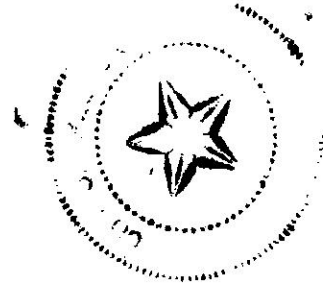
CITY OF WESTON, TEXAS

Patti Harrington
Patti Harrington, Mayor
City of Weston, Texas

DATE EXECUTED: 10-2-12

ATTEST:

Kay Lokey
Kay Lokey, City Secretary
City of Weston, Texas



APPROVED AS TO FORM:

Bryn Meredith
Bryn Meredith, City Attorney
City of Weston, Texas

EXHIBIT 1

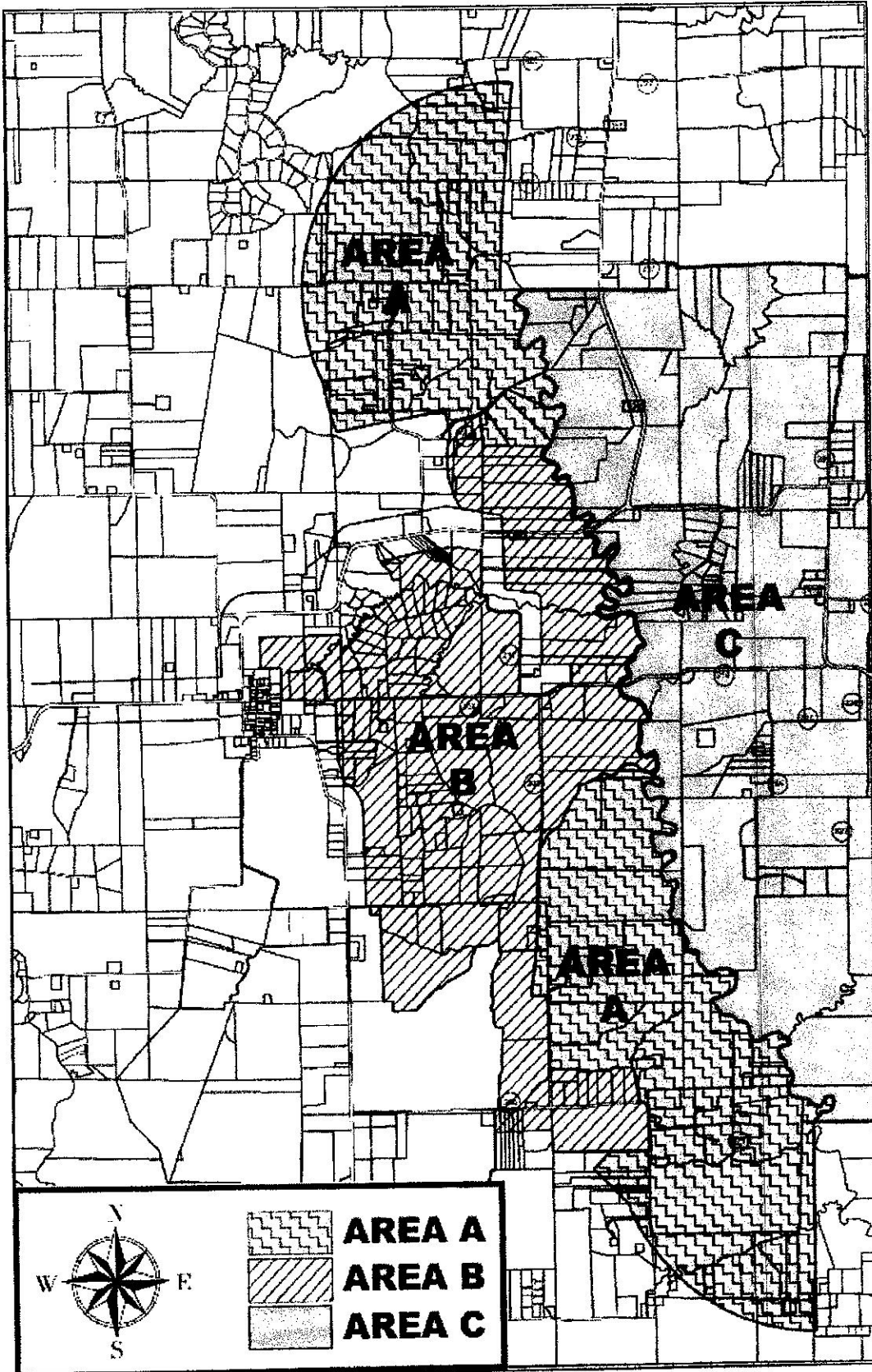


EXHIBIT 2

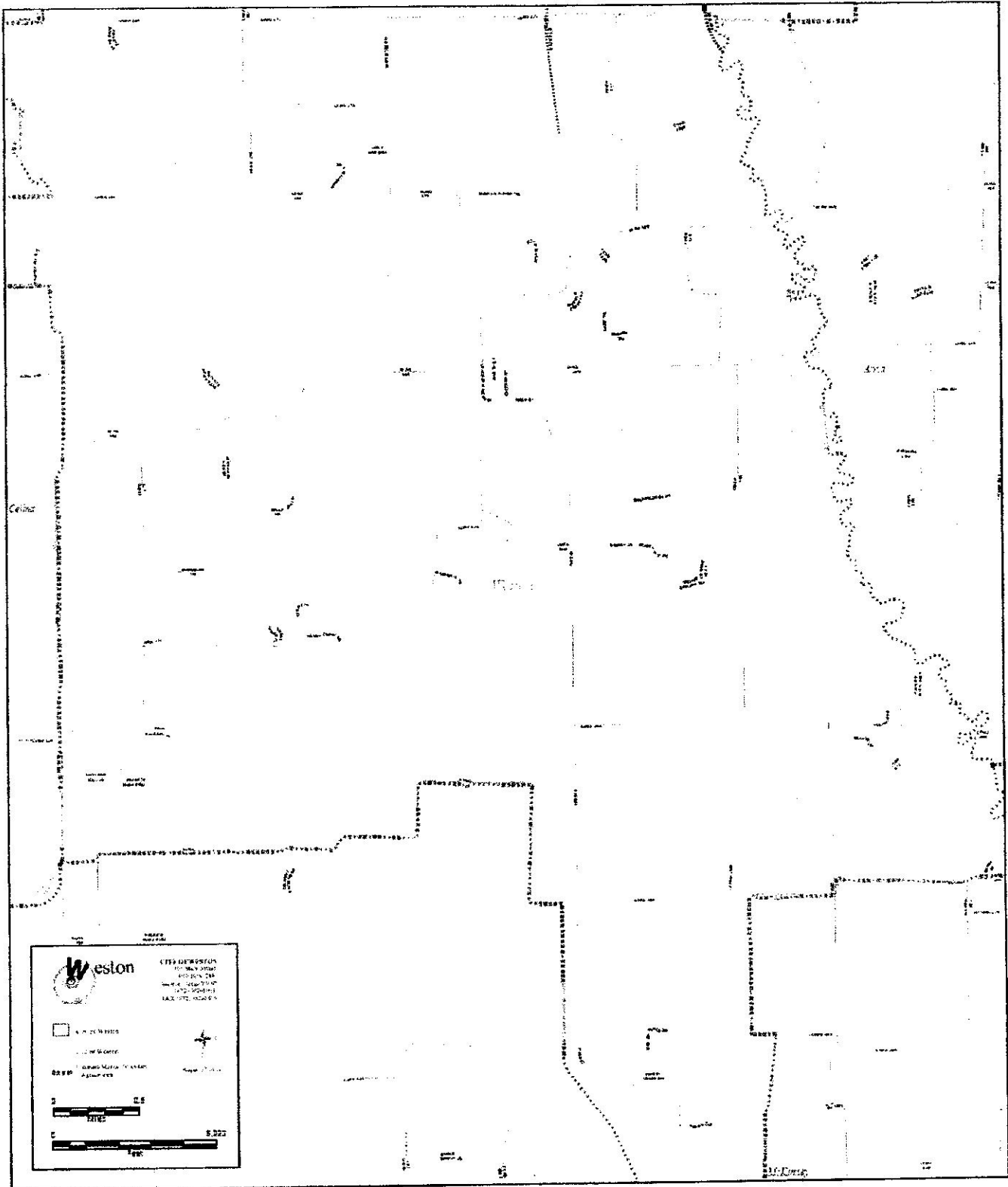
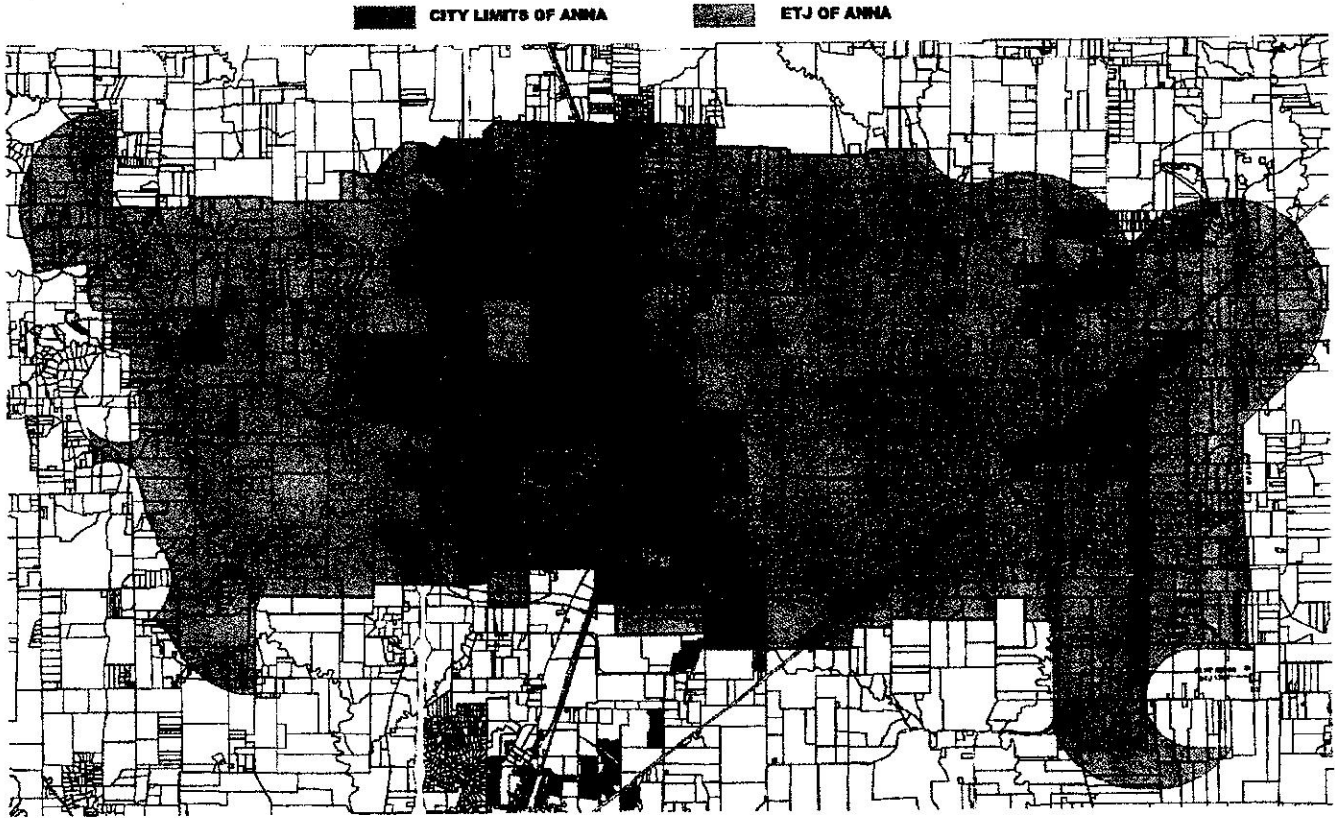
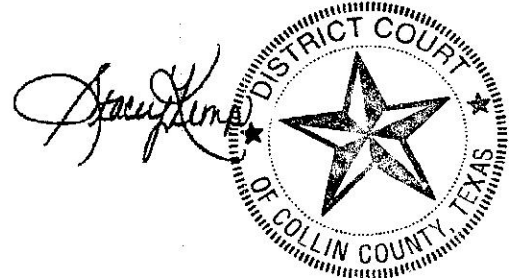


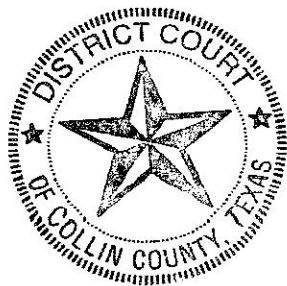
EXHIBIT 3



Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
10/04/2012 12:30:17 PM
\$60.00 DLAIRO
20121004001263870

DEPUTY
COLLIN COUNTY, TEXAS
ANDREW THOMPSON, DISTRICT CLERK
A 10
the day of _____ A.D. 2012
Collin County, Texas. Witness my hand and seal of said County and
Collin County, Texas. Witness my hand and seal of said County and
deputy county clerk on the above date in a true and correct copy of the
I, Andrew Kemp, County Clerk in and for Collin County, Texas,
COUNTY OF COLLIN
STATE OF TEXAS





STATE OF TEXAS)
COUNTY OF COLLIN)

I, Andrea Stroh Thompson, District Clerk in and for Collin County Texas, do hereby certify that the above foregoing is a true and correct copy of the original document as the same appears on the file in the District Court, Collin County, Texas. Witness my hand and seal of said Court, this the 14th day of NOV, A.D., 2014

ANDREA STROH THOMPSON, DISTRICT CLERK
COLLIN COUNTY, TEXAS

Andrea Stroh Thompson DEPUTY