



**NOTICE OF WORK SESSION AND REGULAR MEETING
AGENDA**

**LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS**



211 N. HENRY STREET, LANCASTER, TEXAS

Monday, February 14, 2011 – 6:30 P.M.

6:30 p.m. WORK SESSION AGENDA

CALL TO ORDER

- A. Discuss a resolution of the City Council of the City of Lancaster, Texas, providing for the appointment of the Associate Judge of the Municipal Court; authorizing the Mayor to execute an agreement providing for compensation, the term of office, and the duties of said Associate Judge; providing a repealing clause; providing a severability clause; and providing an effective date.
- B. Discuss City Council's annual strategic planning for 2011.

Adjourn work session.

7:00 p.m. REGULAR MEETING AGENDA

CALL TO ORDER

INVOCATION: MINISTERIAL ALLIANCE

PLEDGE OF ALLEGIANCE: DEPUTY MAYOR PRO TEM NINA MORRIS

CITIZENS' COMMENTS: (At this time citizens who have pre-registered before the call to order will be allowed to speak on any matter other than personnel matters or matters under litigation, for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.)

CONSENT AGENDA: (Items listed under the consent agenda are considered routine and are generally enacted in one motion. The exception to this rule is that a Council Member may request one or more items to be removed from the consent agenda for separate discussion and action.)

- 1C. Consider approval of minutes from the City Council Regular Meeting held January 24, 2011.

- 2C. Consider Resolution 2011-02-05 of the City Council of the City of Lancaster, Texas, authorizing the award of Bid No. 2010-7 to CPS Civil, LLC for construction/renovation of State Transportation Enhancement Program (STEP) sidewalks on State Highway 342, Wintergreen Road and Community Park in an amount not to exceed \$527,522; authorizing the Interim City Manager to execute the agreement; providing a repealing clause; providing a severability clause; and providing an effective date.
- 3C. Consider Resolution 2011-02-06 of the City Council of the City of Lancaster, Texas, authorizing the award of Bid No. 2010-15 to Midwest Wrecking Co. of Texas, Inc. in an amount not to exceed \$45,820 for demolition of the Pleasant Run Well; authorizing the Interim City Manager to execute the agreement pursuant to approval; providing a repealing clause; providing a severability clause; and providing an effective date.
- 4C. Consider Resolution 2011-02-07 of the City Council of the City of Lancaster, Texas, authorizing the award of Bid No. 2011-18) to A&A Construction Company for demolition services for the Hazard Mitigation Grant Program (HMGP) in an amount not to exceed \$46,291; authorizing the Interim City Manager to execute an agreement pursuant to such award; providing a repealing clause; providing a severability clause; and providing an effective date.
- 5C. Consider Resolution 2011-02-08 of the City Council of the City of Lancaster, Texas, declaring certain board, commission and committee position(s) vacant due to excessive absences; and providing an effective date.
- 6C. Consider Resolution 2011-02-09 of the City Council of the City of Lancaster, Texas, providing for the appointment of the Associate Judge of the Municipal Court; authorizing the Mayor to execute an agreement providing for compensation, the term of office, and the duties of said Associate Judge; providing a repealing clause; providing a severability clause; and providing an effective date.
- 7C. Consider an ordinance of the City of Lancaster, Texas amending Ordinance No. 2010-10-24 to correct a clerical error to Exhibit C of said ordinance and to correct clerical error under Section 4.B. of said ordinance; providing a severability clause; providing a savings clause; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; and providing an effective date.
- 8C. Consider an ordinance of the City of Lancaster, Texas, amending the Comprehensive Zoning ordinance and Map, as heretofore amended, by granting a change in zoning from Light Industrial (LI) to Light Industrial – Specific Use Permit (LI-SUP) to allow an Aerial Park Commercial Amusement Facility on property located approximately 3,250 feet west of the intersection of West Beltline Road and South Dallas Avenue, more commonly known as 700 West Beltline Road, Lancaster, Dallas County, Texas; providing for the approval of a Site Plan and Aerial Park Concept Plan; providing for special conditions; providing a severability clause; providing a savings clause; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; and providing an effective date.

ACTION

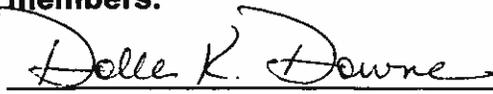
9. First reading of caption and discussion of an ordinance of the City of Lancaster, Texas, granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to construct, maintain, and operate pipelines and equipment in the City of Lancaster, Dallas County, Texas, for the transportation, delivery, sale, and distribution of gas in, out of, and through said City for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-way; providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; and repealing all previous gas franchise ordinances.
10. Discuss and consider Resolution 2011-02-10 of the City Council of the City of Lancaster, Texas, suspending the February 14, 2011, effective date of Oncor Electric Delivery Company's requested rate change to permit the City time to study the request and to establish reasonable rates; approving cooperation with the Steering Committee of Cities Served by Oncor to hire legal and consulting services and to negotiate with the Company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the Company and Legal Counsel for the Steering Committee.
11. The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, to-wit: the City Manager.
12. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

EXECUTIVE SESSION: The Council reserves the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the TEXAS GOVERNMENT CODE to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: The Municipal Center is wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on February 10, 2011 @ 2011 and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL
Work Session Agenda Communication for
February 14, 2011

A

WS11-A

Discuss a resolution of the City Council of the City of Lancaster, Texas, providing for the appointment of the Associate Judge of the Municipal Court; authorizing the Mayor to execute an agreement providing for compensation, the term of office, and the duties of said Associate Judge; providing a repealing clause; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 4: Professional and Committed Workforce

Background

At the November 15, 2010 Work Session, Council directed staff to solicit resumes for the Associate Judge position in addition to the nine resumes received without solicitation. On December 9, 2010 the position of Associate Judge was advertised on the City of Lancaster website. During the Work Session both Mayor Pro-Tem James Daniels and Deputy Mayor Pro-Tem Nina Morris were selected to take part in the candidate review process.

A total of eleven resumes were submitted for consideration and three candidates were extended an opportunity to interview. On January 19, 2011 Mayor Pro-Tem Daniels, Deputy Mayor Pro-Tem Morris, Presiding Judge Henry Campbell, III and Human Resources Director Dori Lee conducted the interviews for the position of Associate Judge for the City of Lancaster. The candidates were objectively scored and the finalist chosen was Mr. Scott E. Kurth.

Scott E. Kurth has served as Presiding, Associate, and/or Arraignment Judge for nearly twenty years in eight different municipalities including Lancaster, DeSoto, Red Oak, and Cedar Hill. He is a graduate of Baylor Law School and has practiced privately for approximately twenty eight years.

Considerations

- **Operational** - The Associate Judge will preside over municipal court proceedings for and on behalf of the Lancaster Municipal Court in the absence of its Presiding Judge,

to conduct such services as may be required from time-to-time, including but not limited to, arraignments, issuance of search warrants and/or capias warrants, and such administrative duties and responsibilities as are necessary and incidental to the office of the Judge of the Municipal Court of the City of Lancaster.

- **Legal** - A copy of the resolution and agreement has been reviewed and approved by the City Attorney.
- **Financial** - The contract for the Municipal Associate Judge states that Scott E. Kurth would be compensated at a rate of seventy-five dollars (\$75.00) per hour with a minimum of two (2) hours for services as detailed within the contract. This is included in account 01-0541-08-00.
- **Public Information** - Consideration of this item must be conducted during a meeting of the City Council in accordance with the Texas Open Meetings Act. This matter is scheduled for formal consideration during the February 14, 2011 regular meeting. This meeting was properly noticed and is being held in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Council may adopt the resolution as presented.
2. Council may reject the resolution and direct staff.

Recommendation

Staff recommends Council approve the resolution as presented.

Attachments

- Resolution
- Contract
- Scott E. Kurth Resume

Prepared and submitted by:
Opal Mauldin-Robertson, Interim City Manager

Date: February 14, 2011

RESOLUTION NO. 2011-02-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, PROVIDING FOR THE APPOINTMENT OF THE ASSOCIATE JUDGE OF THE MUNICIPAL COURT; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT PROVIDING FOR COMPENSATION, THE TERM OF OFFICE, AND THE DUTIES OF SAID ASSOCIATE JUDGE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

Section 1. That the City Council does hereby appoint Scott E. Kurth as Associate Judge to the Lancaster Municipal Court, City of Lancaster, Dallas County, Texas, for a two (2) year term.

Section 2. That the Mayor of the City of Lancaster is hereby authorized, after approval by the City Council, to execute a written agreement to fix compensation at seventy-five dollars (\$75) per hour, to provide for a term of two (2) years, and to provide the duties in conformance with State law.

Section 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Resolution as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

Section 4. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provides.

DULY PASSED by the City Council of the City of Lancaster, Texas, on the 14th day of February, 2011.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY

Resolution No. 2011-02-__

THE STATE OF TEXAS
COUNTIES OF DALLAS

§
§
§

MUNICIPAL ASSOCIATE JUDGE

This agreement is made by and between the City of Lancaster (herein called "City"), a home rule municipal corporation located in Dallas County, Texas, and Scott Kurth (herein called "Associate Judge"), who resides at 606 Cedar Ridge Ct., Ovilla, Texas 75154.

WITNESSETH:

1. The City, acting by and through its city council, exercising its discretion pursuant to the City charter and the laws of State of Texas hereby appoint Scott Kurth as the Municipal Associate Judge of the Lancaster Municipal Court of Record and agrees to compensate the Associate Judge for his services as hereinafter set forth.

2. In the absence of the Presiding Municipal Judge, the Associate Judge agrees to perform the services of Presiding Judge of the Lancaster Municipal Court and to maintain eligibility and the appropriate licenses as may be required by law to serve in such capacity for a term of two (2) years commencing the 21st day of February, 2011 appointment, which shall conclude on the 21st day of February, 2013.

3. Compensation shall be at a rate of seventy-five dollars (\$ 75.00) per hour, with a minimum two (2) hours, for services which would include presiding over municipal court proceedings for and on behalf of the Lancaster Municipal Court as its Presiding Judge, to conduct such services as may be required from time-to-time, including but not limited to, arraignments, issuance of search warrants and/or capias warrants, and such administrative duties and responsibilities as are necessary and incidental to the office of the Judge of the Municipal Court of the City of Lancaster.

4. The Associate Judge shall provide time and billing records to the City to reflect the time dedicated to the service for and on behalf of the Municipal Court.

5. The Associate Judge is not and shall not be deemed an employee of the City for any purpose and agrees that he serves solely as an independent contractor.

6. The Associate Judge further acknowledges and shall not undertake to exercise his discretion as Presiding Judge from improper influences and shall act as he deems appropriate under his independent judgment as the Presiding Judge of the Municipal Court.

7. The Associate Judge shall perform all services in accordance with the Code of Judicial Conduct applicable to judges of courts in the State of Texas and agrees to conduct himself in a judicial demeanor at all times in representing the City.

8. The Associate Judge is not precluded from performing such legal services in maintaining his private practice of law and nothing construed herein shall preclude him from maintaining his private legal practice.

9. The Associate Judge hereby agrees not to knowingly undertake any legal matter that would compromise or conflict with his duties and responsibilities as the Municipal Court Judge or otherwise knowingly undertake to represent a client on a legal matter against the City.

10. The Parties to this agreement hereby acknowledge that the Associate Judge can be removed for cause in accordance with State Law as provided for in such cases.

11. City agrees, with regard to the services provided herein, to indemnify and hold harmless the Associate Judge for any act, claim or liability for negligence, gross negligence acting on behalf of the City and shall maintain adequate insurance or liability coverage to effectuate this provision.

12. This Contract consists of this document, upon which the parties have affixed their signatures, and those documents specifically incorporated herein by reference. This Contract as so constituted is the entire agreement between the parties, with respect to the subject matter hereof, and supersedes all other previous statements, communications, or agreements, whether oral or written. No modification, alteration, or waiver of any provision hereof shall be binding upon the parties unless evidenced in writing and signed by both parties.

13. The City or the Associate Judge may terminate this contract in accordance with state law. If the contract is terminated as provided herein, the Associate Judge's fee would be paid for hours worked, which have not already been compensated, performing the services of the City covered by this contract.

14. This Contract shall be renewed for an additional two (2) year term, except by giving written notice one hundred (100) days prior to its expiration date of February 21st, 2013.

15. That the City shall reimburse the Associate Judge tuition and travel expenses, which shall include lodging and meals, for mandatory judicial continuing education.

16. Both the Associate Judge and the City represent that they have full capacity and authority to grant all rights and assume all obligations that they have granted and assumed under this Contract.

17. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the law of the State of Texas and any venue for any action concerning this Contract shall be in Dallas County, Texas.

18. In the event one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect other provisions, and the Contract shall be constructed as if such invalid, illegal, or unenforceable provision had never been contained in it.

EXECUTED this 14th day of February, 2011.

Scott Kurth, Associate Judge

CITY OF LANCASTER, TEXAS

BY: _____
Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

RESUME
OF
SCOTT E. KURTH

RESIDENCE:

606 Cedar Ridge Ct.
Ovilla, Texas 75154
(972) 978-4225 Cell

OFFICE:

500 N. Interstate 35
Suite A, P.O. Box 2219
Red Oak, Texas 75154
(972) 224-5534
Fax: (972) 224-8669
Email: debidebi7@aol.com

PERSONAL:

Date of Birth : March 17, 1959

Place of Birth : Birmingham, Alabama

Marital Status : Married since March 24, 1984

Spouse : Debra Kay Kurth

Children : Austin Edward Kurth
Age: 24
Texas A&M University
College Station, Texas
Class of 2008 Graduate

Colton Scott Kurth
Age: 20
Sophomore: Tarleton State University

Health : Excellent

Hobbies : Running, Weight-lifting, Swimming

Church Participation : Ordained Minister; Bible Teacher;
Ordained Deacon

LANGUAGES:

Bilingual: Spanish

ACADEMICS:

High School : **Wagner High School
Republic of the Philippines**

**Rome Free Academy
Rome, New York**

**General H.H. Arnold High School
Wiesbaden, West Germany
Graduated: 1977; ranked 11th out of
137 students**

Honors : **Member of the National Honor
Society**

: **Senior Class President**

College : **Baylor University (1977-1980)
Waco, Texas**

Degree : **Bachelor of Arts; Political Science
December 20, 1980**

Honors : **Dean's List Fall 1977, 1978, 1979,
Spring 1979**

Grade Point Average : **3.75**

Law School : **Baylor Law School
Waco, Texas**

Honors : **Spring 1982 Dean's List**

Degree : **Doctor of Jurisprudence**

Graduated : **August 7, 1982**

Bar Exam Results : **Top 10%**

PROFESSIONAL MEMBERSHIPS:

November 5, 1982 : State Bar of Texas
August 27, 1987 : Federal District Court for the Northern District of Texas

PROFESSIONAL EMPLOYMENT:

8/16/82 through 5/20/83: Law Firm of Larry S. Parnass
5/21/83 through present: Scott E. Kurth, P.C.

JUDICIAL EXPERIENCE:

I have had the privilege of serving as a municipal court judge for nearly twenty (20) years in eight (8) different municipalities. I conduct the jail arraignments seven (7) days each week for the cities of DeSoto, Lancaster, Cedar Hill, and Red Oak. Additionally, I am responsible for signing/approving misdemeanor and felony warrants for DeSoto, Lancaster, Cedar Hill, and Red Oak on a daily basis along with evidentiary search warrants. I hold court in Grand Prairie as needed and conduct jail arraignments at least once monthly on weekends. Likewise, I am the on-call magistrate with the police departments of DeSoto, Lancaster, Cedar Hill, Red Oak, Glenn Heights, and Grand Prairie for the purpose of signing warrants (i.e. both search and arrest). I hold court weekly in DeSoto and at least twice monthly in Red Oak and more as needed. I have presided over thousands of trials before the court (i.e. Judge) and trials by jury, and am responsible for the disposition of all city ordinance cases, Class C misdemeanors, failure to attend school, and school rule violation cases for the Red Oak Independent School District and DeSoto Independent School District.

JUDICIAL SERVICE:

Presiding Municipal Court Judge: City of Red Oak, Texas (1989 to present) (Court of Record)
Presiding Municipal Court Judge: DeSoto, Texas (2002 to present) (Court of Record)
Presiding Municipal Court Judge: Ovilla, Texas (2006 to present) (Court of Record)
Associate Municipal Court Judge: DeSoto, Texas (1999 to 2002)

Associate Municipal Court Judge:	Lancaster, Texas (1999 to present)
Associate Municipal Court Judge:	Cedar Hill, Texas (2000 to present)
Associate Municipal Court Judge:	Grand Prairie, Texas (May 2000 to present) (Court of Record)
Associate Municipal Court Judge:	Glen Heights, Texas (2007 to present)
Associate Municipal Court Judge:	Balch Springs, Texas (2007 to present)
Commissioner, Texas Funeral Services Commission :	Gubernatorial Appointee: 1989 to 1995
Special Visiting Master In Chancery :	254 th Judicial District Court, Dallas County, Texas
Faculty Member :	Texas Municipal Court Education Center Faculty Member 2004-2005 Academic Year (Responsible for training Municipal Court Judges in Texas)
Faculty Member :	Texas Municipal Court Education Center Faculty Member 2004-2005 Academic Year (Responsible for training Municipal Court Judges in Texas)

Repeated service as a Commissioner of Condemnation for Dallas County, Texas to hear cases relating to the valuation of real estate being condemned for rights-of-way in the building of North Central Expressway.

APPLICABLE PROFESSIONAL ARTICLES: *Understanding Common Driver's License Offenses (2004); Conditions of Bail in Driving While Intoxicated and Other Offenses (2006) (See Attachments)*

PRIVATE PRACTICE:

My private practice is concentrated in the area of family (i.e. child support enforcement, juvenile law, divorce, child custody, protective orders). I have extensive felony and misdemeanor criminal trial experience. In connection with my private

practice, for roughly fifteen (15) years, I was appointed by the Judges of the 255th, 256th, 303rd, 330th, 301st, and 302nd Judicial District Courts to serve as a "Friend of the Court" to ensure that the Court's orders on the payment of child support were obeyed. My function was to seek out and bring to justice those individuals who have willfully failed and refused to pay their court ordered child support.

CERTIFIED MEDIATOR/CERTIFIED FAMILY LAW MEDIATOR:

In June 2004, I underwent formal mediation training through the National Mediation Academy, Inc. and obtained my certification as a civil law mediator. I underwent additional training to obtain a higher level of certification as a certified family law mediator. I regularly mediate complex cases dealing with child custody and visitation issues.

LANCASTER CITY COUNCIL
Work Session Agenda Communication for
February 14, 2011

B

WS11-B

Discuss City Council's annual strategic planning for 2011.

This request supports the City Council 2010-2011 Policy Agenda.

- Goal 1: Financially Sound City Government**
- Goal 2: Quality Development**
- Goal 3: Healthy, Safe & Vibrant Neighborhoods**
- Goal 4: Professional & Committed Workforce**
- Goal 5: Sound Infrastructure**
- Goal 6: Civic Engagement**

Background

This agenda item offers an opportunity for Council to discuss and provide direction to staff regarding the strategic planning session for 2011. It is essential to schedule the annual strategic planning session well in advance to reserve time on the facilitator's schedule and to ensure timely completion of the planning to facilitate the City's budget process.

Last year, at the direction of Council, staff formally sought proposals for facilitators. Council awarded the contract to The Novak Consulting Group. Lead by Ms. Julia Novak, Council completed a highly productive strategic planning session. Continuing the foundation set last year, staff requested Ms. Novak provide dates she and her team are available this year. After review of the city-wide calendar, the best dates identified are Thursday, June 23 through Saturday, June 25, 2011. Tentatively, the Executive Team would meet with Ms. Novak on Thursday, followed by sessions with Council on Friday and Saturday.

Considerations

- **Operational** – Annual strategic planning is essential to evaluate and fine-tune goals and objectives. Clear identification of goals by Council provides the foundation to match City resources with priorities and helps provide efficient services to citizens.
- **Legal** – There are no legal requirements.
- **Financial** – \$11,000 is budgeted in Council's special services line item (0407-01) for this year's annual strategic planning.

- **Public Information** – There are no public information requirements.

Options/Alternatives

Staff seeks direction from Council regarding the proposed strategic planning date of June 23-25, 2011.

Prepared and submitted by:
Dolle K. Downe, City Secretary

Date: February 3, 2011

LANCASTER CITY COUNCIL
Agenda Communication for
February 14, 2011

1

AG11-001

Consider approval of minutes from the City Council Regular Meeting held January 24, 2011.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held January 24, 2011

Prepared and submitted by:

Dolle K. Downe, City Secretary
February 7, 2011

MINUTES

LANCASTER CITY COUNCIL MEETING OF JANUARY 24, 2011

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on January 24, 2011 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Walter Weaver
Marco Mejia
Mayor Pro Tem James Daniels
Clyde Hairston
Deputy Mayor Pro Tem Nina Morris

Councilmember Absent

Todd Love

City Staff Present:

Rickey Childers, City Manager
Opal Mauldin-Robertson, Assistant City Manager
Larry Flatt, Assistant Police Chief
Sean Johnson, Parks and Recreation Director
Clovia English, Public Works Director
Rona Stringfellow-Govan, Development Services Director
Nathaniel Barnett, Senior Planner
Robert E. Hager, City Attorney
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on January 24, 2011.

Invocation:

Pastor John Richardson gave the invocation.

Pledge of Allegiance:

Councilmember Clyde Hairston led the Pledge of Allegiance.

Citizens Comments:

Michael Roy, 145 Big Sandy Lane, commented that City services are inept; complained of a stray dog in the neighborhood since November that has avoided capture; stated there is trash in the alley; said that he is frustrated with taxes going up; commented violations for high grass are issued at six inches and that the streets are not taken care of; said this is why people leave the City; stated that he is tired of excuses and the dog roving the neighborhood.

David Molix, 1429 Cardigan Lane, did not wish to speak, but wanted his support of the City Manager noted in the record.

Carolyn Morris, 887 Wintergreen, expressed her support for the City Manager and encouraged Council to continue to do their job and represent all citizens of Lancaster.

Consent Agenda:

City Secretary Downe read the remaining consent agenda.

- 1C. **Consider approval of minutes from the City Council Regular Meeting held January 10, 2011.**
- 2C. **Consider Resolution 2011-01-04 of the City Council of the City of Lancaster, Texas, approving Amendment 2 to the meal services contract with the Paper Plate in an amount not to exceed \$4.18 per meal for senior meal services; authorizing the City Manager to execute said amendment pursuant to approval; providing a repealing clause; providing a severability clause; and providing an effective date.**
- 3C. **Consider an ordinance of the City of Lancaster, Texas, repealing Ordinance No. 2006-08-29 requiring a Specific Use Permit (SUP) for all new development along the IH-35E Corridor District in the City of Lancaster, Dallas County, Texas, in its entirety; providing a severability clause; and providing an effective date.**

MOTION: Councilmember Hairston made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve consent items 1C - 3C. The vote was cast 6 for, 0 against [Love absent].

4. **Conduct a public hearing and consider a request (Z11-01) to amend Ordinance No. 2006-04-23, the Lancaster Development Code and Map of the City of Lancaster, as amended, by granting a change in zoning from Light Industrial (LI) to Light Industrial – Specific Use Permit for an Aerial Park Commercial Amusement facility located approximately 3,250 feet west of the intersection of West Beltline Road and South Dallas Avenue and more commonly known as 700 West Beltline Road, Lancaster, Texas.**

Senior Planner Barnett gave a brief overview of the request for a Specific Use Permit for an Aerial Park, an amusement center for adventurous people seeking outdoor entertainment including a course with a “zip line” that allows people to move from tree to tree. Senior Planner Barnett noted that the park is compatible with nearby land uses of a golf course and City Park.

Deric Salser, 341 N. Hope Road, Sunnyvale, Texas, representing the applicant, described the proposed aerial park as a 20 acre adventure park that is more like an obstacle course. Mr. Salser stated that the property, near the golf course, is an excellent location. Mr. Salser commented that they desire to preserve the trees and natural beauty of the site and wish to use alternate paving such as crushed stone wherever possible. Mr. Salser commented that there would be a 4,000 to 5,000 square foot building on site, primarily for ticket sales and that the course would be designed for various skill levels.

Deputy Mayor Pro Tem Morris commented that she thinks it is a great idea for the area and will fall in nicely with the golf course.

Councilmember Mejia commented that this presents a great opportunity for development and that Council should remove the Specific Use Permit (SUP) requirement and grant the change in zoning.

Mayor Knight opened the public hearing.

There were no speakers for or against the proposed change in zoning.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Hairston, to close the public hearing. The vote was cast 6 for, 0 against [Love absent].

City Attorney Hager stated that the Specific Use Permit (SUP) requirement is a part of the Lancaster Development Code and cannot be removed for this matter; it would be necessary for Council to amend the Lancaster Development Code. City Attorney Hager further commented that, if desired, Council may remove the requirement for renewal of the SUP.

MOTION: Councilmember Weaver made a motion, seconded by Councilmember Mejia, to grant the change in zoning from Light Industrial to Light Industrial – Specific Use Permit for an Aerial Park Commercial Amusement facility at 700 West Beltline Road and to remove the requirement for renewal of the SUP every ten years.

Councilmember Hairston asked why the renewal requirement was recommended. Senior Planner Barnett commented that it was suggested so that City Council may, in the future, review the use and determine if it remains appropriate.

The vote was cast 6 for, 0 against [Love absent].

5. **Conduct a public hearing and consider a request (Z11-02) to amend Ordinance No. 2006-04-23, the Lancaster Development Code and Map of the City of Lancaster, as amended, by granting a change in zoning from Retail (R) to Retail – Specific Use Permit to allow for a tattoo studio facility located approximately 250 feet north of the northeast corner of North Dallas Avenue and West Pleasant Run Road and more commonly known as 1326 North Dallas Avenue, Lancaster, Texas.**

Senior Planner Barnett outlined the request, noting that a tattoo studio is an allowed use only in a Retail (R) zone and with a Specific Use Permit (SUP). Senior Planner Barnett stated that the applicant desires to relocate to a larger facility nearby for their existing operation. He commented that the business has operated in the existing location for several years with no reports of adverse activities.

Violeta Delgado, 717 Bordner Drive, owner, stated that this is a family owned business which has operated from the current location for four years without any complaints filed; commented that they wish to move the business to a nearby location because it provides a larger facility for their growing business.

Councilmember Mejia stated that this business is in his district, and there have been no problems with the business. He commented that they wish to expand their business operations and that it is hard to invest in a business with the uncertainty that the requirement of a periodic review of the Specific Use Permit (SUP) creates.

Mayor Knight opened the public hearing.

Speaking in favor of the request were:

Vic Buchanon, 1243 Margaret Court, stated that this business has operated at this location for four years without an incident or complaint and that they should be allowed to expand their operations; commented that it is excellent when a business in this economic climate is able to expand and that the City should not put stipulations or roadblocks that discourage business growth; stated that such stipulations are a burden to the business.

Roland Bennett, 230 E. Colonial, stated he has been a citizen since 1982 and has owned a business in Lancaster for the last few years; commented that he would like to see this business be able to expand and the stipulations removed from the request; said that the business expansion is good for Lancaster.

Gerald Chandler, 4151 Jordan Valley, Dallas, stated that he is a customer of the shop and that the facility is very clean and well run; commented that he is proud to come to Lancaster to get tattoos.

Chris Luna, 717 Bordner Drive, supports this business expanding its operations, stating that Council should consider that there have been no complaints; stated that international artists come to the shop and asked Council to let the business thrive in Lancaster.

Ariel Bernal, 717 Bordner Drive, stated that she is employed at the shop and favors moving to a larger location; commented that tattoos are an art form and the City should not silence this form of art.

William Snowden, 717 Bordner Drive, stated that he is an employee of the shop and they do not have sufficient work area in their current location; stated that he wants the business to grow because it is his livelihood.

Frank Mejia, 501 Colgate Drive, commented that he is a thirty six year resident of the City and supports growth of any business in Lancaster; stated that it is a family owned business and they have proved themselves able to operate without incidents; stated that requiring an Specific Use Permit (SUP) kills businesses in Lancaster; urged Council to approve the request.

Bobby Jones, 1316 N. Dallas Avenue, did not wish to speak, but asked his support for the request be included in the record.

There was no one speaking in opposition of the request.

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Mejia, to close the public hearing. The vote was cast 6 for, 0 against [Love absent].

City Attorney Hager stated that the Lancaster Development Code requires a Specific Use Permit (SUP) for this use which cannot be removed without amending the LDC; however, Council, if desired, may remove the stipulation regarding periodic renewal of the SUP.

MOTION: Councilmember Mejia made a motion, seconded by Deputy Mayor Pro Tem Morris, to grant a change in zoning from Retail to Retail – Specific Use Permit to allow for a tattoo studio facility to be located at 1326 North Dallas Avenue and removal of the stipulation regarding renewals. The vote was cast 4 for [Knight, Weaver, Mejia, Morris], 2 against [Daniels, Hairston] [Love absent]. The motion fails. Due to denial by the Planning and Zoning Commission, this item required a super majority vote of the City Council.

Councilmember Weaver stated that this denial is a disservice to this business and is a poor business decision. Council is going against businesses when it will not permit a thriving, existing business to move three doors down, commenting that this is not business friendly.

Deputy Mayor Pro Tem Morris commented that she does not understand why someone would not vote in favor of this relocation.

6. **Discuss and consider an ordinance of the City of Lancaster, Texas, amending the Lancaster Code of Ordinances by amending Article 4.900, Section 4.1805, which was a scrivener's error and is renumbered as 4.905, and further amending by requiring any alarm holder who desires to have Police response to an alarm site to obtain an Alarm Permit, by authorizing the Police Chief to refuse Police response to an alarm site that does not have a valid Permit unless the alarm notification is a robbery alarm, a panic alarm, a duress alarm or a report to 911 by a person other than an alarm company, and by deleting 4.905(a); providing a repealing clause; providing a severability clause; and providing an effective date.**

MOTION: Councilmember Hairston made a motion, seconded by Mayor Pro Tem Daniels, to approve an ordinance amending Article 4.900, Section 4.1805, which was a scrivener's error and is renumbered as 4.905, and further amending by requiring any alarm holder who desires to have Police response to an alarm site to obtain an Alarm Permit, by authorizing the Police Chief to refuse Police response to an alarm site that does not have a valid Permit unless the alarm notification is a robbery alarm, a panic alarm, a duress alarm or a report to 911 by a person other than an alarm company, and by deleting 4.905(a). The vote was cast 6 for, 0 against [Love absent].

Executive Session:

At 7:46 p.m. the City Council convened into closed executive session in the Conference Room pursuant to:

7. **The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, to-wit: the City Manager.**

8. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

The City Council recessed from Executive Session at 9:05 p.m. and reconvened into open session at 9:07 p.m.

MOTION: Councilmember Hairston made a motion, seconded by Councilmember Mejia, to sever the employment agreement by and between Rickey Childers and the City of Lancaster; and, to pay the severance in accordance with paragraph 4A of such agreement. The vote was cast 6 for, 0 against [Love absent].

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Weaver, to appoint Opal Mauldin Robertson Interim City Manager. The vote was cast 6 for, 0 against [Love absent].

There were no other actions following executive session.

MOTION: Councilmember Hairston made a motion, seconded by Deputy Mayor Pro Tem Morris, to adjourn. The vote was cast 6 for, 0 against [Love absent].

The meeting was adjourned at 9:10 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL
Agenda Communication for
February 14, 2011

2

AG11-002

Consider a resolution of the City Council of the City of Lancaster, Texas, authorizing the award of Bid No. 2010-7 to CPS Civil, LLC for the construction/renovation of sidewalks [State Transportation Enhancement Program project] on State Highway 342, Wintergreen Road and Community Park in an amount not to exceed \$527,522; authorizing the Interim City Manager to execute the agreement; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 3: Healthy, Safe & Vibrant Neighborhoods

Background

The original 2001 agreement with the Texas Department of Transportation (TxDOT) was to install a pedestrian bridge over SH 342. In 2005, recognizing that pedestrians walking to and from facilities located along SH 342 transgressed along unimproved right-of-way and in vehicle lanes along SH 342, Wintergreen Road, and Veterans Memorial Parkway, the City requested that TxDOT grant the funds to be used for sidewalks instead of a pedestrian bridge. TxDOT approved using the funds for sidewalks in 2007. TxDOT proposed construction of new sidewalks along Wintergreen Road and SH 342. The environmental study and design of the project was completed in 2008-2009. In 2010, the City and TxDOT agreed that the City would locally let the project. This means the project will be administratively managed and inspected by the City, which will also reduce costs for the City.

The project will provide sidewalks near several City facilities, as well as Lancaster High School. The sidewalk will begin at the intersection of Wintergreen Road and Verona Road and extend east to SH 342. It will then follow SH 342 south to Pleasant Run Road with extension along Veterans Memorial Parkway for a total length of approximately 2.27 miles (12,000 feet). Additionally, the project will meet the Americans with Disabilities requirements. The scope of the project also includes the installation of pedestrian signals and a traffic signal at the intersection of Dallas Avenue and Veterans Memorial Parkway.

Considerations

- **Operational** –The project will improve pedestrian safety and mobility in these areas.

- **Legal** – Bids were processed in accordance with all local and state purchasing statutes. Six bids were received. One of the six was M/WBE certified. The City Attorney has reviewed the contract documents.
- **Financial** – The City of Lancaster’s total budget for this project is \$237,000. Funding for this project is reimbursed by Texas Department of Transportation at 80%. The City’s portion of this bid (\$105,505) is available in the remaining bond program in account 44-0436-12-202. Expenditures will not exceed funds appropriated. Funds will be committed at the time of invoice payment.
- **Public Information** – Bids were advertised in the Focus Daily News on August 30, September 6 and 13, 2010. Bids were posted nationally on Demandstar, the City’s e-procurement system and on the State of Texas website. A Pre-Bid Conference was held September 28, 2010. The environmental and PS&E design have been completed and approved by TXDOT. Bids were opened on October 19, 2010. The lowest bidder was CPS Civil, LLC. As required by the grant, the City Purchasing Agent provided the bid documentation to TxDOT for their review on November 10, 2010. TxDOT issued a letter of approval for the bid on December 3, 2010.

The bid is being submitted to City Council for their review and award of contract. Once the contract is awarded, it is sent to the contractor for their signature. The contractor is allowed 10 days to sign and return the contract to the City (Purchasing Agent). Then the Purchasing Agent issues the Notice to Proceed (NTP). The contractor is allowed 10 days from the day the NTP is issued to start the project. We anticipate that construction will start the first week of March 2011.

Options/Alternatives

1. Council may award the bid and approve the agreement as presented.
2. Council may reject the bid and direct staff.

Recommendation

Staff recommends authorizing the construction / renovation of the STEP program to CPS Civil, LLC in an amount not to exceed \$527,522.

Attachments

- Resolution
- Contract
- Tab Sheet

Prepared and submitted by:
Dawn Berry, Purchasing Agent

Date: January 12, 2011

RESOLUTION NO. 2011-02-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE AWARD OF BID NO. 2010-7 TO CPS CIVIL, LLC FOR THE CONSTRUCTION / RENOVATION OF SIDEWALKS [STATE TRANSPORTATION ENHANCEMENT PROGRAM PROJECT] ON STATE HIGHWAY 342, WINTERGREEN ROAD, AND COMMUNITY PARK IN AN AMOUNT NOT TO EXCEED \$527,522.00; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE STANDARD FIXED PRICE CONSTRUCTION AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster desires to increase the safety of the citizens of Lancaster by installing sidewalks in the areas designated by the State Transportation Enhancement Program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, THAT:

- Section 1. The City Council hereby authorizes the award of Bid No. 2010-7 for the construction / renovation sidewalks [State Transportation Enhancement Program project] on State Highway 342, Wintergreen Road, and Community Park to CPS Civil, LLC in an amount not to exceed five hundred twenty-seven thousand five hundred twenty-two dollars and no cents (\$527,522.00) pursuant to the standard fixed price construction agreement attached hereto and incorporated herein by reference as Exhibit "A"; and, authorize the Interim City Manager to execute said agreement.
- Section 2. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.
- Section 3. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.
- Section 4. This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED AND APPROVED by the City Council of the City of Lancaster, Texas, on this the 14th day of February, 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster, Texas

Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and CPS Civil, LLC, (hereinafter referred to as the "Contractor") for construction of Lancaster STEP Program – SH 342, Wintergreen Road, and Community Park (Bid 2010-7, STP 2008(517)TE, CSJ #0918-45-532), (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Invitation to Bid, Requirements and Instructions to Bidders, the Specifications, the Drawings, the Project Manual, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance, maintenance, and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner or the Architect of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **However, the owner makes no representation or warranty of any nature whatsoever to the contractor concerning such documents.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any

and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II: THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Bid # 2010-7

***Lancaster STEP Program - SH 342,
Wintergreen Road, and Community Park***

The project includes but not limited to: the removal of existing concrete sidewalks, saw cutting of existing concrete sidewalks, and disposal of materials that are designated for removal, installation of new sidewalks, new ADA ramps, new crosswalks, installation of new handrails and the re-installation of existing signs that are relocated due to new construction.

All work shall be completed within 122 days.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full

performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than one hundred twenty-two (122) working days from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of \$120.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.1.3 In the event that the Contractor achieves certification of substantial completion prior to the scheduled completion date, the Owner shall pay to the Contractor the sum of \$0.00 per day for each calendar day that substantial completion is certified in advance of the scheduled completion date.

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.5 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of \$527,522.00.

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and/or to the Architect a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values nor artificially inflate

any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Architect and the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Architect and upon Certificates for Payment subsequently issued to the Owner by the Architect, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 below.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments

have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the

Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected. When the Architect on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s)

which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI: THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII: THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as

appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner and the Architect for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the owner and the Architect, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Architect. Approval by the Architect, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource

Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner and the Architect shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner or the Architect, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 **OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.**

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or

indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Architect during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Architect to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Lancaster and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Architect and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

8.1.1 When used in this Contract the term "Architect" does not necessarily denote a duly licensed, trained or certified architect; as used herein, the term shall be used interchangeably and shall mean a designated Architect, Engineer, or Contract Administrator (who may not be an architect or engineer) for the Owner, said person to be designated or redesignated by the Owner prior to or at any time during the Work hereunder. The Architect may be an employee of the Owner or may be retained by the Owner as an independent contractor but, in either event, the Architect's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Architect notwithstanding the contractual relationship between the Owner and Architect. All of the Owner's

instructions to the Contractor shall be through the Architect.

In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

8.2 ARCHITECT'S ADMINISTRATION

8.2.1 The Architect, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Architect as set forth in this Contract. The Architect shall be the Owner's representative from the effective date of this Contract until final payment has been made.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Architect shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Architect will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Architect shall determine all claims and matters in dispute between the Contractor and Owner with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Architect within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute who shall render a written decision within a reasonable time thereafter. The Architect's decisions shall be final and binding on the parties. In the event that either party objects to the Architect's determination as to any submitted dispute, that party shall submit a written objection to the Architect and the opposing party within ten (10) days of receipt of the Architect's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 **CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS** - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the Owner's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

8.3.4 **CLAIMS FOR ADDITIONAL COSTS** - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Architect written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors. The Owner shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the Owner.

8.3.5 **CLAIMS FOR ADDITIONAL TIME** - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect, for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived. The procedures and remedies provided by this provision shall be the sole remedy of Contractor and Contractor shall not assert nor be entitled to any additional delays or damages associated therewith.

8.4 FIELD ORDERS

8.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the

Contractor. The Contractor shall carry out such Field Orders promptly.

8.5 MEDIATION

8.5.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Architect and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Architect's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.5.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Architect in accomplishing the timely completion of the Project.

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions,

revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect requires an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be

made to the Contractor on the Architect's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Architect or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment

and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated

portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Architect's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII: INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Lancaster until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
Worker's Compensation as set forth in the Worker's Compensation Act.	
Commercial General Liability	
	\$1,000,000 Each Accident/Occurrence. The policy shall have no coverage removed by exclusions.
Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.	
Automobile Liability	
	\$500,000 Combined single limit per occurrence.

13.2 INSTALLATION FLOATER

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverage's designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

13.3 Builders Risk

This insurance shall be written in completed value form

and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

13.4 ADDITIONAL INSURED / PROJECT INFORMATION

The Owner shall be named as an additional insured on the Commercial General Liability (Public), Policies furnished by the Contractor.

The project name and bid/contract number shall be listed on the certificate.

13.5 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the Purchasing Agent, City of Lancaster, PO Box 940, Lancaster, Texas, 75146.

13.6 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

13.7 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City of Lancaster on a Standard Certificate of Insurance Form. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Lancaster, the contractor shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

13.8 PRIMARY COVERAGE

The coverage's provided herein shall be primary and noncontributory with any other insurance maintained by

the City of Lancaster, Texas, for its benefit, including self insurance.

13.9 WORKER'S COMPENSATION INSURANCE COVERAGE

13.9.1 The Contractor shall:

1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;

(D) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by

sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to

the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect.

EXECUTED in single or multiple originals, this 14th day of February, 2011.

CITY OF LANCASTER

CPS Civil, LLC

Opal Mauldin-Robertson, Interim City Manager

Type/Print Name and Title

ATTEST:

1215 Crest Lane Drive
Duncanville, TX 75137

Dolle K. Downe, City Secretary

Bid Request Number

2010-7 Addendum 2

Title

Construction/Renovation of Lancaster STEP - SH 342, Wintergreen Rd. & Community Park

Description

Although we are legally required to accept paper bids, we strongly request that bidders submit this bid electronically. Please feel free to call us if you require any assistance with the submittal. Electronic bidding will eliminate errors, eliminate unn

Bid Type

ITB

Issue Date

8/30/2010 8:00:00 AM Central

Close Date

10/19/2010 10:00:00 AM Central

Organization

Lancaster Purchasing

Bid Creator

Dawn Berry Purchasing Agent

Email

dberry@lancaster-tx.com

Phone

(972) 218-1329

Fax

(972) 218-3621

Responding Suppliers

Name	City	State	Response Submitted	Lines Responded	Response Total
CPS Civil, LLC	Duncanville	TX	10/19/2010 9:57:37 AM CST	37	\$527,522.00
Bluebay Construction	Houston	TX	10/19/2010 9:55:11 AM CST	37	\$536,303.16
Green Scaping	Ft. Worth	TX	10/19/2010 9:31:14 AM CST	37	\$540,099.80
Fain	Fort Worth	TX	10/19/2010 9:11:17 AM CST	37	\$623,857.50
ENCINO LANDSCAPE, INC	CLEVELAND	TX	10/19/2010 9:10:33 AM CST	37	\$633,333.50
Legends Landscapes	Lexington	TX	10/19/2010 8:53:52 AM CST	37	\$660,322.60

LANCASTER CITY COUNCIL
Agenda Communication for
February 14, 2011

3

AG11-003

Consider a resolution of the City Council of the City of Lancaster, Texas, authorizing the award of Bid 2010-15 to Midwest Wrecking Co. of Texas, Inc. in an amount not to exceed \$45,820 for demolition of the Pleasant Run Well; authorizing the Interim City Manager to execute the agreement pursuant to approval; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 1: Financially Sound City Government

Background

The Pleasant Run Well has been out of service since 2008 due to motor failure. An estimate was received by the Water Department to investigate the malfunctions. The cost to investigate the problem was approximately \$100,000 and did not include repairs. Additionally, when the well was in operation taste and odor complaints were received due to the blending of the well water with surface water. Since the well has been removed from service due to its inoperability, taste and odor complaints related to the well water have ceased. The TCEQ requires that inoperable wells are to be plugged within 6 months.

The demolition was bid in August 2010; however, the award of this bid was delayed until now because of the vendor's unwillingness to complete the demolition until an abatement survey was conducted for both lead and asbestos. The recommended vendor agreed to hold their price until the survey was complete. Abatement services were conducted and all sample results were below the regulated levels. No further abatement services were required and the vendor is ready to move forward.

Staff requests authorization to demolish the Pleasant Run Well.

Considerations

- **Operational** – The demolition will include all parts, labor, supervision, materials and equipment necessary to demolish the structure, including property clean up.

- **Legal** – This bid was processed in accordance with all local and state purchasing statutes. Seven bids were received. Two of the bids received were MWBE certified. Contract documents were reviewed by the City Attorney.
- **Financial** - Funding has been approved in this year's budget.

Account #	Budgeted	Bid Amount
05-0429-21-00	\$70,000	\$45,820
- **Public Information** - Bids were advertised on July 7 & July 14, 2010 in the Focus News. Bids were posted Nationwide on Demandstar, the State of Texas website, and the City's e-procurement system. Bids were opened on August 6, 2010. The delay in approval was due to the vendors not being willing to complete the demolition until an abatement survey was conducted.

Options/Alternatives

1. Council may award the bid as presented.
2. Council may reject the bid and direct staff.

Recommendation

Staff recommends awarding bid 2010-15 to Midwest Wrecking Co. of Texas in an amount not to exceed \$45,820.

Attachments

- Resolution
- Tab Sheet
- Contract

Prepared and submitted by:
Dawn Berry, Purchasing Agent

Date: January 10, 2011

RESOLUTION NO. 2011-02-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE AWARD OF BID 2010-15 TO MIDWEST WRECKING CO. OF TEXAS, INC. IN AN AMOUNT NOT TO EXCEED \$45,820.00 FOR DEMOLITION OF THE PLEASANT RUN WELL; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE CONTRACT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the property is deemed to be inoperable and citizen complaints were numerous due to the blending of well water with surface water, and;

WHEREAS, the City Council of the City of Lancaster desires to contract for demolition services;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, THAT:

- Section 1. The City Council hereby authorizes the award of bid 2010-15 for demolition services to Midwest Wrecking Co. of Texas, Inc. in an amount not to exceed forty-five thousand eight hundred twenty dollars (\$45,820.00) and authorizes the Interim City Manager to execute an agreement, which is attached hereto and incorporated herein by reference as Exhibit "A".
- Section 2. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.
- Section 3. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.
- Section 4. This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED AND APPROVED by the City Council of the City of Lancaster, Texas, on this the 14th day of February, 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster, Texas

Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and Midwest Wrecking Co. of Texas, Inc., (hereinafter referred to as the "Contractor") for construction of Demolition of Pleasant Run Well (Bid 2010-15), (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Specifications, and any Change Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its

generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study the Contract Documents and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for completion of demolition of Pleasant Run Well and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 All work shall be completed in the order as established by the Water Superintendent. Contractor shall not demolish any property without prior written approval from the Superintendent.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents shall remain the property of the Owner. The Contractor will be given one set for their records.

ARTICLE II: THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract including furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, equipment, tools, transportation, storage, power, permits and licenses required of the Contractor, and fuel. The Work to be performed by the Contractor is generally described as follows:

Bid # 2010-15

Provide parts, labor, materials insurance, bonding, and equipment to demolish the Pleasant Run Well as listed below including property clean up.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project.

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Completion of the Work no later than ten (10) working days from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract.

3.1.2 The Contractor shall pay the Owner the sum of \$120.00 per day for each and every working day of unexcused delay in achieving Substantial Completion.

3.1.3 In the event that the Contractor achieves certification of substantial completion prior to the scheduled completion date, the Owner shall pay to the Contractor the sum of \$0.00 per day for each calendar day that substantial completion is certified in advance of the scheduled completion date.

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application,

which extension shall not be unreasonably denied, to compensate for the delay.

3.1.5 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 Completion shall mean that the Work is sufficiently complete in accordance with this Contract.

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of \$45,820.00.

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor upon completion of all properties within thirty (30) calendar days.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor within fifteen (15) calendar days.

ARTICLE VI: THE OWNER

6.1 RIGHT TO STOP WORK

6.1.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject

deficiencies, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII: THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner shall have access to the Work at all times from commencement of the Work through final completion.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and

others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Architect during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Owner to protect persons or property in, near or adjacent to the jobsite.

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services except those required by the specifications and contract to be capped or disconnected.

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 The Contractor shall direct all administration concerns to the Owner's Representative – the Building Official.

8.2 MEDIATION

8.2.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Owner, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees.

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project.

9.2.2 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 NOTICE TO SURETY; CONSENT

10.3.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor for all Work executed.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the

Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3

(a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII: INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Lancaster until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Insurance in such amounts as follows:

Type of Insurance Amount

Worker's Compensation as set forth in the Worker's Compensation Act.

Commercial General Liability

\$1,000,000 Each Accident/Occurrence. The policy shall have no coverage removed by exclusions.

Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.

Automobile Liability

\$500,000 Combined single limit per occurrence.

13.3 ADDITIONAL INSURED / PROJECT INFORMATION

The Owner shall be named as an additional insured on the Commercial General Liability (Public), Policies furnished by the Contractor.

The project name and bid/contract number shall be listed on the certificate.

13.4 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the Purchasing Agent, City of Lancaster, PO Box 940, Lancaster, Texas, 75146.

13.5 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

13.6 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City of Lancaster on a Standard Certificate of Insurance Form. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Lancaster, the contractor shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

13.7 PRIMARY COVERAGE

The coverage's provided herein shall be primary and noncontributory with any other insurance maintained by the City of Lancaster, Texas, for its benefit, including self insurance.

13.8 WORKER'S COMPENSATION INSURANCE COVERAGE

13.8.1 The Contractor shall:

1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or

transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;

(D) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 The Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the

Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not be included herein.

14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect.

EXECUTED in single or multiple originals, this 14th day of February, 2011.

CITY OF LANCASTER

Midwest Wrecking Co. of Texas, Inc.

Opal Mauldin-Robertson, Interim City Manager

Type/Print Name and Title

ATTEST:

PO Box 161819
Fort Worth, TX 76161

Dolle K. Downe, City Secretary

Bid Request Number
Title
Description

2010-15 Addendum 2
 Demolition of Pleasant Run Well

Although we are legally required to accept paper bids, we strongly request that bidders submit this bid electronically. Please feel free to call us if you require any assistance with the submittal. Electronic bidding will eliminate errors, eliminate unn

Bid Type
Issue Date
Close Date

ITB
 7/2/2010 5:47:13 PM Central
 8/6/2010 2:00:00 PM Central

Organization
Bid Creator

Lancaster Purchasing
 Dawn Berry Purchasing Agent

Email
Phone
Fax

dberry@lancaster-bx.com
 (972) 218-1329
 (972) 218-3621

Responding Suppliers

Name	City	State	Response Submitted	Lines Responded	Response Total
MIDWEST WRECKING COMPANY OF TEXAS, INC.	FORT WORTH	TX	8/6/2010 7:52:04 AM CST	1	\$45,820.00
Axis Construction, LP	fort worth	TX	8/5/2010 10:03:41 PM CST	1	\$49,950.00
JK Excavation	Italy	TX	8/6/2010 1:13:07 PM CST	1	\$62,000.00
TOTAL DEMOLITION, INC.	DEL VALLE	TX	8/6/2010 11:28:07 AM CST	1	\$65,000.00
Boggs Backhoe Service	Breckenridge	TX	8/5/2010 3:57:37 PM CST	1	\$68,229.00
Weisinger Incorporated	Conroe	TX	8/6/2010 9:58:28 AM CST	1	\$68,958.00
Hunter Demolition & Wrecking Corp.	Jourdanton	TX	8/6/2010 10:03:49 AM CST	1	\$81,000.00

LANCASTER CITY COUNCIL
Agenda Communication for
February 14, 2011

4

AG11-004

Consider a resolution of the City Council of the City of Lancaster, Texas, authorizing the award of Bid 2011-18 to A&A Construction Company for demolition services for the Hazard Mitigation Grant Program (HMGP) in an amount not to exceed \$46,291; authorizing the Interim City Manager to execute an agreement pursuant to such award; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda

Goal 3: Healthy, Safe & Vibrant Neighborhoods

Background

With the aid of Freese & Nichols, Inc., the City applied for the FEMA funded (75/25) Hazard Mitigation Grant Program (HMGP) in 2007, 2008 and 2009. In December 2009, the Division of Emergency Management notified the City that they had been awarded the grant. In 2010, the grant has enabled the City to assist homeowners in voluntarily removing themselves from a flood-prone situation by purchasing ten (10) repetitive loss flood-prone properties along the Ten-Mile Creek Watershed. Abatement services were procured for these structures and all work has been completed. The next step is to demolish the structures and clean the properties to return them to open green space. Staff requests demolition services for structures at the following addresses:

			A&A Construction Company
Line	Description	Unit	
1	101 Southwood Drive		\$5,481.00
2	241 N. Creekwood Drive		\$6,138.00
3	253 N. Creekwood Drive		\$5,975.00
4	1401 Enchanted		\$3,798.00
5	1409 Enchanted		\$3,200.00
6	1425 Enchanted		\$2,754.00
7	1441 Enchanted		\$4,260.00
8	1925 Enchanted		\$5,170.00
9	2001 Enchanted		\$4,195.00
10	2218 W. Main Street		\$5,320.00

Considerations

- **Operational** – The demolition will include all parts, labor, supervision, materials and equipment necessary to demolish structures, including property clean up.
- **Legal** – This bid was processed in accordance with all local and state purchasing statutes. Three bids were received. Two of the bids received were M/WBE certified. A&A Construction is MBE certified by North Central Texas Regional Certification Agency (NCTRCA) and HUB Certified by the State of Texas. Contract documents were reviewed by the City Attorney.
- **Financial** – The HMGP grant is a 75/25 cost share program (25% City). The demolition portion of the project is \$46,291.00. The City portion is \$11,572.75 which is budgeted in account 53-0416-04-02. The grant reimbursable portion is \$34,718.25. Expenditures will not exceed funds appropriated. Funds will be committed at the time of invoice payment.
- **Public Information** - Bids were posted Nationwide on the State of Texas website and the City's e-procurement system on November 23, 2010. Bids were opened on December 17, 2010. Legal advertisements were not placed as the project is under the \$50,000 statutory requirement. Council authorization is requested as bid 2010-15 (item 3) increases total for demolition service for current fiscal year over the \$50,000 authorization requirement.

Options/Alternatives

1. City Council may award the bid and authorize execution of the agreement as presented.
2. City Council may reject the bid and direct staff.

Recommendation

Staff recommends awarding bid 2011-18 for demolition services to A&A Construction and authorizing the Interim City Manager to execute the agreement in an amount not to exceed \$46,291.00.

Attachments

- Resolution
- Contract
- Tab Sheet

Prepared and submitted by:
Dawn Berry, Purchasing Agent

Date: January 14, 2011

RESOLUTION NO. 2011-02-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE AWARD OF BID 2011-18 FOR DEMOLITION SERVICES FOR THE HAZARD MITIGATION GRANT PROGRAM (HMGP) TO A&A CONSTRUCTION COMPANY IN AN AMOUNT NOT TO EXCEED \$46,291.00; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT PURSUANT TO SUCH AWARD; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster desires to contract for demolition services;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, THAT:

- Section 1. The City Council hereby authorizes the award of bid 2011-18 for demolition services to A&A Construction Company in an amount not to exceed forty-six thousand two hundred ninety-one dollars (\$46,291.00) pursuant to the agreement attached hereto and incorporated herein by reference as Exhibit "A"; and, authorize the Interim City Manager to execute said agreement.
- Section 2. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.
- Section 3. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.
- Section 4. This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED AND APPROVED by the City Council of the City of Lancaster, Texas, on this the 14th day of February, 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster, Texas

Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and A&A Construction Company., (hereinafter referred to as the "Contractor") for construction of Demolition of HMGP Homes (Bid 2011-18), (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Specifications, and any Change Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its

generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study the Contract Documents and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for completion of demolition of 10 HMPG Homes and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 All work shall be completed in the order as established by the Water Superintendent. Contractor shall not demolish any property without prior written approval from the Superintendent.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents shall remain the property of the Owner. The Contractor will be given one set for their records.

ARTICLE II: THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract including furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, equipment, tools, transportation, storage, power, permits and licenses required of the Contractor, and fuel. The Work to be performed by the Contractor is generally described as follows:

Bid # 2011-18

Provide parts, labor, materials insurance, bonding, and equipment to demolish the Pleasant Run Well as listed below including property clean up.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project.

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Completion of the Work no later than ten (10) working days from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract.

3.1.2 The Contractor shall pay the Owner the sum of \$120.00 per day for each and every working day of unexcused delay in achieving Substantial Completion.

3.1.3 In the event that the Contractor achieves certification of substantial completion prior to the scheduled completion date, the Owner shall pay to the Contractor the sum of \$0.00 per day for each calendar day that substantial completion is certified in advance of the scheduled completion date.

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application,

which extension shall not be unreasonably denied, to compensate for the delay.

3.1.5 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 Completion shall mean that the Work is sufficiently complete in accordance with this Contract.

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of \$46,291.00.

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor upon completion of all properties within thirty (30) calendar days.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor within fifteen (15) calendar days.

ARTICLE VI: THE OWNER

6.1 RIGHT TO STOP WORK

6.1.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject

deficiencies, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII: THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME

FUNCTION

NAME	FUNCTION

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner shall have access to the Work at all times from commencement of the Work through final completion.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and

others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Architect during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Owner to protect persons or property in, near or adjacent to the jobsite.

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services except those required by the specifications and contract to be capped or disconnected.

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 The Contractor shall direct all administration concerns to the Owner's Representative – the Building Official.

8.2 MEDIATION

8.2.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Owner, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees.

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project.

9.2.2 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 NOTICE TO SURETY; CONSENT

10.3.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor for all Work executed.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the

Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3

(a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or

transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;

(D) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 The Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the

Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect.

EXECUTED in single or multiple originals, this 14th day of February, 2011.

CITY OF LANCASTER

A&A Construction Co.

Opal Mauldin-Robertson, Interim City Manager

Type/Print Name and Title

ATTEST:

PO Box 202212
Arlington, TX 76006

Dolle K. Downe, City Secretary

Bid Request Number 2011-18
Title Demolition of HMPG Homes
Description Although we are legally required to accept paper bids, we strongly request that bidders submit this bid electronically. Please feel free to call us if you require any assistance with the submittal. Electronic bidding will eliminate errors, eliminate unn

Organization
Bid Creator

Lancaster Purchasing
 Dawn Berry Purchasing Agent

Email dberry@lancaster-tx.com
Phone (972) 218-1329
Fax (972) 218-3621

Bid Type ITQ
Issue Date 11/23/2010 1:08:24 PM Central
Close Date 12/17/2010 10:00:00 AM Central

<u>Responding Suppliers</u>		<u>State</u>	<u>Response Submitted</u>	<u>Lines Responded</u>	<u>Response Total</u>
Name	City				
A&A Construction Company	Arlington	TX	12/7/2010 2:24:03 PM CST	10	\$46,291.00
Lindamood Demolition	Irving	TX	12/16/2010 11:52:13 AM CST	10	\$67,800.00
Garrett Demolition, Inc	Burleson	TX	12/16/2010 9:19:24 PM CST	10	\$68,700.00

LANCASTER CITY COUNCIL
Agenda Communication for
February 14, 2011

5

AG11-005

Consider a resolution of the City Council of the City of Lancaster, Texas, declaring certain board, commission and committee position(s) vacant due to excessive absences; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 6: Civic Engagement

Background

In June 2003, City Council adopted an attendance policy for all City Boards and Commissions. The Attendance Policy states "Absences from three (3) consecutive meetings or a total of five (5) absences within a twelve month period shall constitute excessive absences." The policy further states that upon review of the attendance records "The council, at its next regularly scheduled meeting, shall declare the position vacant..."

City Council asked to review the attendance records on a quarterly basis. Attached are attendance records updated through December 2010 for the following boards:

- Airport Advisory Board
- Animal Shelter Advisory Committee
- Economic Development Corporation Board (4A)
- Historic Landmark Preservation Committee
- Library Advisory Board
- Parks and Recreation / Recreational Development Corporation Board (4B)
- Planning and Zoning Commission
- Property Standards and Appeals Board
- Youth Advisory Committee
- Zoning Board of Adjustment

Considerations

A review of the attendance records indicates the following member(s) did not meet attendance standards.

Planning and Zoning Commission

Valerie Perkins - regular member (term expires July 2011)
(4 consecutive absences)

The City Council deemed it necessary to establish guidelines for attendance by members of the City's boards and commissions in order to provide for the orderly and effective conduct of meetings and hearings.

Development Services Director Rona Stringfellow-Govan noted that Dr. Perkins had notified her and the Planning and Zoning Commission members that she was out of the city to care for a critically ill family member who has since been moved to a facility in this area.

The Planning and Zoning Commission may conduct its business with as few as three of its members. It is in the best interest of the Commission to operate with a full commission as soon as is practical. An appointment [Shields vacancy] to the Planning and Zoning Commission is scheduled for the February 28 Council meeting.

Options/Alternatives

1. Council may approve the resolution declaring a vacancy in a position where attendance standards have not been met. This action would remove Dr. Perkins from the Planning and Zoning Commission. If Dr. Perkins is removed from the Planning and Zoning Commission, Council may direct the City Secretary to include her application for consideration at the February 28 Council meeting when Council is scheduled to consider another Planning and Zoning Commission vacancy [Shields].
2. Council may deny the resolution. This action would leave Dr. Perkins on the Planning and Zoning Commission.

Recommendation

No staff recommendation. This is a matter of Council policy.

Attachments

- Resolution
- Attendance records as noted above
- City Board and Commission Attendance Policy

Prepared and submitted by:
Dolle K. Downe, City Secretary

Date: January 31, 2011

RESOLUTION NO. 2011-02-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, DECLARING CERTAIN BOARD, COMMISSION, AND COMMITTEE POSITION(S) VACANT DUE TO EXCESSIVE ABSENCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council deemed it necessary to establish guidelines for attendance for members of the City's various boards, commissions and committees through a Resolution approved in June 2003; and

WHEREAS, the City Council outlined attendance standards in order to provide for the orderly and effective conduct of meetings and hearings; and

WHEREAS, the City Council believes that it is unfair to the citizens served and to those board, commission, and committee members who are faithful and prompt in their attendance to overlook excessive absences; and

WHEREAS, the City Council has determined that it is in the best interest of the citizens, boards, commissions, and committees of the City of Lancaster to declare positions vacant where attendance standards have not been met;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

Section 1: That the following positions are declared vacant due to excessive absences as defined in the City of Lancaster Attendance Policy.

Planning and Zoning Commission

Valerie Perkins – regular member (term expires 2011)

Section 2. The Resolution shall become effective immediately upon its passage.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 14th day of February 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

AIRPORT ADVISORY BOARD

Airport Advisory Board Meeting Attendance

Term Expires	Board Members	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sept 10	Oct 10	Nov 10	Dec 10
2012	Keith Hutchinson	P	P	P	P	P	P	MC	MC/P	P	P	P	MC
2012	Andy Mungenast	P	P	A	P	P	P	MC	MC/P	P	P	P	MC
2011	Lester Elliott		Reappt.	P	P	P	P	MC	MC/P	P	P	P	MC
2012	Dr. Charles Waldrop, Jr.	P	P	A	P	P	P	MC	MC/P	P	P	P	MC
2011	Dean Byers	P	P	P	P	P	P	MC	MC/P	P	P	P	MC
2011	John Stewart	P	P	P	P	P	P	MC	MC/P	P	A	P	MC
	ALTERNATE												
2011	Tim Fagan								Appt/P	P	P	P	MC

A= Absent
 P = Present
 LC = Lack of Quorum
 MC = Meeting Cancelled

Staff Contact - Mark Divita
 Council Liason - Councilmember Todd Love

LANCASTER ANIMAL SHELTER ADVISORY COMMITTEE

Meeting Attendance													
Term Expires	Board Members	Jan 10	Feb 10	Mar 10	Apr 10	May 10	June 10	Jul-10	Aug-10	Sept-10	Oct-10	Nov-10	Dec 10
2012	Dr. Alleice Summers	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
2011	Mark Wilson	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
2011	Nancy Sewell	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
2012	Thomas Hail	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
2012	Larry King	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
	ALTERNATE:												
2011	Susan Anderson	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC

A= Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Larry King
Council Liaison - Councilmember Todd Love

LANCASTER ECONOMIC DEVELOPMENT CORP. (4A)

Meeting Attendance													
Term Expires	Board Members	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10
2013	Ric Peterson	P	MC	P	MC	MC	MC						
2011	Todd Love	P	MC	P	MC	MC	MC						
2011	Vanessa Sheffield	A	MC	P	MC	MC	MC						
2011	Susan Anderson	P	MC	P	MC	MC	MC						
2013	Sandi Collier	P	MC	P	MC	MC	MC						

A = Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Ed Brady
Council Liaison - Councilmember Clyde Hairston

HISTORIC LANDMARK PERSERVATION COMMITTEE

Term Expires	Board Members	Meeting Attendance												
		Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	
2012	Carolyn Miller	MC	P	MC	MC									
2011	Cheryl Wright	MC	P	MC	MC									
2011	Emily Lewis	MC	P	MC	MC									
2011	Glenn Hooper	MC	P	MC	MC									
2012	Dee Hinkle	MC	P	MC	MC									
	Alternate													
2011	Gilles Delaisse												Appt.	

A = Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Rona Stringfellow
Council Liaison - Councilmember Walter Weaver

LIBRARY ADVISORY BOARD

Meeting Attendance													
Term Expires	Board Members	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10
2012	Lana Filgo	P	N/A	P	N/A	N/A	P	N/A	P	N/A	A	N/A	N/A
2011	Nakesha Reddick	P	N/A	P	N/A	N/A	P	N/A	A	N/A	P	N/A	N/A
2012	Laurie Telfair	A	N/A	P	N/A	N/A	P	N/A	P	N/A	A	N/A	N/A
2011	Kathy Gaither	P	N/A	P	N/A	N/A	P	N/A	P	N/A	P	N/A	N/A
2011	Virginia Durbin	P	N/A	P	N/A	N/A	P	N/A	P	N/A	P	N/A	N/A
2012	Sarah Barber								Appt / P	N/A	P	N/A	N/A
2012	Sian Whitfield	P	N/A	P	N/A	N/A	A	N/A	P	N/A	P	N/A	N/A
	ALTERNATE												
2011	Francil Morris								Appt / A	N/A	A	N/A	N/A

A = Absent

P = Present

LC = Lack of Quorum

MC = Meeting Cancelled

N/A = No Scheduled Meeting

Staff Contact - Cami Loucks

Council Liaison - Councilmember Clyde Hairston

**PARKS AND RECREATION ADVISORY BOARD
LANCASTER RECREATIONAL DEVELOPMENT CORP. (4B)**

Term Expires	Board Members	Jan-10	Feb-8	Feb-15	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-16	Aug-23	Sep-10	Oct-18	Oct-25	Nov-10	Dec-10
2011	Mary Sykes	P	P	P	P	P	MC	P	MC	A	P	P	P	A	A	MC
2012	Willene Watson	P	P	P	P	P	MC	P	MC	P	P	P	P	P	P	MC
2011	Darwin Isham	A	P	P	P	P	MC	A	MC	P	P	P	P	P	P	MC
2012	Spencer Hervey	P	P	P	A	P	MC	P	MC	P	P	P	P	P	A	MC
2012	Cecelia Rutherford	P	P	P	P	P	MC	P	MC	P	P	P	P	P	A	MC
2012	LaShonjia Harris									Appt / P	P	P	P	P	A	MC
2012	Coy Poirier	P	P	P	P	P	MC	P	MC	P	P	P	A	A	P	MC
	ALTERNATE															
2011	vacant															

A= Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Sean Johnson
Council Liaison - MPT James Daniels

PLANNING AND ZONING COMMISSION

Meeting Attendance													
Term Expires	Board Members	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sept 10	Oct 5/19-10	Nov 2/16/22-10	Dec 10
2012	Mary Jane Colton	P	P	P	MC	MC	P	MC	P	P	P/A	P/P/P	P
2011	Valerie Perkins	P	P	P	MC	MC	A	MC	A	A	A/P	P/P/P	P
2011	Polly Shields	P	P	P	MC	MC	P	MC	P	P	P/P	P/P/P	P
2011	Robert Pointer	P	A	P	MC	MC	P	MC	P	A	P/P	A/P/P	P
2012	Marian Elkins	A	P	P	MC	MC	P	MC	P	P	P/P	P/P/P	P

A = Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Nathaniel Barnett
Council Liaison - MPT James Daniels

PROPERTY STANDARDS AND APPEALS BOARD

Meeting Attendance													
Term Expires	Board Members	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	Sep 10	Oct 10	Nov 10	Dec 10
2012	Carlton Terry	MC	MC	P	MC	MC	MC	MC	MC	A	MC	MC	MC
2011	Cassandra Andrews	MC	MC	P	MC	MC	MC	MC	MC	P	MC	MC	MC
2012	Sue Wyrick								APPT	P			
2012	Richard Wilson	MC	MC	P	MC	MC	MC	MC	MC	P	MC	MC	MC
2011	Mark Larson	MC	MC	P	MC	MC	MC	MC	MC	A	MC	MC	MC
	ALTERNATE												
2011	Elois Fisher								APPT	P	MC	MC	MC

A= Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Larry King
Council Liaison - Councilmember Marco Mejia

LANCASTER YOUTH ADVISORY COMMITTEE

Meeting Attendance											
Term Expires	Board Members	July-2010	Aug-2010	Sept-2010	Oct-2010	Nov-2010	Dec-2010				
9/3/2011	Mami Murry			P	P	P	P				
9/3/2011	Domnique Whitfield			P	P	P	P				
9/3/2011	Jasmine Brown			P	P	P	P				
9/3/2011	Bria Ward			P	P	P	P				
9/3/2011	Counselo Ramos			P	P	P	A				
9/3/2011	Tracey Cole			P	P	P	P				

A= Absent
P = Present
LC = Lack of Quorum
NM = No Meeting

Staff Contact - Brandon Harrison
Council Liaison - Deputy Mayor Pro Tem Nina Morris

ZONING BOARD OF ADJUSTMENT

Term Expires	Board Members	Meeting Attendance												
		Jan-10	Feb-10	Mar-10	Apr 6/13 -10	May-10	Jun-10	July-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	
2011	Margaret Brooks	MC	MC	MC	LC - A/P	P	MC	MC	MC	MC	MC	P	MC	MC
2012	Sharon Brooks	MC	MC	MC	LC - P/P	P	MC	MC	MC	MC	MC	A	MC	MC
2011	Quinnie Wright	MC	MC	MC	LC - P/P	P	MC	MC	MC	MC	MC	P	MC	MC
2012	Keith Burnett	MC	MC	MC	LC - P/A	P	MC	MC	MC	MC	MC	P	MC	MC
2011	Kimest Sanders	MC	MC	MC	LC - A/A	P	MC	MC	appt/reg	MC	MC	P	MC	MC
	ALTERNATE													
2011	Deborah Taylor								appt.	MC	MC	P	MC	MC

A = Absent
P = Present
LC = Lack of Quorum
MC = Meeting Cancelled

Staff Contact - Rona Stringfellow
Council Liaison - Councilmember Nina Morris



City of Lancaster Boards, Commissions and Committees Attendance Policy

Persons appointed to city boards, commissions or committees can only be effective members or alternates if they attend the groups' meetings regularly. Attendance Reports will be maintained by City staff liaisons to the boards/commissions/committees and provided to the City Council on a quarterly basis for their review. In case of excessive absences, the following shall apply:

- (a) In case of excessive absences, a board, commission or committee member or alternate shall be removed from office. Absences from three (3) consecutive meetings or a total of five (5) absences within a twelve-month period shall constitute excessive absences. This provision shall apply even if such meeting is subsequently canceled or postponed due to lack of a quorum.
- (b) The procedure for removal of a member or alternate is as follows: Immediately after a member or alternate has three (3) consecutive absences or a total of five (5) absences within a twelve-month period, the staff liaison of the board, commission or committee shall notify the president or chair in writing. The staff liaison shall notify the city secretary with recommendations in writing within five (5) days of receiving notification. The city secretary shall notify the mayor and city council in writing within five (5) days of receiving notification. The council, at its next regularly scheduled meeting, shall declare the position vacant and instruct the city secretary to notify the board or commission member in question to that effect. The council shall then appoint someone to fill the vacancy from the available alternates or publish the vacancy and make an appointment after sufficient time has passed to receive applications for the position.

LANCASTER CITY COUNCIL
Agenda Communication for
February 14, 2011

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AG11-006

Consider a resolution of the City Council of the City of Lancaster, Texas, providing for the appointment of the Associate Judge of the Municipal Court; authorizing the Mayor to execute an agreement providing for compensation, the term of office, and the duties of said Associate Judge; providing a repealing clause; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 4: Professional and Committed Workforce

Background

At the November 15, 2010 Work Session, Council directed staff to solicit resumes for the Associate Judge position in addition to the nine resumes received without solicitation. On December 9, 2010 the position of Associate Judge was advertised on the City of Lancaster website. During the Work Session both Mayor Pro-Tem James Daniels and Deputy Mayor Pro-Tem Nina Morris were selected to take part in the candidate review process.

A total of eleven resumes were submitted for consideration and three candidates were extended an opportunity to interview. On January 19, 2011 Mayor Pro-Tem James Daniels, Deputy Mayor Pro-Tem Nina Morris, Presiding Judge Henry Campbell, III and Human Resources Director Dori Lee conducted the interviews for the position of Associate Judge for the City of Lancaster. The candidates were objectively scored and the finalist chosen was Mr. Scott E. Kurth.

Scott E. Kurth has served as Presiding, Associate, and/or Arraignment Judge for nearly twenty years in eight different municipalities including Lancaster, Desoto, Red Oak, and Cedar Hill. He is a graduate of Baylor Law School and has practiced privately for approximately twenty eight years.

Considerations

- **Operational** – The Associate Judge will preside over municipal court proceedings for and on behalf of the Lancaster Municipal Court in the absence of its Presiding Judge,

to conduct such services as may be required from time-to-time, including but not limited to, arraignments, issuance of search warrants and/or capias warrants, and such administrative duties and responsibilities as are necessary and incidental to the office of the Judge of the Municipal Court of the City of Lancaster.

- **Legal** - A copy of the resolution and agreement has been reviewed and approved by the City Attorney.
- **Financial** – The contract for the Municipal Associate Judge states that Scott E. Kurth would be compensated at a rate of seventy-five dollars (\$75.00) per hour with a minimum of two (2) hours for services as detailed within the contract. This is included in account 01-0541-08-00.
- **Public Information** - Consideration of this item must be conducted during a meeting of the City Council in accordance with the Texas Open Meetings Act. This meeting was properly noticed and is being held in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Council may adopt the resolution as presented.
2. Council may reject the resolution and direct staff.

Recommendation

Staff recommends council approve the resolution as presented.

Attachments

- Resolution
- Contract
- Scott E. Kurth Resume

Prepared and submitted by:
Opal Mauldin-Robertson, Interim City Manager

Date: February 14, 2011

RESOLUTION NO. 2011-02-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, PROVIDING FOR THE APPOINTMENT OF THE ASSOCIATE JUDGE OF THE MUNICIPAL COURT; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT PROVIDING FOR COMPENSATION, THE TERM OF OFFICE, AND THE DUTIES OF SAID ASSOCIATE JUDGE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

Section 1. That the City Council does hereby appoint Scott E. Kurth as Associate Judge to the Lancaster Municipal Court, City of Lancaster, Dallas County, Texas, for a two (2) year term.

Section 2. That the Mayor of the City of Lancaster is hereby authorized, after approval by the City Council, to execute a written agreement to fix compensation at seventy-five dollars (\$75) per hour, to provide for a term of two (2) years, and to provide the duties in conformance with State law.

Section 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Resolution as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

Section 4. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provides.

DULY PASSED by the City Council of the City of Lancaster, Texas, on the 14th day of February, 2011.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY

Resolution No. 2011-02-09

THE STATE OF TEXAS
COUNTIES OF DALLAS

§
§
§

MUNICIPAL ASSOCIATE JUDGE

This agreement is made by and between the City of Lancaster (herein called "City"), a home rule municipal corporation located in Dallas County, Texas, and Scott Kurth (herein called "Associate Judge"), who resides at 606 Cedar Ridge Ct., Ovilla, Texas 75154.

WITNESSETH:

1. The City, acting by and through its city council, exercising its discretion pursuant to the City charter and the laws of State of Texas hereby appoint Scott Kurth as the Municipal Associate Judge of the Lancaster Municipal Court of Record and agrees to compensate the Associate Judge for his services as hereinafter set forth.
2. In the absence of the Presiding Municipal Judge, the Associate Judge agrees to perform the services of Presiding Judge of the Lancaster Municipal Court and to maintain eligibility and the appropriate licenses as may be required by law to serve in such capacity for a term of two (2) years commencing the 21st day of February, 2011 appointment, which shall conclude on the 21st day of February, 2013.
3. Compensation shall be at a rate of seventy-five dollars (\$ 75.00) per hour, with a minimum two (2) hours, for services which would include presiding over municipal court proceedings for and on behalf of the Lancaster Municipal Court as its Presiding Judge, to conduct such services as may be required from time-to-time, including but not limited to, arraignments, issuance of search warrants and/or capias warrants, and such administrative duties and responsibilities as are necessary and incidental to the office of the Judge of the Municipal Court of the City of Lancaster.
4. The Associate Judge shall provide time and billing records to the City to reflect the time dedicated to the service for and on behalf of the Municipal Court.
5. The Associate Judge is not and shall not be deemed an employee of the City for any purpose and agrees that he serves solely as an independent contractor.
6. The Associate Judge further acknowledges and shall not undertake to exercise his discretion as Presiding Judge from improper influences and shall act as he deems appropriate under his independent judgment as the Presiding Judge of the Municipal Court.
7. The Associate Judge shall perform all services in accordance with the Code of Judicial Conduct applicable to judges of courts in the State of Texas and agrees to conduct himself in a judicial demeanor at all times in representing the City.
8. The Associate Judge is not precluded from performing such legal services in maintaining his private practice of law and nothing construed herein shall preclude him from maintaining his private legal practice.

9. The Associate Judge hereby agrees not to knowingly undertake any legal matter that would compromise or conflict with his duties and responsibilities as the Municipal Court Judge or otherwise knowingly undertake to represent a client on a legal matter against the City.

10. The Parties to this agreement hereby acknowledge that the Associate Judge can be removed for cause in accordance with State Law as provided for in such cases.

11. City agrees, with regard to the services provided herein, to indemnify and hold harmless the Associate Judge for any act, claim or liability for negligence, gross negligence acting on behalf of the City and shall maintain adequate insurance or liability coverage to effectuate this provision.

12. This Contract consists of this document, upon which the parties have affixed their signatures, and those documents specifically incorporated herein by reference. This Contract as so constituted is the entire agreement between the parties, with respect to the subject matter hereof, and supersedes all other previous statements, communications, or agreements, whether oral or written. No modification, alteration, or waiver of any provision hereof shall be binding upon the parties unless evidenced in writing and signed by both parties.

13. The City or the Associate Judge may terminate this contract in accordance with state law. If the contract is terminated as provided herein, the Associate Judge's fee would be paid for hours worked, which have not already been compensated, performing the services of the City covered by this contract.

14. This Contract shall be renewed for an additional two (2) year term, except by giving written notice one hundred (100) days prior to its expiration date of February 21st, 2013.

15. That the City shall reimburse the Associate Judge tuition and travel expenses, which shall include lodging and meals, for mandatory judicial continuing education.

16. Both the Associate Judge and the City represent that they have full capacity and authority to grant all rights and assume all obligations that they have granted and assumed under this Contract.

17. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the law of the State of Texas and any venue for any action concerning this Contract shall be in Dallas County, Texas.

18. In the event one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect other provisions, and the Contract shall be constructed as if such invalid, illegal, or unenforceable provision had never been contained in it.

EXECUTED this 14th day of February, 2011.

Scott Kurth, Associate Judge

CITY OF LANCASTER, TEXAS

BY: _____
Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

RESUME
OF
SCOTT E. KURTH

RESIDENCE:

606 Cedar Ridge Ct.
Ovilla, Texas 75154
(972) 978-4225 Cell

OFFICE:

500 N. Interstate 35
Suite A, P.O. Box 2219
Red Oak, Texas 75154
(972) 224-5534
Fax: (972) 224-8669
Email: debidebi7@aol.com

PERSONAL:

Date of Birth : March 17, 1959

Place of Birth : Birmingham, Alabama

Marital Status : Married since March 24, 1984

Spouse : Debra Kay Kurth

Children : Austin Edward Kurth
Age: 24
Texas A&M University
College Station, Texas
Class of 2008 Graduate

Colton Scott Kurth
Age: 20
Sophomore: Tarleton State University

Health : Excellent

Hobbies : Running, Weight-lifting, Swimming

Church Participation : Ordained Minister; Bible Teacher;
Ordained Deacon

LANGUAGES:

Bilingual: Spanish

ACADEMICS:

High School : **Wagner High School
Republic of the Philippines**

**Rome Free Academy
Rome, New York**

**General H.H. Arnold High School
Wiesbaden, West Germany
Graduated: 1977; ranked 11th out of
137 students**

Honors : **Member of the National Honor
Society**

: **Senior Class President**

College : **Baylor University (1977-1980)
Waco, Texas**

Degree : **Bachelor of Arts; Political Science
December 20, 1980**

Honors : **Dean's List Fall 1977, 1978, 1979,
Spring 1979**

Grade Point Average : **3.75**

Law School : **Baylor Law School
Waco, Texas**

Honors : **Spring 1982 Dean's List**

Degree : **Doctor of Jurisprudence**

Graduated : **August 7, 1982**

Bar Exam Results : **Top 10%**

PROFESSIONAL MEMBERSHIPS:

November 5, 1982 : State Bar of Texas
August 27, 1987 : Federal District Court for the Northern District of Texas

PROFESSIONAL EMPLOYMENT:

8/16/82 through 5/20/83: Law Firm of Larry S. Parnass
5/21/83 through present: Scott E. Kurth, P.C.

JUDICIAL EXPERIENCE:

I have had the privilege of serving as a municipal court judge for nearly twenty (20) years in eight (8) different municipalities. I conduct the jail arraignments seven (7) days each week for the cities of DeSoto, Lancaster, Cedar Hill, and Red Oak. Additionally, I am responsible for signing/approving misdemeanor and felony warrants for DeSoto, Lancaster, Cedar Hill, and Red Oak on a daily basis along with evidentiary search warrants. I hold court in Grand Prairie as needed and conduct jail arraignments at least once monthly on weekends. Likewise, I am the on-call magistrate with the police departments of DeSoto, Lancaster, Cedar Hill, Red Oak, Glenn Heights, and Grand Prairie for the purpose of signing warrants (i.e. both search and arrest). I hold court weekly in DeSoto and at least twice monthly in Red Oak and more as needed. I have presided over thousands of trials before the court (i.e. Judge) and trials by jury, and am responsible for the disposition of all city ordinance cases, Class C misdemeanors, failure to attend school, and school rule violation cases for the Red Oak Independent School District and DeSoto Independent School District.

JUDICIAL SERVICE:

Presiding Municipal Court Judge: City of Red Oak, Texas (1989 to present) (Court of Record)
Presiding Municipal Court Judge: DeSoto, Texas (2002 to present) (Court of Record)
Presiding Municipal Court Judge: Ovilla, Texas (2006 to present) (Court of Record)
Associate Municipal Court Judge: DeSoto, Texas (1999 to 2002)

Associate Municipal Court Judge:	Lancaster, Texas (1999 to present)
Associate Municipal Court Judge:	Cedar Hill, Texas (2000 to present)
Associate Municipal Court Judge:	Grand Prairie, Texas (May 2000 to present) (Court of Record)
Associate Municipal Court Judge:	Glen Heights, Texas (2007 to present)
Associate Municipal Court Judge:	Balch Springs, Texas (2007 to present)
Commissioner, Texas Funeral Services Commission :	Gubernatorial Appointee: 1989 to 1995
Special Visiting Master In Chancery :	254 th Judicial District Court, Dallas County, Texas
Faculty Member :	Texas Municipal Court Education Center Faculty Member 2004-2005 Academic Year (Responsible for training Municipal Court Judges in Texas)
Faculty Member :	Texas Municipal Court Education Center Faculty Member 2004-2005 Academic Year (Responsible for training Municipal Court Judges in Texas)

Repeated service as a Commissioner of Condemnation for Dallas County, Texas to hear cases relating to the valuation of real estate being condemned for rights-of-way in the building of North Central Expressway.

APPLICABLE PROFESSIONAL ARTICLES: *Understanding Common Driver's License Offenses (2004); Conditions of Bail in Driving While Intoxicated and Other Offenses (2006) (See Attachments)*

PRIVATE PRACTICE:

My private practice is concentrated in the area of family (i.e. child support enforcement, juvenile law, divorce, child custody, protective orders). I have extensive felony and misdemeanor criminal trial experience. In connection with my private

practice, for roughly fifteen (15) years, I was appointed by the Judges of the 255th, 256th, 303rd, 330th, 301st, and 302nd Judicial District Courts to serve as a "Friend of the Court" to ensure that the Court's orders on the payment of child support were obeyed. My function was to seek out and bring to justice those individuals who have willfully failed and refused to pay their court ordered child support.

CERTIFIED MEDIATOR/CERTIFIED FAMILY LAW MEDIATOR:

In June 2004, I underwent formal mediation training through the National Mediation Academy, Inc. and obtained my certification as a civil law mediator. I underwent additional training to obtain a higher level of certification as a certified family law mediator. I regularly mediate complex cases dealing with child custody and visitation issues.

LANCASTER CITY COUNCIL
Agenda Communication for
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AG11-007

Consider an ordinance of the City of Lancaster, Texas, amending Ordinance No. 2010-10-24 to correct a clerical error to Exhibit C of said ordinance and to correct clerical error under Section 4.B. of said ordinance; providing a severability clause; providing a savings clause; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 2: Quality Development

Background

On October 25, 2010, City Council approved Ordinance No. 2010-10-24, a Planned Development - SouthPointe Campus District to allow for the development of 80± acres on the southwest corner of Houston School Road and Interstate Highway 20. Certain minor modifications to the existing Lancaster Campus District were approved as recommended by staff and the Planning and Zoning Commission. However, an incorrect set of modifications (Special Development Regulations, Exhibit C) were included in the ordinance. Specifically, the incorrect Exhibit "C" limited the adopted regulations to only Sites 1, 2, and 3 with regard to changes requested to the building placement, street benches, lights, bicycle racks and litter containers. Additionally, it did not address changes to the maximum block length, ground floor building levels, window and glass, placement of service areas, service area screening and street trees. This amendment seeks to correct this Exhibit as outlined in the minor modifications that were recommended by the Planning and Zoning Commission and presented to City Council.

This is a housekeeping item to replace the incorrect Exhibit C that was attached to the ordinance at its adoption. Additionally, there is language in the ordinance that contradicts the intent of the ordinance. Under Section 4 of Ordinance 2010-10-24, it states that if a conflict exists between the Lancaster Campus District, the Concept Master Plan, and the Special Development Regulations, then the Lancaster Campus District standards shall prevail. The purpose of the PD was to modify the standards so that it is more compatible with an industrial park development. This language addresses a conflict and should have addressed an omission.

Considerations

- **Operational** – This is a housekeeping matter to correct an error by amending the existing Ordinance No. 2010-10-24 to reflect the correct Exhibit “C” and correct contradictory language in Section 4 of the ordinance. The changes to the exhibit are as follows:

BUILDING PLACEMENT

2.1 Building Setbacks

Each building will have various distances from 50' to 200' from the street's rights-of-way. See the Concept Master Plan for distances for each building. **This only applied to Sites 1, 2, and 3 on the previous exhibit.**

3.2 Block Requirements

Each building project is less than 1,500 feet. However, at completion of all buildings, the “block” along the new road will exceed 1,500 feet. Construction shall be in accordance with the attached Concept Master Plan. **This was not addressed.**

5.2 General 'Public' Street Ground Level Elevation (Non-Residential Uses)

There may be occasions that due to drainage considerations, some small areas may be above the finished floor elevation. This will be determined in each phase. **This was not addressed.**

6.7 Window and Glass

Buildings shall utilize glass that will meet current energy code, most all of which are tinted. **This was not addressed.**

9.1 Placement of Service Areas

Services and trash bins shall not be placed within the building, but shall be screened where practical by landscaping or screening walls from the 'Public' street. **This was not addressed.**

Depending upon the design and function of the warehouse and/or office use, the service areas and trash bins could be located in the office portion of the building (typically in the front and visible from the public right-of-way). Sometimes, those areas are also shared entrances to the truck courts and loading areas. It may not always be practical to place landscaping and/or screening walls around those areas because they could get damaged by the tractor trailers. In such cases, we would advise the applicant to locate service areas and trash bins behind the wing walls or security fences, thereby satisfying this requirement. Under the Lancaster Campus District, this was not an option.

9.2 Service Area Screening

Utility functions shall be screened by landscaping or screening walls. **This was not addressed.**

11.3 Fencing Material

There shall be no requirement of fencing unless requested by a tenant for 'security.' If a tenant requires fencing, black vinyl coated chain link fencing may be utilized. **This was not addressed.**

STREETSCAPE AND OPEN SPACE

No sidewalks, street furniture, or other amenities shall be installed along the internal roadways. **This was only addressed for the new road.**

12.2 Street trees

The minimum caliper for trees shall be three (3) inches. **This was not addressed.**

12.8 Street Benches

Street benches shall not be provided. **This only applied to Sites 1, 2, and 3 on the previous exhibit.**

12.9 Street Lights

Building lighting shall be provided by building mounted light fixtures. Street lighting shall be per electric company standard fixtures and spacing. **This only applied to Sites 1, 2, and 3 on the previous exhibit.**

12.10 Bicycle Racks

No bicycle racks shall be provided. **This only applied to Sites 1, 2, and 3 on the previous exhibit.**

12.11 Litter Containers

No litter containers along street frontages shall be provided. **This only applied to Sites 1, 2, and 3 on the previous exhibit.**

- **Legal** – The City Attorney has prepared the ordinance and has revised the language to clarify Section 4.B. of the existing ordinance as follows:

SECTION 4. In construing and applying the terms of this ordinance the following shall apply:

....

- B. If a conflict exists between the Lancaster Development District regulations, the Concept Master Plan (Exhibit "B") and the Special Development Regulations (Exhibit "C"), then the provisions of Exhibit C shall prevail over the master plan and the general development regulations under the Lancaster Campus District provisions.

....

- **Financial** – There are no financial considerations for this matter.
- **Public Information** -- There are no public hearing notifications required to correct the ordinance.

Options/Alternatives

1. Approve the ordinance with the corrections.
2. Deny the request to correct the error and direct staff.

Recommendations

Staff recommends approval of the ordinance correcting Exhibit C "Special Development Regulations" and amending the contradictory language in Section 4.

Attachments

- Ordinance (with corrected Exhibit C and revised Section 4)
- Ordinance No. 2010-10-24 as adopted

Prepared and submitted by:
Rona Stringfellow-Govan, Director of Development Services

Date: February 7, 2011

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING ORDINANCE NO. 2010-10-24 TO CORRECT A CLERICAL ERROR TO EXHIBIT C OF SAID ORDINANCE AND TO CORRECT CLERICAL ERROR UNDER SECTION 4.B. OF SAID ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council adopted Ordinance No. 2010-10-24, which established a planned development district within the Lancaster Campus District, under the name of Southpointe Campus District; and

WHEREAS, the planned development had special development regulations in addition to the requirements of the development and regulations under the Comprehensive Zoning Ordinance; and

WHEREAS, there were errors to be corrected in Exhibit C, which contained the development and regulations; and

WHEREAS, Section 4.B. needed clarification in that the language that was used therein created a possible conflict within the development regulations; and

WHEREAS, the City Council desires to correct Ordinance No. 2010-10-24 to give full intent to the original ordinance as adopted and approved by the City Council.

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

SECTION 1. That Ordinance 2010-10-24 is hereby amended as follows:

(a) That Exhibit C contained in the said Ordinance No. 2010-10-24 is hereby amended to delete Exhibit C and incorporate a new Exhibit C, which is attached hereto and incorporated herein by reference as Exhibit 1.

(b) That Section 4, subsection B of the said Ordinance No. 2010-10-24 is hereby amended to now read:

“B. If a conflict exists between the Lancaster Development District regulations, the Concept Master Plan (Exhibit “B”) and the Special Development Regulations (Exhibit “C”), then the provisions of Exhibit C shall prevail over the master plan and the general development regulations under the Lancaster Campus District provisions.”

SECTION 2. That Ordinance No. 2010-10-24, as amended herein, is hereby readopted, ratified, and republished.

SECTION 3. That all provisions of the Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

PASSED AND APPROVED ON THIS 14th DAY OF FEBRUARY, 2011.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb)

EXHIBIT "C"

SPECIAL DEVELOPMENT REGULATIONS

1. SOUTH I-20 WAREHOUSE SUB DISTRICT

2. BUILDING PLACEMENT

2.1 Building Setbacks

Each building will have various distances from 50' to 200' from the street's right-of-way. See the Concept Master Plan for distances for each building.

2.2 Minimum Development Street Frontage

None of the buildings shall be constructed to the "build-to-lines." The buildings shall be generally located as shown on the Concept Master Plan.

2.4 Parking Setback

Parking shall be provided as shown on the Concept Master Plan. Landscaping shall be provided in accordance with Concept Master plan to distribute and enhance parking areas.

3. SITE CONTROLS

3.2 Block Requirements

Each building project is less than 1,500 feet. However, at completion of all buildings, the "block" along the new road will exceed 1,500 feet. Construction shall be in accordance with the attached Concept Master Plan.

4. BUILDING MASSING AND HEIGHT

4.2 Maximum Building Length

There shall be no maximum building length for buildings facing public streets.

5. GROUND FLOOR BUILDING LEVEL

5.2 General 'Public' Street Ground Level Elevation (Non-Residential Uses)

There may be occasions that due to drainage considerations, some small areas may be above the finished floor elevation. This will be determined in each phase.

5.4 Ground Level Design ('Public' Street)

Each building shall have a small number of entrances which will result in entrances being more than seventy (70) feet.

6. EXTERIOR APPEARANCE OF BUILDINGS

6.4 Dominant Primary Cladding Materials

Construction shall be in accordance with the attached conceptual elevation for representative building materials.

6.7 Window and Glass

Buildings shall utilize glass that will meet current energy code, most all of which are tinted.

8. PARKING AREAS

8.3 Parking Format

There shall be no on-street parking. Parking shall be in accordance with Conceptual Master Plan. Screening shall be in accordance with approved conceptual landscape plan.

9. SERVICE AND EQUIPMENT AREAS

9.1 Placement of Service Areas

Services and trash bins shall not be placed within the building, but shall be screened where practical by landscaping or screening walls from the 'Public' street.

11. FENCING

11.3 Fencing Material

There shall be no requirement of fencing unless requested by a tenant for 'security.' If a tenant requires fencing, black vinyl coated chain link fencing may be utilized.

12. STREETSCAPE AND OPEN SPACE

No sidewalks, street furniture, or other amenities shall be installed along the internal roadways.

12.2 Street trees

The minimum caliper for trees shall be three (3) inches.

12.8 Street Benches

Street benches shall not be provided.

12.9 Street Lights

Building lighting shall be provided by building mounted light fixtures. Street lighting shall be per electric company standard fixtures and spacing.

12.10 Bicycle Racks

No bicycle racks shall be provided.

12.11 Litter Containers

No litter containers along street frontages shall be provided.

ORDINANCE NO. 2010-10-24

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING ORDINANCE NO. 2006-04-13 THE LANCASTER DEVELOPMENT CODE AND ZONING MAP OF THE CITY OF LANCASTER, TEXAS, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM LANCASTER CAMPUS DISTRICT (LCD) TO PLANNED DEVELOPMENT-SOUTHPOINTE CAMPUS DISTRICT TO ALLOW FOR THE DEVELOPMENT OF 80± ACRES LOCATED ON THE SOUTHWEST CORNER OF HOUSTON SCHOOL ROAD AND I-20, AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING FOR THE APPROVAL OF THE CONCEPT MASTER PLAN AND THE DEVELOPMENT REGULATIONS, WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBITS "B" AND "C," RESPECTIVELY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Planning and Zoning Commission and the governing body of the City of Lancaster, Texas, in compliance with the laws of the State of Texas and pursuant to the Lancaster Development Code of the City of Lancaster, have given requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, and to all persons interested and situated in the affected area and in the vicinity thereof, the said governing body is of the opinion that Zoning Application No. Z10-08 should be approved, and in the exercise of legislative discretion have concluded that the Lancaster Development Code and Map should be amended.

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

SECTION 1. That the Lancaster Development Code and Zoning Map of the City of Lancaster, Texas, duly passed by the governing body of the City of Lancaster, Texas, as heretofore amended, be and the same is hereby amended by granting a change in zoning from Lancaster Campus District (LCD) to Planned Development – SouthPointe Campus District to allow the development of 80± acres located on the southwest corner of Houston School Road and I-20, and being more particularly described in Exhibit "A" attached hereto and incorporated herein.

SECTION 2. That the permitted uses for the Planned Development - SouthPointe Campus District shall be for those uses as set forth in the Lancaster Campus District in the Lancaster Development Code, exclusive of any uses requiring a special use permit under said code, and the same is hereby approved.

SECTION 3. That permitted uses in this Planned Development – SouthPointe Campus District as set forth shall be developed in conformance with the Development Regulations as provided in the Lancaster Development Code, Lancaster Campus District, and Section 2 of this Ordinance, except as provided in Exhibits “B” and “C,” the Concept Master Plan (Exhibit “B”) and the Special Development Regulations (Exhibit “C”), which are hereby adopted and are attached hereto and incorporated herein by reference as if set forth in full.

SECTION 4. In construing and applying the terms of this ordinance the following shall apply:

- A. The specific references shall govern over the general references.
- B. If a conflict exists between the Lancaster Campus District provisions, the Concept master plan (Exhibit “B”) and the Special Development Regulations (Exhibit “C”), then the Lancaster Campus District Development Regulations shall govern.
- C. If a conflict exists between the Concept master plan (Exhibit “B”) and the Special Development Regulations (Exhibit “C”), then the provisions on the Concept master plan shall govern.

SECTION 5. That the development of the property herein shall be in accordance with building regulations, zoning ordinances, and any applicable ordinances except as may be specifically altered or amended herein.

SECTION 6. That all provisions of the Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 7. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

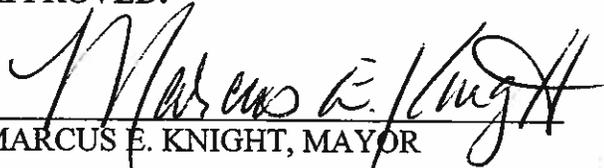
SECTION 8. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 9. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Lancaster Development Code of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

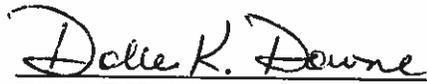
SECTION 10. That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 25th day of October 2010.

APPROVED:

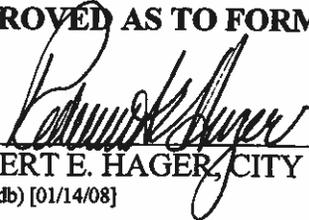

MARCUS E. KNIGHT, MAYOR

ATTEST:



DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:



ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb) [01/14/08]

EXHIBIT A

PROPERTY

83.3 acre Tract

Being 3,632,350 square feet or 83.3873 acre tract of land situated in the S. B. Runyon Survey, Abstract No. 1199, City of Lancaster, Dallas County, Texas, said tract being part of a called 84.7672 acre tract conveyed to Highland Park Land Company by deed recorded in Volume 2000132, Page 4397, Deed Records of Dallas County, Texas and all of a called 0.8035 acre tract of land conveyed to Highland Park Land Company by deed recorded in Volume 2001030, Page 2484, Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a set 5/8 inch iron rod for a corner in the south line of LBJ Freeway - Interstate Highway 635 (a variable width right of way), said point being S 85 degrees 31 minutes 26 seconds W, a distance of 308.91 feet from the intersection of the south line of Interstate Highway 635 with the west line of Houston School Road (a variable width right of way), and said point being the northwest corner of Lot 1, Block 1 of Houston School/635 addition as recorded in Volume 2001116, Page 3404, Deed Records of Dallas County, Texas;

THENCE, S 02 degrees 32 minutes 47 seconds W, with the west line of said Lot 1, a distance of 280.50 feet to a set 5/8 inch iron rod for a corner, said point being the southwest corner of said Lot 1;

THENCE, N 89 degrees 48 minutes 00 seconds E, with the south line of said Lot 1, a distance of 332.47 feet to a found 1/2 inch rod for a corner in the west line of Houston School Road;

THENCE, S 00 degrees 14 minutes 16 seconds E, with the west line of Houston School Road, a distance of 700.08 feet to a found 1/2 inch iron rod for a corner, said point being in the north line of a called 0.46 acre tract conveyed to Jamie Villanueva by deed recorded in Inst. No. 200302520098, Deed Records of Dallas County, Texas;

THENCE, S 89 degrees 48 minutes 00 seconds W, with the north line of the said 0.46 acre tract, passing at a distance of 568.25 feet the common north corner of the said 0.46 acre tract and a called 61.464 acre tract of land conveyed to Oscar V. Eastep by deed recorded in Volume 88023, Page 4372, Deed Records of Dallas County, Texas, continuing in all a distance of 2,118.45 feet to a found 1/2 inch iron rod for a corner at the northwest corner of the said 61.464 acre tract;

THENCE, S 00 degrees 01 minutes 31 seconds E, with the west line of the said 61.464 acre tract, a distance of 312.69 feet to a found 5/8 inch iron rod for a corner, said point being in the north line of a called 29.09 acre tract conveyed to Transportation Property Leasing LLC by deed recorded in Volume 2003253, Page 5284, Deed Records of Dallas County, Texas;

THENCE, N 89 degrees 58 minutes 17 seconds W, with the north line of the said 29.09 acre tract, passing at a distance of 145.0 feet the common north corner of the said 29.09 acre tract and a called 30.0 acre tract of land conveyed to Transportation Property Leasing LLC by deed

recorded in Volume 90001, Page 2120, Deed Records of Dallas County, Texas, continuing in all a distance of 730.22 feet to a found 1/2 inch iron rod for a corner in the east line of Eaton Avenue (a 50 foot right of way) according to the map of Danieldale Resubdivision of Tracts 1 to 5 of Oak Cliff Farms Addition Unrecorded, an addition to the City of Lancaster, Texas recorded in Volume 35, Page 213, Map Records of Dallas County, Texas;

THENCE, N 00 degrees 13 minutes 23 seconds E, with the east line of Eaton Avenue, a distance of 838.01 feet to a found 1/2 inch iron rod for a corner at the intersection of the east line of Eaton Avenue with the north line of Brantley Drive, (a 25 foot right of way);

THENCE, N 89 degrees 57 minutes 50 seconds W, with the north line of Brantley Drive, a distance of 734.83 feet to a found 1/2 inch iron rod for a corner at the intersection of the north line of Brantley Drive with the east line of Patman Drive (a 50 foot right of way);

THENCE, N 01 degrees 22 minutes 17 seconds E, with the east line of Patman Drive, passing at a called distance of 354.4 feet the northeast corner of the said Danieldale Resubdivision of Tracts 1 to 5 of Oak Cliff Farms Addition Unrecorded and in the east line of Oak Cliff Farms Addition, an unrecorded addition, continuing in all a distance of 532.06 feet to a found concrete right of way monument for a corner in the south line of Interstate Highway 635;

THENCE, the following courses and distances with the south line of Interstate Highway 635:

- N 88 degrees 08 minutes 33 seconds E, a distance of 734.28 feet to a found concrete right of way monument for an angle point;
- N 85 degrees 18 minutes 54 seconds E, a distance of 713.90 feet to a found 1/2 inch iron rod for an angle point;
- S 89 degrees 57 minutes 24 seconds E, a distance of 1,178.95 feet to a found concrete right of way monument for an angle point;
- S 69 degrees 14 minutes 17 seconds E, a distance of 384.67 feet to a found concrete right of way monument for an angle point;
- S 83 degrees 56 minutes 15 seconds E, a distance of 200.28 feet to a found concrete right of way monument for an angle point;
- N 85 degrees 31 minutes 26 seconds E, a distance of 61.42 feet to the Point of Beginning and containing 3,632,350 square feet or 83.3873 acres of land.

PROJECT DATA

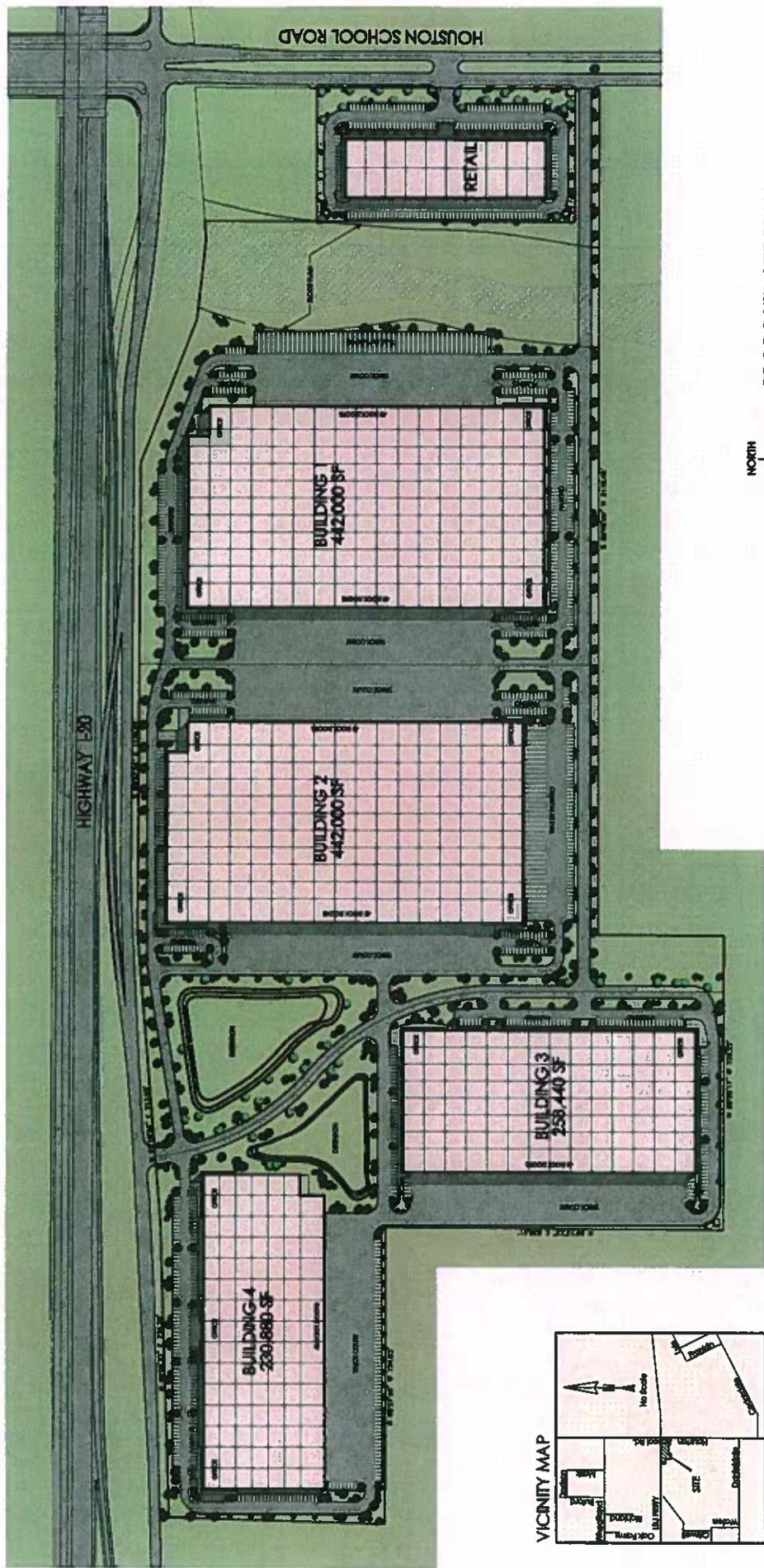
RETAIL TRACT / SITE 5
 BUILDING AREA 75,000 SF

BUILDING / SITE 4
 BUILDING AREA 230,680 SF

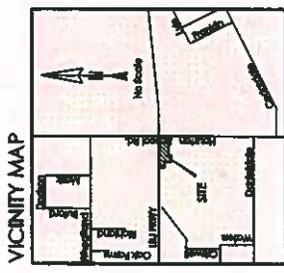
BUILDING / SITE 3
 BUILDING AREA 258,440 SF

BUILDING / SITE 2
 BUILDING AREA 442,000 SF

BUILDING / SITE 1
 BUILDING AREA 442,000 SF

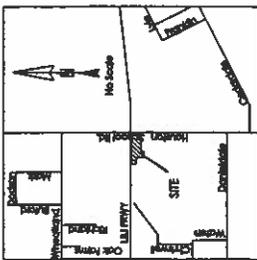


1 PROPOSED SITE PLAN
 SCALE 1"=100'-0"





VICINITY MAP



PROJECT DATA

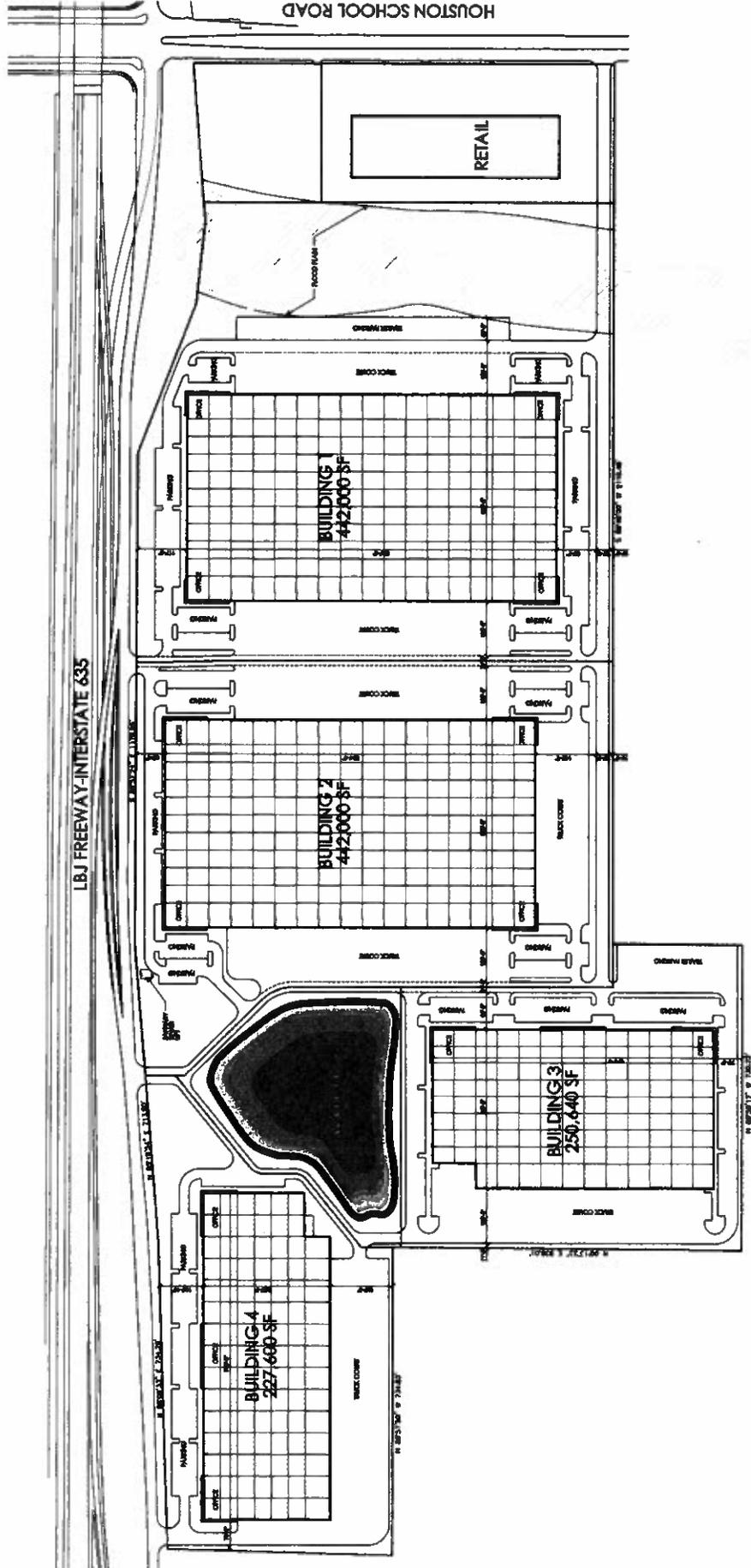
RETAIL TRACT / SITE 5	
BUILDING AREA	75,000 SF
SITE AREA	234,281 SF
COVERAGE	32%

BUILDING / SITE 4	
BUILDING AREA	227,600 SF
SITE AREA	504,724 SF
COVERAGE	45.1%

BUILDING / SITE 3	
BUILDING AREA	250,440 SF
SITE AREA	544,254 SF
COVERAGE	46.1%

BUILDING / SITE 2	
BUILDING AREA	442,000 SF
SITE AREA	934,632 SF
COVERAGE	47.2%

BUILDING / SITE 1	
BUILDING AREA	442,000 SF
SITE AREA	1,192,388 SF
COVERAGE	37.1%



1 PROPOSED SITE PLAN #3
 SCALE 1"=100'-0"

EXHIBIT "C"

SPECIAL DEVELOPMENT REGULATIONS

1. **Definitions.** "Pedestrian Area 4" and "Pedestrian Area 5" are those areas within Site 4 and Site 5 more particularly displayed on the Concept Master Plan (Exhibit "B").
2. **Building Setbacks.**
 - a. Except as otherwise provided in this section, each building may be set back at various distances from a minimum of 30 feet (30') to a maximum of two hundred feet (200') from the streets' right-of-way.
 - b. The facades of buildings facing Pedestrian Area 4 and Pedestrian Area 5 must be set back no more than 8 feet from an abutting driveway or pedestrian walkway.
3. **Parking Setback.** Parking and landscaping shall be constructed in conformance with the Concept Master Plan.
4. **Maximum Building Length.** Buildings facing public streets shall be constructed in accordance with the Concept Master Plan and may exceed lengths of greater than 400 feet on Sites 1, 2, and 3.
5. **Ground Level Design.** Except for the facades of buildings facing Pedestrian Area 4 or Pedestrian Area 5, buildings may have entrances of more than seventy feet (70') apart after approval of the site plan provided for in Section 4 of this ordinance.
6. **Dominant Primary Cladding Materials.** Except for the facades of any building facing Pedestrian Area 4 or Pedestrian Area 5, one primary cladding material may exceed the maximum sixty-five percent (65%) of the building's façade.
7. **Street Furniture, Benches, Litter Containers, and Bicycle Racks.** Except within Pedestrian Area 4 and Pedestrian Area 5, there is no requirement for any street furniture or other amenities to be installed along any street, driveway, or pedestrian walkway.
8. **Street Lights.** Except within Pedestrian Area 4 and Pedestrian Area 5, building lighting shall be provided by building mounted light fixtures, and street lighting shall be per electric company standard fixtures and spacing.

LANCASTER CITY COUNCIL

Agenda Communication for
February 14, 2011

8

AG11-008

Consider an ordinance of the City of Lancaster, Texas, amending the Comprehensive Zoning Ordinance and Map, as theretofore amended, by granting a change in zoning from Light Industrial (LI) to Light Industrial – Specific Use Permit (LI-SUP) to allow an Aerial Park Commercial Amusement Facility on property located approximately 3,250 feet west of the intersection of West Beltline Road and South Dallas Avenue, and more commonly known as 700 West Beltline Road; providing for the approval of a site plan and Aerial Park Concept Plan; providing for special conditions; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of two thousand (\$2,000) dollars for each offense; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 2: Quality Development

Background

At the January 24, 2011 City Council meeting, the Council approved a request for a Specific Use Permit (SUP) for the Aerial Park and directed staff to bring back an ordinance that reflected the approval with no time limit associated with the SUP.

- 1. Location and Size:** The property is generally located 3,250 feet west of the intersection of West Beltline Road and Dallas Avenue. The property under consideration is approximately 19.83 acres of land.
- 2. Current Zoning:** The subject property is currently zoned LI – Light Industrial.
- 3. Adjacent Properties:**
North: A-O, Agricultural Open
South: LI, Light Industrial (Vacant land)
East: LI, Light Industrial (Bailey Tool)
West: A-O, Agricultural Open

4. **Comprehensive Plan Compatibility:** The Comprehensive Plan identifies this site as suitable for low density residential. This proposal is not compatible with the Comprehensive Plan; however it is compatible with the surrounding amenities of a golf course and City Park.
5. **Public Notification:** The Public Hearing notice appeared in the Focus Daily Newspaper and property owner notifications were mailed out on December 23, 2010. Zoning signs were placed on the subject property on December 28, 2010, satisfying the noticing requirement for this request.
6. **Case/Site History:**

Date	Body	Action
01/04/11	P&Z	Z11-01 SUP for Aerial Park Recommended approval 4-0
01/24/11	Council	Z11-01 SUP for Aerial Park was unanimously approved

Considerations

- **Operational** – This is a request for a Specific Use Permit (SUP) to develop an Aerial Park within the city limits. An Aerial Park is an amusement center for adventurous people seeking outdoor entertainment. It uses ropes, trees, harnesses and platforms to form a zip-line course. This course allows people to “zip” from tree to tree while suspended on ropes multiple feet above the ground. It utilizes the natural features of the land (trees) to maintain the natural beauty of the area while providing amusement and entertainment for people of all ages. The aerial park can also be utilized by corporations for team-building exercises, as a field trip for school-age students, by organizations as a retreat, and multiple other functions. It would be compatible with the nearby land uses of a golf course and City park, which are also located on Beltline Road. There are only 2 other adventure parks of this magnitude in the country and the proposed development would be the only one of its kind in the metropolitan area, thus creating a local attraction and destination point for the City of Lancaster.
- **Legal** - The City Attorney has prepared the ordinance.
- **Financial** - There are no financial considerations for this case.
- **Public Information** - The public hearing notice, legal notice, property owner notification and on-site zoning sign requirements were fulfilled, in accordance with the Lancaster Development Code. No property owner notifications were returned in favor of or opposed to the SUP request. The Planning and Zoning public hearing was conducted on January 4, 2011. City Council conducted a public hearing on January 24, 2011.

Options/Alternatives

1. Adopt the ordinance for the approved Specific Use Permit.
2. Adopt the ordinance for the approved SUP with modifications.

Recommendation

CITY COUNCIL

At the January 24, 2011 meeting, the City Council approved the request for a Specific Use Permit for the Aerial Park with the modification of no time limit for renewal of the SUP. The Ordinance being considered is the accompanying Ordinance for the SUP.

P&Z

At the January 4, 2011 meeting, the Planning and Zoning Commission recommended approval (4-0) of case Z11-01, following staff's recommendation as outlined below.

STAFF

Staff recommends approval of the item, in accordance with the following recommendations:

1. This SUP is limited to the use and operation of the site as currently configured. Expansion of the existing building or substantial alteration that would increase the building occupancy or intensity of use shall require reconsideration and approval of this SUP.
2. The SUP is required to be renewed every 10 years for the life of its operation.
3. The use of alternative materials for non-required parking spaces be granted to preserve the naturalness of the subject property and keep the area environmentally friendly by reducing the amount of pavement and retaining as much permeable surface as possible.

Attachments

- Ordinance

Prepared and submitted by:
Nathaniel Barnett, Senior Planner

Date: February 7, 2011

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM LIGHT INDUSTRIAL (“LI”) TO LIGHT INDUSTRIAL-SPECIFIC USE PERMIT (“LI-SUP”) TO ALLOW AN AERIAL PARK COMMERCIAL AMUSEMENT FACILITY ON PROPERTY LOCATED APPROXIMATELY 3,250 FEET WEST OF THE INTERSECTION OF WEST BELTLINE ROAD AND SOUTH DALLAS AVENUE, MORE COMMONLY KNOWN AS 700 WEST BELTLINE ROAD, LANCASTER, DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT A, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN; PROVIDING FOR THE APPROVAL OF A SITE PLAN AND AERIAL PARK CONCEPT PLAN, WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBITS B AND C, RESPECTIVELY; PROVIDING FOR SPECIAL CONDITIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Planning and Zoning Commission and the governing body of the City of Lancaster, Texas, in compliance with the laws of the State of Texas and pursuant to the Comprehensive Zoning Ordinance of the City of Lancaster, have given requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, and to all persons interested and situated in the affected area and in the vicinity thereof, the said governing body is of the opinion that Zoning Application No. Z11-01 should be approved, and in the exercise of legislative discretion have concluded that the Comprehensive Zoning Ordinance and Map should be amended.

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

SECTION 1. That the Comprehensive Zoning Ordinance and Map of the City of Lancaster, Texas, duly passed by the governing body of the City of Lancaster, Texas, as heretofore amended, be and the same is hereby amended by granting a change in zoning from Light Industrial (“LI”) to Light Industrial-Specific Use Permit (“LI-SUP”) to allow a commercial amusement facility on property located approximately 3,250 feet west of the intersection of West Beltline Road and South Dallas Avenue, more commonly known as 700 West Beltline Road, Lancaster, Dallas County, Texas, and being more particularly described in Exhibit A, which is attached hereto and incorporated herein.

SECTION 2. The property shall be developed and used in accordance with the development standards under the Lancaster Zoning Ordinance, ordinances of the City of Lancaster, and the special conditions as established herein on the approved Site Plan and Aerial Park Concept Plan, which are attached hereto and incorporated herein as Exhibits B and C, respectively, and the following special conditions:

- A. There shall be no further additional construction or extension of buildings or accessory structures not depicted on the attached site plan.
- B. That the commercial amusement use shall be for an aerial park or human obstacle course with non-electric mechanical amusements but may include zip lines, rope bridges, or other obstacle elements.
- C. Concession stands for souvenirs, refreshments and food services shall be permitted.
- D. That the use of alternative materials for non-required parking spaces be granted to preserve the naturalness of the subject property and keep the area environmentally friendly by reducing the amount of pavement and retaining as much permeable surface as possible.

SECTION 3. That the Site Plan and the Aerial Park Concept Plan, attached hereto as Exhibits B and C, and made a part hereof for all purposes, are hereby approved.

SECTION 4. That all provisions of the Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

DULY PASSED AND APPROVED ON THIS 14th DAY OF FEBRUARY, 2011.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb)

2991747

STEWART TITLE 04302871
LANCASTER 128 KF

4748136
07/28/04

116.00 Deed

"NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER."

WARRANTY DEED

DATE: June 22, 2004

GRANTOR: LIFE IN THE TRINITY MINISTRY, A TEXAS NON-PROFIT CORPORATION

GRANTEE: BRAZOS RIVER LAND, L.P., DOING BUSINESS AS BRAZOS RIVER LAND CO.
200 CRESCENT COURT, SUITE 850
DALLAS, TEXAS, 75201

CONSIDERATION: TEN DOLLARS (\$10.00) and other considerations

PROPERTY (including any improvements):
SEE EXHIBIT A

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY: This conveyance is subject to all presently recorded and effective restrictions, reservations, rights-of-way, easements, covenants, conditions, oil and gas leases, mineral severances and other instruments, other than liens and conveyances, that affect the property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

Taxes for 2004 are assumed by Grantee.

When context requires, singular nouns and pronouns include plural.

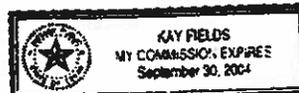
LIFE IN THE TRINITY MINISTRY, A TEXAS NON-PROFIT CORPORATION
BY:

[Signature]
ARVID LEICK, PRESIDENT

STATE OF TEXAS
COUNTY OF DALLAS

July This instrument was acknowledged before me on the 23rd day of JUNE, 2004, by ARVID LEICK, PRESIDENT OF LIFE IN THE TRINITY MINISTRY, A TEXAS NON-PROFIT CORPORATION, on behalf of same and in the capacity stated

[Signature]
NOTARY PUBLIC, STATE OF TEXAS



GF# 04302871

Being a tract of land situated in the E. Bader Survey, Abstract No. 172, City of Lancaster, Dallas County, Texas, and being a tract of land conveyed by deed to Life in the Trinity recorded in Volume 2000102, Page 551, Deed Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8 inch (O.D.) iron pipe found for corner on the south line of W. Beltline Road (100' ROW), said point being the northwest corner of said Life in the Trinity Tract, same being the northeast corner of Moore Estates, an addition to the City of Lancaster recorded in Volume 94203, Page 1587, Map Records, Dallas County, Texas;

THENCE S 72 deg. 27 min. 42 sec. E (Deed-S 72 25 4 E), along the south line of W. Beltline Road, a distance of 859.23 feet (Deed-858.95 feet) to a 3/8 inch iron rod found for corner, same being the northwest corner of a tract of land conveyed by deed to Continental Engineering Corporation recorded in Volume 69052, Page 1434, Deed Records, Dallas County, Texas;

THENCE S 4 deg. 31 min. W (Deed-S 4 29 56 W), leaving the south line of W. Beltline Road and along the west line of said Continental Tract, a distance of 499.85 feet (Deed-500.00 feet) to a 3/8 inch iron rod found for corner;

THENCE S 72 deg. 23 min. 42 sec. E (Deed-S 72 25 4 E), along the south line of said Continental Tract, a distance of 999.49 feet (Deed-1000.00 feet) to a 1/2 inch iron rod found for corner;

THENCE S 4 deg. 29 min. 56 sec. W a distance of 250.00 feet to a 1/2 inch iron rod found for corner.

THENCE N 72 deg. 25 min. 4 sec. W a distance of 1838.71 feet (Deed-1840.26 feet) to a 1/2 inch iron rod found for corner;

THENCE N 3 deg. 1 min. 32 sec. E (Deed-N 3 6 38 E) a distance of 754.37 feet (Deed-754.45 feet) to the POINT OF BEGINNING, and containing 19.8343 acres (863,982 square feet) of land, more or less.

Property Address: 700 BL W. BELTLINE LANCASTER, TX 75146

UNOFFICIAL

FILED AND RECORDED
JUL 27 PM 1:47
COUNTY CLERK
GALVESTON, TEXAS

10254041740000
200 Crescent Court, Ste. 350
JUL 27 PM 1:47
34800 Smith

2004 44 12717

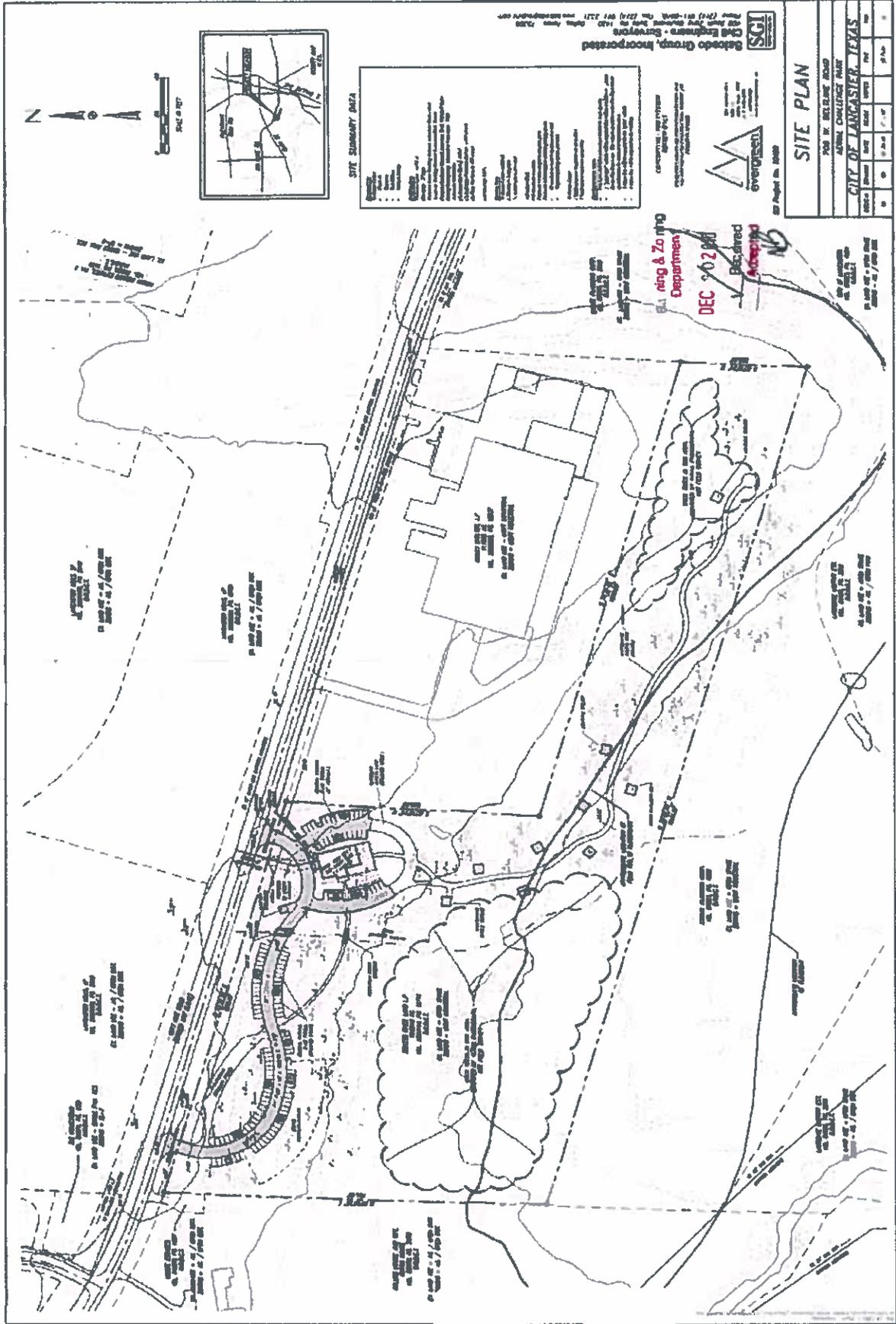


EXHIBIT C CONCEPT PLAN



Planning & Zoning Department
 DEC 10 2010
 Received
 Accepted
 JB



Texas Aerial Forest Challenge Park - Lancaster, Tx
 30 November 2010

LANCASTER CITY COUNCIL

Agenda Communication for
February 14, 2011

9

AG11-009

First reading of caption and discussion of an ordinance of the City of Lancaster, Texas, granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to construct, maintain, and operate pipelines and equipment in the City of Lancaster, Dallas County, Texas, for the transportation, delivery, sale, and distribution of gas in, out of, and through said City for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-way; and providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; and repealing all previous gas franchise ordinances.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 2: Quality Development

Goal 3: Healthy, Safe, and Vibrant Neighborhoods

Background

On October 21, 1985 the Lancaster City Council adopted an original ordinance granting a gas franchise to what was then named Lone Star Gas Company, presently referred to as Atmos Energy Corporation. This franchise was for a term of 25 years with the City accepting a sum payment of four percent (4%) of gross revenues over the term of the agreement. The ordinance was amended by Atmos Energy (then TXU Gas Company) and adopted by Council on December 23, 2002 to include the lease of facilities within the City's rights-of-way. Atmos Energy Corporation is at this time requesting the extension of their gas franchise effective January 1, 2011 for an additional twenty-five (25) years.

The ordinance submitted for consideration grants a franchise to Atmos Energy Corporation to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public rights-of-way for the purpose of laying, maintaining, constructing, protecting, operating, and replacing pipelines and equipment necessary for the delivery, transport, and distribution of gas in, out of, and through the City of Lancaster for persons, firms, and corporations within the City corporate limits for a term of twenty-five (25) years ending December 31, 2035. The Lancaster Home Rule Charter, as amended November 7, 2006, Article X Franchises and Special Privileges Section C stipulates that no franchise shall ever be granted until it has been approved by

a majority of the City Council after having been read in full at two (2) regular meetings of the City Council.

The ordinance sets forth that this is a non-exclusive franchise and the City of Lancaster reserves the right to grant like privileges, rights, and franchises as it may see fit to any other person or corporation for like purposes. The City agrees to accept a sum payment of five percent (5%) of gross revenues as stipulated within the ordinance, representing a 1% increase in gross revenue payments paid to the City as a result of the renewal of this gas franchise. Upon the effective date of this ordinance, all previous ordinances of the City granting franchises for gas delivery purposes held by Atmos Energy Corporation shall be automatically cancelled and no longer in effect.

Considerations

- **Operational** – This is a request for the adoption of the Atmos Energy Corporation gas franchise. As required by City Charter, this item is to be read into the record and placed on the February 28, 2011 regular meeting agenda for consideration.
- **Legal** – A copy of the ordinance has been reviewed and approved as to form by the City Attorney.
- **Financial** – Atmos Energy Corporation will remit quarterly payments equivalent to five percent (5%) of the Gross Revenues, as defined in Section 5.B. of the ordinance, to the City of Lancaster per the terms specified.
- **Public Information** - Consideration of this item must be conducted during a meeting of the City Council in accordance with the Texas Open Meetings Act. This meeting was properly noticed and is being held in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. February 14, 2011 reading of the ordinance into record as required by City Charter; placement of the ordinance on the February 28, 2011 regular meeting agenda for consideration.
2. Reject ordinance and direct staff.

Recommendation

Staff recommends the reading of the ordinance into record and placement of the item on the February 28, 2011 regular meeting agenda for consideration.

Attachments

- Ordinance

Agenda Communication
February 14, 2011
Page 3

Prepared and submitted by:
Opal Mauldin-Robertson, Interim City Manager

Date: February 14, 2011

ORDINANCE NO: _____

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The City of Lancaster, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2035.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In determining the location of the facilities of the City and other users of Public Rights-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot

otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. City shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City.

- B. If City, in constructing its sewers, drainage, water lines, streets, or utilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. In the event that the City does not provide sufficient written notice to Atmos Energy as set forth in this paragraph, the

City shall be responsible for fifty percent (50%) of the cost of the removal or relocation of Atmos Energy's facilities.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, streets or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

- C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs.
- D. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any Rights-of-Way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.
- E. If Atmos Energy employees damage the facilities owned by City within the Public Rights-of-Way of City, City agrees to repair the damage to its facilities at no cost to Atmos Energy. Atmos Energy agrees to notify the appropriate City official as soon as reasonably possible after the occurrence of such damage. If City employees damage facilities owned by Atmos Energy within the Public Rights-of-Way of City, Atmos Energy agrees to repair the damage to its facilities at no

cost to City. City agrees to notify the appropriate personnel of Atmos Energy as soon as reasonably possible after the occurrence of such damage.

SECTION 3. INDEMNITY & INSURANCE: In the event of injury to any person or damage to any property by reason of Atmos Energy's construction, operation, maintenance, or replacement of Atmos Energy's pipeline system within Public Rights-of-Way, Atmos Energy shall indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the City, including, without limitation, the City's negligent or intentional acts or omissions. Atmos Energy's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 5. PAYMENTS TO CITY:

- A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 15th day of February, May, August, and November, 2011, and on or before the same days of each succeeding year during the term of this franchise, the last payment being made on the 15th day of November, 2035, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar year.
- B. "Gross Revenues" shall mean:
 - (1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to governmental customers or to another gas utility in the City for resale to its customers within City) within the City;
 - (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any

gas transported to governmental customers or to another gas utility in City for resale to its customers within City);

- (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales")(excluding the value of any gas transported to governmental customers or to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
- (4) "Gross Revenues" shall also include fees collected pursuant to this agreement and the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City.
- (5) "Gross Revenues" shall not include:
 - (a) revenues received from governmental customers;
 - (b) revenues billed but not ultimately collected or received by Atmos Energy;
 - (c) contributions in aid of construction;
 - (c) the revenue of any affiliate or subsidiary of Atmos Energy;
 - (d) sales tax paid to the City;
 - (e) interest or investment income earned by Atmos Energy; and
 - (f) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's rights-of-way.

C. The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through March 31, 2011, and each succeeding payment shall be for the privilege period of the calendar quarter in which the payment is made.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad

valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

E. Atmos Energy Franchise Fee Recovery Tariff

- (1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or

state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.

- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

F. **Lease of Facilities Within City's Rights-of-Way.** Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City's public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 6. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 7. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 8. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of January 1, 2011.

PASSED AND APPROVED on this the _____ day of _____, 2011.

ATTEST:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor
City of Lancaster, Texas

STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF LANCASTER §

I, _____, City Secretary of the City of Lancaster, DALLAS County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Lancaster, Texas, at a _____ session, held on the _____ day of _____, 2011, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ___ day of _____, 2011.

Dolle K. Downe
City Secretary
City of Lancaster, Texas

LANCASTER CITY COUNCIL
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AG11-010

Discuss and consider a resolution of the City Council of the City of Lancaster, Texas, suspending the February 14, 2011, effective date of Oncor Electric Delivery Company's Requested Rate Change to permit the City time to study the request and to establish reasonable rates; approving cooperation with the Steering Committee of Cities served by Oncor to hire legal and consulting services and to negotiate with the Company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and legal counsel for the steering committee; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda.

Goal 1: Financially Sound City Government

Background

Oncor Electric Delivery Company filed an application on or about January 7, 2011 with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by \$353 million. The Company asks the City to approve a 14.6% increase in residential rates, a 15.5% increase in commercial rates, and a 25.9% increase in street lighting rates. According to Oncor, annual rates would increase by approximately \$60 for an average residential customer.

The resolution suspends the February 14, 2011 effective date of the Company's rate increase for the maximum period permitted by law to allow the City, working in conjunction with the Steering Committee of Cities Served by Oncor, to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

The law provides that a rate request made by an electric utility cannot become effective until at least 35 days following the filing of the application to change rates. The law permits the City to suspend the rate change for 90 days after the date the rate change would otherwise be effective. If the City fails to take some action regarding the filing before the effective date, Oncor's rate request is deemed administratively approved.

Lancaster is a member of the 146-city coalition known as the Steering Committee of Cities Served by Oncor. The Steering Committee has been in existence since the late 1980s. It took on a formal structure in the early 1990s when cities served by the former TXU gave up their statutory right to rate case expense reimbursement in exchange for higher franchise fee payments. Empowered by city resolutions and funded by per capita assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for the last 20 years.

The current filing comes 15 months following the implementation of Oncor's last rate increase. The case is currently under appeal.

Considerations

- **Operational** – This is a request to suspend the Oncor rate increase request.
- **Legal** – Lloyd Gosselink Blevins Rochelle & Townsend, P.C. represents the Oncor Cities Steering Committee and prepared and approved the resolution.
- **Financial** – Rate cases expenses are minimized as Lancaster is a member of the Oncor Cities Steering Committee. Oncor will reimburse the Steering Committee for its reasonable rate cases expenses. No individual city incurs liability for payment of rate case expenses by adopting this suspension resolution.
- **Public Information** – There are no public notification requirements. This resolution was considered at a regular meeting of the City Council.

Options/Alternatives

1. Approve the resolution as presented.
2. Deny the resolution and direct staff.

Recommendation

Staff recommends approval of the resolution as presented to suspend the rate case.

Attachments

- Resolution

Prepared and submitted by:
Opal Mauldin Robertson, Interim City Manager

Date: January 20, 2011

RESOLUTION NO. 2011-02-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, SUSPENDING THE FEBRUARY 14, 2011, EFFECTIVE DATE OF ONCOR ELECTRIC DELIVERY COMPANY'S REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING COOPERATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR TO HIRE LEGAL AND CONSULTING SERVICES AND TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL FOR THE STEERING COMMITTEE.

WHEREAS, on or about January 7, 2011, Oncor Electric Delivery Company (Oncor), pursuant to PURA §§ 33.001 and 36.001 filed with the City of Lancaster a Statement of Intent to increase electric transmission and distribution rates in all municipalities exercising original jurisdiction within its service area effective February 14, 2011; and

WHEREAS, the City of Lancaster is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee") and will cooperate with the 146 similarly situated city members and other city participants in conducting a review of the Company's application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company prior to getting reasonable rates and direct any necessary litigation; and

WHEREAS, PURA § 36.108 grants local regulatory authorities the right to suspend the effective date of proposed rate changes for ninety (90) days after the date the rate change would otherwise be effective; and

WHEREAS, PURA § 33.023 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

1. That the February 14, 2011 effective date of the rate request submitted by Oncor on or about January 7, 2011, be suspended for the maximum period allowed by law to permit adequate time to review the proposed changes and to establish reasonable rates.

2. As indicated in the City's resolution approving membership in the Steering Committee, the Executive Committee of Steering Committee is authorized to hire and direct legal counsel and consultants, negotiate with the Company, make recommendations regarding reasonable rates, and to intervene and direct any necessary administrative proceedings or court litigation associated with an appeal of a rate ordinance and the rate case filed with the City or Public Utility Commission.

3. That the City's reasonable rate case expenses shall be reimbursed by Oncor.

4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

5. A copy of this Resolution shall be sent to Oncor, care of Autry Warren, Oncor Electric Delivery Company, LLC, 1601 Bryan St., 23rd Floor, Dallas, Texas 75201 and to Geoffrey Gay, General Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this the 14th day of February 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL
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AG11-011

The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, to-wit: the City Manager.

Executive session matter.

Prepared and submitted by:
Dolle K. Downe, City Secretary

Date: February 7, 2011

LANCASTER CITY COUNCIL
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AG11-012

Consider and take appropriate action(s), if any, on closed/executive session matters.

Background

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.

Prepared and submitted by:
Dolle K. Downe, City Secretary

Date: February 7, 2011