



**NOTICE OF WORK SESSION AND REGULAR MEETING
AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**

Monday, April 28, 2014 - 6:45 PM

6:45 PM WORK SESSION:

1. Discuss participation in the Fiscal Year 2014 Dallas County Community Development Block Grant (CDBG) Program and use of allocated funds; direct staff regarding projects(s) submission.

Adjourn Work Session

7:00 PM REGULAR MEETING:

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Councilmember Jaglowski

PROCLAMATION: Crime Victims' Awareness Week

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.

- C1. Consider approval of minutes from the City Council Regular Meeting held March 24, 2014.
- C2. Consider a resolution approving and accepting the policies of the Veterans Memorial Library.
- C3. Consider a resolution approving a contract with First Southwest Asset Management, Inc., providing for the calculation of arbitrage rebate compliance; pursuant to the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986, as amended.

- [C4.](#) Consider approving an amendment to the FY2012-13 Annual Budget for a transfer from LRDC to reimburse for previous debt payments made by the General Fund.
- [C5.](#) Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 660 at the Lancaster Regional Airport.
- [C6.](#) Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 680 at the Lancaster Regional Airport.
- [C7.](#) Consider a resolution approving the City of Lancaster Public Improvement District (PID) Policy.
- [C8.](#) Consider a resolution authorizing Dallas County to resell 3315 Sherwood Avenue, 2425 Verona Road, 820 Bayport and 1111 North Lancaster Hutchins Road, tax foreclosed properties, by public or private sale, to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Tax Code.
- [C9.](#) Consider a resolution accepting the 2013 Racial Profiling Analysis Annual Report.

PUBLIC HEARING:

- [10.](#) Conduct a public hearing and consider a resolution approving the Terms and Conditions of Interlocal Agreements by and Between Dallas County and the City of Lancaster for the Reconstruction and/or Overlay of Streets, that is Arcady Lane from Wintergreen Drive to Stanford Drive; Rutgers Drive from Wintergreen Drive to Lexington Drive; Lexington Drive from Arlington to End of Asphalt; Marsalis from Green Drive to Dead End; as listed in the Agreements.

ACTION:

- [11.](#) Consider an ordinance establishing Civil Service classifications within the Police and Fire Departments; prescribing the number of positions in each classification.
- [12.](#) Consider Amending Ordinance 24.07 of the Water Conservation, Drought Contingency and Emergency Water System Situations Plan.
- [13.](#) Consider a resolution accepting the terms and conditions of a Sanitary Sewer Easement Document for the installation of a sewer line across Dallas County's 125-acre Ten Mile Creek Preserve and the compensation for the easement, by and between Dallas County and The City of Lancaster.
- [14.](#) Consider a resolution approving the terms and conditions of a Capital Improvement Program Funding Agreement made by and between Dallas County and the City of Lancaster for the Implementation of the Major Capital Improvement Project (MCIP) based on the Southern Dallas County Infrastructure Analysis (SDCIA) study that was conducted in October 2007 in conjunction with the North Central Texas Council of Governments to promote economic development in the Southern part of Dallas County which identified specific projects included in Dallas County's MCIP 20102 and MCIP 31402; The Pleasant Run Road Waterline Improvement and Infrastructure Design.

EXECUTIVE SESSION:

- 15. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.
- 16. The City Council shall convene into closed executive session pursuant to Section 551.071(a) and (b) to discuss and deliberate with the City Attorney the following pending matter in litigation, settlement and/or matters involving attorney-client privilege:
 - (a) Cause No. DC-13-10151; Healthspace Regions Lancaster, LLC v. City of Lancaster in the 191st Judicial District Court of Dallas County.

ADJOURNMENT

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 April 25, 2014 @ 5:30 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Sorangel O. Arenas
City Secretary

LANCASTER CITY COUNCIL
Work Session Agenda Communication
April 28, 2014

Item 1

Discuss participation in the Fiscal Year 2014 Dallas County Community Development Block Grant (CDBG) Program and use of allocated funds; direct staff regarding project(s) submission.

This request supports the City Council 2013-2014 Policy Agenda.

**Goal: Financial Sound City Government
Sound Infrastructure**

Background

The City of Lancaster is eligible to receive \$116,863 in Community Development Block Grant (CDBG) funds for fiscal year 2014.

CDBG funds are administered through Dallas County and may only be used on projects that eliminate blight, eliminate a community threatening condition or primarily benefit low/moderate income residents. The primary objective of the program is to develop sustainable urban communities that meet the public service and housing needs of low and moderate income households. Federal rules allow each community to tailor its program to address specific local needs.

Historically the City of Lancaster has used this funding for residential roadway projects. For the past four years council has approved eleven roadway project(s) in low to moderate income areas for reconstruction. In addition to the funds received this year, a surplus of funds is available from previous years.

Below is a recap of CDBG funding:

Funds available from previous years	\$ 158,443
2014 Community Development Block Grant	\$ <u>116,863</u>
Total funds available	\$ 275,306

Given the significant need for roadway improvements in various areas of the City, staff recommends qualifying roadway projects. The streets listed below were identified as projects using the City's HVJ Pavement management program ratings, the estimated cost within the allocated dollar amount, and eligibility under the CDBG program.

NAME	FROM STREET	TO STREET	EST. COST	LENGTH LINEAR FT.
ARCADY	WINTERGREEN	STANFORD	\$ 79,884	1,268 FT.
RUTGERS	WINTERGREEN	ARCADY	\$ 29,127	520 FT.
ARLINGTON	WINTERGREEN	LEXINGTON	\$ 96,264	1,528 FT.
LEXINGTON	ARLINGTON	CONCRETE	\$ 52,038	826 FT.
MARSALIS	GANT	END	\$ 57,771	917 FT.
TOTAL			\$ 315,084	

Considerations

- **Operational** – Dallas County recommends submitting multiple roadway projects even if the amount exceeds funds available as the U. S. Department of Housing and Urban Development (HUD) has rejected some projects in the past. Staff has coordinated with Dallas County to ensure eligibility of projects. Roadways not completed may be carried over to future fiscal years.

In order for Dallas County to meet the required federal submission deadline, cities participating in the program, must submit the application(s) for eligible projects by May 23, 2014.

- **Legal** – A resolution will be required ratifying the selected roadway projects for submission to Dallas county.
- **Financial** – The City is eligible to receive \$116,863 in CDBG funding for fiscal year 2014. Funds not used on completed projects may be designated for carry-over for eligible roadway projects.
- **Public Information** – A notice was placed in the Focus Daily News City’s newspaper of record on Wednesday, April 23, 2014.

Recommendation

Staff seeks direction regarding submission of projects for the 2014 CDBG program. If the City does not submit projects, Lancaster’s funds would be reallocated among the other participating cities.

Submitted by:

Jim Brewer, Director Public Works
 Sorangel O. Arenas, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 1

Consider approval of minutes from the City Council Regular Meeting held March 24, 2014.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held March 24, 2014

Submitted by:
Sorangel O. Arenas, City Secretary

MINUTES

LANCASTER CITY COUNCIL MEETING OF MARCH 24, 2014

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on March 24, 2014 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Carol Strain-Burk
Stanley Jaglowski
Marco Mejia
Mayor Pro Tem James Daniels
LaShonjia Harris
Deputy Mayor Pro Tem Nina Morris

City Staff Present:

Opal Mauldin Robertson, City Manager
Thomas Griffith, Fire Chief
Sam Urbanski, Assistant Police Chief
Rona Stringfellow, Assistant City Manager
Ed Brady, Economic Development Director
Cynthia Pearson, Finance Director
Baron Sauls, Assistant Finance Director
Mark Divita, Airport Manager
Angie Arenas, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on March 24, 2014.

Invocation:

Pastor John Richardson with Zion Chapel gave the invocation.

Pledge of Allegiance:

Councilmember Strain-Burk led the pledge of allegiance.

Citizens Comments:

Lisa Stephani, 1675 W. Main Street, shared her concerns with structure in the city as far as citizens who want to hold public events and is in favor of licensing agreements of public space within the city.

Consent Agenda:

City Secretary Arenas read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meeting held March 10, 2014.**
- C2. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial leases from buildings 690 & 700 at the Lancaster Regional Airport.**

- C3. Consider a resolution authorizing the purchase of motor fuel (unleaded and diesel) from Martin Eagle Oil Company as the Primary, TAC Energy as the Secondary, and Douglass Distributing as the alternate through an Interlocal Agreement with Tarrant County at the unit prices stated.**
- C4. Consider an ordinance amending the code of ordinances by amending chapter 14, article 14.10 “Abandoned or Junked vehicles,” division 1, “Generally”, section 14.10.001, “Definitions”, providing for a new definition for inoperable motor vehicle; Amending division 2, “Abandoned Vehicles”, section 14.10.031, “Authority to take into custody.”**

Councilmember Strain-Burk pulled consent item C4.

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Jaglowski, to approve consent items C1-C3. The vote was cast 7 for, 0 against.

Councilmember Strain-Burk stated that she wanted the Chief to address this issue. [Item C4] City Manager Mauldin-Robertson stated that Assistant Chief Urbanski would be the staff liaison to address the issue. Councilmember Strain-Burk asked for the current situation with this item and why it was being put into place. Assistant Chief Urbanski stated that the amendment to the ordinance would provide a clear definition of inoperable vehicles and would allow law enforcement to tow vehicles that prove to be road hazards after being ticketed and monitored for 48 hours.

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Jaglowski, to approve consent items C4 as presented. The vote was cast 7 for, 0 against.

- 5. Discuss a resolution to accept the terms and conditions of a grant with the United States Department of Homeland Security, Federal Emergency Management Agency, Staffing for Adequate Fire and Emergency Response (SAFER) grant in the amount of \$740,640.00.**

Chief Griffith stated that the fire department has been applying for this grant for many years and in 2013 they were able to demonstrate their great need. The fire department has a lot of mutual aid dependence, specifically with the DeSoto fire department, when the city's ambulances are on other calls. The grants duration is two years in which the hire of additional firefighters will be funded one hundred percent. The grant will decrease response time and mutual aid dependency, while allowing the department to answer more calls.

Mayor Pro Tem Daniels asked how many firefighters would be hired; Chief Griffith stated that six new firefighters would be hired and of those some may need schooling in order to reach the goal of them having the ability to ride both a fire engine and ambulance.

Councilmember Strain-Burk applauded Chief Griffith for pursuing the grant. Deputy Mayor Pro Tem Morris inquired how the grant was found; Chief Griffith stated that they are constantly monitoring FEMA and other federal grants. Councilmember Jaglowski thanked Chief Griffith for his due diligence and hard work. Councilmember Mejia shared that this grant was a great opportunity for the city and that since Chief Griffith has become Fire Chief he has seen many positive changes in the fire department. Councilmember Harris congratulated Chief Griffith on the grant and stated that as we look at improving staff modules she would like to see support give to those hired as a result of this grant.

MOTION: Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve a resolution to accept the terms and conditions of a grant with the United States Department of Homeland Security, Federal Emergency Management Agency, Staffing for Adequate Fire and Emergency Response (SAFER). The vote was cast 7 for, 0 against.

6. **Consider an ordinance amending the Code of Ordinances by amending Chapter 8, Article 8.08 “Peddlers, Solicitors, Itinerant Vendors and Handbill Distributors”, Section 8.08.042 “Depositing or Distributing in public place” to provide for the distribution of handbills for religious or political purposes on public property at times and in areas which have been designated by the city as reasonable and appropriate for such action; and by amending Section 8.08.046, “Permit Required; duration; hours of operation” by adding Subsection (d) to provide an exception to the permit requirement for those individuals distributing handbills or other written material with a political or religious purpose; amending providing a penalty of fine not to exceed five hundred dollars (\$500.00).**

MOTION: Councilmember Mejia made a motion, seconded by Mayor Pro Tem Daniels, to table the ordinance amending the Code of Ordinances until the Special meeting on March 31, 2014. The vote was cast 6 for, 1 against [Strain-Burk].

7. **Consider a resolution approving the terms and conditions of a License and Use agreement by and between the City of Lancaster and the Lancaster Chamber of Commerce, Inc. for the use of public rights of way.**

Deputy Mayor Pro Tem Morris asked would the City be breaking a law if they did not have the agreement in place. City Attorney Hagar stated that he expressed his concerns about not having an agreement and that by putting one into place we are trying to manage the expectations. He also clarified that you cannot use public funds to support private enterprise which violates the Constitution.

Mayor Knight stated that the major concern is the exposure to liability to the City; the agreement would clarify who is responsible.

MOTION: Councilmember Mejia made a motion, seconded by Mayor Pro Tem Daniels, to table the resolution approving the terms and conditions of a License and Use agreement by and between the City of Lancaster and the Lancaster Chamber of Commerce, Inc. until the Special meeting on March 31, 2014. The vote was cast 7 for, 0 against.

8. Discuss and Consider a Resolution amending the Wholesale Treated Water Contract by and between the City of Lancaster and the City of Wilmer for the sale of wholesale treated water.

Assistant City Manager Stringfellow stated that sections 2.1 and 4.3 were removed which have to do with construction and design and will be addressed through a separate funding agreement. Staff would also like to reserve the right to have the latitude to remove section 9.3 which addresses water wells. TCEQ adopted a mandate to cap water wells across the state and the City of Wilmer falls under that mandate. Assistant City Manager Stringfellow also mentioned that in the event of an emergency the City of Wilmer may not have water wells that are operational and that they recommend City Council approval to strike that language.

Councilmember Strain-Burk asked if the language could say if the City of Wilmer has not met the mandate they could have access to their wells.

City Manager Mauldin-Robertson stated that TCEQ has mandates the City of Wilmer has to meet and we, the City of Lancaster, do not want to be in conflict. She also stated that we want City Attorney Hagar to be able to strike that language.

Councilmember Strain-Burk wanted clarification that the separate funding mechanism will simply spell out who is responsible for what.

MOTION: Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve the resolution amending approving the Wholesale Treated Water Contract by and between the City of Lancaster and the City of Wilmer for the sale of wholesale treated water. The vote was cast 7 for, 0 against.

9. Consider a resolution approving a contract with Dallas County Tax Assessor Collector providing for the assessment and collection of ad valorem property taxes for all properties subject to the City of Lancaster's taxing jurisdiction; pursuant to Section 6.24 of the Texas Property Tax Code and Section 791.011 of the Texas Government Code.

Finance Director Pearson stated that the county desires to bring all of their contracts in sync with each other which is the reasoning behind these changes. The changes are as follows; a notice of per parcel cost which will be an addendum to the new contract, payment for collection services performed by the tax office must be deducted from collections by January in lieu of payment by check, all tax rates must be adopted on or before the third Wednesday in September.

Mayor Knight stated that the state law gives the City until the last day of September and asked how the county could usurp the state.

Finance Director Person stated that the county is a state agency that has been given the right to asses and appraise taxes as long as they are not creating extenuating circumstances for the City.

MOTION: Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve the resolution approving a contract with Dallas County Tax Assessor Collector providing for the assessment and collection of ad valorem property taxes for all properties subject to the City of Lancaster's taxing jurisdiction; pursuant to Section 6.24 of the

Texas Property Tax Code and Section 791.011 of the Texas Government Code. The vote was cast 7 for, 0 against.

10. Consider a resolution authorizing the City Manager to execute a Memorandum of Understanding by and between the City of Lancaster and Con-Way Truckload, Inc.

City Manager Mauldin-Robertson stated that Con-way Truckload, Inc. has dismissed the lawsuit with the City of Lancaster and in dismissal they are disposing of the property; however they are requesting to continue utilization of property following the close of sell for an additional 13 months. One of the conditions was for the City to execute a memorandum of understanding. City Attorney Hagar stated that we were happy to do so because it complies with our Ordinance as well as their non-conforming rights.

MOTION: Councilmember Mejia made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve the resolution authorizing the City Manager to execute a Memorandum of Understanding by and between the City of Lancaster and Con-Way Truckload, Inc.

Executive Session:

11. The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate:

- (a) The appointment, employment, evaluation duties or dismissal of a public officer, to wit: Municipal Court Judge; and,**
- (b) The duties of a public officer; to wit: City Attorney.**

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

The City Council recessed from Executive Session at 8:54 p.m. and reconvened into open session at 9:05 p.m.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Mejia, to adjourn. The vote was cast 7 for, 0 against.

The meeting was adjourned at 9:06 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 2

Consider a resolution approving and accepting the policies of the Veterans Memorial Library.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Healthy, Safe & Vibrant Neighborhoods

Background

At the March 20, 2014 Library Advisory Board Meeting, staff presented updated policies pertinent to current and future library operations. Library Board members discussed and reviewed the following policies and unanimously approved them as presented and recommended council approval and acceptance:

Wireless Access and Use Policy
Meeting Room Policy
Internet and Electronic Resource Policy and Guidelines
Interlibrary Loan Policy
Circulation Policy

Considerations

- **Operational** –The Library Board serves in an advisory capacity. Meetings are held quarterly at 6:30 p.m. on the third Thursday of the month (or) as special called.
- **Legal** – The City attorney has reviewed and approved as to form.
- **Financial** – Approval of this resolution has no direct financial impact.
- **Public Information** – This item is being considered at a regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Approve the resolution as presented.
2. Reject the resolution.
3. Approve the resolution with stated modifications to the bylaws.

Recommendation

At the March 2014 meeting the Library Advisory Board voted unanimously to recommend approval of the attached policies.

Attachments

- Resolution
 - Wireless Access and Use Policy
 - Meeting Room Policy
 - Internet and Electronic Resource Policy
 - Interlibrary Loan Policy
 - Circulation Policy
 - Draft minutes of Library Advisory Board from 3/20/14
-

Submitted by:

Sean Johnson, Managing Director Quality of Life and Cultural Services

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, APPROVING AND ACCEPTING POLICIES OF THE VETERANS MEMORIAL LIBRARY BOARD, WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "A"; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster, Texas has reviewed policies of the Lancaster Veterans Memorial Library and finds that the policies should be approved;

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

SECTION 1. That the City Council of the City of Lancaster, Texas, hereby approves AND accepts the policies of the Lancaster Veterans Memorial Library Board, which are attached hereto and incorporated herein as Exhibit "A."

SECTION 2. That this Resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas on this the 28th day of April 2014.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

2014-01
Wireless Access and Use Policy
Lancaster Veterans Memorial Library

Use of the Lancaster Veterans Memorial Library’s wireless (WiFi) network constitutes the user's acceptance and agreement of the “Wireless Access and Use Policy” and the “Internet and Electronic Resource Policy and Guidelines.” The WiFi is to be used in a safe and responsible manner in accordance with these and other Library policies, City of Lancaster rules and regulations, and the Texas Penal Code.

The Library upholds and affirms the right of each user to have access to constitutionally protected material. However, the Library reserves the right to use filtering software to ensure a safe and welcoming environment for users of all ages. The Library may restrict access to Internet sites that compromise the performance of the Library network and equipment.

All Internet resources accessible through the Library are provided equally to all users during hours of public service. There is no age limit for the use of the Library's WiFi network. It is the Library's policy that parents or legal guardians must assume responsibility for deciding what library resources are appropriate for their children.

Library users have the right of confidentiality and privacy. However, users should be advised that because privacy is technically difficult to achieve, electronic transmissions of files and information, as well as viewing screens could become public. As a result, the Library cannot guarantee privacy or confidentiality.

The Lancaster Veterans Memorial Library's wireless network is not secure. Information sent to and from a wireless device using the Library's WiFi network may be captured by anyone else with a wireless device and appropriate software. It is strongly advised that personal, financial or otherwise sensitive information not be transmitted through the wireless network.

Responsibility for the safety and security of an individual's data files, computer or other wireless device configurations and all personal equipment rests with the individual and will not be assumed by the library.

Virus, security and privacy protection are not provided by the Library.

The Library is not responsible for damage, theft or loss of personal property or software used in the Library.

The Library is not responsible for supplying electrical power for user's equipment and access to the Library's electrical outlets may be limited. The user is responsible for supplying their own charged batteries as well as cords and cables.

Printing is not available to users of the Library's Wi-Fi.

The Library's Wi-Fi is available seven days a week, 24 hours a day. However, the Library cannot guarantee that wireless service will be available at any specific time.

The Library can make no guarantees as to the compatibility of a library user's device with the Library's wireless network or that users will be able to make a wireless connection.

The Library cannot guarantee Internet speed or quality of connection.

Library users will be asked to terminate any wireless activity that adversely impacts the network's performance.

The Library reserves the right to terminate an individual's WiFi session with or without cause or the individual is otherwise in violation of the Library's "Internet and Electronic Resource Policy and Guidelines." Violations of the Library's policies may result in the loss of Library, WiFi and computer use privileges. Nothing contained in this policy shall constitute a property right under state law.

PROCEDURES FOR WI-FI USE

Responsibilities of the Library staff;

- Written instructions for wireless login are available at the circulation and information desks.
- Library staff members are not authorized to provide technical assistance to users regarding their portable electronic devices.
- Library staff cannot configure users' laptops or portable electronic devices.
- Library staff members are not permitted to install any software or external devices on users' wireless devices.
- The Library and Library staff are not responsible for any damage to data files, alteration to file systems, or functionality of the computer resulting from connecting to the wireless network.
- Library staff is authorized to take immediate action to protect the security of the Library's computers and network.

Responsibilities of the users;

- It is the user's responsibility to become familiar with the Library's "Wireless Access and Use Policy". Copies of this policy are available for public viewing at the circulation and information desks upon request. The Library's WiFi is to be

used in a safe and responsible manner in accordance with this and other Library policies, City of Lancaster rules and regulations, and the Texas Penal Code.

- The user is responsible for ensuring that his/her wireless device is enabled and supports WiFi access. Individuals need to know how to use their wireless device's configuration software to connect to the wireless network.

Legal Responsibilities:

The Library's wireless network may not be used for any illegal or criminal purposes.

Examples of illegal use include, but are not limited to the following:

- attempting to alter or damage computer equipment, software configurations, or files belonging to the Lancaster Veterans Memorial Library or City of Lancaster, other users, or external networks;
- attempting unauthorized entry to the Library's and/or City of Lancaster's computer network or external networks;
- libeling, slandering, or otherwise harassing or stalking others;
- accessing material that is obscene, includes child pornography, or is harmful to minors consistent with applicable state and local laws;
- transmission of information not protected by the First Amendment of the United States Constitution;
- intentional propagation of computer viruses;
- violation of copyright or communication laws. U.S. copyright law (Title 17, U.S. Code) prohibits the unauthorized reproduction or distribution of copyrighted materials, except as permitted by the principles of fair use. Responsibility for any consequences of copyright infringement lies with the user. The Library expressly disclaims any liability or responsibility resulting from such use.

Ethical Responsibilities:

The Library's wireless network must not be used in an unethical manner. Examples of unethical use (some of which may also have legal consequences) include, but are not limited to the following:

- hacking (breaking into or out of any system) and violation of computer system security;
- use of computer communications facilities in ways that interfere with, or impede computer use of others;
- intentional violation of another user's privacy;
- obtrusively displaying information with the intent of being disruptive or offensive to others;
- using profanity or other language that may be offensive to other users or Library staff
- Do not block walkways, Library service desks or access to Library materials.

SANCTION

- Violations of the rules described above will be dealt with in a serious and appropriate manner including but not limited to loss of computer and WiFi privileges. Illegal acts involving library computing resources may also be subject to prosecution by local, state, or federal authorities. A first time violation of this policy will result in a verbal warning and loss of computer privileges for the day. A second violation will result in loss of computer privileges for 60 days. A third violation will result in loss of computer privileges.
- Users are financially liable if they permanently or temporarily damage any Lancaster Veterans Memorial Library or City of Lancaster equipment or software.

Revised 1/15/2014

DRAFT

Lancaster Veterans Memorial Library
Meeting Room Policy

1. The Lancaster Veterans Memorial Library will make every effort to ensure your rental experience is a positive one. To do this we would like to share with you some guidelines regarding rental of the meeting room. Use of the Library's Meeting Room does not constitute the City of Lancaster endorsement or approval of viewpoints expressed by participants in the program. Advertisements or announcements implying such endorsement are not permitted. The Library's phone number may not be used in any literature by any non-library related group.
2. When the Meeting Room is not in use by the Library or the City, it will be available on a first-come, first-served basis. If the Room is needed on an emergency basis for official governmental business or a reservation conflicts with Library programming, the reservation shall be canceled and may be rescheduled at the group's request.
3. Booking of library meeting room must be made in person when the library is open during library operating hours: Mon-Thur 10 – 8, Fri 10-6 and Sat 9-5.
4. Both residents and non-residents may rent the room. Reservations must be made at least 14 days in advance of the requested date. Reservations must be made in person and all fees and deposits are to be paid in full at the time the rental is booked, no exceptions. Upon renting the meeting room, renters are required to provide proof of residency that matches rental contract information. To receive the resident rate, renter must provide proper identification in person. For the purposes of rental, proper identification includes Texas driver's license, Texas ID or utility bill. Reservations are not automatically renewable. Resident rate is non-transferable. All fees are approved by the City of Lancaster and are available by viewing the fee schedule on the city web site. All fees are due at the time the rental is made. Any changes to rentals must be made at least 14 days before rental date. A \$20.00 administrative fee will be charged to the renter's credit card or deducted from the deposit for any rescheduled dates, times or changes to the contract.

Initials: Renter _____ **Staff** _____

5. Only the applicant stated on the contract will be allowed to check in for the rented space and check out. Applicant is required to be present at rental event and available to the city staff during the entire course of the event. If renters fail to comply, rental may be canceled and refund will be forfeited. No exceptions.
Initials _____
6. Cancellation must be done in person. No phone cancellations will be accepted. Renter must complete the refund request form. Cancellation Policy: 0-13 days

before rental, will result in loss of rental fees, 14-60 days before rental will result in 50% of rental fees. Cancellation will result in full refund of damage deposit.

Initials _____

7. Groups should reserve the meeting room well in advance of the date needed but may not reserve space more than 90 days or 3 months in advance. To give all organizations an opportunity to use the meeting room, reservations shall not exceed two meetings per month. No standing reservations are permitted. The meeting room cannot be the primary or regular meeting place of any group or organization.
8. Use of the library meeting room is allowed for meetings only. Birthday parties, banquets, and receptions may occur at one of the city's recreation center facilities.
9. No admission charges, collections, accepting orders, dues, sales or commercial activity of any kind shall be made or required for participation in any rental events held at the library except for library related activities, (i.e Friends of the Library) the proceeds of which directly benefit of the Library.
10. Activities in the room must not disrupt regular Library operations (no loud noise, no blocking of entries, fire lanes or walkways, etc.). The lobby area is not an extension of the rented room. The individual reserving the room may not set up tables in the lobby.
11. Access to the meeting room is only for the date and time specified on this form. Client will only be allowed to enter the rental space at the time stated on the rental agreement form. No exceptions. The length of time reserved for each meeting should include time for setting up the room and returning it to the original condition at the end of the meeting. If the meeting extends beyond the scheduled time, the librarian on duty has a right to end the meeting.

Initials _____

12. Setups are available for an additional fee; the setup will be done according to the meeting room request form. No additional chairs, tables will be provided. Table cloths are not available. Setup must be determined at the time of rental. Otherwise the rental space will be set as determined by library staff.
13. Client is responsible for cleaning and restoring the rental space back to its original state upon completion of rental. Client must setup and clean up during the reserved scheduled reservation time. All rentals must end on time or an additional fee will be assessed from the deposit. The Room must be vacated (clean and with furniture returned to its original location) at least 5 minutes prior to closing time. Any and all damages will be deducted from renters deposit.<< No additional furniture other than what is available in the Meeting Room will be provided unless prior arrangements have been made.

Initials _____

14. Deliveries of any kind, i.e. equipment, food, flowers, etc will not be accepted by the City of Lancaster staff. Deliveries must be done at the contracted time of the rental, client must be available to accept and all deliveries. The City of Lancaster staff accept no responsibility for deliveries of merchandise.
15. Resident must be present at the rental event and available to city staff during the entire course of the event. Noncompliance will warrant stoppage of the event and forfeit of deposit.

Initials _____

16. To use the Library's audio visual equipment, prior arrangements must be made and a training session scheduled with a library staff member before the event. However, availability of equipment cannot be guaranteed and meeting planners are encouraged to provide their own equipment.
17. Organizations using the Meeting Room must bring their own supplies such as pens, pencils, paper, copies, ice, coffee supplies, trash bags, batteries for the sound system, etc.
18. Attendance at meetings must be limited to the seating capacity of the Meeting Room which is 80. For statistical purposes the number of people attending must be reported to the circulation supervisor or librarian on duty during or immediately following the event.
19. A kitchen is available for the preparation of light refreshments. Beverages, pastries, light buffets and boxed lunches will be allowed in the Meeting Room when necessary. No cooking on the premises is permitted.
20. Smoking is not allowed in the Library or meeting room. Alcoholic beverages may not be dispensed or consumed in any part of the Library or on Library property.
21. Posters, papers, signs and other items may not be affixed to the walls or window shades in the meeting room. No staples, push pins, or tape should be attached to the walls of the meeting room.
22. The individual making the reservation, as well as the membership of the group as a whole, will be held responsible for any and all damage that may occur as a result of the use of the facilities.
23. Equipment, supplies or personal belongings cannot be stored or left in the Library before or after use.
24. The Library will not be responsible for lost or damaged items.
25. Failure to comply with any of these rules may result in loss of future meeting room privileges.

Approved by: _____

**LIBRARY CARD, Wi-Fi, INTERNET AND ELECTRONIC RESOURCE POLICY AND GUIDELINES
LANCASTER VETERANS MEMORIAL LIBRARY**

LIBRARY CARDS

I apply for the right to borrow materials from the Lancaster Veterans Memorial Library. I agree to abide by the rules, to promptly pay any fines or damages charged to me, and give immediate notice of any change of address or other identification. As an adult, I understand I am responsible for all materials checked out on my card until I have officially reported the card lost. As a youth, I understand information regarding over-dues, fines, or damages will be reported to the responsible adult whose signature appears on this application.

Printed Name _____ Library Card # _____

Borrowers' Signature _____ Parent/Guardian's Signature _____

INTERNET & ELECTRONIC RESOURCES

Lancaster Veterans Memorial Library Internet and Electronic Use Policy applies to all users of Lancaster Veterans Memorial Library Computers or networks. Use of the Internet or electronic resources at Lancaster Veterans Memorial Library automatically constitutes acceptance of the Policy and Guidelines.

PURPOSE

As part of its mission to offer a broad spectrum of information and a variety of educational, recreational and cultural opportunities for its users, Lancaster Veterans Memorial Library also offers access to the Internet's international network of databases. Veterans Memorial Library provides a graphical (text, pictures, and sounds) web browser. The Library does not provide electronic mail accounts, Internet Relay Chat or Newsgroups. Access at the library to these services is available to library cardholders in good standing who follow electronic service registration procedures. **Lancaster Veteran's Memorial Library reserves the right to revise its policies and rules of conduct at any time.**

NOTICE OF LIABILITY

For the privilege of using the electronic resources, including Internet access at Lancaster Veterans Memorial Library, you hereby release and hold harmless the City of Lancaster, its officers, agents, servants or employees, the Veterans Memorial Library, its staff, volunteers, representatives or advisors, from any and all liability or responsibility for any and all claims or expenses arising either directly or indirectly from the use of the Library's materials and equipment, whether or not caused, in whole or in part, by alleged negligence of the City of Lancaster, its officers, agents, servants, employees, volunteers, representatives or advisors.

Illegal acts involving the Library's Internet and electronic resources may also be subject to prosecution by local, state, or federal authorities.

CHOICES AND RESPONSIBILITIES OF USERS

Veterans Memorial Library only assumes responsibility for the information provided on its own home page. While the Internet offers access to an incredible number of local, national and international sources of information, it is impossible to guarantee that information on the Internet is accurate, complete, or current. Evaluate critically the information you find and don't hesitate to ask our Librarians for assistance in locating other library sources.

The Internet is a massive and complex global entity with a highly diverse user population and information content. Library patrons use it at their own risk. The library cannot block material on the Internet, censor access, or protect users from materials they may find offensive. Lancaster Veterans Memorial Library operates in accordance with the American Library Association's "Library Bill of Rights."

PRIVACY

The library seeks to protect the First Amendment rights of its customers and their individual right to privacy. However, Internet users must be sensitive to the fact that workstations are in public areas and, therefore, images on the screen are subject to view by a w

audience. Users are urged to respect the sensibilities of others when accessing material that may reasonably be offensive to someone else. However, absolute privacy for individuals using electronic resources in the library cannot be guaranteed. There exists a possibility of inadvertent viewing by others, either by watching the user's screen or because a user may leave the screen unattended.

CHILDREN'S USE OF THE INTERNET

Lancaster Veterans Memorial Library policy requires that the parents or the legal guardian assume responsibility for governing a child's choices in the use of library materials. The Library does not have the right or responsibility to act in the place of the parent or guardian. Some sites carry information that is sexually explicit, controversial or inappropriate for children. The Library does use filters, however, no filter is impenetrable and access may still be obtainable to any material on the Internet, including those sites that could be deemed objectionable. **Restriction of a child's access to the Internet is the responsibility of the parent or guardian. Parents are responsible for monitoring the Internet activity of their children.**

COPYRIGHT

U. S. Copyright law (Title 17, U.S. Code) prohibits the unauthorized reproduction or distribution of copyrighted material, except as permitted by the principle of "fair use". Users may not copy or distribute electronic materials (including electronic mail, text, images, programs or data) without the explicit permission of the copyright holder. Any responsibility for any consequences of copyright infringement lies with the user; the Library expressly disclaims any liability or responsibility resulting from such use.

Lancaster Veterans Memorial Library specifically disclaims any liability or responsibility arising from access to or use of information obtained through its electronic information systems, or any consequences thereof.

RULES OF THE ROAD FOR USE OF INTERNET AND ELECTRONIC DATABASES ON VETERANS MEMORIAL LIBRARY COMPUTERS

1. Computers are available on a first-come, first-served basis. Must use assigned workstation.
2. The user may use no one's library card number except his own to log onto the library computers.
3. Users will be limited to a time limit if others are waiting to access the computers. Users must relinquish a workstation at the end of their assigned session.
4. If a computer or software malfunctions, stop use and notify library staff immediately.
5. Copies may be printed from the network for a per page charge.
6. Not all media work on the public computers, i.e., certain Flash drives, diskettes, CD's, DVD's, etc.

USERS MUST NEVER:

1. Use the work stations to gain access to the Library's network or computer systems or to any other network or computer system.
2. Attempt to damage computer equipment or software.
3. Turn a computer off, on, reset, or attempt to break into or alter the operating system, software or maintenance functions.
4. Deliberately crash any library computer or system.
5. Violate copyright laws or software licensing agreements.
6. Deliberately propagate computer worms and/or viruses.
7. Install personal software or copy software from the Internet.
8. Engage in any activity which is deliberately and maliciously offensive, libelous, or slanderous.
9. Download from the Internet.
10. Engage in disruptive or destructive behavior that violates the Library's Rules of Conduct.
11. Use the Library's computers for illegal activity, to access illegal materials, to access materials that by local community standards would be objectionable, or to create a hostile work environment for the Library staff. (Illegal materials include, but are not limited to, obscenity and child pornography as defined in U.S. Code 18 and State Penal Code Chapters 42 and 43.)

Misuse of the computer may result in loss of computer privileges, potential loss of library privileges, and possible prosecution. A first time violation of the Internet policy will result in a verbal warning and loss of computer privileges for the day. A second violation will result in loss of computer privileges for 60 days. A third violation will result in loss of computer privileges. Damages resulting from the misuse of Library computers are the responsibility of the user or, in the case of minors, the parent or guardian.

I UNDERSTAND AND AGREE TO ABIDE BY THE RULES AND GUIDELINES IN THIS POLICY. I UNDERSTAND THAT IF I DISREGARD OR VIOLATE ANY OF THESE GUIDELINES, I MAY FORFEIT THE PRIVILEGE OF USING LIBRARY RESOURCES, AND MAY BE LIABLE FOR LOSS OR DAMAGE TO SOFTWARE, EQUIPMENT, SERVICES, OR OTHER HARM RESULTING FROM MY ABUSE OF THE ITEMS I USE.

Signature _____ Date _____

Parent/Guardain Signature (if applicant under 18) _____

Revised 1/17/2014

DRAFT

Interlibrary Loan Policy Lancaster Veterans Memorial Library

Materials from the collections of other public libraries, as well as academic and special libraries, may be borrowed through interlibrary loan. Patrons may request that the library attempt to locate books or copies of journal or periodical articles that are not available in the Lancaster Veterans Memorial Library (LVML).

Libraries do not lend rare or fragile items, items published within the past six months, items with a new status or items in high demand. Most libraries do not lend genealogy, microfilm or items designated as reference in their catalogs. Libraries are under no obligation to lend materials via interlibrary loan. Items owned by LVML cannot be requested, regardless of status. All requests placed for such items will be cancelled. If patrons request items for interlibrary loan that we own, we will obtain items from the local collection and the ILL request may be cancelled. Please check the library catalog or ask a library employee for assistance.

Please note that materials may take up to six weeks to arrive. Some requests may be cancelled by lending agencies if items are unavailable.

Patrons requesting interlibrary loan materials must have a current LVML library card that has been active for 30 days, be at least 18 years of age, and must be free of fines, fees or usage blocks. The account cannot be expired or temporary. There is a limit of five (5) open requests per patron at one time. Patrons must present their library card in order to pick up interlibrary loan materials. An item may be borrowed one time within a three-month period. Items may be renewed one (1) time if the lending library approves.

Interlibrary loan materials returned late will be assessed a fine of \$0.20 per day per item up to the cost of the item. Patrons who do not return the material, or return damaged material, will be billed for the price determined by the lending library, plus a \$5.00 processing fee.

Borrowers are required to sign the following statement:

I understand that as an interlibrary loan borrower, I am responsible for:

- Any charges assessed by the lending library, whether or not I choose to use the material. All interlibrary loan request services will cost \$3.00 per item.
- Overdue fines of \$0.20 per day as assessed by Lancaster Veterans Memorial Library and any additional charges, fines or fees imposed by the lending institution.
- Replacement cost plus a processing fee of \$5.00 if the materials are lost or damaged;
- Compliance with the Copyright Law of the United States (Title 17, United States Code) which governs the making of photocopies or other reproduction of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or other reproduction is not to be “used for any purpose other than private study,

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scholarship, or research.” If a user makes a request for, or later uses a photocopy or reproduction for purposes in excess of “fair use”, the user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Reviewed 01/15/2014

DRAFT

Lancaster Veterans Memorial Library Circulation Policy

Registration

All borrowers must be registered with a valid patron card to borrow library materials. Library cards are free to Lancaster residents, Lancaster ISD teachers, and Lancaster city employees. Resident cards will be renewed every 3 years.

To obtain a library card, patrons must fill out an application form and provide:

1. A valid Texas photo ID, such as a driver's license (or a state issued ID) AND
2. Proof of current address.

If the address on your photo ID is not current, you may obtain a temporary card that will be valid for 90 days. To obtain a temporary card, you must provide documentation with your name, address, and a recent date. This documentation may be one of the following: electric bill, water bill, gas bill, rent or mortgage statement or other documents approved by the Director, Library manager or Assistant Manager. In extenuating circumstances, the library may, at the discretion of the Director, Library Manger or Assistant Manager, extend the privilege for another 90 days.

The temporary card may be upgraded to a regular resident card with an expiration date of three years from the original date of issue by following steps 1 & 2 above.

If proof of Lancaster residency cannot be produced, you may obtain an out-of-city library card for a fee of \$20.00 per year with valid photo ID. Minors must be accompanied by a parent or legal guardian. Library card applications will not be accepted in the last 30 minutes prior to closing. Computer usage for non-Lancaster residents who do not wish to obtain an out-of-city card is available for \$3.00 per 60 minute session, with proof of identity.

Minors, children under the age of 18, applying for a library card must be accompanied by a parent or legal guardian. Parental signature is required when applying for a child's card. However, parental signature is not required for children who are renewing cards. Anyone age 18 or older must provide their own photo ID and their own proof of address.

Materials cannot be checked out until a library card is issued. Two pieces of material may be borrowed on a new application, one of which may be a video on an adult card. On subsequent visits to the library, patrons may check out an unlimited number of books, magazines and audiocassettes. Adult patrons may check out up to five videos or DVDs per family.

Borrowing Privileges

Patrons are responsible for all items checked out on their library card. Patrons must present their library card at the circulation desk to check out materials. Patrons are responsible for notifying the library of any name change, physical address, email address, phone number or lost library card.

Lost or forgotten cards

The replacement fee for a lost card is \$1.00.

Checkout limitsFirst time checkouts

Adults – 2 items, either two books, or one book and one movie

Children – 2 books

After the initial two items have been returned

Adults – unlimited books and magazines, 5 movies, 15 audiobooks

Children – unlimited books and magazines, 15 audiobooks (minors may not check out movies)

TexShare card patrons

Limit of 5 books at a time, and maximum of one audiobook. No movies.

Fines & Fees

Fines and fees are set annually and published in the City of Lancaster fee schedule

Overdue Fines

Books, magazines	\$0.20 per day
audiobooks, audio tapes, CD's	\$0.20 per day
Videos and DVD's	\$1.00 per day
Interlibrary loan	\$0.20 per day

Other Fees

Lost or damaged material	Replacement cost + \$5.00 fee (non-refundable)
Non-resident library card	\$20.00 per year
Replacement of lost card	\$1.00
Interlibrary loan service - postage	\$3.00

Holds

Holds may be placed by patrons on items currently checked out to another patron either in person, over the phone or online. Patrons will be notified by telephone when the materials are available. The material will be held at the checkout desk for five days.

Damaged materials

If materials are determined to be damaged, the patron will be charged the replacement cost and a processing fee.

Reviewed 1/16/2014



1700 Veterans Memorial Parkway • Lancaster, TX 75134
972.218.3706 (Office) • 972.218.3648 (FAX)
www.lancaster-tx.com

MEETING

LANCASTER VETERANS MEMORIAL (LVM) LIBRARY ADVISORY BOARD

Thursday, March 20, 2014, 6:30 p.m.

MINUTES

The Members of the Lancaster Veterans Memorial Library Advisory Board met Thursday, March 20, 2014 at 6:30 p.m. at the Lancaster Veterans Memorial Library Conference Room, 1600 Veterans Memorial Parkway, Lancaster, TX 75134.

Lancaster Veterans Memorial Library Advisory Board Members Present: Sarah Barber, Angela McCowan, Laurie Telfair, Tiffany Devereaux, and Marcus Slaughter

Lancaster Veterans Memorial Library Advisory Board Members Absent: Bettie Jones, and Valencia Stimage

City Staff Present: Parks, Recreation, and Library Services Director Sean Johnson, Library Manager Jerry McCulley, and Administrative Secretary Cynthia D. Williams

I. Call to Order

Chair Marcus Slaughter called the meeting to order at 6:34 pm.

II. Consider Approval of Minutes (February 20, 2014)

Ms. Telfair made a motion seconded by Ms. Barber to approve the February 20, 2014 minutes as written. The motion carried unanimously.

III. LVM Library Policies Discussion (Parks, Recreation, and Library Services Director Sean Johnson)

Mr. Johnson reported that Staff wanted to take this time to go into detail on some of the policies that we need to have accepted by City Council if this Board chooses to do so. He stated that what the Board has before them tonight are a few items that Staff upon Board recommendation, would need to present to Council for consideration and acceptance.

The Board along with Staff reviewed each of the following Policies and Procedures which were in "Draft" form one by one: Wireless Access and Use Policy, Meeting Room Policy, Internet and Electronic Resource Policy

and Guidelines, Interlibrary Loan Policy, and Circulation Policy. Mr. Johnson asked the Board to review each Policy, make comments, and take action.

There was further questions/discussion.

Ms. McCowan made a motion seconded by Ms. Telfair to approve the recommended changes to the above mentioned policies and procedures to City Council. The motion carried unanimously.

IV. Annual Report Update (Parks, Recreation, and Library Services Director Sean Johnson)

Mr. Johnson reported that annually Staff completes an Annual Report for our State Library which is a requirement for Library accreditation. Having being an accredited library, we are available to receive, e-rate, BTOP, and impact grants that come by way of the State and federal funds. With that, comes a Maintenance of Efforts which states we have to spend so much per capita each year to be an accredited library. Staff has a process of capturing operation and maintenance cost and indirect cost to meet our Maintenance of Efforts.

There was further questions/discussion.

V. Set Agenda and Date of Next Meeting

Next Meeting: Thursday, May 15, 2014, 6:30pm
Update on Annual Report
Geek the Library Campaign Update

VI. Adjournment

Ms. McCowan made a motion seconded by Ms. Telfair to adjourn. All present approved and the meeting adjourned at 7:19pm.

ATTEST:

Cynthia D. Williams, Administrative Secretary

APPROVED:

Marcus Slaughter, Chair
Lancaster Veterans Memorial Library Advisory Board

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 3

Consider a resolution approving a contract with First Southwest Asset Management, Inc. for the calculation of arbitrage rebate compliance; pursuant to the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986, as amended.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Financially Sound City Government

Background

First Southwest Asset Management provides professional services related to Arbitrage Compliance to numerous cities across the state. This contract provides for the performance of services in relation to the City of Lancaster's tax exempt debt obligations.

Considerations

- **Operational** – Administration and monitoring of the agreement are within the capabilities of staff.
- **Legal** – The City Attorney has reviewed and approved all documents.
- **Financial** – The cost of the services is \$12,000.
- **Public Information** – The item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. The City Council may approve the resolution
2. The City Council may deny the resolution.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
 - Contract
-

Submitted by:
Cynthia A. Pearson, Director of Finance

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CONTRACT WITH FIRST SOUTHWEST ASSET MANAGEMENT, INC., PROVIDING FOR THE CALCULATION OF ARBITRAGE REBATE COMPLIANCE; PURSUANT TO THE PROVISIONS OF SECTION 148(f)(2) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS Exhibit "A"; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster ("City") has issued certain tax-exempt obligations, and needs to determine to what extent, if any, it will be required to rebate certain investment earnings from the proceeds of those obligations to the United States of America, and wishes to enter into contract with First Southwest Asset Management for performance of those services; and

WHEREAS, execution of said contract requires the approval of the Lancaster City Council;

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

SECTION 1. That the City Council of the City of Lancaster, Texas hereby consents to the Arbitrage Rebate Compliance Contract under the terms and conditions set forth in the Contract, which is attached hereto and incorporated herein as Exhibit "A".

SECTION 2. That the City Council hereby authorizes the City Manager to execute said Contract.

SECTION 3. This resolution shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this 28th day of April, 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

**AGREEMENT FOR
ARBITRAGE REBATE COMPLIANCE SERVICES
BETWEEN
CITY OF LANCASTER, TEXAS
(Hereinafter Referred to as the "Issuer")
AND
FIRST SOUTHWEST ASSET MANAGEMENT, INC.
(Hereinafter Referred to as "First Southwest")**

It is understood and agreed that the Issuer, in connection with the sale and delivery of certain bonds, notes, certificates, or other tax-exempt obligations (the "*Obligations*"), will have the need to determine to what extent, if any, it will be required to rebate certain investment earnings (the amount of such rebate being referred to herein as the "*Arbitrage Amount*") from the proceeds of the Obligations to the United States of America pursuant to the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986, as amended (the "*Code*"). For purposes of this Agreement, the term "Arbitrage Amount" includes payments made under the election to pay penalty in lieu of rebate for a qualified construction issue under Section 148(f)(4) of the Code.

We are pleased to submit the following proposal for consideration; and if the proposal is accepted by the Issuer, it shall become the agreement (the "*Agreement*") between the Issuer and First Southwest effective at the date of its acceptance as provided for herein below.

1. This Agreement shall apply to all issues of tax-exempt Obligations delivered subsequent to the effective date of the rebate requirements under the Code, except for (i) issues which qualify for exceptions to the rebate requirements in accordance with Section 148 of the Code and related Treasury regulations, or (ii) issues excluded by the Issuer in writing in accordance with the further provisions hereof, (iii) new issues effected in a fashion whereby First Southwest is unaware of the existence of such issue, (iv) issues in which, for reasons outside the control of First Southwest, First Southwest is unable to procure the necessary information required to perform such services.

Covenants of First Southwest

2. We agree to provide our professional services in determining the Arbitrage Amount with regard to the Obligations. The Issuer will assume and pay the fee of First Southwest as such fee is set out in Appendix A attached hereto. First Southwest shall not be responsible for any extraordinary expenses incurred on behalf of Issuer in connection with providing such professional services, including any costs incident to litigation, mandamus action, test case or other similar legal actions.
3. We agree to perform the following duties in connection with providing arbitrage rebate compliance services:
 - a. To cooperate fully with the Issuer in reviewing the schedule of investments made by the Issuer with (i) proceeds from the Obligations, and (ii) proceeds of other funds of the Issuer which, under Treasury Regulations Section 1.148, or any successor regulations thereto, are subject to the rebate requirements of the Code;
 - b. To perform, or cause to be performed, consistent with the Code and the regulations promulgated thereunder, calculations to determine the Arbitrage Amount under Section 148(f)(2) of the Code; and
 - c. To provide a report to the Issuer specifying the Arbitrage Amount based upon the investment schedule, the calculations of bond yield and investment yield, and other information deemed relevant by First Southwest. In undertaking to provide the services set forth in paragraph 2 and this paragraph 3, First Southwest does not assume any responsibility for any record retention requirements which the Issuer may have under the Code or other applicable laws, it being understood that the Issuer shall remain responsible for compliance with any such record retention requirements.

Covenants of the Issuer

4. In connection with the performance of the aforesaid duties, the Issuer agrees to the following:
 - a. The fees due to First Southwest in providing arbitrage rebate compliance services shall be calculated in accordance with Appendix A attached hereto. The fees will be payable upon delivery of the report prepared by First Southwest for each issue of Obligations during the term of this Agreement.
 - b. The Issuer will provide First Southwest all information regarding the issuance of the Obligations and the investment of the proceeds therefrom, and any other information necessary in connection with calculating the Arbitrage Amount. First Southwest will rely on the information supplied by the Issuer without inquiry, it being understood that First Southwest will not conduct an audit or take any other steps to verify the accuracy or authenticity of the information provided by the Issuer.
 - c. The Issuer will notify First Southwest in writing of the retirement, prior to the scheduled maturity, of any Obligations included under the scope of this Agreement within 30 days of such retirement. This notification is required to provide sufficient time to comply with Treasury Regulations Section 1.148-3(g) which requires final payment of any Arbitrage Amount within 60 days of the final retirement of the Obligations. In the event the Issuer fails to notify First Southwest in a timely manner as provided hereinabove, First Southwest shall have no further obligation or responsibility to provide any services under this Agreement with respect to such retired Obligations.
5. In providing the services set forth in this Agreement, it is agreed that First Southwest shall not incur any liability for any error of judgment made in good faith by a responsible officer or officers thereof and, except to the limited extent set forth in this paragraph, shall not incur any liability for any other errors or omissions, unless it shall be proved that such error or omission was a result of the gross negligence or willful misconduct of said officer or officers. In the event a payment is assessed by the Internal Revenue Service due to an error by First Southwest, the Issuer will be responsible for paying the correct Arbitrage Amount and First Southwest's liability shall not exceed the amount of any penalty or interest imposed on the Arbitrage Amount as a result of such error.

Obligations Issued Subsequent to Initial Contract

6. The services contracted for under this Agreement will automatically extend to any additional Obligations (including financing lease obligations) issued during the term of this Agreement, if such Obligations are subject to the rebate requirements under Section 148(f)(2) of the Code. In connection with the issuance of additional Obligations, the Issuer agrees to the following:
 - a. The Issuer will notify or cause the notification, in writing, to First Southwest of any tax-exempt financing (including financing lease obligations) issued by the Issuer during any calendar year of this Agreement, and will provide First Southwest with such information regarding such Obligations as First Southwest may request in connection with its performance of the arbitrage rebate services contracted for hereunder. If such notice is not provided to First Southwest with regard to a particular issue, First Southwest shall have no obligation to provide any services hereunder with respect to such issue.
 - b. At the option of the Issuer, any additional Obligations to be issued subsequent to the execution of this Agreement may be excluded from the services provided for herein. In order to exclude an issue, the Issuer must notify First Southwest in writing of their intent to exclude any specific Obligations from the scope of this Agreement, which exclusion shall be permanent for the full life of the Obligations; and after receipt of such notice, First Southwest shall have no obligation to provide any services under this Agreement with respect to such excluded Obligations.

Effective Date of Agreement

7. This Agreement shall become effective at the date of acceptance by the Issuer as set out herein below and remain in effect thereafter for a period of five (5) years from the date of acceptance, provided, however, that this Agreement may be terminated with or without cause by the Issuer or First Southwest upon thirty (30) days prior written notice to the other party. In the event of such termination, it is understood and agreed that only the amounts due to First Southwest for services provided and extraordinary expenses incurred to and including the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement. In the event this Agreement is terminated prior to the completion of its stated term, all records provided to First Southwest with respect to the investment of monies by the Issuer shall be returned to the Issuer as soon as practicable following written request by Issuer. In addition, the parties hereto agree that, upon termination of this Agreement, First Southwest shall have no continuing obligation to the Issuer regarding any arbitrage rebate related services contemplated herein, regardless of whether such services have previously been undertaken, completed or performed.

Acceptance of Agreement

8. This Agreement is submitted in duplicate originals. When accepted by the Issuer in accordance with the terms hereof, it, together with Appendix A attached hereto, will constitute the entire Agreement between the Issuer and First Southwest for the purposes and the consideration herein specified. In order for this Agreement to become effective, it must be accepted by the Issuer within sixty (60) days of the date appearing below the signature of First Southwest’s authorized representative hereon. After the expiration of such 60-day period, acceptance by the Issuer shall only become effective upon delivery of written acknowledgement and reaffirmation by First Southwest that the terms and conditions set forth in this Agreement remain acceptable to First Southwest.

Governing Law

9. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflicts of laws.

Acceptance will be indicated on both copies and the return of one executed copy to First Southwest.

Respectfully submitted,

FIRST SOUTHWEST ASSET MANAGEMENT, INC.

By _____

Hill A. Feinberg, Chairman & Chief Executive Officer

Date _____

ISSUER’S ACCEPTANCE CLAUSE

The above and foregoing is hereby in all things accepted and approved by

_____, on this the _____ day of _____, ____.

By _____

Authorized Representative

Title _____

Printed Name _____

APPENDIX A - FEES

The Obligations to be covered initially under this contract include all issues of tax-exempt obligations delivered subsequent to the effective dates of the rebate requirements, under the Code, except as set forth in Section I of the Agreement.

The fee for any Obligations under this contract shall only be payable if a computation is required under Section 148(f)(2) of the Code. In the event that any of the Obligations fall within an exclusion to the computation requirement as defined by Section 148 of the Code or related regulations and no calculations were required by First Southwest to make that determination, no fee will be charged for such issue. For example, certain obligations are excluded from the rebate computation requirement if the proceeds are spent within specific time periods. In the event a particular issue of Obligations fulfills the exclusion requirements of the Code or related regulations, the specified fee will be waived by First Southwest if no calculations were required to make the determination.

First Southwest’s fee for arbitrage rebate services is based upon a fixed annual fee per issue. The annual fee is charged based upon the number of years that proceeds exist subject to rebate from the delivery date of the issue to the computation date.

First Southwest’s fees are payable upon delivery of the report. The first report will be made following one year from the date of delivery of the Obligations and on each computation date thereafter during the term of the Agreement. The fees for computations of the Arbitrage Amount which encompass more, or less, than one Computation Year shall be prorated to reflect the longer, or shorter, period of work performed during that period.

The fee for each of the Obligations included in this contract shall be based on the table below.

Additionally, due to significant time saving efficiencies realized when investment information is submitted in an electronic format, First Southwest passes the savings to its clients by offering a 10% reduction in its fees if information is provided in a spreadsheet or electronic text file format.

Description	Annual Fee
ANNUAL FEE	\$1,200
<i>COMPREHENSIVE ARBITRAGE COMPLIANCE SERVICES INCLUDE:</i>	
<ul style="list-style-type: none"> • Commingled Funds Analysis & Calculations • Spending Exception Analysis & Calculations • Yield Restriction Analysis & Calculations (for yield restricted Project Funds, Reserve Funds, Escrow Funds, etc.) • Parity Reserve Fund Allocations • Transferred Proceeds Calculations • Universal Cap Calculations • Debt Service Fund Calculations (including earnings test when required) • Preparation of all Required IRS Paperwork for Making a Rebate Payment / Yield Reduction Payment • Retention of Records Provided for Arbitrage Computations • IRS Audit Assistance • Delivery of Rebate Calculations Each Year That Meets the Timing Requirements of the Audit Schedule • On-Site Meetings, as Appropriate, to Discuss Calculation Results / Subsequent Planning Items 	INCLUDED
<i>OTHER SERVICES AVAILABLE:</i>	
IRS Refund Request – Update calculation, prepare refund request package, and assist issuer as necessary in responding to subsequent IRS Information Requests	\$750
Commercial Paper Calculations – Per allocated issue	\$1,600

Note: The fees for all calculations through September 30, 2014 will not exceed \$12,000.00. \$4,800.00 would be billed for the 2002, 2003, and 2007 series IRS calculations. The remaining \$7,200.00 would be billed at the completion of the September 30, 2014 calculation updates. After September 30, 2014, the fees will be based upon the above per calculation per year fee.

EXPLANATION OF TERMS:

- a. **Computation Year:** A “Computation Year” represents a one year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one “computation year,” the annual fee is multiplied by the number of computation years contained in the calculation being performed. If a calculation includes a portion of a computation year, i.e., if the calculation includes 1 ½ computation years, then the base fee will be multiplied by 1.5.
- b. **Electronic Data Submission:** The data should be provided electronically in MS Excel or ASCII text file (comma delimited text preferred) with the date, description, dollar amount, and an activity code (if not in debit and credit format) on the same line in the file.
- c. **Variable/Floating Rate Bond Issues:** Special services are also required to perform the arbitrage rebate calculations for variable rate bonds. A bond is a variable rate bond if the interest rate paid on the bond is dependent upon an index which is subject to changes subsequent to the issuance of the bonds. The computational requirements of a variable rate issue are more complex than those of a fixed rate issue and, accordingly, require significantly more time to calculate. The additional complexity is primarily related to the computation of the bond yield, which must be calculated on a “bond year” basis. Additionally, the regulations provide certain flexibility in computing the bond yield and determining the arbitrage amount over the first IRS reporting period; consequently, increased calculations are required to determine which bond yield calculation produces the lowest arbitrage amount.
- d. **Commingled Fund Allocations:** By definition, a commingled fund is one that contains either proceeds of more than one bond issue or proceeds of a bond issue and non-bond proceeds (i.e., revenues) of \$25,000 or more. The arbitrage regulations, while permitting the commingling of funds, require that the proceeds of the bond issue(s) be “carved out” for purposes of determining the arbitrage amount. Additionally, interest earnings must be allocated to the portion of the commingled fund that represents proceeds of the issue(s) in question. Permitted “safe-harbor” methods (that is, methods that are outlined in the arbitrage regulations and, accordingly, cannot be questioned by the IRS under audit), exist for allocating expenditures and interest earnings to issues in a commingled fund. First Southwest uses one of the applicable safe-harbor methods when doing these calculations.
- e. **Debt Service Reserve Funds:** The authorizing documents for many revenue bond issues require that a separate fund be established (the “Reserve Fund”) into which either bond proceeds or revenues are deposited in an amount equal to some designated level, such as average annual debt service on all parity bonds. This Reserve Fund is established for the benefit of the bondholders as additional security for payment on the debt. In most cases, the balance in the Reserve Fund remains stable throughout the life of the bond issue. Reserve Funds, whether funded with bond proceeds or revenues, must be included in all rebate calculations.
- f. **Debt Service Fund Calculations:** Issuers are required under the regulations to analyze the invested balances in their debt service funds annually to determine whether the fund depletes as required during the year and is, therefore, “bona fide” (i.e., potentially exempt from rebate in that year). It is not uncommon for surplus balances to develop in the debt service fund that services an issuer’s tax supported debt, particularly due to timing differences of when the funds were due to be collected versus when the funds were actually collected. First Southwest performs this formal analysis of the debt service fund and, should it be determined that a surplus balance exists in the fund during a given year, allocates the surplus balance among the various issues serviced by the fund in a manner that is acceptable under IRS review.
- g. **Earnings Test for Debt Service Funds:** Certain types of bond issues require an additional level of analysis for the debt service fund, even if the fund depletes as required under the regulations and is “bona fide.” For short-term, fixed rate issues, private activity issues, and variable rate issues, the regulations require that an “earnings test” be performed on a bona fide debt service fund to determine if the interest earnings reached \$100,000 during the year. In cases where the earnings reach or exceed the \$100,000 threshold, the entire fund (not just the surplus or residual portion) is subject to rebate.

- h. **Transferred Proceeds Calculations:** When a bond issue is refinanced (refunded) by another issue, special services relating to “transferred proceeds” calculations may need to be performed. Under the regulations, when proceeds of a refunding issue are used to retire principal of a prior issue, a pro-rata portion of the unspent proceeds of the prior issue becomes subject to rebate and/or yield restriction as transferred proceeds of the refunding issue. The refunding issue essentially “adopts” the unspent proceeds of the prior issue for purposes of the arbitrage calculations. These calculations are required under the regulations to ensure that issuers continue to exercise due diligence to complete the project(s) for which the prior bonds were issued.
- i. **Universal Cap:** Current regulations provide an overall limitation on the amount of gross proceeds allocable to an issue. Simply stated, the value of investments allocated to an issue cannot exceed the value of all outstanding bonds of the issue. For example, this situation can occur if an issuer encounters significant construction delays or enters into litigation with a contractor. It may take months or even years to resolve the problems and begin or resume spending the bond proceeds; however, during this time the debt service payments are still being paid, including any scheduled principal payments. Thus, it’s possible for the value of the investments purchased with bond proceeds to exceed the value of the bonds outstanding. In such cases, a “de-allocation” of proceeds may be required to comply with the limitation rules outlined in the regulations.
- j. **Yield Restriction Analysis/Yield Reduction Computations:** The IRS strongly encourages issuers to spend the proceeds of each bond issue as quickly as possible to achieve the governmental purpose for which the bonds were issued. Certain types of proceeds can qualify for a “temporary period,” during which time the proceeds may be invested at a yield higher than the yield on the bonds without jeopardizing the tax-exempt status of the issue. The most common temporary period is the three-year temporary period for capital project proceeds. After the end of the temporary period, the proceeds must be yield restricted or the issuer must remit the appropriate yield reduction payment when due. First Southwest performs a comprehensive yield restriction analysis when appropriate for all issues having proceeds remaining at the end of the applicable temporary period and also calculates the amount of the yield reduction payment due to the IRS.

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 4

Consider an amendment to the FY12-13 Annual Budget for a transfer from LRDC to reimburse for previous debt payments made by the General Fund.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Financially Sound City Government

Background

Annually, the General Fund has transferred to the Lancaster Recreational Development Corporation monies utilized to pay their share of the general obligation debt. This amendment provides for the reimbursement of a portion of those funds.

Considerations

- **Operational** – Implementation of the budget amendment is within the capabilities of staff.
- **Legal** – The legal level of budget control is the Fund level.
- **Financial** – The total amendment is \$947,238.
- **Public Information** – This amendment is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

The City Council may approve or deny the budget amendment.

Recommendation

Staff recommends approval of the budget amendment as presented

Attachments

- Ordinance

Submitted by:

Cynthia A. Pearson, Director of Finance

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE FISCAL YEAR 2012-2013 OFFICIAL BUDGET, ADOPTED BY ORDINANCE 2012-09-28, TO REIMBURSE GENERAL FUND IN THE AMOUNT OF NINE HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED AND THIRTY-EIGHT DOLLARS (\$947,238); BY MAKING TRANSFERS FROM THE LANCASTER RECREATIONAL DEVELOPMENT FUND; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster, Texas is a home rule city under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Lancaster previously approved Ordinance Number 2012-09-28, officially adopting the Official Budget of the City for Fiscal Year 2012-2013; and

WHEREAS, the City Council finds that it is necessary and in the best interest of the City for the Lancaster Recreational Development Fund to reimburse General Fund for a portion of the monies previously transferred to them for payment of the debt service obligation.

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

SECTION 1. That the 2012-2013 Official Budget, adopted by Ordinance 2012-09-28, is hereby amended by increasing the General Fund by nine hundred forty seven thousand two hundred and thirty-eight dollars (\$947,238) by transferring from the Lancaster Recreational Development Corporation.

SECTION 2. That except as amended hereby, or as heretofore amended, the provisions of Ordinance No. 2012-09-28 shall remain in full force and effect.

SECTION 3. 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 decided to be invalid, illegal or unconstitutional.

SECTION 4. That this ordinance shall take effect immediately from and after its passage as the law in such cases provides, and the City Secretary is directed to furnish a copy of this amendment to the budget to the County Clerk of Dallas County as required by Chapter 102 of the TEXAS LOCAL GOVERNMENT CODE.

PASSED, APPROVED and ADOPTED at the Regular Meeting of the Lancaster City Council on the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 5

Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 660 at the Lancaster Regional Airport.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 660-112 (1,624 sq.ft.) for a tenant, Mr. Keith Foree.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement was reviewed and approved by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this large size T-hangar is \$290.00 per month.
- **Public Information** - There are no public information requirements.

Options/Alternatives

1. Council may approve the resolution as presented.
2. Council may reject the resolution.

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit "A" Lease Agreement
-

Submitted by:
Mark Divita, Airport Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR NON-COMMERCIAL LEASE FROM BUILDING 660 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the lease listed in Exhibit "A";

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

SECTION 1. That the City T-hangar lease agreement attached hereto and incorporated herein by reference as Exhibit "A" having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

SECTION 2. That the City Manager is hereby authorized to execute said lease agreement.

SECTION 3. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER REGIONAL AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this **28th** day of **April**, 2014, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and **Keith Foree**, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite **660-112**, located at the Airport, and consisting of approximately **1,624** square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the **28th** day of **April** 2014. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$290.00** per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 10 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

c. In the event the payment is received after the 10th day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

II.

STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

2. **Disabled Aircraft:** LESSEE shall store only the following aircraft on the lease premises under any of the following conditions:

- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.

4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.

5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.

6. **Services Furnished by LESSOR:** LESSOR shall furnish adequate utility power service for night time lighting. LESSOR assumes no liability to LESSEE for failures or interruptions of any and all services or utilities furnished to LESSEE when due to causes beyond the control of LESSOR, including but not limited to floods, fire, and power failures.

7. **Care of Premises by LESSEE:** LESSEE shall keep the leased premises in a safe, neat, clean, and presentable condition at all times and shall promptly repair any damage caused by LESSEE, its officers, agents, employees, or invitees.

8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

e. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

f. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand

any deficiency that may arise by reason of such re-letting.

g. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to LESSEE. Notwithstanding any such re-letting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

11. **Assignment, Encumbrances, and Subletting:** LESSEE shall not assign, pledge, or otherwise encumber this lease or the premises covered thereby. LESSEE shall not sublet the premises or any part thereof, or furnish to any other person any ground space, office space, aircraft storage space, or other right or privilege in or on any Airport property without the prior written consent of the LESSOR's Airport Manager. Said consent shall not be unreasonably withheld. The rental rate paid by the SUBLESSEE shall not be greater than that paid by LESSEE to LESSOR.

It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

12. **Surrender of Premises:** Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage cause by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary

wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

13. **Rules and Regulations:** LESSEE shall faithfully observe and comply with all rules and regulations of LESSOR, including any rules and regulations promulgated by LESSOR'S Airport Manager, not inconsistent with the provisions of this lease. Such rules and regulations shall be communicated by LESSOR'S Airport Manager, in writing, to LESSEE and necessary for the reputation, safety, care, or appearance of the building, or preservation of good order, the operation or maintenance of equipment, or the comfort or safety of other Airport tenants.

14. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 9.

15. **Signs:** LESSEE shall not erect, install, or place any signs on or about the leased premises without the prior written consent and approval of the LESSOR'S Airport Manager.

16. **Ingress and Egress:** LESSEE, its invitees, visitors, and suppliers of materials and services shall have full and free rights of ingress and egress to and from the premises and to and from other Airport buildings subject to rules and regulations of LESSOR and LESSOR'S Airport Manager.

17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster
Lancaster Regional Airport
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

LESSEE: Keith Foree

PO Box 128

Fate, TX 75132

214-763-3033

rrbejcek@aol.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

IN WITNESS HEREOF, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Sorangel O. Arenas, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 6

Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 680 at the Lancaster Regional Airport.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 680-109 (956 sqft) for a tenant, Mr. Richard Tallini.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement was reviewed and approved by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this small size T-hangar is \$180.00 per month.
- **Public Information** - There are no public information requirements.

Options/Alternatives

1. Council may approve the resolution as presented.
2. Council may reject the resolution.

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit "A" Lease Agreement
-

Submitted by:

Mark Divita, Airport Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR NON-COMMERCIAL LEASE FROM BUILDING 680 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the lease listed in Exhibit "A";

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

SECTION 1. That the City T-hangar lease agreement attached hereto and incorporated herein by reference as Exhibit "A" having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

SECTION 2. That the City Manager is hereby authorized to execute said lease agreement.

SECTION 3. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER REGIONAL AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this **28th** day of **April**, 2014, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and **Richard Tallini**, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite **680-109**, located at the Airport, and consisting of approximately **956** square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the **28th** day of **April** 2014. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$180.00** per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 10 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

c. In the event the payment is received after the 10th day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

II.

STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

2. **Disabled Aircraft:** LESSEE shall store only the following aircraft on the lease premises under any of the following conditions:

- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.

4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.

5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.

6. **Services Furnished by LESSOR:** LESSOR shall furnish adequate utility power service for night time lighting. LESSOR assumes no liability to LESSEE for failures or interruptions of any and all services or utilities furnished to LESSEE when due to causes beyond the control of LESSOR, including but not limited to floods, fire, and power failures.

7. **Care of Premises by LESSEE:** LESSEE shall keep the leased premises in a safe, neat, clean, and presentable condition at all times and shall promptly repair any damage caused by LESSEE, its officers, agents, employees, or invitees.

8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

e. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

f. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand

any deficiency that may arise by reason of such re-letting.

g. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to LESSEE. Notwithstanding any such re-letting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

11. **Assignment, Encumbrances, and Subletting:** LESSEE shall not assign, pledge, or otherwise encumber this lease or the premises covered thereby. LESSEE shall not sublet the premises or any part thereof, or furnish to any other person any ground space, office space, aircraft storage space, or other right or privilege in or on any Airport property without the prior written consent of the LESSOR's Airport Manager. Said consent shall not be unreasonably withheld. The rental rate paid by the SUBLESSEE shall not be greater than that paid by LESSEE to LESSOR.

It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

12. **Surrender of Premises:** Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage cause by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary

wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

13. **Rules and Regulations:** LESSEE shall faithfully observe and comply with all rules and regulations of LESSOR, including any rules and regulations promulgated by LESSOR'S Airport Manager, not inconsistent with the provisions of this lease. Such rules and regulations shall be communicated by LESSOR'S Airport Manager, in writing, to LESSEE and necessary for the reputation, safety, care, or appearance of the building, or preservation of good order, the operation or maintenance of equipment, or the comfort or safety of other Airport tenants.

14. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 9.

15. **Signs:** LESSEE shall not erect, install, or place any signs on or about the leased premises without the prior written consent and approval of the LESSOR'S Airport Manager.

16. **Ingress and Egress:** LESSEE, its invitees, visitors, and suppliers of materials and services shall have full and free rights of ingress and egress to and from the premises and to and from other Airport buildings subject to rules and regulations of LESSOR and LESSOR'S Airport Manager.

17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster
Lancaster Regional Airport
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

LESSEE: Richard Tallini

1415 Main St, #1004

Dallas, TX 75202

609-314-6840

ricktallini@gmail.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

IN WITNESS HEREOF, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Sorangel O. Arenas, City Secretary

Consider a resolution approving the City of Lancaster Public Improvement District Policy.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Civic Engagement

Background

At the April 21, 2014 work session, City Council received a presentation regarding the proposed City of Lancaster Public Improvement District Policy. A Public Improvement District (PID) is a defined geographical area established to provide specific improvements and maintenance within the area financed by an assessment levied on each property within the area. Assessments are based on the appraised values of real property within the area and/or the cost of improvement(s). The City is authorized to create PIDs under Chapter 372 of the Texas Local Government Code.

The City Council stated objective to “support Lancaster neighborhoods in the creation of Public Improvement Districts (PIDs) throughout the city to strengthen and connect neighborhoods” has been realized with the implementation of 8 existing PIDs in the City.

City Council requested staff to establish a committee to develop a Policy to provide uniformity to the manner in which each PID operated. The committee held several meetings to provide input and feedback regarding a Policy. Staff researched best practices and existing operations to create the proposed policy.

Considerations

- **Operational** – There are self-managed and agency managed PIDs within the Community. The policy addresses the following areas which are applicable to all PIDs within the City of Lancaster.
 - Establishment and Operations
 - Maintenance and Improvements
 - Advisory Board Elections
 - Advisory Board Responsibilities
 - Advisory Board Training
 - Expense/Invoice Process and Monthly Reporting
 - Expansion
 - City Staff Responsibilities

- **Legal** – The proposed policy has been reviewed and approved by the City Attorney.
- **Financial** – The City does not assess an administrative fee to the Public Improvement Districts. Revenues are received from the County annually and are maintained in separate designated funds for each PID. Expenses/Invoices are processed in accordance with this proposed policy.
- **Public Information** – This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Attachments

- Resolution
 - PID Policy
 - PID Brochure
-

Submitted by:

Opal Mauldin Robertson, City Manager

Rona Stringfellow, Assistant City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE 2014 PUBLIC IMPROVEMENT DISTRICT POLICY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Council of the City of Lancaster support Lancaster neighborhoods in the creation of Public Improvement Districts throughout the city to strengthen and connect neighborhoods; and

WHEREAS, Texas Local Government Code, Chapter 372 allows for the creation of Public Improvement Districts; and

WHEREAS, the City of Lancaster recognizes that Public Improvement Districts are valuable tools which neighborhoods use to enhance the maintenance of public property beyond the level normally provided by the City;

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

SECTION 1. The City Council hereby adopts the Public Improvement District policy, which is attached hereto and incorporated herein as Exhibit A.

SECTION 2. That all resolutions of the City of Lancaster heretofore adopted which are in conflict with the provisions of this resolution be, and the same are hereby repealed, and all resolutions of the City of Lancaster not in conflict with the provisions hereof shall remain in full force and effect.

SECTION 3. If any article, paragraph, subdivision, clause or provision of this resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 4. That this Resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney
(REH/cdb)

CITY OF LANCASTER PUBLIC IMPROVEMENT DISTRICT POLICY

PURPOSE

A Public Improvement District (PID) is a tax assessment area established to provide for the maintenance and enhancement of public improvements and services in the area. Assessments are generally based on the appraised values of real property within the area and/or the cost of improvement(s). A PID can encompass and serve both residential and commercial property. Cities are authorized to create PID's under Chapter 372 of the Texas Local Government Code.

The City of Lancaster recognizes that PID's are valuable tools which neighborhoods use to enhance the maintenance of public property beyond the level normally provided by the City. It is the intent of the city to allow direct management control of PID operations by bodies consisting of PID property owners. However, PID bodies serve advisory functions, and all final decisions are made by the governing body of the PID, the City Council. Section 372.002 of the Texas Local Government Code, Exercise of Powers, states that "Powers granted under this subchapter may be exercised by a municipality or county in which the governing body of the municipality or county initiates or receives a petition requesting the establishment of a public improvement district. A petition must comply with the requirements of Section 372.005."

PID ESTABLISHMENT

The City Council must approve all petitions requesting establishment of public improvement districts. Land included in the PID must be contiguous.

A PID may be created at any time; however, to be assessed in October following PID creation, the required number of petition signatures must be turned in to the City by July 1st. Establishment shall be in accordance with Chapter 372 of Texas Local Government Code.

The key indicator that distinguishes an existing neighborhood or business district from a new development is whether the majority of lot ownership is held by the developer or by the residents. All PID's must comply with the details of the approved resolution that established the PID. Public Improvement Districts are prohibited from enforcing Homeowners Association Deed Restrictions. PID's are likewise prohibited from expenditures of public monies advertising or promoting a developer's sales.

Advisory Board Membership

PID Board members will comply with all laws, policies, and procedures set by:

- Chapter 372 of the Texas Local Government Code.
- The City of Lancaster
- The City of Lancaster Code of Ordinances
- The Texas Open Meetings Act
- The City of Lancaster Public Improvement District Policy
- The Bylaws of the Public Improvement District

If any Advisory Board member intentionally violates any of these laws, policies, or procedures, the City may remove the member from the Advisory Board and appoint a replacement.

Existing Neighborhood or Existing Business District

Individuals interested in establishing a PID should determine the support of their community and present a petition including a conceptual plan of improvements to the City Manager's Office which includes at least:

- Proposed district boundaries
- Estimated costs associated with the improvements and maintenance
- The general nature of the proposed improvements or maintenance program
- Consideration of future replacement of capital improvements, i.e. fences
- Classes of property which will be subject to or exempt from assessment and the proposed method of assessment
- A core committee of interested individuals (names, addresses and phone numbers) willing to serve as the initial PID Advisory Board
- That the persons signing the petition request or concur with the establishment of the PID

The City Manager's Office will coordinate with any neighborhood or organized group interested in establishing a PID.

After initial review, the city will determine whether sufficient support and documentation has been provided. If accepted, the city will then prepare the final application packet.

The final application packet must include an assessment plan apportioning the cost of the improvement plan to be assessed:

- An estimated assessment rate is applied to the expected appraised value of property to sufficiently fund a budget. The budget should provide adequate funds for the following:
 - Annual routine maintenance of improvements
 - Reserves to fund long term major maintenance and replacement of improvements
 - Associated out-of-pocket administrative costs
- The Advisory Board will recommend specific improvements, oversee the annual service plan and long-term plans, and manage related contracts and services.
- A Petition - The petition is sufficient if signed by:
 - Owners of taxable real property representing more than 50% of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and
 - Record owners of real property liable for assessment under the proposal who:
- Constitute more than 50% of all record owners of property that is liable for assessment under the proposal; or
- Own taxable real property that constitutes more than 50% of the area of all taxable real property that is liable for assessment under the proposal.

Maintenance and Improvements

PID assessments may only be used to serve, maintain or improve public property and may not be used to benefit or enhance private property. Listed below are services and improvements which Lancaster PID's may provide or maintain. Other improvements allowed by the statute will be reviewed and considered individually by the city.

- Landscaping and irrigation
- Right-of-way, median, and other open space maintenance, such as residential detention ponds
- Perimeter fencing
- Entry features
- Fountains
- Distinctive lighting
- Distinctive signs
- Art or decorations
- Sidewalks
- Parks
- Special supplemental services for improvement and promotion of the district including public safety, security, business recruitment, development, recreation, and cultural enhancement
- Payment of necessary expenses incurred in the establishment, administration, and operation of the district

Listed below are services and improvements which Lancaster PID's may not provide or maintain:

- Construction, improvement, or maintenance of privately owned facilities or land including that owned by a Home Owners' Association (HOA)
- Purely social activities
- Travel expenses
- Advertisement or promotion intended to sell property or newly constructed private property within PID area

PID ADVISORY BOARD ELECTIONS

After receiving a petition that complies with this policy and Texas Local Government Code, section 372.005, the Lancaster City Council will appoint an Advisory Body with the responsibility of developing and recommending an improvement plan to the City Council.

- Council will appoint an Advisory Board according to the nomination plan developed by the PID residents in their initial petition.
- New Advisory Board members shall be nominated annually, either by themselves or another property owner within the PID.
- Selection and ratification by City Council will be moved to September of each year, with members taking their seats on October 1 – the start of a new fiscal year.
- Board Composition – Each PID must have at least three (3) members, but not more than seven (7), and shall satisfy the requirements of Section 372.008 (b) Local Government.
- Board Terms – members will serve staggered 1 year terms¹. Odd numbered seats will be elected in odd numbered years and even numbered seats will be elected in even years.

¹ Specified seats will serve an initial two year term when a new PID is established.

- Currently established PID's will begin staggering seats in the current year by selecting three of its members to hold their seats for an additional year.
- Board Election – Board elections must occur annually. Please see this policy for specific board election procedures that must be followed by all established PID's.
- All Election meetings must be published publically (ex: neighborhood signs, city's website, etc.).

Board Responsibilities and Planning

The Advisory Board will hold work session from time to time to discuss maintenance and improvement projects. Work sessions will be open to the public. Notification to the community of the time, place, and topics to be considered will be provided via the city website and area signage. Work sessions are not to be considered public meetings or hearings and general comments from persons not serving on the Advisory Board are not solicited.

Meetings

Each PID is required to hold one homeowner meeting each year that is open to the public comment. The annual meeting will finalize projects for the five year service plan, district tax assessment rates, and the upcoming budget. The PID will provide notice of the meeting to all PID property owners. The advisory board may schedule other meetings as required and will notify the City of Lancaster of their time and location at least 72 hours in advance. The City will assist in publication of notice and posted agenda regarding such meetings. The PID advisory board will request the meetings be posted on the City website; in addition to this, the PID advisory board may advertise the meetings. The public is permitted and encouraged to speak at the annual meeting. The Board will provide forms to record the names and addresses of persons speaking and to record support for or opposition to the Advisory Board's plans. Minutes of the public meeting with such comments will be attached to the approved proposal sent to the city council. Final recommendations regarding the five year plan and tax rate are the responsibility of the Advisory Board.

Operations

Improvements and maintenance authorized by PIDs are supplemental to the general operations of the city and shall be paid entirely from district assessments.

Contracts

The PID advisory board shall pursue annual contracts for maintenance, repair, and construction services where possible.

Contracts will be negotiated by the PID advisory board.
Contracts will be approved by the PID advisory board

The PID advisory board must ensure that its contractors provide appropriate liability and other insurance.

Insurance

The PID advisory boards will acquire general liability, automobile liability, and errors and omissions insurance, such coverage to be paid for from PID assessments. Property insurance for valuable assets is optional and to be paid for from PID assessments.

The PID advisory board should consult its insurance advisor /agent on the appropriate levels of insurance. PIDs may obtain insurance through the Texas Municipal League (TML) at government rates or purchase it from a private carrier. If PIDs decide to pursue insurance coverage via the Texas Municipal League, it must do so independently of the City of Lancaster. The City of Lancaster will not allow umbrella coverage under its TML policy for any PIDs.

Security - If any PID hires additional security, the security service must provide proof of adequate insurance, or the PID may hire off-duty police officers. If any PID hires additional security, the Police Department will be notified prior to engaging the security service.

New Development

All new residential developments shall have either a PID or an HOA (or both). State law requires notification to homebuyers before purchasing the property acknowledging that they will pay PID assessments with their property taxes. Developers interested in establishing a PID should present a petition including a conceptual plan of improvements to the city Planning Director before construction begins. The PID petition must be submitted for City Council approval before the final plat is filed. The plan must include at least:

- Proposed district boundaries
- Estimated costs associated with the improvements and maintenance
- The general nature of the proposed improvements or maintenance program
- Consideration of future replacement of capital improvements, i.e. fences
- Classes of property which will be subject to or exempt from assessment and the proposed method of assessment
- The proposed apportionment of costs between the PID and the municipality as a whole (the transfer)
- How the PID will be managed
- An advisory board to develop and recommend an improvement plan to the governing body of the municipality at least half of whose members shall be resident of the development.
- That the persons signing the petition request or concur with the establishment of the PID
- A plan for turning the PID over to the residents when the developer has finished the residential development. The plan should include an approximate date for giving control to the residents and the specific triggers for giving control to an advisory body, such as 50% of development. The developer will be responsible for: scheduling a meeting with residents; informing the residents of the purpose, date, time, and location of the meeting; attending this meeting with the residents; explaining how the PID works; helping residents

to nominate an advisory body; and turning over to the new advisory body a detailed accounting of prior expenditures.

A city task force consisting of representatives from the following departments will review the initial submittal: Planning, City Attorney, Finance, and Parks and Recreation. The City Manager's Office will take the lead in the review process and will handle administrative tasks.

If the developer intends an HOA for early phases of development, to be phased out and replaced by PID structures later, the plan must propose detailed benchmarks for the transition timeline, occupancy rates, and property /ownership transfers.

After initial review, the city task force will determine whether sufficient support and documentation has been provided. If accepted, the PID committee will then prepare the final application packet in a format provided by the city. If city reviewers find that sufficient information is available, the applicants must be provided a detailed critique allowing amendments and corrections to the application to be made in a timely fashion.

The final application packet must include an assessment plan apportioning the cost of the improvement plan to be assessed; including:

- If applicable, a description of the division of PID and HOA responsibilities and the relationship between PID fees and HOA dues.
- An estimated assessment rate to be applied to the expected appraised value of property in order to sufficiently fund a budget. The budget should provide adequate funds for the following:
 - Annual routine maintenance of improvements
 - Reserves to fund long term major maintenance and replacement of improvements
 - Associated city out-of-pocket administrative costs
- Description of procedures for the nomination of an Advisory Body. The Advisory Body will recommend specific improvements, oversee the annual budget and long-term plans, and manage related contracts and services.
- A petition. The petition must be signed by the landowners and approved by the city council before construction begins. The petition is sufficient if signed by:
 - Owners of taxable real property representing more than 50% of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and
 - Record owners of real property liable for assessment under the proposal who:
 - Constitute more than 50% of all record owners of property that is liable for assessment under the proposal; or
 - Own taxable real property that constitutes more than 50% of the area of all taxable real property that is liable for assessment under the proposal.
- Other documentation requested by the city.

PID ADVISORY BOARD RESPONSIBILITIES

- **Management** - Management of a PID is the responsibility of the PID advisory board. If the district fails to appoint an advisory board but wishes to continue the PID assessments and

maintenance, the city will maintain the district through a contract with a property management company with all expenses to be paid from PID assessments.

- **Bylaws** - Each PID must adopt bylaws. Specifically, the board may recommend:
 - The number of members, with a minimum of 3 and a maximum of 7 composition must comply with 372.008 Local Government Code
 - The number of regular meetings, with a minimum of one (1) per year.

The City staff will assist in the developing, and review each PID's bylaws before they are adopted. The City Council must vote to approve the bylaws to give them force. The PID advisory boards may amend the bylaws as necessary, and all amendments must be approved by the City Council.

PID Relationship to City after PID is created

- **Training** - The City will hold an annual training after the election of new PID officers. The training will be designed to educate new and existing PID officers of the laws, policies, and practices that govern PID's in the City of Lancaster.
- **Budgeting** - The City will give a crash course in PID budgeting at the annual training and again prior to budget development.
- **Fees and permits** – PID's are required to pay the same fees and obtain the same permits as would be required of any person or persons of the city. PID's will pay for water utilities through the interdepartmental billing system.

PID's must pay for:

- Meter fees
- Tap fees
- Collection cost for the PID assessment

Assessment Rate Increase

If a PID requests an assessment rate increase following annual review of its service plan, the PID must hold at least one additional homeowner meeting within the month before the assessment hearing to announce the increase, provide budget information, and answer questions. The PID may hold additional homeowner meetings as needed. No PID is allowed to increase its assessment rate more than 25% in one year budget year.

PID Relationship to City after PID is created

- **Fees and Permits - Developers forming PID's** for new developments are required to pay any fees and obtain the permits which may be necessary for the development, including but not limited to:
 - Meter fees
 - Tap fees (if the work is done by the city)
 - Security deposits
 - Impact fees
 - Inspection fees
 - Permits as required
 - Other City fees as required

- **Monthly Invoice/Expense Submission and Reimbursement Process** - All PIDs will be required to submit invoices monthly to the city for review and reimbursement and/or payment through PID accounts for annual service plan expenditures. Should expenses exceed the funds allocated within the annual service plan, the PID shall adhere to the City of Lancaster Budget Adjustment Process to obtain Council approval for changes.

Expansion of a PID

- Expansion of an established PID requires that a written petition of the owners of the property to be added to the PID be submitted to the established PID advisory body, which shall form the petition to City Council for consideration. For an expansion, there is no minimum number of parcels, and land annexed into the PID must be contiguous to the existing PID. The City Council will not unilaterally take action without first conducting a fiscal impact analysis and obtaining PID boards' input. If the subject property is contiguous to an existing PID and neither area has outstanding debt, it will be annexed into the existing PID after consideration and approval by the City Council.

The petition shall include:

- Formal request to be annexed into PID including petition of owner of property to be added to PIDs (meeting Section 372.005 of state statute) if more than a single owner.
- Fully completed exhibit which contains the name of each parcel owner, the parcel legal description (subdivision name, lot, block, etc.) and the tax account number for each parcel.
- Description of property including boundaries, name of subdivision or property, boundary map, and site plan.
- Description and scaled site plan of proposed improvements including landscape plan, landscape irrigation plan, signage, etc.

If the expansion is a new development, the petition shall include:

- Letter of commitment that developer/property owner shall maintain improvements for a period of two years after annexation into improvement district.
- Commitment that developer/property owner shall pay any costs associated with annexation.

- **Fees and Permits - New developments joining existing PID's** are required to pay any necessary fees and permits, including but not limited:
 - Meter fees
 - Tap fees (if the work is done by the City)
 - Security deposits
 - Impact fees
 - Inspection fees
 - Permits as required
 - Other City fees as required

PID STAKEHOLDER GROUPS AND RESPONSIBILITIES

PID stakeholder groups include

- City Council
- City staff

- PID advisory boards
- PID property owners
- PID contractors (only during initial construction and development phases; of less than 50% owner occupancy)

City Council Responsibilities

PID boards serve advisory functions, and all final decisions are made by the governing body of the PID. The City Council approves the annual 5-year service plan, and assessment rate and roll.

City and City Staff Responsibilities

- **Collections** - Dallas County will collect current and delinquent PID assessments. Current collection costs will be reimbursed from PID assessments. In the case of a PID dissolution, PID assessments will continue until any and all debt obligations of the PID are paid in full.
- **Public Notices** - The city will coordinate annual PID roll review and distribution of public notices and communications for the annual public hearing to adopt the assessment roll and assessment rate, and service plan and to appoint the advisory board.
- **Expenditures** - The city will review PID expenditures and process payments.
- **Reporting** - The city will account for each PID's assets, revenues, and expenses separately and reports will be provided to the PID advisory boards regularly. PID records are open to the public.
- **Contracts** - The PID advisory board shall pursue annual contracts for maintenance, repair, and construction services where possible.
 - The PID advisory board will negotiate contracts.
 - Contracts will be approved by the PID advisory board

The PID advisory board must ensure that its contractors provide appropriate liability and other insurance. Day-to-day responsibilities may be provided by contract management paid for from PID assessments.

- **Support** - The city will provide support to the PID boards as needed and will orient new PID advisory board members to the role and responsibilities of the PID as needed, and during the annual PID Officer training.

PID Policy Updates

- The PID Policy Committee will consider any proposed revisions to the PID policy.
- PID advisory boards will then be notified of the proposed revisions.
- The PID Policy Committee will consider advisory boards' comments.
- The City Council will conduct a hearing to approve the policy.

- The Policy Committee will establish “a review and revision process” that considers and, if necessary, updates this policy at least once annually.

CITY LIABILITY

The PIDs and PID advisory board, performing the tasks of the PID that are authorized or mandated by the City, are authorized by the City to perform those tasks, and to the extent possible, are afforded the appropriate rights and protections of other City volunteers if they act strictly in accordance with city policies and procedures. PID advisory board members must obtain the advice of experts.

A PID proposing to install any sign or structure in a median must have City Council approval **before any costs are incurred**, and the following must be agreed to by the PID as a condition of approval by City Council:

- The PID will assume responsibility for third party liability for any and all claims or suits for damage to any persons or property, including that property purchased, installed, operated, and maintained by the PID, arising out of or in connection with, directly or indirectly, the construction, maintenance, occupancy, use, existence or location of said uses granted hereunder, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants employees, contractors, subcontractors, licensees, or invitees of the PID. The PID maintains rights, at the option of the PID, to repair, replace, or to remove, any property installed, operated, and maintained by the PID. The PID will assume responsibility for any and all claims or suits for personal injury, including death, to any and all persons, of whatsoever kind or character, arising out of or in connection with, directly or indirectly, the construction, maintenance, occupancy, use, existence or location of said uses granted hereunder, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants employees, contractors, subcontractors, licensees or invitees of the PID. The PID will assume responsibility for any and all injury or property damage arising out of or in connection with any and all acts or omissions of the PID, its officers, agents, servants, employees, contractors, subcontractors, licensees, invitees, or trespassers.

I have read and understand this policy.

Signature

Date

4. The City Council will hold a public hearing on the advisability of establishing the district.

5. The City Council may authorize the improvement district by adopting a resolution in accordance with its findings as to the advisability of the district.

How Long does the Resolution process take?

In general, the establishment process can take from three months to one year depending upon the timing of the submittals for review, the thoroughness of the information, and the cooperation of the petitioners.

How does a PID function after establishment?

The PID advisory board is responsible for the preparation of a 5 year service plan that is presented to the city. The service plan must also define the annual indebtedness and the projected costs for improvements. This service plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements.

The yearly assessments are based on the annual budget. The City Council must hold a public hearing each year prior to the adoption of the service plan, the assessment rate, and approval of the assessment roll.



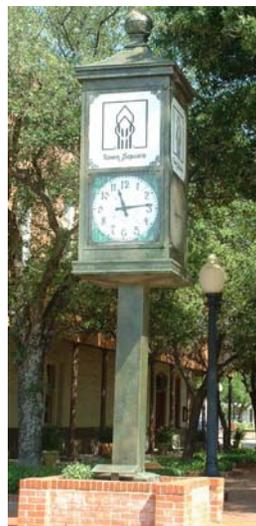
The PID Advisory Board is then directly responsible for managing the improvements outlined in their petition. The board can hire contractors, maintenance personnel or purchase materials necessary to develop and /or maintain their improvements. The level of quality of the improvements rests with the PID Board and is managed based on the assessment rate adopted annually.

What are Public Improvement Districts doing?

Currently approved PID's are performing landscape improvements and maintenance functions along rights-a-way, landscape irrigation service, maintenance of common property decorative fencing, sign maintenance, funding decorative street lighting, and park and playground maintenance service within their defined areas.

Other Questions?

Please contact the City of Lancaster at (972) 218-1300 or email communityrelations@lancaster-tx.com for additional information.



City of Lancaster
211 N. Henry St.
Lancaster, TX 75146
www.lancaster-tx.com
972-218-1300

*P*ublic

*I*mprovement

*D*istrict



What is a Public Improvement District (PID) and how can it be of assistance to residential communities and developers?

What is a Public Improvement District?

A PID is a defined geographical area established to provide specific types of improvements or maintenance within the area which are financed by assessment against the property owners within the area.

Chapter 372 of the Texas Local Government Code authorizes the creation of PIDs by cities.

What Improvements can be provided in a Public Improvement District (PID)?

A PID may include:

- Landscaping and irrigation;
- erecting foundation, distinctive lighting, and signs;
- constructing or improving perimeter fencing;
- constructing or improving side walks;
- acquiring and installing pieces of art or decorations;
- acquiring, constructing, or improving entry features;
- establishing or improving parks; (Owned and maintained by the PID/ HOA)
- acquiring, by purchase or otherwise, Real property in connection with an authorized improvement;
- using special supplemental services for improving and promoting the district, including service relating to advertising, promotion, public safety, security, development, recreation, and cultural enhancement; and
- paying expenses incurred in establishing, administering, and operating the district. (e.g. insurance, management)

What is the benefit of a Public Improvement District?

A PID allows for improvements and a higher degree of maintenance within the PID area which presumable enhances the property values.

With the establishment of an advisory body, the property owners within the PID have control over the types of improvements, level of maintenance, and amount of assessments to be levied against the property owners.

Assessments are collected by the city's tax collecting agent and are deposited into a specific PID fund. Revenue collection is simple since a homeowner's association does not have to perform fee collection. This ensures a dependable revenue source for the PID. In most instances, mortgage companies pay PID assessments at the same time that ad valorem taxes are paid, as the assessment is included on the tax statement.

What are the steps required to establish a Public Improvement District?

Any property owner group, developer, homeowner's association, etc., can initiate the PID establishment process. A petition for the establishment of a PID must be submitted to the city and include the following:

- the general nature of the proposed improvement;
- the estimated cost of the improvement;
- the boundaries of assessable property;
- the property assessment cost
- whether the management of the district is to be by the management company, or a partnership between the community and the private sector;
- that the persons signing the petition request or concur with the establishment of the district ; and

- that an advisory body (PID Board) be established to develop and recommend an improvement plan to the City Council

The petition must be signed by:

- owners of taxable real property representing more than 50% of the appraised property within the proposed PID; and
- more than 50% of the property owners

City staff is available to assist with this process for existing homeowners association.

What happens next?

Homeowners Association authorized Board of Directors submits documentation requesting assistance with PID establishment.

1.Homeowners Association authorized Board of Directors submits documentation requesting assistance with PID establishment.

2. The petition is submitted to the City Secretary for filing. The city staff will review the petition to determine compliance with the state statutes.

3. The municipality may appoint an advisory body with the responsibility for developing and recommending a district improvement plan to the City Council. The composition of the advisory body should include record owners of real property within the district who are liable for assessments under the proposal. This is usually the Homeowners Association Board of Directors.

LANCASTER CITY COUNCIL

Agenda Communication

February 24, 2014

Item 8

Consider a resolution authorizing Dallas County to resell 3315 Sherwood Avenue, 2425 Verona Road, 820 Bayport and 1111 North Lancaster Hutchins Road, tax foreclosed properties, by public or private sale, to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Tax Code.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Financially Sound City Government

Background

Following a judgment of the District Court of Dallas County, parcels of land were offered for sale at public auction for foreclosure of the tax liens, securing payment of delinquent property taxes, accrued penalty and interest, and court costs. These parcels are in the City of Lancaster. These parcels did not receive sufficient bid as set by law and were struck off to City of Lancaster as follows:

- 3315 Sherwood Ave;
- 2425 Verona Road;
- 820 Bayport;
- 1111 North Lancaster Hutchins Road

Dallas County is preparing for the resale the properties, as tax foreclosed properties, which is now in the ownership of the taxing authorities. Pursuant to Section 34.05(a) of the Tax Code, Dallas County is requesting the City of Lancaster's consent to sell said property to the highest qualified purchaser, by either public or private sale.

The sale of said properties will bring them back onto the City of Lancaster's tax roll, increasing the tax base and often recouping portions of delinquent taxes due as a result of judgments.

Considerations

- **Operational** - As trustee for the City of Lancaster, Dallas County will coordinate the public or private sale of the tax foreclosed properties.
- **Legal** – Dallas County handles all legal matters associated with the public or private sale process. The resolution authorizing the resell has been reviewed and approved as to form by the City Attorney.

- **Financial** – The judgment at the time of strike off was as follows:
 - 3315 Sherwood Ave; \$14,794.58
 - 2425 Verona Road; \$15,291.83
 - 820 Bayport; \$26,022.35
 - 1111 North Lancaster Hutchins Road; \$24,136.96

The City may recoup some of its back taxes, and the properties will be placed back on the tax rolls and we will begin to receive tax revenue. At this time, the City is receiving no tax revenue from these parcels. The City of Lancaster retains responsibility for the maintenance of all struck off properties until sold.

- **Public Information** – Dallas County is responsible for all applicable legal notices required under the Texas Property Code for the public sale of tax foreclosed properties. This item is being considered at a regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve the resolution as presented.
2. City Council may reject the resolution.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
- Tax Foreclosed Property Map

Submitted by:

Amber Dorsey, Community Relations Assistant
Opal Mauldin Robertson, City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING DALLAS COUNTY TO RESELL TAX FORECLOSED PROPERTIES BY PUBLIC OR PRIVATE SALE, TO THE HIGHEST QUALIFIED PURCHASER, AS PROVIDED BY SECTION 34.05 OF THE TEXAS PROPERTY TAX CODE.

WHEREAS, this matter was briefed to the Lancaster City Council (“City Council”) on April 28, 2014 wherein the City Council agreed to use this form of Resolution to provide the County of Dallas consent to sell specific properties to the highest qualified purchaser by public or private sale; and

WHEREAS, several parcels of land were offered for sale by the Sheriff of Dallas County, Texas, at public auction pursuant to a judgment of the District Court of Dallas County, Texas, for foreclosure of the tax liens securing payment of delinquent property taxes, accrued penalty and interest, and court costs; and

WHEREAS, those parcels of land which did not receive a sufficient bid as set by law were struck off to the County of Dallas, the City of Lancaster and Lancaster Independent School District (Taxing Authorities) pursuant to Section 34.01(j) of the Property Tax Code; and

WHEREAS, by this resolution, the County of Dallas, as Trustee for itself and the other Taxing Authorities is authorized to resell these struck off parcels of land, which did not receive a sufficient bid as set by law and to execute quitclaim deeds for said parcels conveying the right, title, and interest acquired or held by the City of Lancaster as a party to the judgment foreclosing tax liens, and

WHEREAS, the City of Lancaster desires to resell said parcel(s) in an expeditious manner pursuant to Section 34.05 of the Property Tax Code.

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

SECTION 1. The City does hereby provide specific authorization to the County of Dallas to act as Trustee to offer for sale by public or private sale the parcels of land shown in Exhibit “A,” attached hereto and made a part hereof and the Lancaster City Council does hereby consent to the sale of said parcels to the highest purchaser, even if the amount tendered is less than the market value of the land specified in the judgment of foreclosure or the total amount of the judgment against the property in compliance with Section 34.05(i) of the Texas Property Tax Code, or for an amount equal to or greater than its current market value as shown by the most recent certified appraisal role, if the sum of the amount of the judgment plus post-judgment taxes, penalties, and interest owing against the property exceeds the market value in compliance with Section 34.05(j) of the Texas Property Tax Code, and each taxing unit entitled to receive proceeds of the sale consents to the sale for that amount.

SECTION 2. This Resolution shall take effect immediately from and after its passage in accordance with the provisions of the law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster Tax Foreclosed Property Map

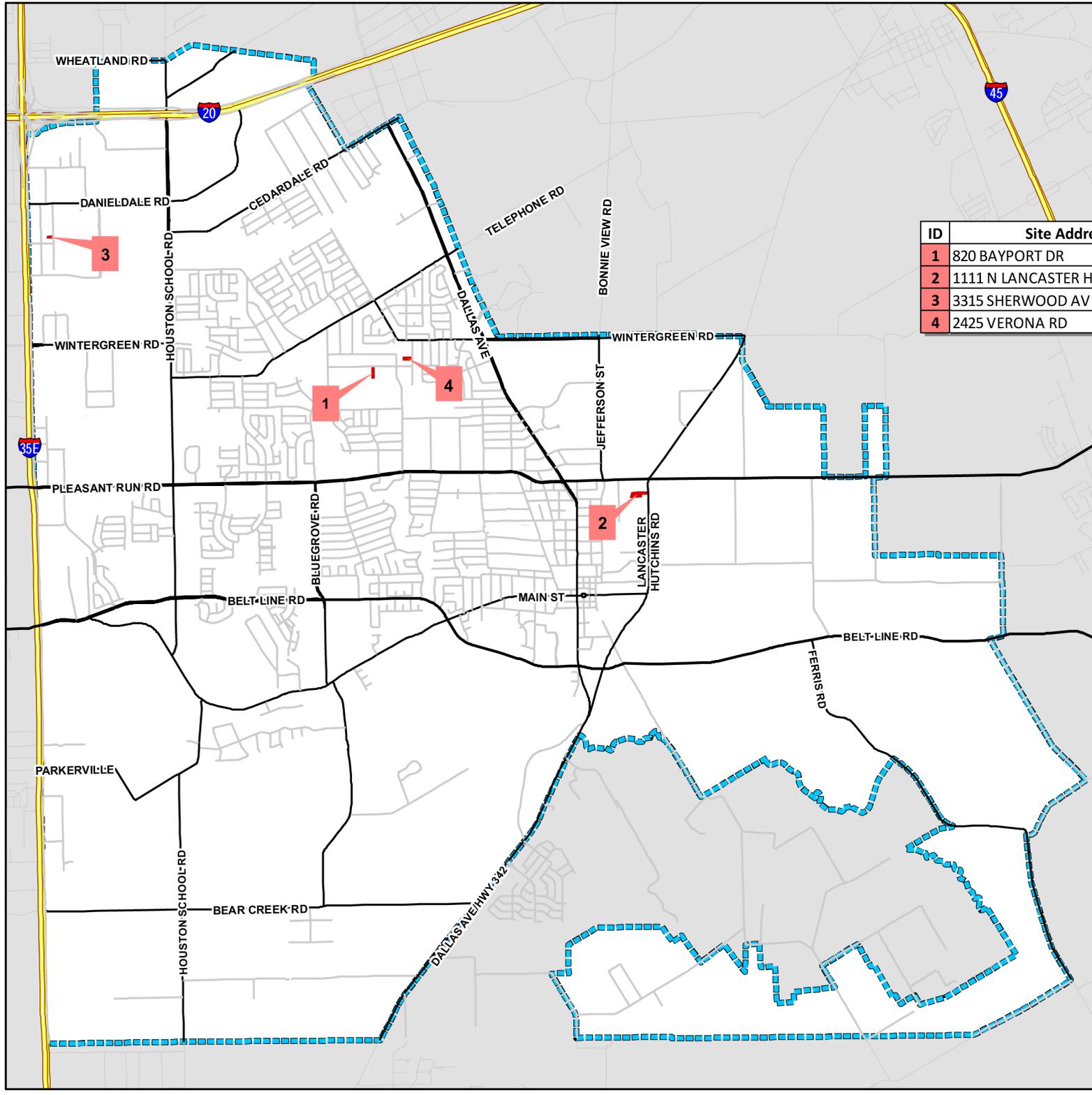
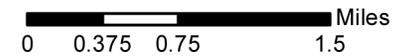
ID	Site Address	Zoning	Acres	Total Value
1	820 BAYPORT DR	SF-5	0.9453	\$ 33,980
2	1111 N LANCASTER HUTCHINS RD	SF-6	2.3389	\$ 35,660
3	3315 SHERWOOD AVE	CH	0.3714	\$ 8,000
4	2425 VERONA RD	SF-5	0.9253	\$ 20,000

Legend

-  City Limits
-  Foreclosed Property



85



LANCASTER CITY COUNCIL
Work Session Agenda Communication
April 28, 2014

Item 9

Consider a resolution accepting the 2013 Racial Profiling Analysis Annual Report.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Healthy, Safe & Vibrant Neighborhoods

Background

Effective September 1, 2001, the Texas Legislature enacted the Texas Racial Profiling Law (S.B. No. 1074). The Texas Code of Criminal Procedure requires that law enforcement agencies collect information relating to traffic stops in which a citation is issued and arrests resulting from those traffic stops. The Texas Code of Criminal Procedure further requires that law enforcement agencies compile and analyze this information and submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency.

Attached is the 2013 Lancaster Police Department Racial Profiling Analysis as prepared by representative experts from the University of North Texas. A printed copy will also be available at the work session. The Police Department had no sustained racial profiling complaints in 2013.

Beginning January 2011, the Texas Commission on Law Enforcement Standards and Education (TCOLE) posts a copy of each police department's racial profiling report on its website.

To further ensure transparency, the Lancaster Police Department will be adding information to the city website.

Considerations

- **Operational** - The Lancaster Police Department has adopted a detailed, written policy on racial profiling and currently collects the required information on racial profiling as required by State Law. The Lancaster Police Department contracted with the University of North Texas for the examination of contact data. We have also had our policy and report reviewed and will be making additional modifications to our report and policies for enhanced transparency and information available to the public. The amended report will be presented to City Council at a future meeting.

- **Legal** - The Texas Code of Criminal Procedure requires that the Lancaster Police Department 2013 Racial Profiling Analysis Report be submitted to the City of Lancaster governing body.
- **Financial** - There are no financial requirements.
- **Public Information** - This item is being considered at a regular meeting of the Lancaster City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Council may approve the resolution as presented
2. Council may deny the resolution and request reconsideration at a future meeting

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
 - Final Racial Profiling Report
-

Submitted by:

Cheryl Wilson, Chief of Police

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ACCEPTING THE 2013 RACIAL PROFILING ANALYSIS ANNUAL REPORT WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE AS EXHIBIT "A"; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with the Racial Profiling Law adopted September 1, 2001, the Lancaster Police Department contracted with the University of North Texas to prepare racial profiling data for the City Council; and

WHEREAS, the City Council has received said report; and

WHEREAS, the City Council desires to accept the 2013 Lancaster Police Department Racial Profiling Analysis Report;

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

SECTION 1. That the 2013 Lancaster Police Department Racial Profiling Analysis Annual Report, which is attached hereto and incorporated herein by reference as Exhibit "A", is hereby, in all things accepted by the City Council of the City of Lancaster, Texas.

SECTION 2. This resolution shall take effect immediately from and after its passage as the law in such cases provides, and it is accordingly so resolved.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 28th day of April, 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER POLICE DEPARTMENT

2013

RACIAL PROFILING ANALYSIS



PREPARED BY:

Eric J. Fritsch, Ph.D.
Chad R. Trulson, Ph.D.

Executive Summary

Article 2.132 (7) of the Texas Code of Criminal Procedure requires the annual reporting to the local governing body of data collected on the race or ethnicity of individuals stopped and issued citations or arrested for traffic violations and whether or not those individuals were searched. Since the law provides no clear instruction to a governing body on how to review such data, the Lancaster Police Department requested this analysis and review to assist the City Council in reviewing the data.

The analysis of material and data from the Lancaster Police Department revealed the following:

- **A COMPREHENSIVE REVIEW OF THE LANCASTER POLICE DEPARTMENT’S RACIAL PROFILING POLICY SHOWS THAT THE LANCASTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.**
- **A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE LANCASTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.**
- **A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS.**
- **ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF RACIAL PROFILING DATA.**
- **THE ANALYSIS OF STATISTICAL INFORMATION FROM LANCASTER POLICE DEPARTMENT REVEALS THAT THERE ARE NO METHODOLOGICALLY CONCLUSIVE INDICATIONS OF SYSTEMIC RACIAL PROFILING BY THE DEPARTMENT.**
- **THE LANCASTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE PROHIBITION OF RACIAL PROFILING.**
- **THE LANCASTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW CONCERNING THE REPORTING OF INFORMATION TO TCOLE.**

Introduction

This report details an analysis of the Lancaster Police Department's policies, training, and statistical information on racial profiling for the year 2013. This report has been prepared to specifically comply with Article 2.132 of the Texas Code of Criminal Procedure (CCP) regarding the compilation and analysis of racial profiling data. Specifically, the analysis will address Articles 2.131 – 2.135 of the CCP and make a determination of the level of compliance with those articles by the Lancaster Police Department in 2013. The full copies of the applicable laws and regulations pertaining to this report are contained in Appendix A.

This report is divided into six analytical sections: Lancaster Police Department's policy on racial profiling; Lancaster Police Department's training and education on racial profiling; Lancaster Police Department's complaint process and public education on racial profiling; analysis of statistical data on racial profiling; an analysis of Lancaster Police Department's compliance with applicable laws on racial profiling; and a final section which includes new data reporting requirements to TCOLE as required beginning in 2011.

For the purposes of this report and analysis, the following definition of racial profiling is used: racial profiling means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity (Texas CCP Article 3.05).

Lancaster Police Department Policy on Racial Profiling

A review of Lancaster Police Department's "Biased Based Profiling" policy 2.01.1 revealed that the department has adopted policies in compliance with Article 2.132 of the Texas CCP. There are seven specific requirements mandated by Article 2.132 that a law enforcement agency must address. All seven are clearly covered in Lancaster's racial profiling policy. Lancaster Police Department policies provide clear direction that any form of racial profiling is prohibited and that officers found engaging in inappropriate profiling may be disciplined up to and including termination. The policies also provide a very clear statement of the agency's philosophy regarding equal treatment of all persons regardless of race, ethnicity, or national origin. Appendix B lists the applicable statute and corresponding Lancaster Police Department regulation.

A COMPREHENSIVE REVIEW OF LANCASTER POLICE DEPARTMENT'S RACIAL PROFILING POLICY SHOWS THAT THE LANCASTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH ARTICLE 2.132 OF THE TEXAS CODE OF CRIMINAL PROCEDURE.

Lancaster Police Department Training and Education on Racial Profiling

Texas Occupation Code § 1701.253 and § 1701.402 require that curriculum be established and training certificates issued on racial profiling for all Texas peace officers. Documentation provided by Lancaster Police Department reveals that racial profiling training and certification is current for all officers in 2013. Racial profiling training is specifically covered in Lancaster's Racial Profiling Policy Part IV.

A REVIEW OF THE INFORMATION PRESENTED AND SUPPORTING DOCUMENTATION REVEALS THAT THE LANCASTER POLICE DEPARTMENT IS FULLY IN COMPLIANCE WITH TEXAS LAW ON TRAINING AND EDUCATION REGARDING RACIAL PROFILING.

Lancaster Police Department Complaint Process and Public Education on Racial Profiling

Article 2.132 §(b)3-4 of the Texas Code of Criminal Procedure requires that law enforcement agencies implement a complaint process on racial profiling and that the agency provide public education on the complaint process. Lancaster Police Department's Racial Profiling Policy Part V and VI cover this requirement.

A REVIEW OF THE DOCUMENTATION PRODUCED BY THE DEPARTMENT REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE RACIAL PROFILING COMPLAINT PROCESS.

Lancaster Police Department Statistical Data on Racial Profiling

Article 2.132(b) 6 requires that law enforcement agencies collect statistical information on traffic citations and detentions with specific information on the race of the person cited. In addition, information concerning searches of persons and whether or not the search was based on consent is also to be collected. Lancaster Police Department submitted statistical information on all citations in 2013 and accompanying information on the race of the person cited. Accompanying this data was the relevant information on searches.

ANALYSIS OF THE DATA REVEALS THAT THE DEPARTMENT IS FULLY IN COMPLIANCE WITH APPLICABLE TEXAS LAW ON THE COLLECTION OF RACIAL PROFILING DATA.

Analysis of the Data

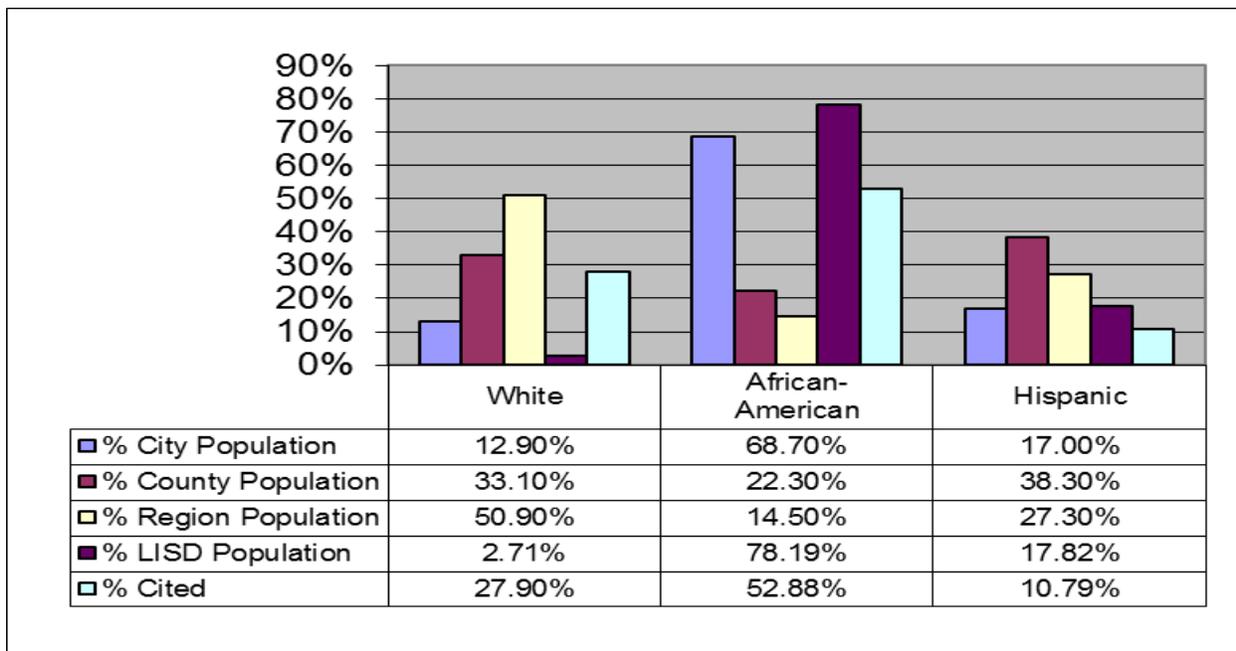
The first chart depicts the percentages of the number of motor vehicle stops that resulted in a citation or arrest by racial group.¹ White drivers constituted 27.90 percent of all drivers cited, whereas Whites constituted 12.90 percent of the city population, 33.10 percent of the county population, and 50.90 percent of the region population.² The chart shows that White drivers are cited at a rate that is higher than the percentage of Whites in the city, but lower than the county and regional population. White drivers were cited at a significantly higher rate than the percentage of White students in the Lancaster Independent School District (2.71 percent).³ African-American drivers constituted 52.88 percent of all drivers cited, whereas African-

¹ The total number of motor vehicle stops that resulted in an action (citation, arrest, or both) in 2013 equaled 4,849 and this number is utilized for calculations in this report. See the TCOLE forms at the end of this report.

²City, County, and Regional population figures are derived from the 2010 Census of the U.S. Census Bureau. "Regional" population figures are defined as the 16 county North Central Texas Council of Governments Region and is comprised of the following counties: Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

³ Data on the racial make-up of LISD were obtained from the Lancaster ISD 2013 State of Schools Report: <http://www.lancasterisd.org/ourpages/auto/2012/10/15/49615586/2013%20Lancaster%20ISD%20State%20of%20Schools%20Report.pdf>

Americans constituted 68.70 percent of the city population, 22.30 percent of the county population, and 14.50 percent of the region population. African-American drivers were cited at a rate that is lower than the percentage of African-Americans found in the city population. African-American citation rates were higher than the percentage of African-Americans in both the county and regional populations. However, African-Americans were cited at a rate that is lower than the percentage of African-American students in the LISD population (78.19 percent). Hispanic drivers constituted 10.79 percent of all drivers cited whereas Hispanics constituted 17 percent of the city population, 38.30 percent of the county population, and 27.30 percent of the regional population. Hispanic drivers were cited at a rate that is lower than the percentage of Hispanics in the city, county, regional, and LISD population.



As the chart shows, easy determinations regarding whether or not Lancaster police officers have “racially profiled” a given motorist are impossible given the nature of the data that has been collected and presented for this report. The law dictates that police agencies compile aggregate-level data regarding the *rates* at which agencies *collectively* stop motorists in terms of their race/ethnicity. These aggregated data are to be subsequently analyzed in order to determine whether or not *individual* officers are “racially profiling” motorists.

This methodological error, commonly referred to as the “ecological fallacy,” defines the dangers involved in making assertions about individual officer decisions based on the examination of aggregate incident level data. In short, one cannot “prove” that an *individual* officer has “racially profiled” any *individual* motorist based on the rate at which a department stops any given *group* of motorists.

Additional interpretation problems remain in regards to the specific measurement of “racial profiling” as defined by Texas state code. For example, officers are currently forced to make subjective determinations regarding an individual's race based on his or her personal observations because the Texas Department of Public Safety does not provide an objectively-based determination of an individual's race/ethnicity on the Texas driver's license. The absence

of any verifiable race/ethnicity data on the driver's license is especially troubling given the racial diversity within the city of Lancaster and the North Texas region as a whole, and the large numbers of citizens who are of Hispanic and/or mixed racial descent. The validity of any racial/ethnic disparities discovered in the aggregate level data becomes threatened in direct proportion to the number of subjective "guesses" officers are forced to make when trying to determine an individual's racial/ethnic background.⁴

In addition, the data collected for the current report does not allow for an analysis that separates (or disaggregates) the discretionary decisions of officers to stop a motorist from those that are largely non-discretionary. For example, non-discretionary stops of motorists based on the discovery of outstanding warrants should not be analyzed in terms of whether or not "profiling" has occurred simply because the officer who has stopped a motorist as a result of the discovery of an outstanding warrant does not *independently* make the decision to stop, but rather, is required to stop that individual regardless of any determination of race. An officer cannot be determined to be "racially profiling" when organizational rules and state codes compel them to stop regardless of an individual's race/ethnicity. Straightforward aggregate comparisons of stop rates ignore these realities, and fail to distinguish between discretionary and non-discretionary law enforcement actions. In the future, this validity issue could be lessened by the collection of data indicating the initial reason for the traffic stop, whether it be an observed traffic violation, other criminal activity, the existence of an outstanding warrant, or some other reason.

Finally, there has been considerable debate as to what the most appropriate population "base-rate" is in determining whether or not racial/ethnic disparities exist. As the current analysis shows in regards to the use of city, county, and regional population base-rates, the outcome of analyses designed to determine whether or not disparities exist is obviously dependent on which base-rate is used. In addition, population growth and the changing demographic character of the North Texas region and particularly the city of Lancaster has exacerbated problems associated with determining appropriate base-rates because measures derived exclusively from the U.S. Census can become quickly outdated since they are compiled only once per decade. For example, Lancaster has experienced a rate of growth of more than 40 percent since the 2000 Census. In years following the 2000 Census, it was unclear as to how this growth impacted the overall demographic character of the city. However, the 2010 Census has revealed that Lancaster has not only experienced large-scale growth over the course of the last several years, but has also become much more diverse as indicated by the demographic statistics presented in this report. Related, the determination of valid stop base-rates becomes multiplied if analyses fail to distinguish between residents and non-residents who are stopped, because the existence of significant proportions of non-resident stops will lead to invalid conclusions if racial/ethnic comparisons are made exclusively to resident population figures.

In short, the methodological problems outlined above point to the limited utility of using aggregate level comparisons of the rates at which different racial/ethnic groups are cited in order to determine whether or not racial profiling exists within a given jurisdiction.

The table below reports the summaries for the total number of persons cited and searched subsequent to being stopped by the Lancaster Police Department for traffic offenses. In addition,

⁴ In 2013, the race of the motorist was reported as "known" prior to the stop in 332 or roughly 7% of instances where a stopped motorist received a citation/arrest/both.

the table shows the number of stopped individuals who granted consent to search and those stopped drivers who were arrested at the conclusion of the stop. The chart shows that roughly 24 percent of all drivers searched were White (109/462 total searches), roughly 8 percent (39) were Hispanic, and 67 percent (310) were African-American. It is clear that the vast majority of the total number of drivers cited (including White, African-American, and Hispanic groups) were not searched, as roughly 90 percent of all drivers who were cited were not searched (462/4,849).

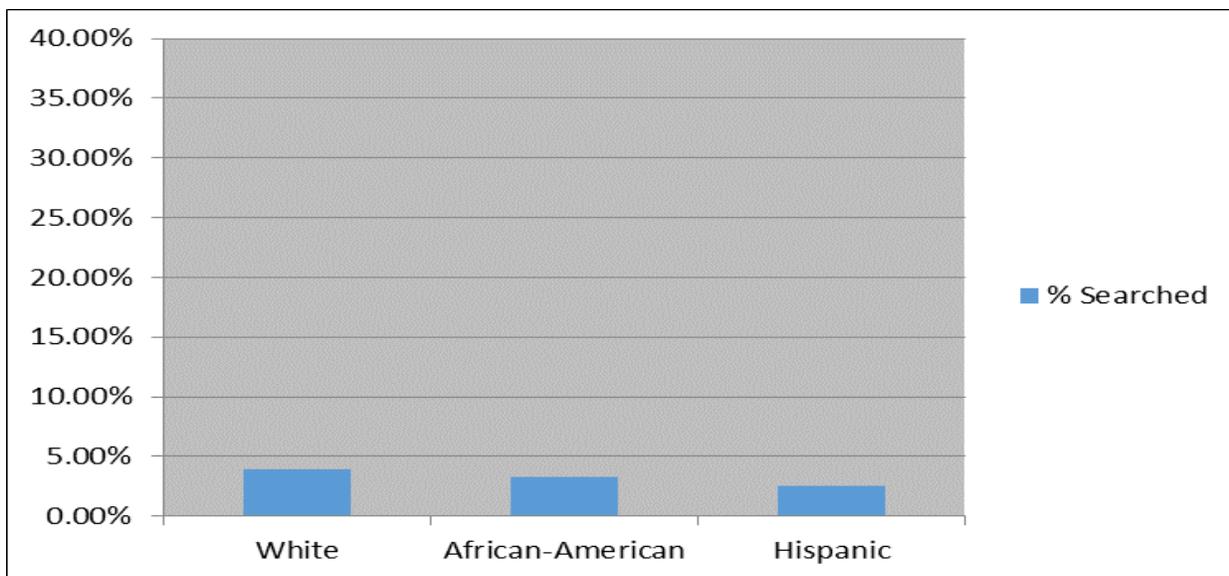
Action	White	Asian	Hispanic	African-American	Other	Total
Citations	1,353	68	523	2,564	341	4,849
Searches	109	3	39	310	1	462
Consent Searches	53	0	13	85	0	151
Arrests	100	3	36	298	0	437

Note: Searches include vehicle and driver searches only.

It should be noted that aggregate level comparisons regarding the rates at which drivers are searched by police are subject to some of the same methodological issues as those outlined above regarding analyses of aggregate level stop rates. Of particular concern is the absence of any analyses that separates discretionary searches from non-discretionary searches. For example, searches that are conducted incident to an arrest or as part of a vehicle tow inventory should not be included in analyses designed to examine whether or not racial profiling has occurred because these types of searches are non-discretionary in that the officer is compelled by law or departmental guidelines to conduct the search irrespective of the race of the stopped driver.

Less than 4 percent of the total number of citations resulted in a consensual search (151/4,849). So too, approximately 9 percent of drivers cited were subject to an arrest. Of those arrested, roughly 23 percent (100/437 total arrests) were White, roughly 70 percent (298) were African-American, and roughly 8 percent (36) were Hispanic. Additional data regarding the reason for the arrest are necessary in order to further examine whether or not these data reflect individual officer decisions to arrest or non-discretionary actions based primarily on legal and/or organizational requirements (e.g., the existence of outstanding arrest warrants or on view criminal activity).

The bar chart below presents the percentage of drivers that were searched by consent within each racial category. The chart indicates that drivers who were cited were rarely searched via consent across the racial categories. For example, roughly 4 percent of all White drivers who were cited were also consent searched, roughly 3 percent of all African-American drivers who were cited were consent searched, and approximately 2 percent of all Hispanic drivers who were cited were consent searched.



Analysis of Racial Profiling Compliance by Lancaster Police Department

The foregoing analysis shows that the Lancaster Police Department is fully in compliance with all relevant Texas laws concerning racial profiling, including the existence of a formal policy prohibiting racial profiling by its officers, officer training and educational programs, a formalized complaint process, and the collection of data in compliance with the law. Finally, internal records indicate that the department had no complaints in reference to racial profiling for the year 2013.

In addition to providing summary reports and analysis of the data collected by the Lancaster Police Department in 2013, this report also included an extensive presentation of some of the limitations involved in the level of data collection currently required by law and the methodological problems associated with analyzing such data for the Lancaster Police Department as well as police agencies across Texas. The Lancaster Police Department should continue its educational and training efforts within the department on racial profiling. Finally, the department should conduct periodic evaluations to assess patterns of officer decision-making on traffic stops. The final section of this report includes newly required TCOLE reporting information by Texas law enforcement organizations.

LPD TCOLE Reporting Forms



Partial Exemption Racial Profiling Reporting
(Tier 1)

Department Name Lancaster Police Department
Agency Number TX 0571700
Chief Administrator Name Cheryl Wilson
Reporting Name Cheryl Wilson
Contact Number 972-218-2710
E-mail Address CWilson@Lancaster-tx.com

Certification to Report 2.132 (Tier 1) – Partial Exemption

Policy Requirements (2.132(b) CCP):

Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
 - (A) the Commission on Law Enforcement Officer Standards and Education; and
 - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

These policies are in effect

Cheryl Wilson 1/6/2014
Chief Administrator Date



**Partial Exemption Racial Profiling Reporting
(Tier 1)**

Video and Audio Equipment Exemption

Partial Exemption Claimed by (2.135(a) CCP):



all cars regularly used for motor vehicle stops are equipped with video camera and transmitter-activated equipment and each motor stop is recorded and the recording of the stop is retained for at least 90 days after the stop.

OR



In accordance with 2.135(a)(2) the agency has requested and not received funds to install the recording equipment

I claim this exemption

Cheryl Wilson 1/6/2014
Chief Administrator Date

PARTIAL EXEMPTION RACIAL PROFILING REPORTING (TIER 1)

INSTRUCTIONS: Please fill out all boxes. If zero, use 0.

- 1. Total on lines 4, 11, 14, and 17 must be equal**
- 2. Total on line 20 must equal line 15**

AGENCY NAME: Lancaster Police Department

Number of motor vehicle stops (mark only 1 category per vehicle stop):

1. 4,087 Citation only
2. 437 Arrest only
3. 325 Both

4. 4,849 (Total of 1-3)

Race or Ethnicity (mark only 1 category per vehicle stop):

5. 2,564 African
6. 68 Asian
7. 1,353 Caucasian
8. 523 Hispanic
9. 1 Middle Eastern
10. 27 Native American
"313 unknown"

11. 4,849 (Total of 5-10, must be the same as #4)

Race or Ethnicity known prior to stop?

12. 332 Yes
13. 4,517 No

14. 4,849 (Total of 12-13, must be the same as #4 and #11)

Search conducted?

15. 462 Yes
16. 4,387 No

17. 4,849 (Total of 15-16, must be the same as #4, #11, and #14 above)

Was search consented?

18. 151 Yes
19. 311No

20. 462 (Total, must equal #15)



**Partial Exemption Racial Profiling Reporting
(Tier 1)**

Option to submit required data by utilizing agency report

You must submit your report in PDF format

Electronic Submission of data required by 2.132(b)(6) CCP

(6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

This report meets the above requirements

Cheryl Wilson 1/6/2014
Chief Administrator Date

Send entire documents electronically to this website

www.tcleose.state.tx.us

Appendix A

Racial Profiling Statutes and Laws

Art. 3.05. RACIAL PROFILING.

In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 2, eff. Sept. 1, 2001.

Art. 2.131. RACIAL PROFILING PROHIBITED.

A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING.

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
 - (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
 - (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
 - (4) provide public education relating to the agency's complaint process;
 - (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
 - (6) require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops, including information relating to:
 - (A) the race or ethnicity of the individual detained;
 - (B) whether a search was conducted and, if so, whether the individual detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
 - (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:
 - (A) the Commission on Law Enforcement Officer Standards and Education; and
 - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.
- (c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.
- (d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle

stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2011, 81st Leg., R.S., Ch. 1172, Sec. 25, eff. September 1, 2011.

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.

(a) In this article, "race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

- (2) the initial reason for the stop;
- (3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;
- (4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;
- (5) the reason for the search, including whether:
 - (A) any contraband or other evidence was in plain view;
 - (B) any probable cause or reasonable suspicion existed to perform the search; or
 - (C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;
- (6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;
- (7) the street address or approximate location of the stop; and
- (8) whether the officer issued a written warning or a citation as a result of the stop.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2011, 81st Leg., R.S., Ch. 1172, Sec. 26, eff. September 1, 2011.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article:

- (1) "Motor vehicle stop" has the meaning assigned by Article 2.132(a).
- (2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each law enforcement agency shall submit a report containing the incident-based data compiled during the

previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; and

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2011, 81st Leg., R.S., Ch. [1172](#), Sec. 27, eff. September 1, 2011.

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT.

(a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Amended by: Acts 2011, 81st Leg., R.S., Ch. 1172, Sec. 28, eff. September 1, 2011.

Art. 2.136. LIABILITY.

A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.138. RULES.

The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

Added by Acts 2001, 77th Leg., ch. 947, Sec. 1, eff. Sept. 1, 2001.

Art. 2.1385. CIVIL PENALTY.

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2011, 81st Leg., R.S., Ch. 1172, Sec. 29, eff. September 1, 2011.

Appendix B

Racial Profiling Laws and Corresponding Department Policies

Texas CCP Article	LANCASTER POLICE DEPARTMENT Racial Profiling Policy
2.132(b)1	Section 1
2.132(b)2	Section 1-2
2.132(b)3	Section 4
2.132(b)4	Section 4B
2.132(b)5	Section 4E
2.132(b)6	Section 4G
2.132(b)7	Section 4G(3)

Appendix C

Lancaster Police Department Racial Profiling Policy

LANCASTER, POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> April 4, 2014		<i>Amended Date</i> April 4, 2014		<i>Directive</i> 2.01.1	
<i>Subject</i> Biased Based Policing and Racial Profiling					
<i>Reference</i> Code of Criminal Procedure 2.131 – 2.135					
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i> 2.01.1 Biased Based Profiling		<i>Review Date</i> <i>Pages</i> 6	

This Operations Directive is for internal use only and does not enhance an officer’s civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this policy is to reaffirm the Lancaster Police Department’s commitment to unbiased policing in all of its encounters between officers and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictate of departmental policy and the law.

SECTION 2 POLICY

- A. It is the policy of the department to protect the constitutional rights of all persons. Allegations of racial profiling or discriminatory practices, real or perceived, are detrimental to the relationship between police and the communities they protect and serve because they strike at the basic foundation of public trust. This trust is essential to effective community-based policing. Racial profiling is considered misuse of valuable police resources; such improper methods violate the civil rights of members of the public and may lead to increased exposure to liability for the officer and the department. This department does not endorse, train, teach, support, or condone any type of bias, stereotyping, or racial profiling by its officers. While recognizing that most officers perform their duties in a professional, ethical, and impartial manner, this department is committed to identifying and eliminating any instances of racial profiling.
- B. It is the policy of this department to:
 - 1. Provide all people within this community fair and impartial police services consistent with constitutional and statutory mandates;
 - 2. Assure the highest standard of integrity and ethics among all our members;
 - 3. Respect the diversity and the lawful cultural practices of all people;
 - 4. Take positive steps to identify, prevent, and eliminate any instances of racial profiling by our members; and
 - 5. Continue our commitment to community based policing and problem solving, including vigorous, lawful and nondiscriminatory traffic enforcement that promotes public safety and strengthens public trust, confidence, and awareness.

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<i>Directive</i> 2.01.1	<i>Subject</i> Biased Based Policing and Racial Profiling
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- C. It is the policy of this department to police in a proactive manner and to aggressively investigate suspected violations of law. Officers shall actively enforce local, state and federal laws in a responsible and professional manner without regard to race, gender, ethnicity, or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. This policy shall be applicable to all persons, whether drivers, passengers, or pedestrians.

- D. Officers shall conduct themselves in a dignified and respectful manner at all times when dealing with the public. The department will honor the right of all persons to be treated equally and to be free from unreasonable searches and seizures.

SECTION 3 DEFINITIONS

Racial Profiling is defined as a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

Examples of racial profiling include, but are not limited to, the following:

- a. Citing a driver because of the cited driver's race, ethnicity, or national origin, or
- b. Detaining the driver of a vehicle based on the determination that a person of that race, ethnicity, or national origin is unlikely to own or possess that specific make or model of vehicle.
- c. Detaining an individual based upon the determination that a person of that race, ethnicity, or national origin does not belong in a specific part of town or a specific place.

Gender Profiling is defined as a law enforcement-initiated action based on an individual's gender rather than on the individual's behavior or involvement in criminal activity.

Race or Ethnicity is defined as a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.

Pedestrian Stop is defined as an interaction between a peace officer and an individual traveling on foot who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

Motor Vehicle Stop is defined as a vehicle stop whereas a peace officer stops a motor vehicle for an alleged violation of law or ordinance regulating traffic.

Probable Cause is defined as more than bare suspicion; it exists when the facts and circumstances within the officer's knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed.

Reasonable Suspicion is defined as specific, articulable facts leading a reasonable police officer to believe a crime might be occurring. Reasonable suspicion is less than probable cause, but more than a mere hunch. Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence.

Search is an examination or exploration of an individual's house, premises, vehicle or person to discover stolen property, contraband or other items that may be evidence of a crime.

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Search incident to arrest is a full search of an arrested person and of the vicinity around him or her. The search is conducted for officer safety and to prevent the destruction of evidence.

Consent search is a search permitted by a person with apparent authority to allow the search. To be valid, consent must be voluntary and intelligent, based on a totality of circumstances. Voluntary means that the consent was not forced or coerced. Intelligent means the person giving consent must know what he or she is doing.

Frisk is defined as a limited search or patting down of a suspect's outer clothing for the purpose of officer safety. A frisk must be based on reasonable suspicion that the suspect is armed with a deadly weapon, and that if he is not searched and disarmed, harm will come to the officer or another person. A limited search or frisk of an automobile after a valid stop is permissible if the officer has reasonable suspicion the suspect is dangerous and might gain immediate control of a weapon. The search is limited to the areas in which a weapon may be placed or hidden.

Inventory is an administrative process by which items of property in an impounded vehicle are listed and secured. An inventory is not a search and should not be used as a substitute for a search. The specific objectives of an inventory are to protect the property of the defendant, to protect the police against any claim of lost property, and to protect police personnel and others from any dangerous instruments.

Contraband means property of any nature, including real, personal, tangible or intangible, that is used or intended to be used in an offense. Property used to facilitate or intended to be used to facilitate the commission of a felony or proceeds gained from the commission of a felony.

SECTION 4 PROCEDURES

A. COMPLAINTS

1. Any person may file a complaint with the department if they believe they have been stopped or searched on the basis of their race, ethnicity, national origin, or gender. No person shall be discouraged, intimidated, or coerced from filing such a complaint, or discriminated against because they have filed such a complaint.
2. A complaint from a citizen regarding racial profiling may be made to any police department supervisor or, if available, to the Office of Professional Responsibility. All complaints received shall be forwarded in writing through the chain of command to the office of the Chief of Police.
3. In addition to the written complaint, the supervisor receiving the complaint shall obtain the digital video and/or audio from the officer's contact with the complainant. The supervisor shall label the digital audio/video, indicating the unit number and date and time the audio/video was pulled. The audio/video will be forwarded through the chain of command to the office of the Chief of Police. All audio/video of incidents alleging racial or gender profiling shall be retained with the investigative file. A copy shall be supplied to the officer within five days of the date of the complaint. The Office of Professional Responsibility shall supply the copy to the officer prior to taking any statements from the officer.

B. PUBLIC EDUCATION AND AWARENESS

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The Lancaster Police Department shall provide education to the public concerning the complaint process. Written information regarding how a citizen may file a complaint or issue a commendation for an officer shall be made available to the public at a variety of locations, including public meetings, City Hall and the Police Department. This information shall also be available on the department's Internet site. The information will be available in both English and Spanish.

C. RACIAL PROFILING TRAINING

1. Officers are responsible to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.
2. All officers shall complete the TCOLE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Occupation Code, or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. At the discretion of the Chief of Police, additional diversity and sensitivity training may be required for officers with sustained racial profiling or other discrimination complaints filed against them.
3. The Chief of Police, as part of the initial training and continued education for such appointment, will be required to attend the LEMIT program on racial profiling.
4. Supervisors shall conduct periodic roll call training regarding racial profiling issues, including implementation and enforcement of this policy. All sworn personnel will attend Racial Profiling training at least once every twenty-four months.

D. INTERNAL MONITORING

1. Random Reviews:

The sergeant or lieutenant assigned to the Office of Professional Responsibility shall conduct weekly reviews of the police vehicle digital recordings. The review shall be comprised of two dayshift and two nightshift videos and each video should be from a different officer's vehicle. The purpose of this random review is to:

- a. Assess performance and safety practices;
- b. Ensure compliance with departmental policy;
- c. Ensure proper use of DMVR Equipment; and,
- d. Identify appropriate training video.

Supervisors shall review video files randomly each month, ensuring that each officer is reviewed at least twice during the calendar year. Each shift commander shall be responsible for ensuring the video reviews are conducted and documented and verify that the racial profiling section of MOBLAN was completed for the contact. A report containing the dates each officer was reviewed and the supervisor that conducted each review shall be prepared and submitted to the Office of Professional Responsibility, who shall maintain a log of the reviews.

2. Reviews shall occur whenever:
 - a. An officer is involved in a pursuit;
 - b. An officer is involved in a use of force incident recorded by the system;
 - c. A complaint is lodged against an officer; or,

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- d. A supervisor articulates a reason to suspect an officer is involved in activity contrary to the mandates of the General Orders.

E. CORRECTIVE ACTION

1. Failure to report any observed or known violations of this policy by any police department employee shall result in corrective action being taken against the employee.
2. Officers found in violation of this policy or who have a sustained racial profiling complaint shall be subject to corrective action which may include, diversity, sensitivity, or other appropriate training, counseling, a written reprimand, suspension from duty with or without pay, indefinite suspension, or other appropriate action as determined by the Chief of Police.

F. MANDATED DMVR OPERATION

Unless the delivery of emergency police services would be prevented, an Officer's personal safety would be jeopardized, or police strategy is being discussed, Officers will ensure:

1. DMVR Equipment is always fully activated either manually or automatically:
 - a. On all motor vehicle stops;
 - b. On every call for service, whether dispatched or self-initiated, prior to making citizen contact;
 - c. On all pedestrian stops;
 - d. During any prisoner transport with the in-car video camera positioned toward the prisoner;
 - e. During any interviews, interrogations and other investigative activities where use is practical; and,
 - f. Any time the officer or supervisor believes the use of the equipment would be beneficial.
2. Officers should note in offense, arrest and related reports when video/audio recordings were made.
3. Officers must carefully consider when to cease recording an event and be prepared to justify the action in the event that an incident occurs while DMVR equipment is not recording.
 - a. The intentional stopping of recording during incidents where the use of the DMVR equipment is required by this order may be cause for disciplinary action. Obstructing, shielding, or any act of interfering with the DMVR equipment is not permitted.
 - b. Officers will not cease recording of an event, situation, or other circumstances solely at the demand of anyone other than a supervisor. Officers will inform those who ask that video/audio recording equipment are in use.

G. CITATION DATA COLLECTION AND REPORTING

1. Each officer shall be required to collect information relating to all motor vehicle, pedestrian and bicyclist stops by documenting the required information in the racial profiling section (F12) of MOBLAN.
2. The officer will complete all of the fields in the MOBLAN racial profiling section that pertain to the citizen contact.

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3. By March of each year, the department shall submit a written report to the City Council that includes the information gathered from the motor vehicle stops in the preceding calendar year. The report will include: (1) The number of motor vehicle stops, (2) The number of types of race or ethnicity of the person(s) who were stopped, (3) The number of motor vehicle stops that the race and ethnicity was known prior to stop, (4) The number of stops in which a search was conducted and (4) The number of searches that consent was received prior to search.

H. SCOPE OF RESPONSIBILITY

1. All members of the department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 10

Conduct a public hearing and consider a resolution approving the Terms and Conditions of Interlocal Agreements by and Between Dallas County and the City of Lancaster for the Reconstruction and/or Overlay of Streets, that is Arcady Lane from Wintergreen Drive to Stanford Drive; Rutgers Drive from Wintergreen Drive to Lexington Drive; Lexington Drive from Arlington to End of Asphalt; Marsalis from Green Drive to Dead End; as listed in the Agreements.

This request supports the City Council 2013-2014 Policy Agenda.

**Goal: Financial Sound City Government
Sound Infrastructure**

Background

The City of Lancaster is eligible to receive \$116,863 in Community Development Block Grant (CDBG) funds for fiscal year 2014.

CDBG funds are administered through Dallas County and may only be used on projects that eliminate blight, eliminate a community threatening condition or primarily benefit low/moderate income residents. The primary objective of the program is to develop sustainable urban communities that meet the public service and housing needs of low and moderate income households. Federal rules allow each community to tailor its program to address specific local needs.

Historically the City of Lancaster has used this funding for residential roadway projects. For the past four years council has approved eleven roadway project(s) in low to moderate income areas for reconstruction. In addition to the funds received this year, a surplus of funds is available from previous years.

Below is a recap of CDBG funding:

Funds available from previous years	\$ 158,443
2014 Community Development Block Grant	\$ <u>116,863</u>
Total funds available	\$ 275,306

Given the significant need for roadway improvements in various areas of the City, staff recommends qualifying roadway projects. The streets listed below were identified as projects

using the City’s HVJ Pavement management program ratings, the estimated cost within the allocated dollar amount, and eligibility under the CDBG program.

NAME	FROM STREET	TO STREET	EST. COST	LENGTH LINEAR FT.
ARCADY	WINTERGREEN	STANFORD	\$ 79,884	1,268 FT.
RUTGERS	WINTERGREEN	ARCADY	\$ 29,127	520 FT.
ARLINGTON	WINTERGREEN	LEXINGTON	\$ 96,264	1,528 FT.
LEXINGTON	ARLINGTON	CONCRETE	\$ 52,038	826 FT.
MARSALIS	GANT	END	<u>\$ 57,771</u>	917 FT
			TOTAL	\$ 315,084

Considerations

- **Operational** – Dallas County recommends submitting multiple roadway projects even if the amount exceeds funds available as the U. S. Department of Housing and Urban Development (HUD) has rejected some projects in the past. Staff has coordinated with Dallas County to ensure eligibility of projects. Roadways not completed may be carried over to future fiscal years.

In order for Dallas County to meet the required federal submission deadline, cities participating in the program, must submit the application(s) for eligible projects by May 23, 2014.

- **Legal** – A resolution will be required ratifying the selected roadway projects for submission to Dallas county.
- **Financial** – The City is eligible to receive \$116,863 in CDBG funding for fiscal year 2014. Funds not used on completed projects may be designated for carry-over for eligible roadway projects.
- **Public Information** – A notice was placed in the Focus Daily News City’s newspaper of record on Wednesday, April 23, 2014.

Options/Alternatives

Staff seeks direction regarding submission of projects for the 2014 CDBG program. If the City does not submit projects, Lancaster’s funds would be reallocated among the other participating cities.

Recommendation

Staff recommends approval of a resolution to submit the above selected roadway projects to Dallas County.

Attachments

- Resolution
- CDBG Street Estimates
- Agreement

Submitted by:

Jim Brewer, Director Public Works

Sorangel O. Arenas, City Secretary

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF INTERLOCAL AGREEMENTS BY AND BETWEEN DALLAS COUNTY AND THE CITY OF LANCASTER FOR THE RECONSTRUCTION AND/OR OVERLAY OF STREETS, THAT IS ARCADY LN. FROM WINTERGREEN DRIVE TO STANFORD DRIVE; RUTGERS DR. FROM WINTERGREEN DRIVE TO ARCADY LANE; ARLINGTON LN. FROM WINTERGREEN DRIVE TO LEXINGTON DRIVE; LEXINGTON DRIVE FROM ARLINGTON TO END OF ASPHALT; MARSALIS FROM GREEN DRIVE TO DEAD END; AS LISTED IN THE AGREEMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interests of the City to execute the Interlocal Agreements ("Agreement") with the County of Dallas for the reconstruction and/or overlay of streets listed in the Agreement; and

WHEREAS, the City of Lancaster shall fund this Agreement and shall provide payments prior to the commencement of construction to the County of Dallas, as outlined in the Agreements.

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

SECTION 1. That the City Council hereby approves and accepts the terms and conditions of the Agreements with the County of Dallas, attached hereto and incorporated herein by reference as:

Exhibit "A" – Master interlocal agreement between Dallas County and the City of Lancaster; and

Exhibit "B" – Streets to be reconstructed with cost estimates and map.

SECTION 2. That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreements in substantial compliance as depicted in Exhibit "A" and Exhibit "B".

SECTION 3. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 4. 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 5. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster
Streets for CDBG funding 2014
Measurements furnished by City

Exhibit B

<u>Street</u>	<u>From</u>	<u>To</u>	<u>Addresses</u>	<u>Length x Width</u>
76t Arcady	Wintergreen	Stanford	2501 – 2653	27 x 1,268 = 3,804sy = 79,884.00
76t Rutgers	Wintergreen	Arcady	2625 – 2654	24 x 520 = 1,387sy = 29,127.00
76s Arlington	Wintergreen	Lexington	2408 – 2653	27 x 1,528 = 4,584sy = 96,264.00
76s Lexington	Arlington	Concrete	800 - 853	27 x 826 = 2,478sy = 52,038.00
76s Marsalis	Green	Dead End		20 x 1,238 = 2,751sy = <u>57,771.00</u>
				\$315,084.00

Scope of work for streets listed above.

Mill in place, Stabilize subgrade 8", Prime coat, Single course chip seal,
 2" HMAC type D overlay and Clean drainage as needed.

City to furnish water and utility locates.

STATE OF TEXAS §

COUNTY OF DALLAS §

EXHIBIT A

**MASTER INTERLOCAL AGREEMENT BETWEEN DALLAS COUNTY
AND THE CITY OF LANCASTER REGARDING TRANSPORTATION-RELATED
MAINTENANCE ON OR ABOUT CERTAIN DESIGNATED ROADWAYS SITUATED
WITHIN THE TERRITORIAL LIMITS OF THE CITY OF LANCASTER**

WHEREAS, This Master Interlocal Agreement (“Agreement”) is entered into by the authority of Chapter 791 of the Texas Government Code and Chapter 251 of the Texas Transportation Code to provide authorization for local governments to contract amongst themselves for the performance of governmental functions and services;

WHEREAS, On occasion, the County of Dallas, Texas, hereinafter called “County”, and the City of Lancaster, Texas, hereinafter called “City”, desire to enter into an Interlocal Agreement for the purpose of City retaining and authorizing County, through its Road & Bridge forces, to maintain various “Type E” Roadways, situated wholly within the territorial limits of City; and

WHEREAS, On occasion, the County and City desire to enter into an Interlocal Agreement for the purpose of jointly coordinating, facilitating and/or funding maintenance activity on certain duly qualified “Type B” Roadways, also situated wholly within the territorial limits of City; and

WHEREAS, On occasion, the County and City desire to enter into an Interlocal Agreement for purpose of City authorizing, retaining and/or hiring County, through its Road & Bridge forces, to perform minor transportation-related maintenance services, including but not limited to pothole repair, cleaning and clearing of drainage culverts, roadway debris removal, and the like, which services do not fall squarely within the purview of “Type E” or “Type B” Roadway Projects, such projects to be performed on or about public roadways and alleyways situated wholly within the territorial limits of City; and

WHEREAS, This collaboration between County and City is consistent with Strategy 4.2 of the Dallas County’s Strategic Plan in that it fosters partnership between County and local cities therein on local transportation projects;

NOW THEREFORE, THIS AGREEMENT is hereby made and entered into between County and City for the mutual consideration stated herein:

I. PURPOSE

City has requested in the past, and will likely further request in the foreseeable future (1) that County either perform, or participate in the funding of, certain roadway maintenance services ("projects") on City's street system, which projects shall be identified as "Type B" or "Type E" Roadway Projects, or (2) that County, through its Road & Bridge forces, perform certain minor transportation-related maintenance services on or about City's streets and alleyways which do not fall squarely within the collaborations contemplated by either of the aforementioned. Said projects might include, but shall not be limited to, maintenance and improvements of roadways, thoroughfares, bridges, alleyways and drainage facilities of major County importance, now existing or proposed.

The terms and conditions set forth herein provide the cooperative framework for County and City to jointly undertake a series of transportation-related maintenance projects upon public roadways situated wholly within the incorporated and territorial jurisdiction of the City of Lancaster, said roadway being of significance to Dallas County. Projects to be undertaken per this Agreement shall be duly classified "Type B" or "Type E" roadway projects, or other minor transportation-related maintenance projects, whereby County, through use of its Road & Bridge work forces, equipment and/or funds, shall perform or cause to be performed maintenance, repair and/or qualified construction, including but not limited to scarifying, stabilizing, grading, patching, seal coating, signing, pavement marking, mowing, widening, re-sectioning, overlaying and other duly qualified repair or improvement projects.

Each roadway maintenance project commenced hereunder shall be fully and specifically set forth and described in a separate Project Specific Agreement ("PSA"), and shall be approved by specific order of the Dallas County Commissioners Court, or a duly appointed employee representative of Dallas County, as well as the governing body of the City of Lancaster, Texas. Projects undertaken pursuant to this Agreement are for the benefit of the City and County, and not the purposeful benefit of any third parties. It is the express intention of City and County that any person or entity, other than City or County, receiving services or benefits hereunder shall be deemed incidental beneficiaries only.

Nothing herein shall be construed so as to prevent County and City from collaborating and working jointly, without prior and formal approval of their respective governing bodies, in cases of national, state or local emergencies or natural disasters.

II. CITY'S CONTRIBUTION

For duly qualified "Type B" Roadway Projects contemplated hereunder, City shall be responsible for the total funding and payment for the roadway maintenance services, less any amounts contributed by County, which contributions, if any, may not exceed fifty percent (50%) of the total project costs, and may be made through commitment of financial resources, i.e. funding, or in-kind services, i.e. use of County's labor, equipment and/or materials.

For all other projects contemplated hereunder, City shall be responsible for one hundred percent (100%) of the funding for services provided in whole or in part through use of County Road & Bridge personnel, equipment and/or materials.

All expenditures herein undertaken by City or County for the performance of these government functions shall be made from current revenues available to them.

III. CITY'S OBLIGATIONS

Prior to the commencement of any project hereunder, City shall clearly detail the location, scope and nature of the services it desires performed. Should City desire that County, through employment of its Road & Bridge workforces, perform such services, County shall prepare a written and detailed proposal for City's consideration and approval, indicating all work to be performed by County, and at what costs and expense to City. Before any such work commences, City and County must have a clear and mutual understanding of the scope of services to be provided by County and the costs associated with each such project. Said mutual understanding shall be evidenced by supplemental documentation, i.e. project specific proposals, which shall only be binding once approved by County and the governing body of the City. Said proposals, if approved, shall be confirmed in writing, which shall be considered supplemental hereto.

Upon approval by the County, and immediately upon County's commencement of work duly authorized by them, City shall set aside, segregate and escrow for County's benefit, the full agreed amounts for costs and expenses for each project undertaken. County may elect to bill against segregated funds on a monthly basis for services performed during the course of the month, or it may bill against the segregated funds in full once a project is completed. In either event, County shall be paid promptly, and in full once the project is completed.

Where required by nature of the projects undertaken, City, at its own expense, shall be responsible for the following: (1) informing the public of the proposed maintenance or construction activity, (2) acquiring any right-of-way necessary to complete the project under consideration, (3) locating all manholes, water valves, and other utilities within the project, (4) making all utility relocations or adjustments necessary for the project, (5) remediation of any hazardous or regulated materials, or other environmental hazard on or near the project site, and (6) where necessary, providing appropriate traffic control support, including but not limited to flagging, cones, barricades, shadow vehicles, arrow boards, signage, police presence, etc., to enable the project to be completed in a timely and safe manner. City agrees to accomplish these functions, if required by projects under consideration, in a timely and efficient manner to insure that such activity will not delay the County's timely performance of its maintenance activities.

City agrees to permit County, at County's expense, to conduct routine special studies of traffic conditions within City, which studies might include traffic counts, measurements of speeds,

delays, congestion, and the like.

IV. COUNTY'S CONTRIBUTION

For all projects contemplated hereunder, County shall contribute as follows:

1. For all duly qualified "Type B" projects, County shall contribute an amount not to exceed fifty percent (50%), which contribution may be through pledge and commitment of County Road and Bridge funds, use of County Road and Bridge personnel and/or equipment, or a combination of the two, and
2. For all other duly qualified projects, County's contribution thereunder shall be limited solely to supplying labor, materials and/or equipment necessary to provide maintenance services, all of which shall be provided at City's, or another funding source's, expense.

V. COUNTY'S OBLIGATIONS

County shall not undertake performance of any project hereunder, until such time as same has been specifically approved by both the governing body of the City and the Dallas County Commissioners Court. Dallas County Commissioners Court might authorize and delegate limited approval authority to one or more of its employees, which delegation shall be evidenced by specific Court Order, and shall be binding on the County just as if executed and approved by the Dallas County Judge. Once so approved, if called upon to do so, County shall perform all services contemplated hereunder in a good and workmanlike manner. Further, County shall not assign its rights, or delegate its duties and obligations hereunder to any third party without prior written approval of City. Nothing herein shall be construed to prohibit County from using subcontractors, where reasonably necessary, to aid in the completion of projects.

Should County, in executing any project contemplated hereunder, encounter conditions unknown, unforeseen or unforeseeable by County, County shall immediately bring same to attention of City, and await direction and guidance from City on resolution of same. Where reasonably required by nature of the unknown condition, County may cease performance hereunder until such time as adverse conditions are rectified or remedied by City, and such delay shall not constitute a material breach of this Agreement.

VI. TERM

The initial term of this Agreement shall be from the date of last execution by any required signatory party hereto until December 31, 2017. However, either party hereto, shall have the absolute right to terminate this Agreement, at any time, upon providing sixty (60) days written notice to the other party. If necessary, notice of termination shall be tendered consistent with the notice provisions and protocol stated below.

VII. LIABILITY

Nothing stated herein shall be construed as a waiver of all the protections afforded County as a sovereign governmental unit. To the extent afforded by Texas Tort Claims Act, County shall be responsible only for claims, demands, judgments and the like attributable to the sole acts and omissions of its agents, officers and/or employees. County assumes no liability or responsibility for the acts and omissions of City, their employees, agents, officers or others working through them in any capacity.

Nothing stated herein shall be construed as a waiver of all the protections afforded City as a sovereign governmental unit. To the extent afforded by the Texas Tort Claims Act, City shall be responsible only for claims, demands, judgments and the like attributable to the sole acts and omissions of its agents, officers and/or employees. City assumes no liability or responsibility for the acts and omissions of County, their employees, agents, officers or others working through them in any capacity.

VIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement and any attachments hereto sets forth the entire agreement between the parties respecting the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties respecting the same.

B. Severability. If any term, covenant, condition or provision of this Agreement shall be declared invalid by a tribunal of competent jurisdiction, the remaining terms, covenants, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

C. Not an Agent. County and City mutually agree that neither entity acting hereunder shall be considered an agent of the other, and that each entity is responsible, if at all, for its own acts, forbearance, and deeds.

D. Venue. This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Dallas County, Texas.

E. Amendment. This Agreement may be supplemented and/or amended at any time through the mutual consent of both County and City, so long as all amendments, changes, revisions, and discharges of this Agreement, in whole or in part, are reduced to writing and executed by the parties thereto.

F. Notice. All notices, requests, demands, and other communication under this Agreement shall be tendered in writing and shall be deemed to have been duly given when either delivered in person, via e-mail, or via certified mail, postage prepaid, return receipt requested to the respective parties as follows:

COUNTY:

Commissioner John Wiley Price
Road & Bridge District 3
1506 E. Langdon Road
Dallas, Texas 75241

and

Director of Public Works
Dallas County, Texas
411 Elm Street, Suite 400
Dallas, Texas 75202

CITY:

Rona Stringfellow
Managing Director of Public works and Development Services
700 East Main Street
Lancaster, Texas 75146

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

H. Headings. The headings and titles used herein are for sake of convenience only, and not intended to affect the interpretation or construction of such provisions.

I. Contingent. This Agreement is expressly contingent upon formal approval by the Dallas County Commissioners Court and the governing body of the City of _____, Texas.

The City of Lancaster, State of Texas, has executed the Agreement pursuant to duly authorized City Council Action on the _____ day of _____, 2012.

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number _____ and passed on the _____ day of _____, 2012.

Executed this the _____ day of _____, 2012.

Executed this the _____ day of _____, 2012.

CITY OF _____:

COUNTY OF DALLAS:

MAYOR

CLAY LEWIS JENKINS
COUNTY JUDGE

ATTEST:

APPROVED AS TO FORM:
Craig Watkins
District Attorney

CITY SECRETARY

Paul E. Hamilton
Assistant District Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 11

Consider an ordinance establishing Civil Service classifications within the Police and Fire Departments; prescribing the number of positions in each classification; and providing an effective date.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Financially Sound City Government

Background

On March 24, 2014 City Council approved an agreement between the City and the United States Department of Homeland Security, Federal Emergency Management Agency, Staffing for Adequate Fire and Emergency Response (SAFER) grant. Pursuant to Title 5, Chapter 143, of the Texas Local Government Code, the City Council must establish the civil service classifications in the Police and Fire Departments and the number of positions in each classification. The proposed ordinance is consistent with the staffing levels discussed on March 24, 2014.

Considerations

- **Operational** - The Fire Department staffing includes 62 sworn fire personnel. The Police Department staffing includes 53 sworn police personnel. The proposed classifications are as follows:

<u>Classification</u>	FIRE PREVENTION	FIRE SUPPRESSION
	Authorized <u>No. of Positions as of 10/1/2013</u>	Authorized <u>No. of Positions as of 04/28/2014</u>
Assistant Chief	0	1
Battalion Chief	1	3
Fire Captains	0	11
Fire Engineer	0	21
Fire Fighter**	0	25
<hr/>	<hr/>	<hr/>
Total	1	61

<u>Classification</u>	POLICE Authorized <u>No. of Positions as of</u> <u>10/1/2013</u>
Assistant Chief	2
Police Lieutenant	6
Police Sergeant	7
Police Officer*	38
<hr/>	<hr/>
Total	53

**Three officer positions funded through a three year grant effective 10/1/2009.
A grant extension has been provided through 2015.*

*** Six fire fighter positions funded through a two year grant period beginning
May 2014.*

- **Financial** - There is no salary or benefits cost to the city during the grant period for the additional six fire fighters under the SAFER grant.

Recommendation

Staff recommends approval of an ordinance authorizing all civil service classifications and the number of positions.

Attachments

- Ordinance
-

Submitted by:

Dori Lee, Civil Service/Human Resources Director

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, ESTABLISHING CIVIL SERVICE CLASSIFICATION WITHIN THE POLICE AND FIRE DEPARTMENTS; PRESCRIBING THE NUMBER OF POSITIONS IN EACH CLASSIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 143 of the Texas Local Government Code, the City Council shall establish certain classifications and shall prescribe the number of positions in each of these classifications by ordinance; and

WHEREAS, the City Council has reviewed and approved an agreement between the City of Lancaster and the United States Department of Homeland Security, Federal Emergency Management Agency, Staffing for Adequate Fire and Emergency Response (SAFER) grant; and

WHEREAS, the grant funds will be used only for the purposes for which they are intended under the grant.

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

SECTION 1. That City Council hereby establishes the classifications and the number of authorized positions within each classification in the Fire Department, which shall read as follows:

<u>Classification</u>	FIRE PREVENTION	FIRE SUPPRESSION
	Authorized <u>No. of Positions as of</u> <u>10/01/2013</u>	Authorized <u>No. of Positions as of</u> <u>04/28/2014</u>
Assistant Chief	0	1
Fire Marshal/Battalion Chief	1	3
Fire Captains	0	11
Fire Engineer	0	21
Fire Fighter**	0	25
<hr/>	<hr/>	<hr/>
Total	1	61

*** Six fire fighter positions funded through a two year grant period beginning May 2014.*

SECTION 2. That City Council hereby establishes the classifications and the number of authorized positions within each classification in the Police Department, which shall read as follows:

<u>Classification</u>	POLICE Authorized <u>No. of Positions as of</u> <u>10/1/2013</u>
Assistant Chief	2
Police Lieutenant	6
Police Sergeant	7
Police Officer*	38
<hr/> Total	<hr/> 53

**Three officer positions funded through a three year grant effective 10/1/2009.
A grant extension has been provided through 2015.*

SECTION 3. Severability: If any provision, section, clause, sentence, or phrase of this ordinance is for any reason held to be unconstitutional, void, invalid, or un-enforced, the validity of the remainder of this ordinance or its application shall not be affected, it being the intent of the City Council in adopting and of the Mayor in approving this ordinance that no portion, provision, or regulation contained herein shall become inoperative or fail by way of reasons of any unconstitutionality or invalidity of any other portion, provision, or regulation.

SECTION 4. Repealer: That all other ordinances, section, or parts of ordinances heretofore adopted by the City of Lancaster in conflict with the provisions set out above in this ordinance are hereby repealed or amended as indicated.

SECTION 5. This ordinance shall take effect on April 28, 2014.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

item 12

Consider an ordinance amending the Code of Ordinances by Amending Article 24.07, Water Conservation, Drought Response and Emergency Water System Situations to Provide for the Adoption of a Water Conservation and Drought Contingency and Water Emergency Response Plan, Which is Attached Hereto and Incorporated Herein As Exhibit A, to Promote Responsible Use of Water and to Provide for Penalties and/or the Disconnection of Water Service for Noncompliance with the Provisions of the Water Emergency Response Plan.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Sound Infrastructure

Background

The Texas Water Code, Section 13.146, requires each public utility that provides potable water service to 3,300 or more connections, to submit a Water Conservation /Drought Contingency and Water Emergency Response Plan to the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ). The Texas Commission on Environmental Quality (TCEQ) and the Texas Water Development Board (TWDB) requires this Plan to be updated every five (5) years.

In 2009 the City Council approved Article 13.100, 13.106 to provide for the adoption of a Water Conservation/Drought Contingency and Water Emergency Response Plan. TCEQ requires this plan be updated every five (5) years.

On December 12, 2011, City Council authorized implementation of Stage 2 of the City of Lancaster's Water Conservation and Drought Contingency and Water Emergency Response Plan at the formal request of the City of Dallas, Dallas Water Utilities (DWU). Stage 2 targets a goal of five percent reduction in water consumption.

On February 10, 2012, the City received official notification from the City of Dallas, that they had extended their initial drought contingency Stage by 120 days through June 8, 2012 and were requesting that the City of Lancaster extend their like initiated drought stage for the same period. On February 27, 2012 the City of Lancaster extended the Water Conservation and Drought Contingency and Water Emergency Response Plan for 120 days through June 8, 2012 as did the City of Dallas and as is required by contract.

On June 25, 2013 City Council approved a resolution to extend the drought contingency Stage 2 until May 2014. Staff has provided a brief update at the April 21, 2014 worksession. DWU has requested member cities to remain at a twice weekly watering stage.

Considerations

This is a request to update the Water Conservation and Drought Contingency and Water Emergency Response Plan. The resulting changes include updating the current water rate structure and combined the Stages 3 and 4, to only have Stage 3 which is more streamlined with the DWU Stages.

- **Operational** – The Water Operations Division oversees the implementation of the water conservation plan and drought contingency plan in partnership with Dallas Water Utilities. Staff will continue to closely monitor the drought situation and update City Council as appropriate.
- **Legal** – The City Attorney has prepared an Ordinance to adopt the updated plan. Staff will submit to the required entities by the May 1, 2014 deadline.
- **Financial** – There is no additional cost for continuous implementation of Stage 2. Utilization of less water potentially reduces our expenses and revenues.
- **Public Information** – There are no public information requirements other than the City Council meeting has been posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve the ordinance.
2. City Council may deny this ordinance and direct staff.

Recommendation

Staff recommends the City approve the updated ordinance so that the City will be in compliance with TCEQ and TWDB.

Attachments

- Ordinance
- Amended Drought Contingency Plan

Submitted by:

Jim Brewer, Public Works Director
Andrew Waits, Water & Wastewater Superintendent

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING ARTICLE 24.07, WATER CONSERVATION, DROUGHT RESPONSE AND EMERGENCY WATER SYSTEM SITUATIONS TO PROVIDE FOR THE ADOPTION OF A WATER CONSERVATION AND DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT A, TO PROMOTE RESPONSIBLE USE OF WATER AND TO PROVIDE FOR PENALTIES AND/OR THE DISCONNECTION OF WATER SERVICE FOR NONCOMPLIANCE WITH THE PROVISIONS OF THE WATER CONSERVATION AND DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Lancaster, Texas (the "City"), recognizes that the amount of water available to its water customers is limited; and

WHEREAS, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of nature which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times; and

WHEREAS, the Water Code and the regulations of the Texas Commission on Environmental Quality (the "Commission") require that the City adopt a Water Conservation and Drought Contingency and Water Emergency Response Plan; and

WHEREAS, the City has determined an urgent need in the best interest of the public to adopt a Water Conservation and Drought Contingency and Water Emergency Response Plan; and

WHEREAS, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water resources; and

WHEREAS, the City Council of the City of Lancaster desires to adopt the Water Conservation and Drought Contingency and Water Emergency Response Plan, which is attached hereto and incorporated herein as Exhibit A, as official City policy for the conservation of water.

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

SECTION 1. That the City of Lancaster Code of Ordinances be and the same is hereby amend Article 24.07, Water Conservation, Drought Response and Emergency Water System Situations, to provide for the adoption of said plan as the official City policy for the conservation of water, which shall read as follows:

**"ARTICLE 24.07 WATER CONSERVATION, DROUGHT RESPONSE
AND EMERGENCY WATER SYSTEM SITUATIONS"**

Sec.24.07 Water Conservation and Drought Contingency and Water
Emergency Response Plan

(a) The Water Conservation and Drought Contingency and Water Emergency Response Plan is hereby adopted by reference as the official City policy for the conservation of water. The City commits to implement the requirements and procedures set forth in the adopted Plan. Unless deleted, amended, expanded or otherwise changed herein, all provisions of each such Plan shall be fully applicable and binding. One copy of each such Plan, together with the exceptions and amendments thereto, shall be kept at all times in the office of the city secretary.

(b) For the purpose of this section it shall be presumed that a person who is receiving economic benefit of public water has knowingly tampered with the tangible property of the City of Lancaster if the communication of supply has been:

- 1) Diverted from passing through a metering device; or
- 2) Prevented from being correctly registered by a metering device; or
- 3) Activated by any device installed to obtain public water without a City of Lancaster authorized metering device.

A person violates this section if they knowingly tamper with public property as described above or otherwise seek to take public water without proper payment, regardless of the amount of the pecuniary losses. Any person failing to comply with this section shall be subject to a fine of up to two thousand dollars (\$2,000.00) and/or discontinuance of water service by the City. Proof of a culpable mental state is not required for a conviction of an offense under this section. Each day a person fails to comply with the Plan is a separate violation. The City's authority to seek injunctive or other civil relief available under the law is not limited by this section."

SECTION 2. The City Manager or his designee is hereby directed to file a copy of the Plan and this Ordinance with the Commission in accordance with Title 30, Chapter 288 of the Texas Administrative Code.

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 amended, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. If any article, paragraph or subdivision, clause or provision of this Ordinance shall be adjudged invalid or held unconstitutional, 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 invalid or unconstitutional.

SECTION 5. This Ordinance shall take effect immediately from and after the publication of its caption, as the law in such cases provides.

DULY PASSED by the City Council of the City of Lancaster, Texas, on the 28th day of April 2014.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Water Conservation and Drought Contingency and Water Emergency Response Plan for the City of Lancaster

MAY 2014

1. INTRODUCTION AND OBJECTIVES

Water supply has always been a key issue in the development of Texas. In recent years, the growing population and economic development of North Central Texas has led to increasing demands for water supplies. At the same time, local and less expensive sources of water supply are largely developed. Additional supplies to meet higher demands will be expensive and difficult to develop. It is therefore important that the City of Lancaster make the most efficient use of existing supplies. This will delay the need for new supplies, minimize the environmental impacts associated with developing new supplies, and delay the high cost of additional water supply development. Lancaster is a wholesale customer of the City of Dallas and is subject to the rules and restrictions of the City of Dallas *Water Conservation Plan*¹ and *Drought Contingency Plan*².

Recognizing the need for efficient use of existing water supplies, the Texas Commission on Environmental Quality (TCEQ) has developed guidelines and requirements governing the development of water conservation and drought contingency plans for public water suppliers^{3,4}. TCEQ guidelines and requirements are included in Appendix B. The best management practices established by the Water Conservation Implementation Task Force⁵, established pursuant to SB1094 by the 78th Legislature, were also considered in the development of the water conservation measures. The City of Lancaster has developed this water conservation and drought contingency and water emergency response plan following TCEQ guidelines and requirements and considering the City of Dallas *Water Conservation Plan*¹ and *Drought Contingency Plan*². The plan replaces Lancaster's previous drought contingency plan dated June 2009⁶.

The water conservation sections of this plan include measures that are intended to result in ongoing, long-term water savings. The drought contingency and water emergency response sections of this plan address strategies designed to temporarily reduce water use in response to specific conditions.

The objectives of this water conservation plan are as follows:

- To reduce water consumption from the levels that would prevail without conservation efforts.
- To reduce the loss and waste of water.
- To improve efficiency in the use of water.

¹ Superscripted numbers match references listed in Appendix A.

- To extend the life of current water supplies by reducing the rate of growth in demand.
- To satisfy the requirements set forth by TCEQ and other agencies.

This plan includes all of the elements required by TCEQ. Some elements of this plan go beyond TCEQ requirements. Appendix C shows where the plan addresses specific TCEQ requirements.

2. WATER SYSTEM DESCRIPTION AND UTILITY PROFILE

Appendix D to this water conservation and drought contingency and water emergency response plan is the water utility profile for Lancaster. The City of Lancaster is located in southeast Dallas County and encompasses approximately 30.35 square miles⁷. The City of Lancaster has a contract with the City of Dallas for 8 MGD peak day of treated water. Lancaster provides this treated water to residential, commercial and industrial customers within the city of Lancaster. Lancaster also provides this water to one wholesale customer, Lancaster Municipal Utility District #1 (MUD #1). The 2010 census reported a population of 36,361 people for Lancaster. The 2013 population is estimated at 37,097. The City's ground and elevated storage capacities total 13.5 million gallons respectively. All of the city's wastewater is treated by the Trinity River Authority at the Ten Mile Creek and Red Oak Wastewater Treatment Plants.

Figure 2.1 shows the historical per capita use by the City of Lancaster. Figure 2.2 shows the historical percentage of water loss by the City of Lancaster. Figure 2.3 is a map showing the service area for the City of Lancaster.

Figure 2.1: City of Lancaster Per Capita Water Use

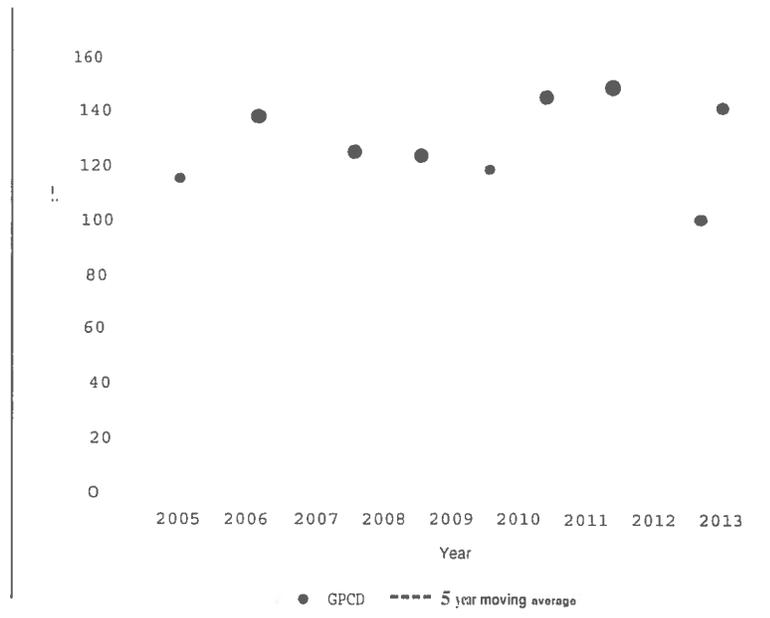
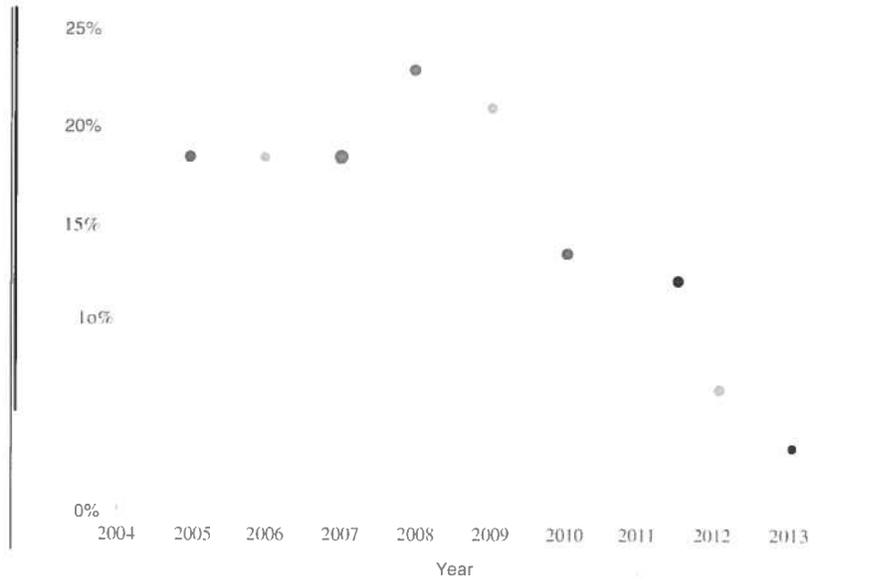
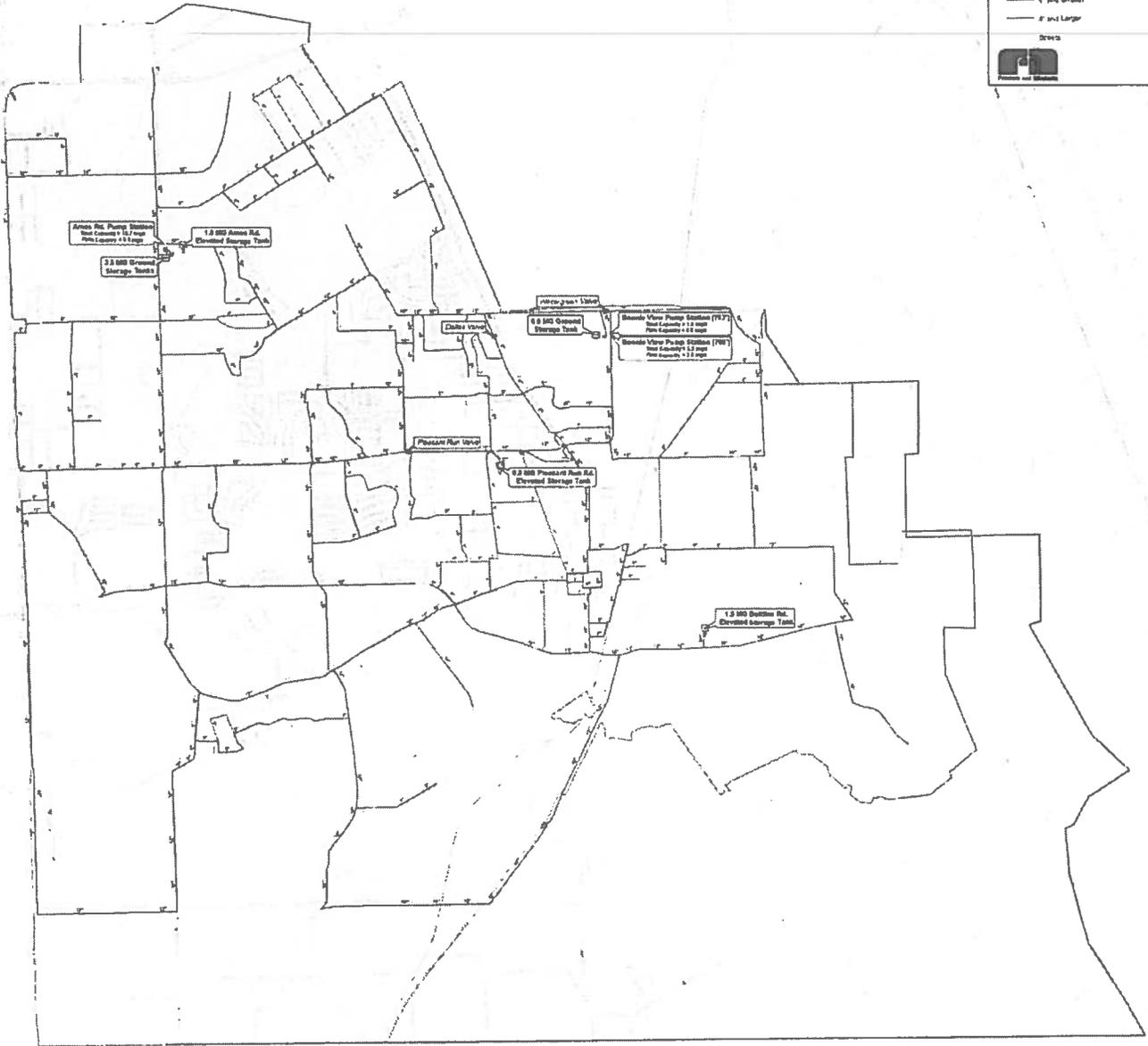


Figure 2.2: City of Lancaster Percent Water Loss



**FIGURE 2.3
CITY OF LANCASTER
EXISTING WATER SYSTEM
LEGEND**

	Elevated Storage Tank		Stream
	Ground Storage Tank		Lake
	Pump Station		City Limits
	Valve		City ET
Water Lines			Lower Pressure Pipe 700
	1" and Smaller		Lower Pressure Pipe 1600
	2" and Larger		
	Street		



3. SPECIFICATION OF WATER CONSERVATION GOALS

TCEQ rules for water conservation plans require the adoption of specific water conservation goals. The City of Lancaster has developed 5-year and 10-year goals for per capita municipal use. These goals are shown in Table 3.1. The goals for this water conservation plan include the following:

- Maintain the per capita municipal water use below the specified 5-year and 10-year goals.
- Maintain the level of unaccounted water in the system below 12 percent annually in 2014 and subsequent years, as discussed in Section 4.3.
- Implement and maintain a program of universal metering and meter replacement and repair, as discussed in Section 4.2.
- Increase the efficiency of water usage through a landscape water management ordinance, order or resolution as discussed in Section 7.4. Decrease waste in lawn irrigation by implementation and enforcement of landscape water management regulations, as discussed in Section 7.4.
- Raise public awareness of water conservation and encourage responsible public behavior by a public education and information program, as discussed in Section 5.
- Conserving water during peak demands, thereby, reducing the peak use.

Table 3.1
Five-Year and Ten-Year Municipal Per Capita Water Use Goals

Description	Current Average (gpcd)	5-Year Goal (gpcd)	10-Year Goal (gpcd)
Current 5-Year Average Per Capita Municipal Use	129	129	129
Projected Reduction Due to Elements in this Plan	0	2	4
Water Conservation Goals	129	127	125

*Note: 1. gpcd is gallons per capita per day.

4. METERING, LEAK DETECTION AND RECORD MANAGEMENT

One of the key elements of water conservation is tracking water use and controlling losses through leaks or illegal diversions. It is important to carefully meter water use, detect and repair leaks in the distribution system and provide regular monitoring of unaccounted water.

4.1 Accurate Metering of Treated Water Deliveries from City of Dallas

Water deliveries from the City of Dallas are metered by the City of Dallas with an accuracy of $\pm 2\%$ ¹. The recorded delivery amount is provided to Lancaster by the City of Dallas.

4.2 Universal Metering

The City of Lancaster meters all water customers. The city is in the process of replacing all of their meters. At this time they have replaced 600 out of 12,000 active meters. Lancaster has one wholesale customer whose water use is metered by the City of Lancaster with an accuracy of $\pm 5\%$.

4.3 Determination and Control of Unaccounted Water

Unaccounted water is the difference between water delivered to the City of Lancaster from the City of Dallas and metered water sales to customers plus authorized but unmetered uses. (Authorized but unmetered uses would include use for fire fighting, releases for flushing of lines, etc.) Unaccounted water can be caused by the following:

- Inaccuracies in customer meters. (Customer meters tend to run more slowly as they age and under-report actual use.)
- Accounts which are being used but have not yet been added to the billing system.
- Losses due to water main breaks and leaks in the water distribution system.
- Losses due to illegal connections and theft.

Measures to control unaccounted water are part of the routine operations of the City. A leak detection and repair program is described in Section 4.4 below. Meter readers watch for and report signs of illegal connections, so they can be quickly addressed.

Unaccounted water should be calculated in accordance with the provisions of the Water Utility Profile in Appendix D. With the measures described in this plan, Lancaster should maintain unaccounted water below 12 percent in 2013 and subsequent years. If unaccounted water exceeds this goal, Lancaster will implement a more intensive audit to determine the source(s) of unaccounted water, and take measures to reduce unaccounted water.

4.4 Leak Detection and Repair

In the past, the City of Lancaster has contracted with a leak detection service, but found that the service was not effective. Currently, City staff targets areas known to have non surfacing

leaks by listening and sounding devices to locate potential leaks. Water lines with known leakage and breakage problems are replaced as budget allows.

4.5 Record Management System

As required by TAC Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2(a)(2)(B), a record management system should allow for the separation of water sales and uses into residential, commercial, public/institutional, and industrial categories. The City has a record management system in place that separates water sales into the categories listed above.

5. CONTINUING PUBLIC EDUCATION AND INFORMATION CAMPAIGN

The continuing public education and information campaign on water conservation includes the following elements:

- Quarterly newsletter to customers providing conservation tips
- The City website include information on water conservation tips <http://www.lancaster-tx.com/>.
- City of Lancaster water customers will be notified in their water bill of the availability of information on the Water Conservation and Drought Contingency Plan.
- The City of Lancaster benefits greatly from the City of Dallas' public education program, "Save Water – Nothing Can Replace It". Television and radio ads sponsored by City of Dallas are aired throughout the Dallas metroplex area including the City of Lancaster.

6. WATER RATE STRUCTURE

The City of Lancaster has an increasing block rate structure for residential customers to discourage excessive use. Current rates as of April 2009 are given below:

Residential Rates

1. Monthly minimum charge of \$19.60.
2. 1st tier up 14,999 gallons, \$2.50 per 1,000 gallons.
3. 2nd tier 15,000 to 29,999 gallons, \$3.10 per 1,000 gallons.
4. 3rd tier 30,000 gallons or more, \$3.90 per 1,000 gallons.

Commercial/Industrial Rates

Commercial and industrial customers are charged the same rates as residential customers.

Wholesale/Customer Rates

Wholesale customers are charged a flat rate of 115% of what Lancaster retail customers are charged in the first tier.

7. OTHER WATER CONSERVATION MEASURES

7.1 City of Dallas System Operation Plan

Since Lancaster purchases treated water from the City of Dallas, the city does not have its own surface water supplies for which to implement a system operation plan. Dallas operates its water supply reservoirs as a system to achieve the most economical operation consistent with assuring adequate supply for future years, maintenance of water rights, and maintenance requirements of the supply and transmission facilities¹.

7.2 Reuse and Recycling of Wastewater

The City of Lancaster does not own or operate a wastewater treatment plant. Wastewater from the City of Lancaster is treated by the Trinity River Authority at the Ten Mile Creek and Red Oak Wastewater Treatment Plant.

7.3 Ordinances, Plumbing Codes, or Rules on Water-Conserving Fixtures

The state has required water-conserving fixtures in new construction and renovations since 1992. The state standards call for flows of no more than 2.5 gallons per minute (gpm) for faucets, 3.0 gpm for showerheads, and 1.6 gallons per flush for toilets. Similar standards are now required nationally under federal law. These state and federal standards assure that all new construction and renovations will use water-conserving fixtures. The City of Lancaster adopted the International Plumbing Code in 2012 incorporating these standards.

7.4 Landscape Water Management Measures

The following landscape water management measures are enforced by the City of Dallas for retail customers in the City of Dallas. Lancaster will adopt these measures to match the City of Dallas measures.

- Time of day restrictions prohibiting lawn irrigation watering from 10 AM to 6 PM beginning April 1 and ending October 31 of each year. Watering with a hand held hose or soaker hose may be conducted at any time.
Prohibition of watering of impervious surfaces. (Wind driven water drift will be taken into consideration.)
Prohibition of over-watering lawn or landscape, such that a constant stream of water overflows from the lawn or landscape onto a street or other drainage area.
Prohibition of outdoor watering during precipitation or freeze events.
Prohibition of outdoor watering with misdirected or broken sprinkler heads.
Rain and freeze sensors required on all new irrigation systems. Rain and freeze sensors must be maintained to function properly.

In addition, the City of Lancaster adopted ordinance# 2008-12-49⁹ in 2008 to address the requirements of Texas House Bill 1656 regarding installation of new irrigation systems.

7.5 Requirement for Water Conservation Plans by Wholesale Customers

The City of Lancaster currently has one wholesale customer, Lancaster MUD# 1. Every contract for the wholesale sale of water by the City of Lancaster that is entered into, renewed, or extended after the adoption of this water conservation plan will include a requirement that the wholesale customer and any wholesale customers of that wholesale customer develop and implement a water conservation plan. These plans must meet the requirements of Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 of the Texas Administrative Code.³ The requirement will also extend to each successive wholesale customer in the resale of the water.

7.6 Coordination

A copy of this Water Conservation and Drought Contingency and Water Emergency Response Plan will be provided to the City of Dallas and the Region C Water Planning Group. A copy of the cover letter to be sent with those plans is included in Appendix E.

7.7 Water Conservation Implementation Report

Appendix G includes the TCEQ-required water conservation implementation report. The report is due to the TCEQ by May 1 of every year, starting in the year 2010. This report lists the various water conservation strategies that have been implemented, including the date the strategy was implemented. The report also calls for the five-year and ten-year per capita water use goals from the previous water conservation plan. The amount of water saved is also requested.

**8. IMPLEMENTATION AND ENFORCEMENT OF THE WATER
CONSERVATION PLAN**

Appendix F contains a copy of an ordinance, adopted by the City Council regarding the water conservation plan. The ordinance designates responsible officials to implement and enforce the water conservation plan.

9. REVIEW AND UPDATE OF WATER CONSERVATION PLAN

TCEQ requires that the water conservation plans be updated prior to May 1, 2014. The plans are required to be updated every five years thereafter. This plan was prepared in response to the May 1, 2014 requirement, and the plan will be updated as required and as appropriate based on new or updated information.

10. DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN

10.1 Introduction

The purpose of this drought contingency and water emergency response plan is as follows:

- To conserve the available water supply in times of drought and emergency
- To maintain supplies for domestic water use, sanitation, and fire protection
- To protect and preserve public health, welfare, and safety
- To minimize the adverse impacts of water supply shortages
- To minimize the adverse impacts of emergency water supply conditions.
- To satisfy the requirements set forth by TCEQ and other agencies.

A drought is defined as an extended period of time when an area receives insufficient amounts of rainfall to replenish the water supply, causing water supply shortages. In the absence of drought response measures, water demands tend to increase during a drought due to the need for additional outdoor irrigation. The severity of a drought depends on the degree of depletion of supplies and on the relationship of demand to available supplies.

10.2 Provisions to Inform the Public and Opportunity for Public Input

The City of Lancaster will provide opportunity for public input in the development of this drought contingency and water emergency response plan by the following means:

- Providing written notice of the proposed plan and the opportunity to comment on the plan by newspaper, and notice on the web site <http://www.lancaster-tx.com/>.
- Making the draft plan available on the web site <http://www.lancaster-tx.com/>.
- Providing the draft plan to anyone requesting a copy.
- Holding a public meeting at a City Council meeting to receive public comments on the draft plan.

10.3 Provisions for Continuing Public Education and Information

After the plan is adopted the City will continue to inform and educate the public about the drought contingency and water emergency response plan by the following means:

- Making the plan available to the public through the web site <http://www.lancaster-tx.com/>.
- Including information about the drought contingency and water emergency response plan on the web site <http://www.lancaster-tx.com/>.
- City of Lancaster water customers will be notified in their water bill of the availability of information on the Water Conservation and Drought Contingency

Plan and of any additional water use restrictions that may become effective in response to future drought conditions.

At any time that the drought contingency and water emergency response plan is activated or the drought stage or water emergency response stage changes, the City will notify local media of the issues, the drought response stage or water emergency response stage, and the specific actions required of the public. The information will also be publicized on the city web site. Information about the current stage and restrictions will be included in the quarterly newsletter sent to customers.

10.4 Initiation and Termination of Drought or Water Emergency Response Stages

Initiation of a Drought or Water Emergency Response Stage

The Public Works Director or official designee may order the implementation of a drought or water emergency response stage with City Council approval when one or more of the trigger conditions for that stage is met. The following actions will be taken when a drought or water emergency response stage is initiated:

- The public will be notified through local media and the city web site as described in Section 10.3.
- Lancaster MUD #1 and the City of Dallas will be notified by e-mail with a follow-up letter or fax that provides details of the reasons for initiation of the drought/water emergency response stage.
- If any mandatory provisions of the drought contingency and water emergency response plan are activated, Lancaster will notify the Executive Director of the TCEQ and the Director of the Dallas Water Utilities within 5 business days.

Drought contingency/water emergency response stages imposed by the City of Dallas will be initiated by the City of Lancaster. For other trigger conditions internal to the city, the Public Works Director or official designee may decide not to order the implementation of a drought response stage or water emergency with approval of City Council even though one or more of the trigger criteria for the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

Termination of a Drought/Water Emergency Response Stage

The Public Works Director or official designee may order the termination of a drought or water emergency response stage with City Council approval when the conditions for termination are met. The following actions will be taken when a drought or emergency response stage is terminated:

- The public will be notified through local media and the city web site as described in Section 10.3.
- Lancaster MUD #1 and the City of Dallas will be notified by e-mail with a follow-up letter or fax.
- If any mandatory provisions of the drought contingency and water emergency response plan are terminated, the City will notify the Executive Director of the TCEQ and the Director of the Dallas Water Utilities within 5 business days.

The Public Works Director or official designee may decide not to order the termination of a drought or water emergency response stage with approval of City Council even though the conditions for termination of the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, or the anticipation of potential changed conditions that warrant the continuation of the drought stage. The reason for this decision should be documented.

10.5 Drought Contingency and Water Emergency Response Stages and Measures

Stage 1

Initiation and Termination Conditions for Stage 1

Stage 1 of the Drought Contingency and Water Emergency Response Plan will be initiated when:

- With approval of City Council the Public Works Director or official designee deems it necessary to implement Stage 1 restrictions. Circumstances which may cause initiation include:
 - System demand exceeds 85% of delivery capacity for 3 consecutive days
 - Ground storage reservoirs have dropped below 65% of capacity.
 - Natural or manmade contamination occurs anywhere in the system
 - Conditions are such that initiation of Stage 1 is desirable
- Dallas Water Utilities has initiated Stage 1 restrictions.

Stage 1 may terminate when Dallas Water Utilities terminates its Stage 1 condition, when the circumstances that caused the initiation of Stage 1 no longer prevail, or when conditions are such that termination of Stage 1 is desirable.

Goal for Use Reduction and Actions Available under Stage 1

Stage 1 is intended to raise public awareness of potential drought or water emergency problems. The goal for water use reduction under Stage 1 is to achieve a 1 percent reduction in water use.

The Public Works Director or official designee may order the implementation of any of the actions listed below:

- All Water Users
 - Encourage reduction in frequency of watering new and first year landscaping.
 - Encourage only initial filling of ornamental fountains.
 - Encourage reduction in frequency of washing or rinsing of vehicles and recommend use of bucket/container, hand held hose with positive shut-off valve or commercial car wash.
 - Encourage reduction in frequency in draining or refilling swimming pools.
 - Encourage reduction in frequency of recreational use including use of faucets, hoses, or sprinklers.
 - Encourage reduction of water use through voluntary day of week lawn watering schedule for established landscape. Irrigation of landscapes areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8) and for locations without addresses, and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9). Apartments, office building complexes or other property containing multiple addresses may be identified by the lowest address number. Irrigation of landscaped areas is permitted at anytime by means of a hand-held hose, a faucet filled bucket or drip irrigation system.
- City Government
 - Initiate public education campaign and encourage reduced water use practices.
 - Encourage 25% reduction in frequency of water street sweeping, vehicle washing and rinsing.
 - Intensify normal leak detection and repair activities on water pipes and mains.
 - Encourage reduction of water use in city-owned ornamental fountains.
 - Encourage reductions in landscape used for parks and city owned golf courses.
- Commercial Customers
 - Identify and encourage voluntary reduction measures by high-volume water users.
 - Encourage reduction in landscape uses for parks and golf courses.
 - Encourage reduction in water use for landscape nursery stock.
- Wholesale Water Customer

- Encourage implementation of like procedures by wholesale customers.

Stage 2

Initiation and Termination Conditions for Stage 2

Stage 2 of the Drought Contingency and Water Emergency Response Plan will be initiated when:

- With approval of City Council the Public Works Director or official designee, deems it necessary to implement Stage 2 restrictions. Circumstances which may cause initiation include:
 - System demand exceeds 90% of delivery capacity for 3 consecutive days.
 - Ground storage reservoirs have dropped below 55%.
 - Natural or manmade contamination occurs anywhere in the system.
 - Conditions are such that initiation of Stage 2 is desirable.
- City of Dallas has initiated Stage 2 restrictions.

Stage 2 may terminate when the City of Dallas terminates its Stage 2 condition, when the circumstances that caused the initiation of Stage 2 no longer prevail, or when conditions are such that termination of Stage 2 is desirable.

Goal for Use Reduction and Actions Available under Stage 2

The goal for water use reduction under Stage 2 is a five percent reduction in water use. If circumstances warrant or if required by the City of Dallas, the Public Works Director or official designee can set a goal for greater water use reduction with City Council approval. The Public Works Director or official designee may order the implementation of any of the actions listed below, as deemed necessary. Measures described as “requires notification to TCEQ” impose mandatory requirements on customers. The supplier must notify TCEQ and the City of Dallas within five business days if these measures are implemented:

- All Water Users
 - Continue or initiate any actions available under Stage 1.
 - **Requires Notification to TCEQ** - Restrict operation of ornamental fountains or ponds to initial filling except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
 - **Requires Notification to TCEQ** - Prohibit recreational water use including use of faucets, hoses or sprinklers, which use water in such a manner as to allow run-off or other wastes.
 - **Requires Notification to TCEQ** - Restrict washing of any motor vehicle, motorbike, boat, trailer, airplane or other vehicle to the use of a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the immediate premises of a commercial car

- wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food or perishables.
- Encourage further reduction of in frequency in draining and refilling of swimming pools.
 - **Requires Notification to TCEQ** - Prohibit hosing off paved area, buildings, windows or other surfaces.
 - **Requires Notification to TCEQ** - Require reductions of water use through mandatory day-of-week landscape watering schedule and require watering only during off-peak hours. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigations systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8) and for locations without addresses, and Saturdays and Wednesdays for water customers with an address ending in an odd number (1, 3, 5, 7, or 9). Irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 6:00 p.m. and 12:00 midnight on designated watering days. Apartments, office building complexes or other property containing multiple addresses may be identified by the lowest address number. Irrigation of landscaped areas is permitted at any time if it is by means of a hand-held hose, a faucet filled bucket or drip irrigation system.
 - **Requires Notification to TCEQ** - A 10 percent rate increase for high water demand users (greater than 10,000 gallons per month per account) or any other percentage as deemed appropriate by the Public Works Director with City Council approval.
 - **City Government**
 - Initiate engineering studies to evaluate alternatives to mitigate drought conditions should conditions worsen.
 - Accelerate public education campaign teaching and encouraging reduced water use practices.
 - Reduce frequency of water street sweeping and city vehicle washing or rinsing by 50 percent.
 - Prohibit flushing of new mains not immediately required to provide service.
 - Continue intensified leak detection and repair activities on water pipes and mains.
 - Prohibit operation of ornamental fountains by city government.
 - City government restricted to day-of-week landscape watering schedule except for parks and city owned golf courses.
 - Increase enforcement efforts.
 - **Commercial Customers**
 - Identify and encourage voluntary reduction measures by high-volume water users.

- **Requires Notification to TCEQ** - Require reduction of water use through day-of-week landscape watering schedule for private parks and golf courses.
- Encourage further reduction in landscape uses for nursery stock.
- Wholesale Water Customer
 - Require water demand reductions in accordance with contract obligations for wholesale water customers.

Stage 3

Initiation and Termination Conditions for Stage 3

Stage 3 of the Drought Contingency and Water Emergency Response Plan will be implemented when:

- With approval of City Council the Public Works Director or official designee, deems it necessary to implement Stage 3 restrictions. Circumstances which may cause initiation include:
 - System demand exceeds 95% of delivery capacity for 2 consecutive days
 - Ground storage reservoirs have dropped below 45% of capacity.
 - Water demand exceeds a reduced pumping capacity for all or part of the system, as determined by the Director of Public Works.
 - Pump or system failures occur, which causes unprecedented loss of capability to provide water service.
 - Natural or manmade contamination occurs anywhere in the system.
 - Conditions are such that initiation of Stage 3 is desirable
- City of Dallas has initiated Stage 3 restrictions.

Stage 3 may terminate when the City of Dallas terminates its Stage 3 condition, when the circumstances that caused the initiation of Stage 3 no longer prevail, or when conditions are such that termination of Stage 3 is desirable.

Goals for Use Reduction and Actions Available under Stage 3

The goal for water use reduction under Stage 3 is a reduction target of fifteen percent in water use. If circumstances warrant or if required by the City of Dallas, the Public Works Director or official designee can set a goal for greater water use reduction with City Council approval.

The Public Works Director or official designee will implement any action(s) required by the City of Dallas. In addition, the Public Works Director or official designee may order the implementation of any of the actions listed below, as deemed necessary. Measures described as “requires notification to TCEQ” impose mandatory requirements on customers.

The supplier must notify TCEQ and the City of Dallas within five business days if these measures are implemented:

- All Water Users
 - Continue or initiate any actions available under Stages 1 and 2.
 - **Requires Notification to TCEQ** - Irrigation of turf, shrubs, perennials, annuals, ground covers and any other landscaped area by any method is absolutely prohibited. Trees may be irrigated with drip irrigation system, soaker hoses or with a hand-held hose one day per week on the Stage 2 watering schedule and within the permitted watering hours. Installation of new landscapes or turf areas is prohibited.
 - **Requires Notification to TCEQ** – Use of water to wash any motor vehicle, motorbike, boat, trailer or other vehicle not occurring on the premises of a commercial vehicle wash facility or commercial service stations is prohibited. Companies with an automated on-site vehicle washing facility may wash its vehicles at any time. Further, such washing may be exempt from these requirements if the health, safety and welfare of the public are contingent upon frequent vehicle cleansing, such as garbage trucks and commercial vehicles used to transport food and perishables.
 - **Requires Notification to TCEQ** – Prohibit the filling, draining and refilling of existing swimming pools, wading pools, Jacuzzi and hot tubs except to maintain structural integrity, proper operation and maintenance or alleviate a public safety risk. Existing pools may add water to replace losses from normal use and evaporation.
 - **Requires Notification to TCEQ** – Foundations may be watered for a two-hour period during off-peak hours with soaker or hand-held hose equipped with a positive shutoff nozzle.
 - **Requires Notification to TCEQ**- Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
 - **Requires Notification to TCEQ**- No application for new, additional, expanded, or increases-in-size water service connections, meters, service lines, pipeline extensions, mains, or other water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage or higher-numbered stage shall be in effect.
 - **Requires Notification to TCEQ** – Permitting of new swimming pools, hot tubs, spas, ornamental ponds and fountain construction is prohibited.
 - **Requires notification to TCEQ**- A 50 percent rate increase for high water demand users (greater than 15,000 gallons per month per account) or any other percentage as deemed appropriate by the Public Works Director with City Council approval.
- City Government
 - Wet street sweeping and city vehicle washing is prohibited except for reasons of public health, safety and welfare.
 - Municipal landscape watering prohibited except golf courses (see below).
 - Water of golf course greens and tee boxes restricted to off-peak hours; watering of other golf course areas and parks is prohibited.

- Commercial Customers
 - o Watering of golf course greens and tee boxes restricted to off-peak hours; watering of other golf course areas and parks is prohibited unless the golf course utilizes a water source other than that provided by the City of Lancaster.
- Wholesale Customer
 - o Require water demand reductions in accordance with contract obligations for wholesale water customers.

Procedures for Granting Variances to the Plan

The Public Works Director or official designee may grant temporary variances for existing water uses otherwise prohibited under this drought contingency and water emergency response plan if one or more of the following conditions are met:

- Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance.
- Compliance with this plan cannot be accomplished due to technical or other limitations.
- Alternative methods that achieve the same level of reduction in water use can be implemented.

Variances shall be granted or denied at the discretion of the Public Work Director or official designee. All petitions for variances should be in writing and should include the following information:

- Name and address of the petitioners
- Purpose of water use
- Specific provisions from which relief is requested
- Detailed statement of the adverse effect of the provision from which relief is requested
- Description of the relief requested
- Period of time for which the variance is sought
- Alternative measures that will be taken to reduce water use
- Other pertinent information

10.7 Procedures for Enforcing Mandatory Water Use Restrictions

Mandatory water use restrictions may be imposed in Stage 2, Stage 3. The penalties associated with the mandatory water use restrictions will be determined by the City of Lancaster.

Appendix F contains potential ordinances, resolutions, and orders that may be adopted by the city council including enforcement of same.

10.8 Coordination

A copy of this Water Conservation and Drought Contingency and Water Emergency Response Plan will be provided to the City of Dallas and the Region C Water Planning Group. A copy of the cover letter to be sent with those plans is included in Appendix E.

10.9 Review and Update of Drought Contingency and Water Emergency Response Plan

As required by TCEQ rules, the City of Lancaster will review the drought contingency and water emergency response plan every five years. The plan will be updated as appropriate based on new or updated information.

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 13

Consider a resolution accepting the terms and conditions of a Sanitary Sewer Easement Document for the installation of a sewer line across Dallas County's 125-acre Ten Mile Creek Preserve and the compensation for the easement, by and between Dallas County and The City of Lancaster.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Sound Infrastructure

Background

The City of Lancaster has completed the Keller Branch Sewer Line replacement Project, Phase 1, which involved upsizing an existing 12-inch vitrified clay sewer line to 18-inch PVC. The project spanned from the Trinity River Authority (TRA) interceptor at Ten Mile Creek to Beltline Road on the north side. As a part of the project, the City also performed work on Dallas County's 125-acre Ten Mile Creek Preserve Area, by Nokomis Road and Beltline Road, within the City of Lancaster.

The City of Lancaster is currently requesting a Permanent Sanitary Sewer Easement across Dallas County's 125-acre Ten Mile Creek Preserve for the completed Keller Branch project. The requested easement is 40 feet wide and 2,395 feet long. The City has agreed to pay \$6,619.15 for the easement and appraisal fees. In addition, the City will install an identification sign for the west side of the preserve, as compensation for the small-caliper trees that had to be removed, as a part of the sewer line replacement project.

Considerations

This item was pulled from the October 28, 2013 regular meeting to address concerns raised related to the purchase of additional easement for the sewer line replacement. Staff met with Dallas County staff and determined that the purchase that was made was for portions of the easement that had not been purchased previously due to inadequate dedications for on-going maintenance, as well as accurate recordation, to date. This agenda is to provide a comprehensive delineation of the easement and the ten mile creek preserve.

- **Operational** – Phase 1 of the Keller Branch Sewer Line replacement project has been completed. The project was to upsize and replace 12-inch clay sewer line with 18-inch PVC.

- **Legal** - The resolution and Easement document have been reviewed and approved as to form by the City Attorney.
- **Financial** – The City will compensate Dallas County \$6,619.15 for the easement, inclusive of appraisal fees. The City will also purchase and install an identification sign for the Ten Mile Creek Preserve, valued at approximately \$3,337. The project was funded utilizing 2011 Series bonds authorized at the September 26, 2011 council meeting.
- **Public Information** – This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve the resolution as presented.
2. City Council may reject the resolution.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
 - Attachment 1 Sanitary Sewer
-

Submitted by:

Rona Stringfellow, Assistant City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ACCEPTING THE TERMS AND CONDITIONS OF A SANITARY SEWER EASEMENT DOCUMENT FOR THE INSTALLATION OF A SEWER LINE ACROSS DALLAS COUNTY'S 125-ACRE TEN MILE CREEK PRESERVE AND THE COMPENSATION FOR THE EASEMENT, WHICH IS ATTACHED AS "EXHIBIT A", BY AND BETWEEN DALLAS COUNTY AND THE CITY OF LANCASTER; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster desires to execute a Sanitary Sewer Easement Document with Dallas County in connection with the upsizing of existing vitrified clay 12-inch to an 18-inch PVC sewer line, located with the 125-acre Ten Mile Creek Preserve;

WHEREAS, the City Council of the City of Lancaster has agreed to pay the County \$6619.15 for said easement and appraisal fees and install a new identification sign for the west side of the preserve as compensation for the small caliber trees that had to be removed as a part of the project;

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

SECTION 1. That the Forty Foot (40') Sanitary Sewer Easement for Keller Branch Phase I Document by and between Dallas County and the City of Lancaster, which is attached hereto and incorporated herein by reference as Exhibit A, having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things accepted.

SECTION 2. That the Mayor is hereby authorized to execute said agreement as depicted in Exhibit 1.

SECTION 3. Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

SECTION 4. Should any part of this resolution be held invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared severable.

SECTION 5. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

COURT ORDER

17

*Rick Sorelyg - Planning
Development
Original*

CASE NO: 2013 1571

DATE: September 24, 2013

STATE OF TEXAS |

COUNTY OF DALLAS |

BE IT REMEMBERED, at a regular meeting of Commissioners Court of Dallas County, Texas, held on the 24th day of September 2013, on a motion made by Mike Cantrell, District 2 and seconded by John Wiley Price, District 3, the following Court Order was adopted:

- WHEREAS, on August 27, 2013, the Dallas County Commissioners Court was briefed on a request from the City of Lancaster for a Permanent Sanitary Sewer Easement across the County's 125-acre Tenmile Creek Preserve to install an eighteen-inch sanitary sewer to replace an existing forty-year-old twelve-inch line; and
- WHEREAS, because the sewer line that is being replaced existed prior to the County owning the property which comprises this preserve, it was initially thought that the City already possessed the easement that is now being requested; and
- WHEREAS, providing the requested easement will allow the City to adequately serve its population which has tripled since the twelve-inch line was installed and will do so without adversely affecting the preserve; and
- WHEREAS, said permanent easement is forty feet wide and 2395 feet long (i.e., 95,815 square feet or 2.1996 acres) whose value was determined to be \$2420 and appraisal fees in the amount of \$4199.15; and
- WHEREAS, the City has agreed to pay the County \$6619.15 for said easement and appraisal fees and install a new identification sign for the west side of the preserve as compensation for the small-caliber trees that had to be removed as part of the sewer replacement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Dallas County Commissioners Court approves the sanitary sewer easement for the installation of a sewer line across the County's 125-acre Tenmile Creek Preserve and the compensation for the easement, the associated appraisal, and the small-caliber trees that have had to be removed, and authorizes the County Judge to sign the attached easement documents.

DONE IN OPEN COURT this the 24th day of September, 2013.

[Signature]
Clay Lewis/Jenkins, County Judge

[Signature]
Dr. Theresa M. Daniel, District #1

[Signature]
Mike Cantrell, District #2

[Signature]
John Wiley Price, District #3

[Signature]
Dr. Elba Garcia, District #4

Recommended by: *[Signature]*

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

PERMANENT 40' SANITARY SEWER EASEMENT AND ADDITIONAL TEMPORARY CONSTRUCTION EASEMENT

Grant of Permanent Easement. On the Effective Date shown below, Dallas County, Texas ("County" or "Grantor") grants to **City of Lancaster, Texas**, including its officers, employees, heirs, executors, administrators, successors, and assigns, who are authorized by Contractor as necessary participants herein (collectively, "Contractor" or "Grantee"), a non-exclusive **Sanitary Sewer/Construction Easement for the City of Lancaster Keller Branch Phase I Pipe Burst Project** ("Permanent Easement"), together with the right of ingress and egress, that shall be covenants running with the land for the life of such Permanent Easement for and in consideration of Contractor's strict compliance with the terms and conditions stated on this document for the purpose specified below (Permitted Project) for the 125-acre tract of real property located along the east side of Nokomis Road where the TenMile Creek runs as shown on the attached Exhibit A and further described as 801 Nokomis Road, Lancaster, Texas and recorded in Volume 85232, Page 3278, Real Property Records, Dallas County, Texas (collectively, "Permanent Property") attached and incorporated herein by reference for all purposes.

Grant of Temporary Construction Easement. Additionally, County hereby grants Contractor together with Contractor's Personnel – including its contracted consultants, contractors, subcontractors, as well as their respective officers, agents and employees – who are authorized by Contractor as necessary participants herein (collectively, "Contractor") a non-exclusive Temporary Construction Easement, together with the right of ingress and egress, for and in consideration of Contractor's strict compliance with the terms and conditions stated in this document for the Permitted Project as described below over, under and across the 125-acre tract of real property located along the east side of Nokomis Road where the TenMile Creek runs as shown on the attached Exhibit A and further described as 801 Nokomis Road, Lancaster, Texas.

This Permanent Easement and Temporary Construction Easement (collectively, "Easement") on the respective Permanent Property and Temporary Property (collectively, "Property") is subject to (a) any existing public or private utility, drainage, railroad or communication facility located in, on, under or upon Property; (b) all vested rights presently owned by any public or private railroad, utility or communication company for the use of the Property for facilities presently located within the boundaries of the Property; (c) any existing lease, easement or other interest in the Property granted by County to any individual, corporation or other entity; (d) any and all existing agreements by and between the County of Dallas and the State of Texas or any other U.S. government, and/or existing right of the general public to utilize the Property; (e) any and all valid and applicable prior deed restrictions; and/or (f) any erosion, accretion, drainage, or emulsion that may change the boundary lines surveyed.

County, including its heirs, executors, administrators, successors and assigns, shall retain all original property rights, including, without limitation, recreational use, wildlife and/or botanical habitat, parking, and storage.

1. **TERM.**

- (A) **Permanent Easement.** Unless otherwise stated in this Easement, the Term of the Permanent Easement shall begin on February 4, 2013 (“Effective Date”) and shall be permanent.
- (B) **Temporary Construction Easement.** Unless otherwise stated in this Easement, the Term of the Temporary Construction Easement shall begin on the Effective Date and shall terminate upon the earlier occurrence of August 8, 2013 (“Expiration Date”) or the completion of the Permitted Project (“Completion Event”)

2. **WARRANTY.** Notwithstanding any provision to the contrary, County makes no expressed, implied, or statutory warranty of title, ownership, condition, habitability, tenantability, merchantability, or fitness for a particular purpose.

3. **PERMITTED PROJECT AND WORK PLANS.**

- (A) **For Permanent Property.** Specifically the Permanent Property shall be used by Contractor solely for maintaining, constructing, laying, replacing, repairing, rebuilding, operating, removing, changing and installing on, in, under, over, along, upon and across the Permanent Property for the purpose of pipe-bursting existing sanitary sewer line, with the right and privilege of ingress, egress, and regress in, along, upon, under and across the Permanent Property. Prior to the commencement of the Permitted Project, Contractor shall submit to the Dallas County Director of Public Works, or his designated agent, a detailed specification or plan of design, work, operation and maintenance, including, without limitation, the exact location, type, depth, and cathodic protection measures, for the Permitted Project. If approved, a true and correct copy of such specifications and plan (“Plan Documents for Permanent Easement”) shall be retained in the Dallas County Trail and Preserve Program (“TAPP”) file cabinet in the Dallas County Administration Building, 411 Elm Street, 3rd Floor, Dallas, Texas, and titled Sanitary Sewer/Construction Easement for the City of Lancaster Keller Branch Phase I Pipe Burst Project at TenMile Creek Preserve, and shall be incorporated herein by reference for all purposes. Should Contractor wish to substantially deviate from the Plan Documents for Permanent Easement, Contractor shall stop work or not commence the Permitted Project until County has reviewed, and/or commented, and approved the modified Plan Documents for Permanent Easement for commencement or continuance. Upon approval of the modified Plan Documents, the modified Plan Documents for Permanent Easement shall take effect, and be incorporated herein by reference for all purposes and in the same manner as the prior approved version of the Plan Documents for Permanent Easement. A true and correct copy shall replace the prior version of the Plan Documents for Permanent Easement in the County’s files with a cover page that indicates the approval date.
- (B) **For Temporary Property.** Specifically the Temporary Property shall be used by Contractor solely for the purpose of pipe-bursting the existing sanitary sewer line, with the right and

privilege of ingress, egress, and regress in, along, upon, under and across the Permanent Property. Prior to the commencement of the Permitted Project, Contractor shall submit to the Dallas County Director of Public Works, or his designated agent, a detailed specification or plan of design, work, operation and maintenance, including, without limitation, the exact location, type, depth, and cathodic protection measures, for the Permitted Project. If approved, a true and correct copy of such specifications and plan ("Plan Documents for Temporary Construction Easement") shall be retained in the Dallas County Trail and Preserve Program ("TAPP") file cabinet in the Dallas County Administration Building, 411 Elm Street, 3rd Floor, Dallas, Texas, and titled Sanitary Sewer/Construction Easement for the City of Lancaster Keller Branch Phase I Pipe Burst Project at TenMile Creek Preserve, and shall be incorporated herein by reference for all purposes. Should Contractor wish to substantially deviate from the Plan Documents for Temporary Construction Easement, Contractor shall stop work or not commence the Permitted Project until County has reviewed, and/or commented, and approved the Plan Documents Temporary Construction Easement for commencement or continuance. Upon approval of the modified Plan Documents the modified Plan Documents for Temporary Construction Easement shall take effect, and be incorporated herein by reference for all purposes in the same manner as the prior approved version of the Plan Documents for Temporary Construction Easement. A true and correct copy shall replace the prior version of the Plan Documents for Temporary Construction Easement in the County's files with a cover page that indicates the approval date.

(C) County Use of Property. This Easement is made expressly subject and subordinate to the right of County to use the Property for any purpose; provided, however, such use shall not prevent Contractor from use of the Property as authorized herein or result in intentional damage to or destruction of the sanitary sewer constructed by Contractor pursuant to this Easement.

4. NOTICE TO COMMENCE, NOTICE OF COMPLETION, AND VACATING THE TEMPORARY PROPERTY. Upon approval by County to commence the Permitted Project, and prior to the actual commencement, Contractor shall provide a seventy-two (72) hours written Notice to Commence to the County Director of Planning and Development, or his designated agent, unless the 72 hours is specifically modified by the County Director of Planning and Development. If the Permitted Project is completed earlier than the Expiration Date, Contractor shall provide a written notice to the County Director of Planning and Development by 5:00 P.M. of the day of Completion Event. Contractor must vacate the Temporary Property by 5:00 P.M. of the Expiration Date or the day of the Completion Event.

5. PAYMENT. Contractor shall pay County Six Thousand One Hundred Ninety Nine and 15/100 Dollars \$6,199.15 (Two Thousand Four Hundred Twenty and 00/100 Dollars (\$2,420.00)) for the Easement and the fee for the in-house appraisal is Four Thousand One Hundred Ninety Nine and 15/100 Dollars (\$4,199.15).

6. CONTRACTOR'S ASSURANCES. In connection with Contractor's Easement and Permitted Project, Contractor shall, without limitation:

- (A) Require and ensure of its Personnel the same duties and obligations to County throughout this entire Easement;
- (B) Assure that the Permitted Project will not interfere with the use of the Property by the general public. Contractor agrees to ensure public safety during the Permitted Project, including, but not limited to, posting of fences, barriers, warning signals, and barricades in or around areas containing potential hazards created by the Permitted Project, so that the public is sufficiently warned about work in progress at all time;
- (C) Not create, either collectively or individually, any hazard or nuisance; not cause a threat to the health, environment or safety of the public; and/or not impair nor prevent access by the general public. Contractor further agrees to pay for any property damage that result from the Permitted Project;
- (D) Conduct its business in a safe, careful, professional and lawful manner, as well as keep and maintain the Property in practically the same condition as it was when Contractor first enter to commence on Permitted Project, except to the extent the Property must be modified to accommodate construction of the Permitted Project in accordance with the Plan Documents for Permanent Easement;
- (E) Use, generate, release, discharge, store, dispose, or transport any Hazardous Materials on, under, in, above, to, or from the Property only as necessary, and in strict compliance with all applicable federal, state, and local laws, rules, regulations, and orders. For purposes of this provision, the term, "Hazardous Materials," shall mean and refer to any wastes, materials, or other substances that require special handling or treatment under any applicable local, state, or federal law, rule, regulation, or order;
- (F) Not use, nor permit the use of the Property, or its adjoining property, for any purpose that may be in violation of any laws pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Texas Water Code, and the Texas Solid Waste Disposal Act, as amended. Contractor warrants that the Permitted Use of the Property will not result in the disposal or other release of any hazardous or regulated substances or solid waste on or to the Property, and that it will take all steps necessary to ensure that no such hazardous or regulated substances or solid waste will ever be discharged onto the Property by Contractor;
- (G) Ensure that first soil (top soil) removed is last soil replaced, restore the surface grade of the land to the original elevations, compaction, and drainage configurations that existed prior to Contractor's performance. Contractor's restoration shall be completed in a timely manner;
- (H) Re-sow with wildflower seed or native grass (appropriate to the soil type and sun exposure of the property) all areas upon which the surface is disturbed by the construction of the line. Reseeding will be of a Texas mixed variety at a rate of at least six pounds per acre. Contractor shall utilize good quality Texas seed. Contractor, however, is not responsible for the success of establishment of the wildflowers. Contractor, acting as County's maintenance partner, hereby assumes co-responsibility for future maintenance of such wildflower areas;

- (I) Ensure that no tree 12 inches or greater in diameter shall be removed for construction unless specific permission has been granted by the County. Replace any trees 3-inches or greater in diameter, if any, with trees on a 2-inch for 1-inch ratio, with the replacement trees being a minimum of 3-inches (i.e., one 12-inch tree replaced with six 3-inch trees) of a mixed variety, preferably Native Texas hardwoods common to this region. A two-year re-establishment period will be required with a minimum 50% survival rate. Trees are to be planted within six (6) months after construction is completed.

In lieu of the above stated tree replacement, the Contractor has agreed to install an identification sign for the west side of the preserve. The County has accepted the sign replacement as compensation for the trees that were removed and were subject to remediation. A true and correct copy shall be retained in the TAPP file cabinet in the Dallas County Administration Building, 411 Elm Street, 3rd Floor, Dallas, Texas, and titled "Tree Mitigation Plan," and shall be incorporated herein by reference for all purposes;

- (J) Assure that it is cognizant of the character of its maintenance, construction, operation and work on the Property;
- (K) Not park, nor permit to be parked, overnight any vehicles on the Property except during Permitted Project and periodic inspections. No vehicle of any kind, type or nature will be abandoned on the Property by Contractor;
- (L) Perform all maintenance, construction, work, operations, alterations or improvements in a professional and reputable manner and in strict compliance with approved plans, drawings, specifications, maintenance, and construction schedules as furnished to County;
- (M) Be solely responsible for the issuance and compliance with all building permits, certificates of occupancy, and all other such requirements;
- (N) Pay all costs as they shall become due, and shall not allow any lien, including, but not limited to, mechanics and materialmen liens, and/or construction liens to be placed on the Property. In the event that a lien is filed, Contractor shall, at no cost and expense to County, pay in full all costs and expenses, including, but not limited to, attorneys' fees, and cause such lien to be released, and the release filed in the real property records of Dallas County, Texas;
- (O) Assure that Contractor's maintenance, construction, operation and work on the Property shall not alter the topography, shall not impair the drainage, and shall not impound or divert the water into any other drainage area;
- (P) Be solely responsible for the determination of the existence of utility, drainage, railroad, or communication facilities and to perform maintenance, construction, operation, or work on Property without damage, interference or conflict. In the event that there is a conflict between the Permitted Project and such existing facilities, Contractor shall be responsible for and shall design, operate, install, and construct, in such a manner as to provide for a minimum clearance so as not to cause damage to or interruption of such utility or communication facilities;

- (Q) Be solely responsible, irregardless of the review, approval, and/or comments by County regarding the Plan Documents, for the construction, operation, work, design and maintenance of the Permitted Project, including, without limitation, the job site, inspection and certification that the Property is safe for work; preparation of safety plans, training and compliance with all applicable state and federal labor laws and regulations; ensuring that all personnel are properly trained and supervised to carry out Permitted Project; development of procedure to detect and warn of hazardous conditions, including use of hazardous or regulated materials, substances or equipment; inspection and testing of all materials to be used in the Permitted Project; and compliance with all applicable state, federal wage and labor laws and all trademark, patents and copyright laws; and will look solely to industry standards for architectural and engineering sufficiency;
- (R) Agree that County and its authorized agents have the right to enter the Property at any time for the purpose of examination, inspection, repairs, alternations, or improvements to the Property as County may deem necessary or desirable, but that would not unreasonably interfere with Contractor's use of the Easement or defeat the function and purpose of the Easement;
- (S) Maintain the Property in good order, including removal from the Property not less frequently than weekly, and prior to providing Contractor's notice of completion, without cost to County, all debris, surplus, trash, substance and materials placed on the Property by Contractor. Contractor shall dispose of same in proper trash receptacles and in accordance with applicable law, ordinance, regulation and County policy. Contractor shall also remove all of its tools, equipment and materials from the Property at no cost to Count upon the earlier of the Expiration Date or Completion Event; and
- (T) Not erect, nor permit others to erect, any structure on the Property except as approved in the Plan Documents.

7. **APPLICABLE LAWS AND AGENCY APPROVALS.** Contractor, without any cost or expense to County, shall comply with all applicable laws, statutes, ordinances, rules, regulations and orders, including any zoning ordinances, required licenses, permits, certifications, or other approvals from any agencies to carry on Permitted Project. Failure to be aware of such requirements or to comply with any parts thereof shall be grounds for Termination of this Easement at County's discretion and shall subject Contractor to all available remedies that County may pursue.

8. **HAZARDS / DANGERS ON PROPERTY.** Contractor shall enter the Property at Contractor's own risks. County shall not be responsible for any known or unknown dangers, hazards, or risks on Property, including, without limitation, poisonous snakes, wild animals, traps, and holes. Contractor shall not destroy or harm any federally, state, or locally protected animals.

9. **DUTY OF CARE IN PERFORMANCE.** If Contractor, including any of its materials and equipment, causes damage to the Property, or its adjacent property, the Contractor shall immediately replace or repair the damages at no cost or expense to County and restore the Property to its condition at the commencement of the Permitted Project. Repair or replacement of damaged areas

of Property shall be performed in a professional manner and using high quality materials. Repair or replacement of damaged areas of Property includes, without limitation, re-seeding, replanting, compacting to the original density and resurfacing any holes, ditches, or other indentations, as well as any mounds or other inclines created by any excavation by Contractor. If Contractor fails or refuses to make such repair or replacement: County shall have the right, but not the obligation, to make or affect any such repair or replacement subject to reimbursement from Contractor; this Easement shall be revoked at County's discretion, without any cost to County; and Contractor shall remove all of the improvement under the Permitted Project, equipment, tools, waste or other items that were not originally found from the Property within ten (10) calendar days of such revocation.

10. INSURANCE FOR TEMPORARY CONSTRUCTION EASEMENT.

- (A) Without limiting any of the other obligations or liabilities of the Contractor, Contractor agrees that it will have and maintain without cost to County, in full force and effect minimum insurance with companies approved by the State of Texas and satisfactory to County.
- (B) As a condition precedent to commencement of any work, not later than ten (10) calendar days after the Effective Date of this Temporary Construction Easement, Contractor shall furnish to the *Dallas County Director of Purchasing* (at the same address given below under this Insurance heading) the following minimum insurance coverage for Contractor that show the County as the certificate holder and covers the period of the Term of this Temporary Construction Easement and any renewals:
 - 1) Statutory Workers' Compensation Insurance that meets the requirements of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, or, if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance for Contractor. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit in lieu of a Certificate of Insurance, which Affidavit shall be attached and incorporated into this Temporary Construction Easement by reference for all purposes, and which shall state that there is no employee. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self-insurance, with the Texas Workers' Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

<u>Types of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	
Bodily injury by Accident	\$500,000.00 Each Accident
Bodily injury by Disease	\$500,000.00 Each Employee
Bodily injury by Disease	\$500,000.00 Policy Limit

- 2) Professional Liability Insurance or Errors and Omissions Insurance. Contractor shall indemnify County from defects, errors or omissions and shall secure, pay for and maintain in full force and effect during the Term of this Temporary Construction Easement and any subsequent extensions and thereafter for an additional five (5) years from the date of cancellation, termination or expiration of this Temporary Construction Easement or any subsequent extensions, sufficient errors and omissions insurance in a minimum amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence with certificates of insurance evidencing such coverage to be provided to the County.
- 3) Commercial General Liability Insurance, including Contractual Liability Insurance. Contractor shall maintain Commercial General Liability Insurance coverage for the following: (a) Premises Operations; (b) Independent contractors or consultants; (c) Products/Completed operations; (d) Personal injury; (e) Contractual liability; (f) Explosion, collapse and underground; (g) Broad form property damage, to include fire legal liability. Such insurance shall carry a limit not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for bodily injury, property damage, and blanket contractual coverage per occurrence with a general aggregate of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and products and completed operations aggregate of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). There shall not be any policy exclusion or limitations for personal injury, advertising liability, medical payments, fire damage, legal liability, broad form property damage, and/or liability for independent contractors and volunteers, or such additional coverage or increase in limits, including those contained within any bid specifications.
- 4) Comprehensive Automotive Liability Insurance: Any liability associated with the operation of a vehicle by Contractor and its Personnel in connection with the performance of services under this Temporary Construction Easement shall not be the responsibility of the County.
- 5) Pollution/Environmental Impairment Liability Insurance. Contractor shall maintain Pollution Liability Insurance with a limit not less than Two Million and 00/100 Dollars (\$2,000,000.00) for each occurrence for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured, cleanup costs, and costs and expenses incurred in the investigation, defense, or settlement of claims. Such insurance shall include automobile coverage forms.
- 6) Excavation Liability Insurance. Contractor shall maintain an XCU coverage with a limit not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence.

(C) Contractor agrees that with respect to the above referenced insurance, all insurance contracts/policies will contain the following required provisions:

- 1) Name County as an additional insured (as the interest of each insured may appear) as to all applicable coverage.

- 2) This insurance shall not be canceled, limited in scope or coverage or non-renewed until after thirty (30) calendar days prior written notice, or ten (10) calendar days for non-payment of premium, has been given by the insurance company to the County.
- 3) Provide for an endorsement that the "other insurance" clause shall not apply to the County where the County is an additional insured on the policy.
- 4) Provide for notice to the County to the person and at the address shown below by certified mail, return receipt requested, and full postage paid, sent to:

*Dallas County Director of Purchasing
Records Building, 6th Floor
509 Main Street, Room 623
Dallas, Texas 75202-5799*

Copy to:
*Dallas County Director of Planning & Development
Administration Building
411 Elm St., 3rd Floor
Dallas, TX 75202-3389*

- 5) Contractor agrees to waive subrogation, and each applicable policy of insurance shall state a waiver of subrogation, against County, including its elected officials, officers, employees, volunteers, agents and representatives, for injuries, including death, property damage and/or any other loss.
- (D) Contractor shall be solely responsible for all cost of any insurance as required here, any and all deductible amount, which in no event shall exceed ten percent (10%) of the amount insured and in the event that an insurance company should deny coverage.
- (E) It is the intent of these requirements and provisions that Contractor's insurance covers all cost and expense so that the County, including its elected officials, officers, employees, volunteers, agents and representatives will not sustain any expense, cost, liability or financial risk as a result of the performance of services under this Temporary Construction Easement.
- (F) Insurance certificates. The certificates of insurance shall list Dallas County as the certificate holder. Any and all copies of Certificates of Insurance shall reference this Easement for which the insurance is being supplied. All insurance policies or duly executed certificates for the same required to be carried by Contractor under this Temporary Construction Easement, together with satisfactory evidence of the payment of the premium thereof, shall be delivered to the

*Dallas County Director of Purchasing
Records Building, 6th Floor
509 Main Street, Room 623
Dallas, Texas 75202-5799*

Copy to:
*Dallas County Director of Planning & Development
Administration Building
411 Elm St., 3rd Floor
Dallas, TX 75202-3389*

within ten (10) calendar days of execution and/or renewal of this Temporary Construction Easement and upon renewals and/or material changes of such policies, but not less than fifteen (15) calendar days prior to the expiration of the term of such coverage, or such non-delivery shall

constitute a default of this Temporary Construction Easement subject to immediate termination at County's sole discretion.

- (G) All insurance coverage shall be on a per occurrence basis or a per claim basis if Contractor provides for five (5) year tail coverage, unless specifically approved in writing and executed by the County's Director of Purchasing and Risk Manager.
- (H) All insurance required to be carried by Contractor under this Temporary Construction Easement shall be acceptable to the County in form and content, in its sole discretion. Acceptance of or the verification of insurance shall not relieve or decrease the liability of the Contractor.
- (I) Minimum insurance is a condition precedent to any work performed under this Temporary Construction Easement and for the entire Term of this Temporary Construction Easement, including any renewals or extensions. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, County shall have the right to:
 - 1) Order Contractor to stop work hereunder, which shall not constitute a Suspension of Work;
 - 2) Withhold any payment(s) which become due to Contractor until Contractor demonstrates compliance with the requirements and assurance and proof acceptable to County that there is no liability to County for failure to provide such required insurance;
 - 3) At its sole discretion, declare a material breach of this Temporary Construction Easement, which, at County's discretion, may result in:
 - a) termination of this Temporary Construction Easement;
 - b) demand on any bond, as applicable;
 - c) the right of the County to cure any damage or complete this Temporary Construction Easement by contracting with another contractor. Contractor will be fully liable for the difference in cost to County, which amount is payable to County by Contractor on demand; or
 - d) any combination of the above;
 - 4) Any combination of the above.
- (J) Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall not relieve Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Contractor from liability.

- (K) Acceptance of the services, or failure to act by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of their services; nor shall such acceptance be deemed an assumption of responsibility or liability by County for any defect in the services performed by Contractor.
- (L) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's performance of the work covered under this Temporary Construction Easement.
- (M) The provisions of this Section shall survive termination or expiration of this Temporary Construction Easement or any determination that this Temporary Construction Easement or any portion hereof is void, voidable, invalid or unenforceable.
- (N) Insurance Lapse. Pursuant to Section 94.73 of the Dallas County Code, if the Contractor fails to maintain the insurance required under the Temporary Construction Easement continuously at all times during the period stated in the Temporary Construction Easement, or otherwise has a lapse in any of the required insurance coverage, including workers' compensation coverage, the Contractor shall reimburse the County for any and all costs, including attorney's fees incurred by the County in curing said default.

In the event that the Contractor does not maintain insurance as required by the Temporary Construction Easement, the Contractor shall immediately cure such lapse at the Contractor's sole cost and expense, and pay the County in full for all costs and expenses incurred by the County under the Temporary Construction Easement as a result of the Contractor's failure to maintain insurance, including, but not limited to, any and all costs and reasonable attorney's fees relating to the County's efforts to cure such lapse in insurance coverage.

11. **INDEMNIFICATION**. County shall not be liable to Contractor for any injury to person or damage to Property, on or about the Property, including but not limited to, consequential damage, (1) caused by any act or omission of Contractor or any other person entering the Property by express or implied invitation of Contractor, or (2) arising out of the use of the Property by Contractor or (3) arising out of any breach or default by Contractor in the performance of its obligations hereunder, or (4) caused by any improvements located in or on the Property being out of repair or by physical defect, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Property, or (5) arising out of the failure or cessation of any service provided by County, if any.

County shall not be liable to Contractor for any loss or damage that may be occasioned by or through the acts or omissions of Contractor or of any other persons whomsoever. Further, County shall not be liable to Contractor for any inconvenience or loss to Contractor's connection with any of the repair, maintenance, damage, destruction, restoration, or replacement referred to in this Easement.

To the fullest extent allowed by law, Contractor agrees to indemnify and hold harmless County, its officers, employees, agents and representatives (collectively, "County") against all

claims, demands, actions, suits, losses, damages, liabilities, costs and/or expenses of every kind and nature (including, but not limited to, court costs, litigation expenses and attorney's fees) and all recoverable interest thereon, incurred by or sought to be imposed on County because of injury (including death) or damage to property (whether real, personal or inchoate), arising out of or in any way related (whether directly or indirectly, causally or otherwise) to: (1) the performance of, attempted performance of, or failure to perform, operations or work under this Easement by Contractor; (2) the condition of the premises on which said operations or work are being performed; (3) the selection, provision, use or failure to use, by any person or entity, of any tools, supplies, materials, equipment or vehicles (whether owned or supplied by County, or any other person or entity) in connection with said work or operations; or (4) the presence of Contractor on the Property. Contractor further agrees to defend, at its sole cost and expense (at the election of County) against any claim, demand, action or suit for which indemnification is provided hereunder.

Further Contractor shall release, defend and indemnify County from and against all loss, damage, claims, expense, including judgments and attorney's fees, and liability for bodily injury to, or death of, any person and loss of or damage to any property and loss of use thereof arising out of or in any way connected with the work upon or adjacent to any part of the Property, whether or not caused by or contributed by the presence in or operation of any facility or any operation, structure or facilities of County, or any other party, or by negligence or alleged negligence on the part of County.

Without in any way limiting or restricting the indemnification and defense agreements stated above, Contractor agrees that it is the intention of the parties that Contractor, and its insurers bear the entire risk of loss or injury to Contractor, or any other person present on the Property or performing any other act or service on Contractor's behalf or at its request, whether or not any such loss or injury is caused in whole or in part by any negligence or fault of County, and without seeking any contribution from County or its insurers.

County and its agents shall not be liable to Contractor for any injury or death to such persons or any damage to personal property occurring in or about the Property caused by the negligence or misconduct of Contractor or any other person.

12. **ASSIGNMENT.** Contractor shall not assign or transfer its rights under this Easement, in whole or in part, or permit any other person or entity, exclusive of Contractor and its subcontractors to use the rights granted herein or sublet all or any part of the Property without prior written consent of County, which County in under no obligation to grant.

13. **DEFAULT BY CONTRACTOR.** In the event Contractor shall be in default hereunder, if any, or shall otherwise breach its covenants or obligations, and shall be and remain in default for a period of ten (10) calendar days after written notice from County to Contractor of such default, County shall have the right and privilege of terminating this Easement and declaring the same at an end, and of entering upon and possession of the Property, and shall have the

remedies now or hereafter provided by law for recovery of rent, repossession of the Property and damages occasioned by such default.

14. REVERSION AND ABANDONMENT

Because County is not conveying to Contractor a fee simple title to Property, if Contractor ceases to use the Property for the Permitted Project for a continuous period of twelve (12) months, the Easement shall terminate accordingly and automatically revert back and vest in County free and clear of the Easement granted, exactly as it stands immediately prior to the execution of this Easement to Contractor. In such event, Contractor shall execute without cost to County, any and all documents and instruments that County deems necessary or expedient to effectuate the reversion to County of the Easement to the Property. Further, Contractor shall remove all improvements, facilities, equipment, materials, and appurtenances in order to restore the Property to its original condition immediately prior to the execution of this Easement.

15. TERMINATION, SUSPENSION AND SURVIVAL.

- (A) **Suspension.** Should County desire to suspend the work, but not terminate the Easement, County shall issue a written order to stop work. The written order shall set out the terms of the suspension. Contractor shall stop all work as set forth in this Easement and will cease to incur costs to County during the term of the suspension. Contractor shall resume work when notified to do so by County in a written authorization to proceed. If a change in the terms and conditions of payment for work of this Easement is necessary because of a suspension, a mutually agreed Easement amendment will be executed in accordance with this Easement.
- (B) **Termination.** The Easement may be immediately terminated as follows: (1) the earlier occurrence of the Completion Event or the Expiration Date with regards to the Temporary Construction Easement only; or (2) Contractor is in default or is in violation of any provision of this Easement; or (3) Upon written mutual agreement; or as additionally stated in other provision this Easement.
- (C) **Survival.** All provisions relating to insurance, indemnification, and duty of care by Contractor shall survive Termination of this Easement.

16. SURRENDER OF PROPERTY. Upon the earlier occurrence of the Expiration Date or Completion Event, Contractor shall have repaired any damage that was directly or indirectly caused by Permitted Project, shall have restored the Property to the condition that existed immediately prior to the commencement of the Permitted Project, and shall surrender the Property to County.

17. CONDEMNATION.

- (A) If the Property cannot be used for the purpose contemplated by this Easement because of condemnation or purchase in lieu of condemnation, this Easement will terminate.
- (B) Contractor shall not have any claim to the condemnation award or proceeds in lieu of condemnation.

18. LIMITATION OF WARRANTIES. There are no expressed, statutory or implied warranties, including but not limited to merchantability, fitness for the particular purpose, as to title, or of any other kind arising out of this Easement, and there are no warranties that extend beyond those expressly stated in this Easement.

19. NOTICES. Any notice, demand or request required or permitted to be given under this Easement or any law shall be deemed to have been given if reduced to writing and delivered in person or mailed by overnight or Registered Mail, postage paid, to the party who is to receive such notice, demand or request at the addresses set forth below, or at such other address as County or Contractor may specify from time to time by written notice. Such notice, demand or request shall be deemed to have been given three (3) days subsequent to the date it was so delivered or mailed to the following:

COUNTY:
Dallas County
Director of Planning & Development
Administration Building
411 Elm St., 3rd Floor
Dallas, TX 75202-3389

CONTRACTOR:
City of Lancaster
Director of Public Works
211 N. Henry St.
Lancaster, Texas 75146

Copy to:
Dallas County Director of Public Works
Administration Building
411 Elm St., 4th Floor
Dallas, TX 75202-3389

20. HOLDING OVER. In the event Contractor remains in possession of any part of the Property without the consent of County, or after the Expiration Date, or after the earlier Completion Event, Contractor shall pay to County a rental fee of \$1,500.00 per month in addition to any and all other cost, including, without limitation, storage cost. In addition, Contractor shall be liable to County for all damage occasioned by such holding over. Contractor shall vacate and surrender the Property to County as intended in this Easement. No holding over by Contractor, whether with or without the consent of County, shall operate to extend this Easement.

21. MISCELLANEOUS GENERAL PROVISIONS.

(A) **Sovereign Immunity.** This Easement is expressly made subject to governmental entities' sovereign immunity, pursuant to Title 5 of the Texas Civil Remedies Code and all applicable State and federal law. The parties expressly agree that no provision of this Easement is in any way intended to constitute a waiver of any immunities from suit or from liability that the parties have by operation of law. This Easement shall be governed by and constructed in accordance with the laws and case decision of the State of Texas. Exclusive venue for any legal action regarding this Easement filed by either party shall be in a State Court in Dallas County, Texas.

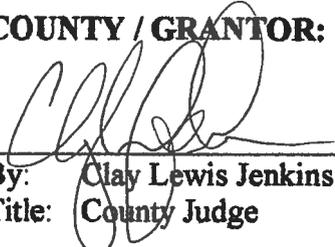
- (B) **Entire Agreement.** This Easement, including all attachments, Exhibits, and Addendum, if any, constitutes the entire agreement between the parties and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.
- (C) **Binding Effect.** This Easement and the respective rights and obligations of the parties shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the parties themselves; except that County, its successors and assigns shall not be obligated to perform beyond the Term of this Easement.
- (D) **Severability.** If any term, covenant, condition or provision of this Easement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provision of this Easement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby no third party beneficiaries. The terms and provisions of this Easement are for the benefit of the parties hereto and not for the benefit of any third party.
- (E) **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare a default or delays in taking any action. Waiver of any term, covenant, condition or violation of this Easement shall not be deemed or construed a waiver unless made in authorized written instrument, nor shall such waiver be deemed or construed a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. The rights and remedies provided by this Easement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Pursuit of any remedy provided in this Easement shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law or equity, including injunctive relief, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any obligation of the defaulting party hereunder or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants herein contained. Contractor has a duty to mitigate damages.
- (F) **Entirety and Amendments.** This Easement embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any relating to the Property and the matters addressed herein, and may be amended or supplement only by a written instrument executed by the party against whom enforcement is sought.
- (G) **Counterparts, Number, Heading, and Gender.** This Easement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Easement shall be held and construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings are for the convenience of reference only and shall not be considered in any interpretation of this Easement.
- (H) **Conflicting or Ambiguous Provisions.** In the event of any ambiguity or inconsistency among the provisions of this Easement and or any incorporated or referenced or pertinent

documents, all parties agree that the provisions most favorable to the County shall control.

- (I) **Relationship of Parties.** Contractor is an independent contractor and not an agent, servant, joint enterpriser, joint venturor, or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its Personnel in conjunction with the performance of services covered under this Easement. Contractor represents that it has, or will secure at its own expense, all Personnel required in performing the services herein. Such Personnel shall not be employees of or have any contractual relationship with the County.

- (J) **Signatory Warranty.** Each party represents that it has the full right, power and authority to enter and perform this Easement in accordance with all of the terms and conditions, and that the execution and delivery of Easement has been made by authorized representatives of each party to validly and legally bind the respective party to all terms, performances and provisions set forth in this Easement.

COUNTY / GRANTOR:



By: Clay Lewis Jenkins
Title: County Judge
Date: September 24, 2013

CONTRACTOR / GRANTEE:

By: _____
Title: _____
Date: _____



Recommended:

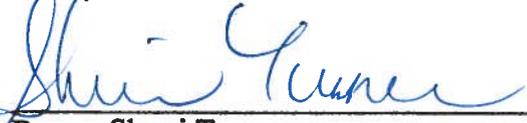


By: Rick Loessberg
Title: Director of Planning & Development

Approved as to Form

Craig Watkins
District Attorney

Teresa Guerra Snelson
Chief, Civil Division



By: Sherri Turner
Assistant District Attorney

*** By law, the District Attorney's Office may only advise or approve contracts or agreements or legal documents on behalf of its clients. It may not advise or approve a contract or agreement or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).**

KELLER BRANCH
TEN MILE CREEK PRESERVE
COUNTY OF DALLAS
JAMES MCMILLAN SURVEY, A-987
DALLAS COUNTY, TEXAS

CITY OF LANCASTER
40' PERMANENT SANITARY SEWER EASEMENT
Parcel SSE-1

REAL PROPERTY DESCRIPTION

BEING A PARCEL OF LAND OUT OF A 46.781 AND A 38.94 ACRE TRACTS OF LAND SITUATED IN THE JAMES MCMILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS, AS DESCRIBED BY DEEDS TO COUNTY OF DALLAS, RECORDED IN VOLUME 85232, PAGE 3278, AND INSTRUMENT NUMBER 200503526382, REAL PROPERTY RECORDS, DALLAS COUNTY, TEXAS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 3/8 INCH IRON FOUND FOR THE NORTHWEST MOST NORTHERLY CORNER OF SAID COUNTY OF DALLAS 46.781 ACRE TRACT, AND THE SOUTHWEST MOST WESTERLY CORNER OF THAT TRACT OF LAND AS COVEYED BY DEED TO MARY L. SYKES RECORDED IN VOLUME 94145, PAGE 2139, REAL PROPERTY RECORDS, DALLAS COUNTY, TEXAS;

THENCE NORTH 70 DEGREES 14 MINUTES 37 SECONDS EAST, 287.80 FEET, WITH THE COMMON LINE OF SAID COUNTY OF DALLAS TRACT AND SAID SYKES TRACT, TO THE POINT OF BEGINNING;

THENCE NORTH 70 DEGREES 14 MINUTES 37 SECONDS EAST, 40.00 FEET, WITH THE COMMON LINE OF SAID COUNTY OF DALLAS TRACT AND SAID SYKES TRACT, TO THE NORTHEAST CORNER OF HEREIN DESCRIBED PARCEL OF LAND FROM WHICH THE NORTHEAST MOST NORTHERLY CORNER OF SAID COUNTY OF DALLAS TRACT BEARS, NORTH 70 DEGREES 14 MINUTES 37 SECONDS EAST, 77.06 FEET;

THENCE SOUTH 20 DEGREES 33 MINUTES 06 SECONDS EAST, 91.95 FEET;

THENCE SOUTH 27 DEGREES 31 MINUTES 48 SECONDS EAST, 76.20 FEET;

THENCE SOUTH 55 DEGREES 40 MINUTES 29 SECONDS EAST, 109.75 FEET;

THENCE SOUTH 14 DEGREES 20 MINUTES 54 SECONDS EAST, 46.86 FEET;

THENCE SOUTH 10 DEGREES 14 MINUTES 19 SECONDS EAST, 115.76 FEET;

THENCE SOUTH 07 DEGREES 25 MINUTES 32 SECONDS EAST, 175.46 FEET;

THENCE SOUTH 30 DEGREES 04 MINUTES 32 SECONDS EAST, 283.16 FEET;

THENCE SOUTH 53 DEGREES 13 MINUTES 47 SECONDS EAST, 59.19 FEET;

THENCE SOUTH 54 DEGREES 47 MINUTES 51 SECONDS EAST, 102.57 FEET;

THENCE SOUTH 41 DEGREES 51 MINUTES 56 SECONDS EAST, 86.55 FEET;

THENCE SOUTH 38 DEGREES 40 MINUTES 23 SECONDS EAST, 103.64 FEET;

THENCE SOUTH 63 DEGREES 14 MINUTES 32 SECONDS EAST, 308.18 FEET;

THENCE SOUTH 75 DEGREES 01 MINUTES 06 SECONDS EAST, 111.34 FEET;

THENCE SOUTH 64 DEGREES 17 MINUTES 29 SECONDS EAST, 117.48 FEET;

A.N.A. Consultants, L.L.C.
5000 Thompson Terrace
Colleyville, TX 76034

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REVISION:03-01-13

KELLER BRANCH
TEN MILE CREEK PRESERVE
COUNTY OF DALLAS
JAMES MCMILLAN SURVEY, A-987
DALLAS COUNTY, TEXAS

CITY OF LANCASTER
40' PERMANENT SANITARY SEWER EASEMENT
Parcel SSE-1

THENCE SOUTH 59 DEGREES 20 MINUTES 50 SECONDS EAST, 103.16 FEET;
THENCE SOUTH 38 DEGREES 23 MINUTES 59 SECONDS EAST, 105.42 FEET;
THENCE SOUTH 47 DEGREES 22 MINUTES 47 SECONDS EAST, 98.74 FEET;
THENCE SOUTH 73 DEGREES 41 MINUTES 33 SECONDS EAST, 125.40 FEET;
THENCE SOUTH 78 DEGREES 13 MINUTES 00 SECONDS EAST, 79.73 FEET;
THENCE SOUTH 49 DEGREES 27 MINUTES 56 SECONDS EAST, 97.42 FEET TO THE NORTH
LINE OF AN EXISTING SANITARY SEWER EASEMENT AS RECORDED IN VOLUME 68194, PAGE
1843, OF SAID REAL PROPERTY RECORDS;
THENCE SOUTH 73 DEGREES 01 MINUTES 13 SECONDS WEST, 47.42 FEET WITH SAID
EXISTING SANITARY SEWER EASEMENT;
THENCE DEPARTING SAID SANITARY SEWER EASEMENT, NORTH 49 DEGREES 27 MINUTES 56
SECONDS WEST, 61.70 FEET;
THENCE NORTH 78 DEGREES 13 MINUTES 00 SECONDS WEST, 71.06 FEET;
THENCE NORTH 73 DEGREES 41 MINUTES 33 SECONDS WEST, 136.33 FEET;
THENCE NORTH 47 DEGREES 22 MINUTES 47 SECONDS WEST, 111.23 FEET;
THENCE NORTH 38 DEGREES 23 MINUTES 59 SECONDS WEST, 101.16 FEET;
THENCE NORTH 59 DEGREES 20 MINUTES 50 SECONDS WEST, 94.03 FEET;
THENCE NORTH 64 DEGREES 17 MINUTES 29 SECONDS WEST, 112.00 FEET;
THENCE NORTH 75 DEGREES 01 MINUTES 06 SECONDS WEST, 111.71 FEET;
THENCE NORTH 63 DEGREES 14 MINUTES 32 SECONDS WEST, 321.02 FEET;
THENCE NORTH 38 DEGREES 40 MINUTES 23 SECONDS WEST, 111.24 FEET;
THENCE NORTH 41 DEGREES 51 MINUTES 56 SECONDS WEST, 80.91 FEET;
THENCE NORTH 54 DEGREES 47 MINUTES 51 SECONDS WEST, 98.59 FEET;
THENCE NORTH 53 DEGREES 13 MINUTES 47 SECONDS WEST, 67.93 FEET;
THENCE NORTH 30 DEGREES 04 MINUTES 32 SECONDS WEST, 299.36 FEET;
THENCE NORTH 07 DEGREES 25 MINUTES 32 SECONDS WEST, 182.49 FEET;
THENCE NORTH 10 DEGREES 14 MINUTES 19 SECONDS WEST, 113.34 FEET;

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Page 2 of 3
REVISION:03-01-13

KELLER BRANCH
TEN MILE CREEK PRESERVE
COUNTY OF DALLAS
JAMES MCMILLAN SURVEY, A-987
DALLAS COUNTY, TEXAS

CITY OF LANCASTER
40' PERMANENT SANITARY SEWER EASEMENT
Parcel SSE-1

THENCE NORTH 14 DEGREES 20 MINUTES 54 SECONDS WEST, 30.34 FEET;

THENCE NORTH 55 DEGREES 40 MINUTES 29 SECONDS WEST, 104.70 FEET;

THENCE NORTH 27 DEGREES 31 MINUTES 48 SECONDS WEST, 88.67 FEET;

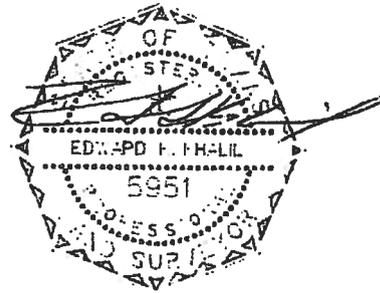
THENCE NORTH 20 DEGREES 33 MINUTES 06 SECONDS WEST, 94.95 FEET TO THE POINT OF BEGINNING AND CONTAINING 95,815 SQUARE FEET OR 2.195 ACRES OF LAND MORE OR LESS.

Note: Surveyed on the ground December 2012

Note: Bearings are relative to True North obtained from Global Positioning Satellite System (GPS) Observations, North American Datum 1983 (NAD '83), Texas State Plane Coordinate System, North Central Zone.

Note: In accordance with the Texas Board of Professional Land Surveying General Rules of Procedures and Practices, 663.19(9), this "Report" consists of the Real Property Description included herein and the Map of Survey attached herewith.

Note: In accordance with the Texas Board of Professional Land Surveying General Rules of Procedures and Practices, 663.19(7), "The cited instruments are not necessarily the current owners of the subject property, but are the documents containing the descriptions of the boundaries as surveyed.



3-4-13

A.N.A. Consultants, L.L.C.
5000 Thompson Terrace
Colleyville, TX 76034

Page 3 of 3

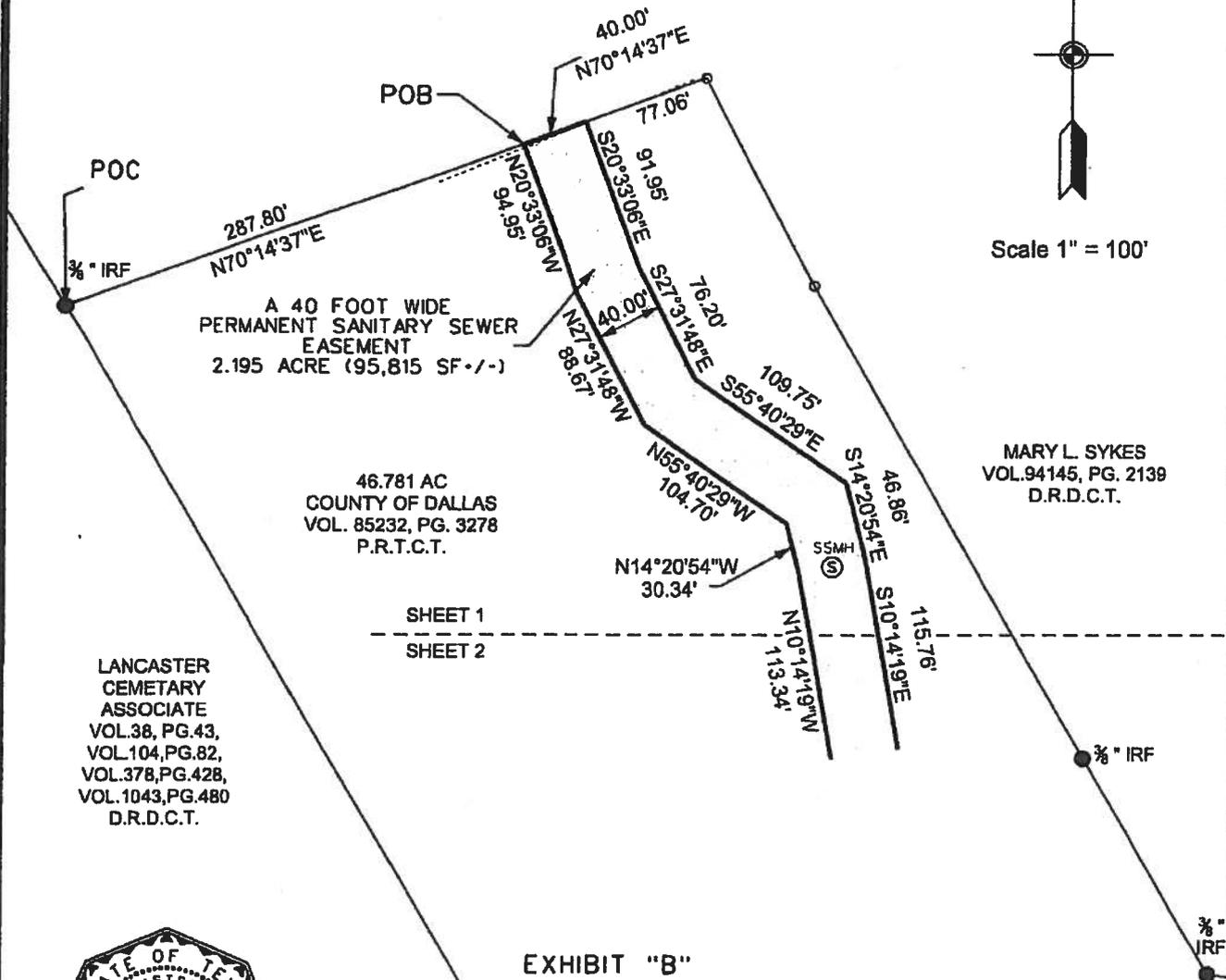
REVISION:03-01-13

**JAMES McMILLAN SURVEY
ABSTRACT No. 987**

MARY L. SYKES
VOL.94145, PG. 2139
D.R.D.C.T.



Scale 1" = 100'



A 40 FOOT WIDE
PERMANENT SANITARY SEWER
EASEMENT
2.195 ACRE (95,815 SF +/-)

46.781 AC
COUNTY OF DALLAS
VOL. 85232, PG. 3278
P.R.T.C.T.

MARY L. SYKES
VOL.94145, PG. 2139
D.R.D.C.T.

LANCASTER
CEMETARY
ASSOCIATE
VOL.38, PG.43,
VOL.104, PG.82,
VOL.378, PG.428,
VOL.1043, PG.480
D.R.D.C.T.

SHEET 1

SHEET 2



3-4-13

EXHIBIT "B"
SHOWING
40 FOOT WIDE
PERMANENT SANITARY
SEWER EASEMENT
SITUATED IN
JAMES McMILLAN SURVEY
ABSTRACT NO. 987
CITY OF LANCASTER,
DALLAS COUNTY, TEXAS

KELLER BRANCH
TEN MILE CREEK
PRESERVE SURVEY
PROJECT
SSE-1

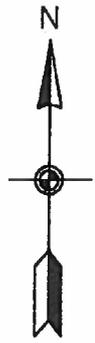
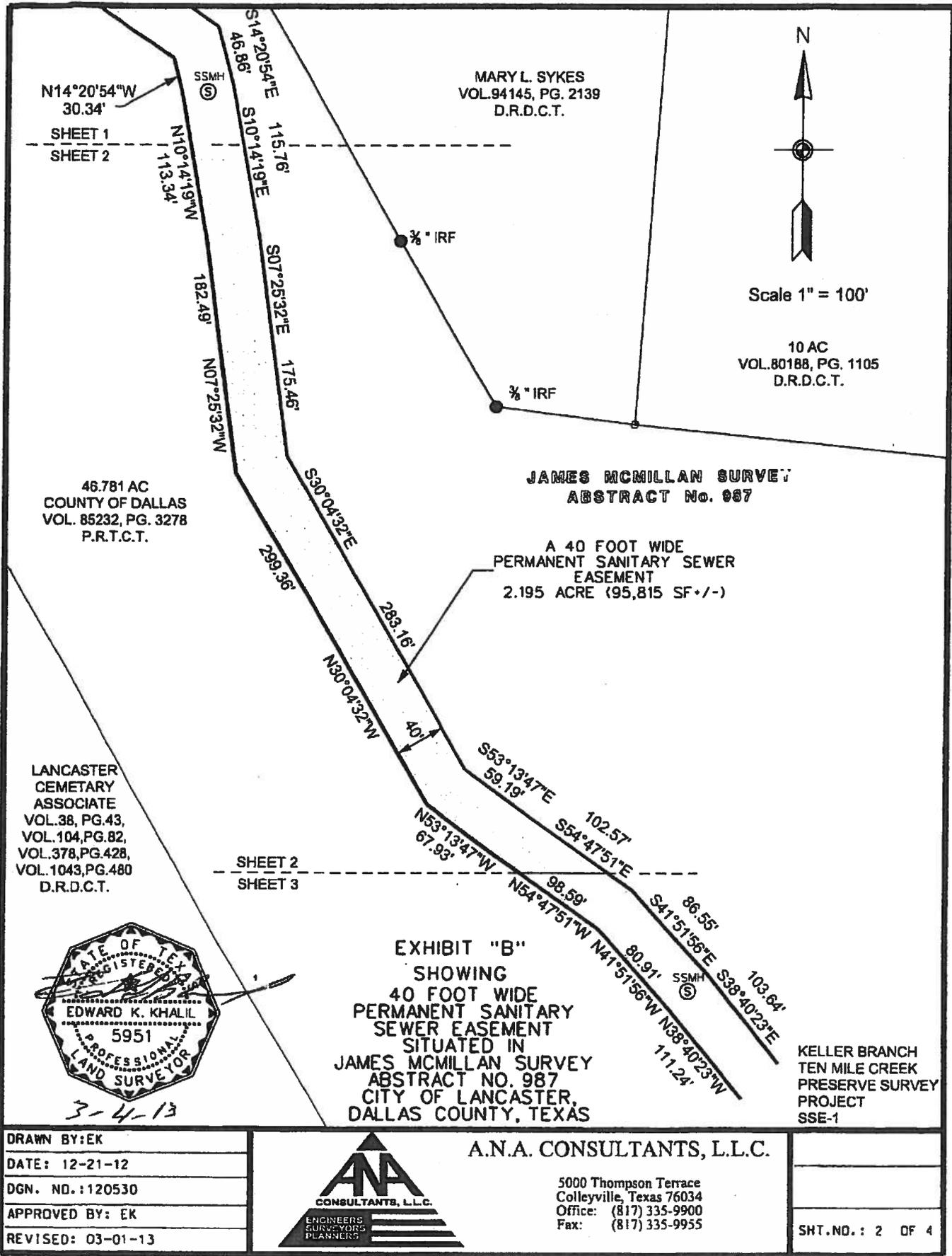
DRAWN BY: EK
DATE: 12-21-12
DGN. NO.: 120530
APPROVED BY: EK
REVISED: 03-01-13



A.N.A. CONSULTANTS, L.L.C.

5000 Thompson Terrace
Colleyville, Texas 76034
Office: (817) 335-9900
Fax: (817) 335-9955

SHT. NO.: 1 OF 4



Scale 1" = 100'

10 AC
VOL. 80188, PG. 1105
D.R.D.C.T.

MARY L. SYKES
VOL. 94145, PG. 2139
D.R.D.C.T.

JAMES McMILLAN SURVEY
ABSTRACT No. 987

A 40 FOOT WIDE
PERMANENT SANITARY SEWER
EASEMENT
2.195 ACRE (95,815 SF +/-)

46.781 AC
COUNTY OF DALLAS
VOL. 85232, PG. 3278
P.R.T.C.T.

LANCASTER
CEMETARY
ASSOCIATE
VOL. 38, PG. 43,
VOL. 104, PG. 82,
VOL. 378, PG. 428,
VOL. 1043, PG. 480
D.R.D.C.T.

SHEET 2
SHEET 3



3-4-13

EXHIBIT "B"
SHOWING
40 FOOT WIDE
PERMANENT SANITARY
SEWER EASEMENT
SITUATED IN
JAMES McMILLAN SURVEY
ABSTRACT NO. 987
CITY OF LANCASTER,
DALLAS COUNTY, TEXAS

KELLER BRANCH
TEN MILE CREEK
PRESERVE SURVEY
PROJECT
SSE-1

DRAWN BY: EK
DATE: 12-21-12
DGN. NO.: 120530
APPROVED BY: EK
REVISED: 03-01-13



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SHT. NO.: 2 OF 4

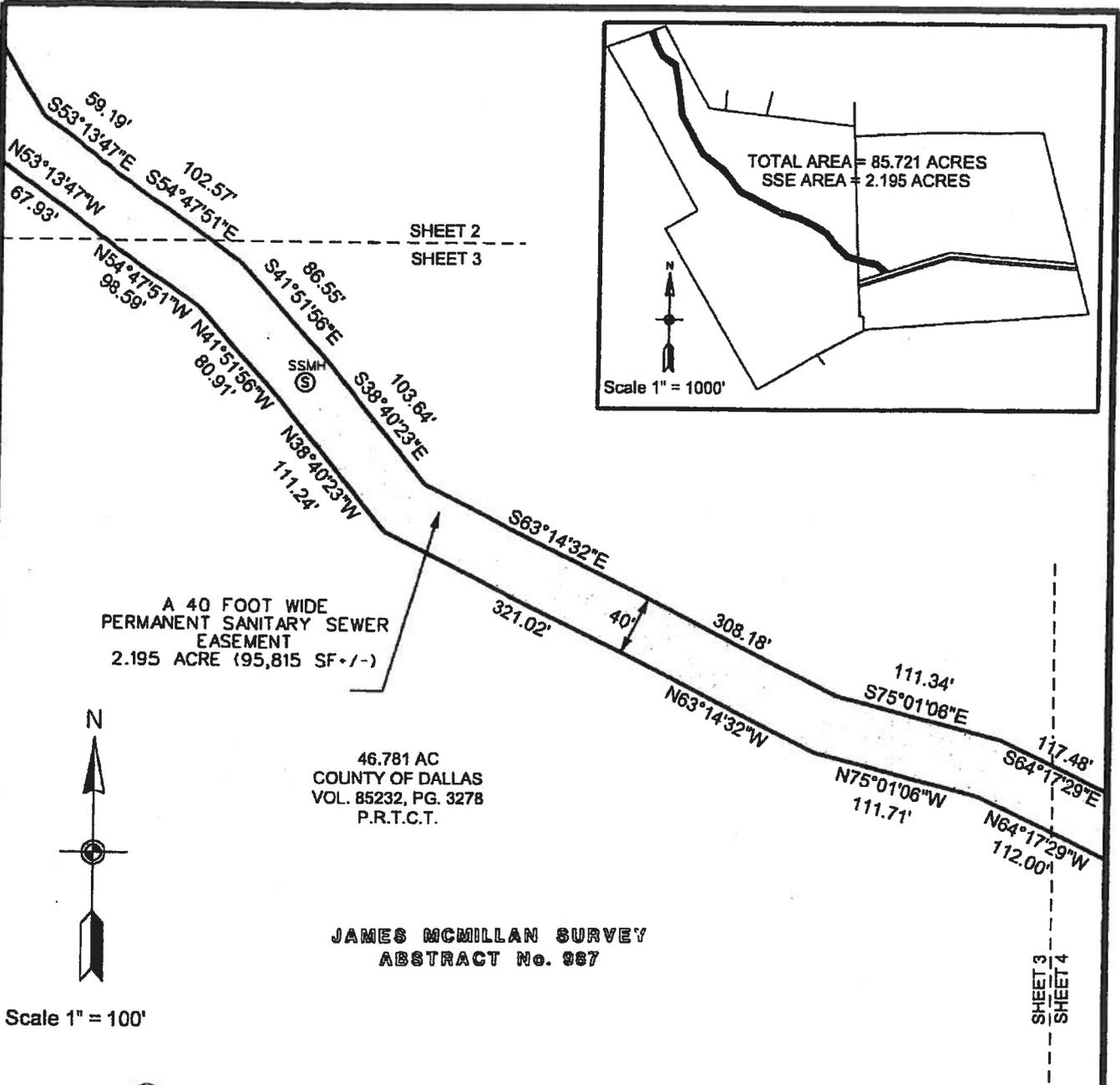
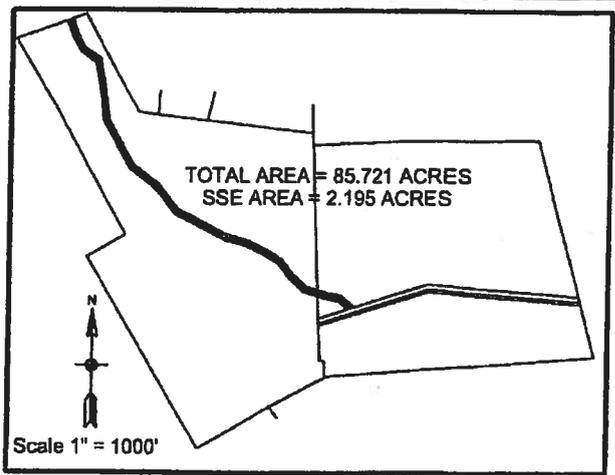


EXHIBIT "B"
 SHOWING
 40 FOOT WIDE
 PERMANENT SANITARY
 SEWER EASEMENT
 SITUATED IN
 JAMES McMILLAN SURVEY
 ABSTRACT NO. 987
 CITY OF LANCASTER,
 DALLAS COUNTY, TEXAS

KELLER BRANCH
 TEN MILE CREEK
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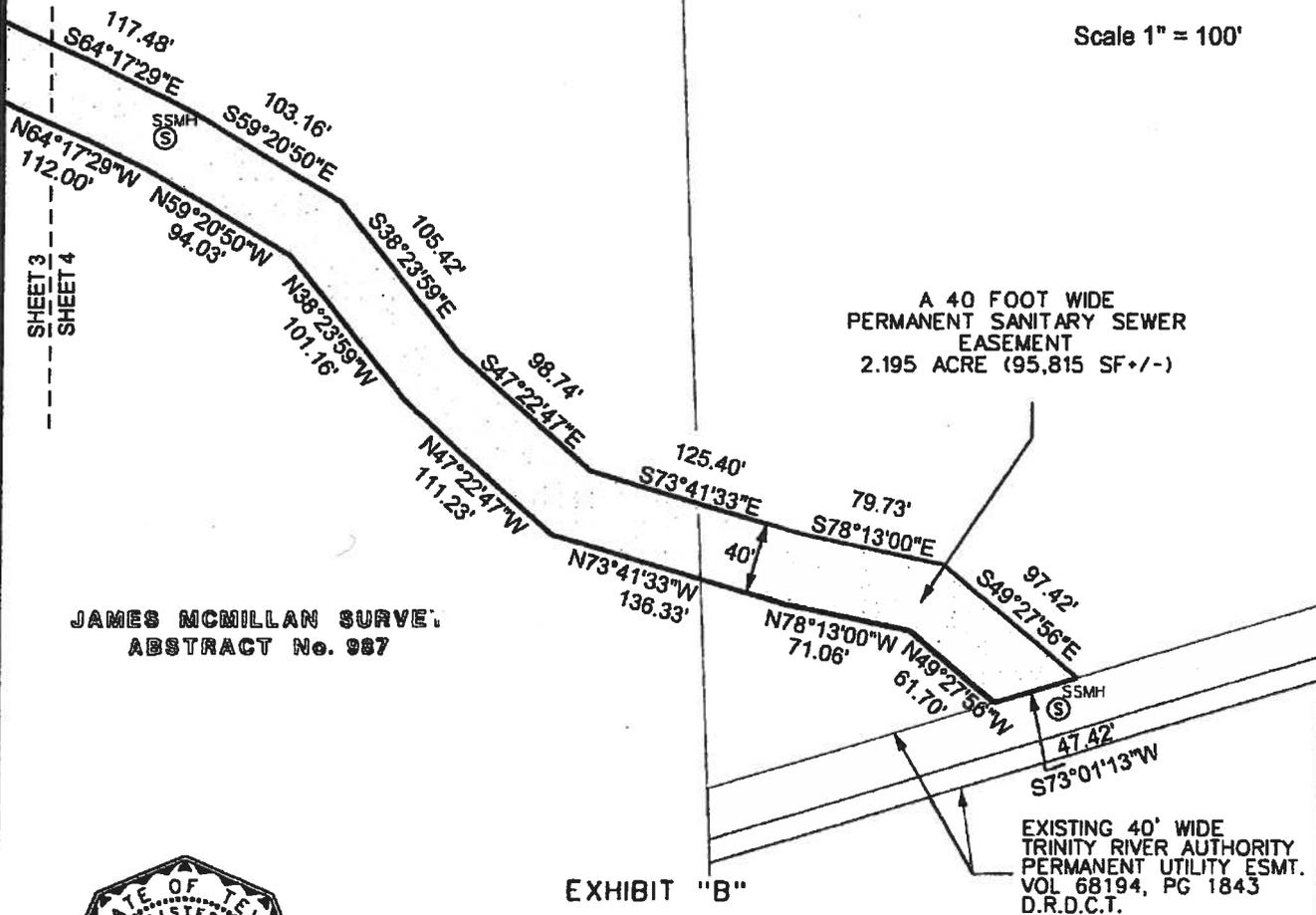
SHT. NO. : 3 OF 4

46.781 AC
 COUNTY OF DALLAS
 VOL. 85232, PG. 3278
 D.R.D.C.T.

38.94 AC
 COUNTY OF DALLAS
 INST. NO. 200503526382
 D.R.D.C.T.



Scale 1" = 100'



JAMES McMILLAN SURVEY
 ABSTRACT No. 987

A 40 FOOT WIDE
 PERMANENT SANITARY SEWER
 EASEMENT
 2.195 ACRE (95,815 SF +/-)

EXISTING 40' WIDE
 TRINITY RIVER AUTHORITY
 PERMANENT UTILITY ESMT.
 VOL. 68194, PG. 1843
 D.R.D.C.T.

EXHIBIT "B"
 SHOWING
 40 FOOT WIDE
 PERMANENT SANITARY
 SEWER EASEMENT
 SITUATED IN
 JAMES McMILLAN SURVEY
 ABSTRACT NO. 987
 CITY OF LANCASTER,
 DALLAS COUNTY, TEXAS

KELLER BRANCH
 TEN MILE CREEK
 PRESERVE SURVEY
 PROJECT
 SSE-1



7-4-13

DRAWN BY: EK
DATE: 12-21-12
DGN. NO.: 120530
APPROVED BY: EK
REVISED: 03-01-13



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5000 Thompson Terrace
 Colleyville, Texas 76034
 Office: (817) 335-9900
 Fax: (817) 335-9955

SHT. NO.: 4 OF 4

**CITY OF LANCASTER TEN MILE CREEK
KELLER BRANCH TREE REMEDIATION PLAN**

TREES TO BE REMOVED

Tree #	Qty.	Type		Size (")
1	1	Pecan	◊	35.5"
3	1	Hackberry		10.2"
4	1	Boxelder		6.8"
5	1	Boxelder		6.4"
6	1	Boxelder		8"
7	1	Pecan	◊	20.8"
8	1	Pecan	◊	25.1"
9	1	Pecan	◊	25.9"
10	1	Boxelder		9.5"
12	1	Pecan	◊	22.9"
13	1	Pecan	◊	35.2"
18	1	Ash		7.8"
19	1	Bois d'Arc		8"
20	1	Ash	◊	11.7"
21	1	Bois d'Arc		12.2"
22	1	Bois d'Arc		9.3"
23	1	Pecan	DT	18.8"
24	1	Bois d'Arc		9.4"
25	1	Pecan	◊	30.8"
28	1	Cedar	DT	15.8
29	1	Ash	◊	9.7"
30	1	Pecan	DT	37.5"
31	1	Pecan	◊	22.2"
32	1	Boxelder	DT	18.9"
33	1	Bois d'Arc		7.6"
34	1	Bois d'Arc		6.5"
35	1	Ash	◊	30.1"
36	1	Bois d'Arc		9"
37	1	Bois d'Arc		10.1"
38	1	Bois d'Arc		9.4"
39	1	Boxelder		11.3"
40	1	Basswood	◊	9.8"
41	1	Bois d'Arc		7"
42	1	Pecan	◊	24.7"
43	1	Burr Oak	◊	35.2"
44	1	Bois d'Arc	DT	7.2"
46	1	Bois d'Arc	◊	8.8"
50	1	Pecan	◊	25"
51	1	Cedar	DT	14.3"
53	1	Burr Oak	◊	40.5"
54	1	Ash	DT	25.9"
55	1	Cedar	DT	7.2"
42	Remediate 17			415.9

TREES TO BE REMOVED

Tree #	Qty.	Type		Size (")
56	1	Cedar	DT	12.0"
57	1	Ash	◊	27.3"
58	1	Hackberry		9.5"
59	1	Bois d'Arc		6.4"
60	1	Hackberry		9.3"
61	1	Boxelder		6.1"
62	1	Ash		6.4"
63	1	Bois d'Arc	DT	8.4"
64	1	Cedar		17.1"
65	1	Bois d'Arc	DT	8.8"
66	1	Cedar	DT	8.2"
67	1	Pecan	◊	26.8"
68	1	Bois d'Arc		8.7"
70	1	Hackberry		7.8"
71	1	Hackberry		8.4"
72	1	Cedar		10.1"
73	1	Black Walnut	◊	20.2"
74	1	Cedar	DT	6.6"
76	1	Burr Oak	◊	21.8"
77	1	Cedar	DT	13.1"
78	1	Cedar	DT	8.1"
79	1	Cedar		17.7"
80	1	Boxelder		7.6"
81	1	Cedar	DT	10.1"
82	1	Boxelder		6.3"
83	1	Cedar		20.4"
84	1	Cedar	DT	6"
85	1	Cedar	DT	9.1"
86	1	Bois d'Arc	◊	8.2"
87	1	Bois d'Arc		7.3"
88	1	Cedar		16.4"
90	1	Ash	DT	23.8"
91	1	Cedar		9.3"
92	1	Bois d'Arc		10.6"
93	1	American Elm		7.5"
94	1	American Elm	◊	9"
95	1	Cedar		12.3"
98	1	Locust		6.4"
99	1	Cedar	DT	6"
100	1	Pecan	◊	28.6"
101	1	Cedar	DT	11.9"
102	1	Pecan	◊	23.2"
42	Remediate 8			165.1

9/18/2013

TREES TO BE REMOVED

Tree #	Qty.	Type		Size (")
103	1	Cedar	DT	12"
104	1	Burr Oak	◊	46"
105	1	Bois d'Arc		7.4"
106	1	Hackberry		7.4"
107	1	Boxelder		6"
108	1	Cedar		8.4"
109	1	Cedar		17.2"
110	1	Cedar		16.6"
111	1	Pecan	◊	20.7"
112	1	Cedar		15.3"
113	1	Cedar		14.3"
114	1	Cedar		14.4"
115	1	Burr Oak	◊	23.7"
116	1	Cedar	DT	7.1"
117	1	Pecan	◊	27.1"
118	1	Pecan	DT	16.3"
119	1	Cedar		18.8"
120	1	Cedar		20.6"
121	1	Cedar	DT	6.5"
122	1	Cedar		15.1"
123	1	Cedar		10.3"
124	1	Chinaberry		12.4"
125	1	Bois d'Arc	DT	12"
126	1	Bois d'Arc		17"
127	1	Cedar		9"
128	1	Chinaberry		14"
129	1	Burr Oak	◊	46"
130	1	Cedar		20"
131	1	Basswood	◊	14"
132	1	Burr Oak	◊	36"
133	1	Cedar		9"
134	1	Cedar		10"
135	1	Pecan	◊	31"
136	1	Pecan	◊	13"
137	1	Walnut	◊	24"
138	1	Cedar		11"
139	1	Basswood	◊	18"
140	1	Cedar		15"
141	1	Cedar		8"
142	1	Burr Oak	◊	33"
143	1	Pecan	◊	15"
144	1	Burr Oak	◊	38"
42	Remediate 31			385.5

TREES TO REMAIN/DO NOT REMOVE

Tree #	Qty.	Type		Size (")
2	1	Pecan		32.8"
11	1	Bois d'Arc		21.4"
14	1	Cedar		11.3"
15	1	Pecan		21.1"
16	1	Pecan		21.8"
17	1	Ash		13.1"
26	1	Boxelder		6.7"
27	1	Boxelder		7.1"
45	1	Ash		10.4"
47	1	Bois d'Arc		8.6"
48	1	Bois d'Arc		7.9"
49	1	Bois d'Arc		9.8"
52	1	Boxelder		9.7"
69	1	Bois d'Arc		8.3"
75	1	Pecan		34.2"
89	1	Cedar		13.0"
96	1	Cedar		12.6"
97	1	Cedar		13.6"
	18			

Total Trees in Survey:	144
Do Not Remove Trees:	18
Total Trees to be removed:	126
Total Trees Subject to Remediation:	39
Total Trees not to be Remediated:	87
Total Inches Subject to Remediation:	966.5
Total 3" Trees to Replace:	322.17

DT Dead Trees

◊ Trees Subject to Remediation

9/18/2013

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 14

Consider a resolution approving the terms and conditions of a Capital Improvement Program Funding Agreement made by and between Dallas County and the City of Lancaster for the Implementation of the Major Capital Improvement Project (MCIP) based on the Southern Dallas County Infrastructure Analysis (SDCIA) study that was conducted in October 2007 in conjunction with the North Central Texas Council of Governments to promote economic development in the Southern part of Dallas County which identified specific projects included in Dallas County's MCIP 20102 and MCIP 31402; The Pleasant Run Road Waterline Improvement and Infrastructure Design.

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Sound Infrastructure

Background

At the October 21, 2013 City Council work session, staff presented an overview of a proposal to provide water to the City of Wilmer. At the December 9, 2013 City Council work session, staff presented an overview of the wholesale cost of service study with a recommendation for a rate to charge the City of Wilmer to provide water. At the January 13, 2014 City Council work session, staff presented an overview of the contract terms and Council directed the City Attorney to draft a contract based upon the terms discussed. At the February 10, 2014 regular meeting of the City Council considered a resolution authorizing the City Manager to enter an agreement by and between the City of Lancaster and the City of Wilmer for the sale of wholesale treated water.

The agreement was approved by the City of Wilmer City Council on April 3, 2014. On Tuesday, April 15, 2014, the Commissioners Court unanimously approved \$10,000,000 of MCIP Funding for the Inland Port Area Water Project. City Council received a presentation at the work session on April 21, 2014 regarding the funding agreement and TIF creation.

Considerations

The proposed project includes the design and construction of a 16-inch water line along Pleasant Run Road (take point) from the intersection of Cornell Road and Pleasant Run to the intersection of Pinto Road and Pleasant Run (delivery point). The proposal will include new sanitary sewer, as well as infrastructure improvements for Pleasant Run Road. It should

be of note that the City of Lancaster is part of the Trinity River Authority – Ten Mile Creek Regional Wastewater System. The City of Wilmer is part of the Dallas Water Utilities Wastewater System. It appears that there may still be some challenges related to sewer with one property owner that has a bifurcation of wastewater treatment systems.

The County has indicated that this project would serve 2200 acres of land within the two jurisdictions, with 45% in the City of Lancaster and 55% in the City of Wilmer.

- **Operational** – Dallas County has approached the City of Lancaster and is proposing to fund the construction of the waterline from the City of Lancaster’s take point to the City of Wilmer’s delivery, as outlined in Route #2, see attachment. The County would be responsible for arranging, directing, and overseeing the design and construction of pipeline. Upon completion and acceptance, the City of Lancaster will be responsible for perpetual maintenance. Staff has reviewed the mechanics of the funding agreement and clarified points of concerns.
- **Legal** – The City Attorney has reviewed the funding agreement.
- **Financial** – Dallas County’s Major Capital Improvement Program (MCIP) policy allows the allocation of funds for infrastructure associated with economic development. The estimated project cost is approximately \$10 million to design and build. The County is providing up-front funding for the project to the City.

Both the Cities of Lancaster and Wilmer will be responsible for 50% of the total estimated cost of the water transmission pipeline project cost in the amount of \$5,000,000. The City’s share of the project is 21.5%. Reimbursement would be provided over twenty years from the creation of a Tax Increment Financing District that would consist of the City of Lancaster’s portion of the project service area. The district would be created by December 2014 and would become operational in January 2018. The City would be responsible for 33% of the increment generated by this district for either 20 years or up to a maximum contribution of \$2.15 million, whichever comes first. The County has committed that if at the end of twenty years, the total amount of increment generated and contributed does not reach 21.5% of the project’s total costs, then the City’s reimbursement obligation will be considered to have been satisfied. Additionally, in the event that the TIF does not have construction by January 2018, the County has indicated that the City is not obligated to pay an assessment until there is an increment realized.

- **Public Information** – This item is being considered at a regular work session of the City Council noticed in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve the resolution as presented.
2. City Council may reject the resolution.

Recommendation

Staff recommends approval of the resolution with additional language in the contract that there is not a payment due if the TIF District does not realize an increment.

Attachments

- Resolution
 - Dallas County Capital Improvement Program Funding Agreement
 - Attachment "B"
-

Submitted by:

Rona Stringfellow, Assistant City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A FUNDING AGREEMENT MADE BY AND BETWEEN DALLAS COUNTY, AND THE CITY OF LANCASTER, FOR IMPLEMENTATION OF THE MAJOR CAPITAL IMPROVEMENT PROJECT BASED ON THE SOUTHERN DALLAS COUNTY INFRASTRUCTURE ANALYSIS (SDCIA) STUDY THAT WAS CONDUCTED IN OCTOBER 2007 IN CONJUNCTION WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS TO PROMOTE ECONOMIC DEVELOPMENT IN THE SOUTHERN PART OF DALLAS COUNTY WHICH IDENTIFIED SPECIFIED PROJECTS INCLUDING INLAND PORT WATERLINE, MCIP 20102 AND MCIP 31402 THE PLEASANT RUN ROAD WATERLINE IMPROVEMENT AND INFRASTRUCTURE DESIGN; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Government Code Chapter 791 and Texas Transportation Code Chapter 251, provided authorization for local governments to contract with each other for the performance of government functions and services, and joint funding of road or street projects; and

WHEREAS, Texas Government Code Chapter 562 of the Texas Local Government Code provides and authorization for local governments to contract with each other for water or sewer projects; and

WHEREAS, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interests of the City to enter into an agreement with Dallas County for the infrastructure improvements along Pleasant Run Road;

WHEREAS, the fund participation ratio for projects on such program is 50 percent county, 50% (fifty percent) shared between the two municipalities and/or Local Government; and

WHEREAS, the estimated local fund participation requirement on the approved proposed project is \$2,150,000 (21.5%).

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

SECTION 1. The City Council of the City of Lancaster, Texas, hereby approves the Funding Agreement, attached hereto and incorporated herein by reference as Exhibit "A".

The City Manager of the City of Lancaster is authorized to execute the 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 become effective immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 28th day of April 2014.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

**DALLAS COUNTY CAPITAL IMPROVEMENT
PROGRAM FUNDING AGREEMENT**

The City of Lancaster Texas, hereinafter called “City”, and the County of Dallas, Texas, hereinafter called “County”, desire to enter into a Funding Agreement, hereinafter called “FA”, in order to contract for the implementation of the Major Capital Improvement Project based on the Southern Dallas County Infrastructure Assessment (SDCIA) study that was conducted in October 2007 in conjunction with North Central Council of Governments to promote economic development in the Southern part of Dallas County which identified specified projects including Inland Port Waterline, MCIP 50102 and MCIP 31402 the Pleasant Run Road Waterline Improvement and Infrastructure Design.

Witnesseth

WHEREAS, the County has requested that it be designated as the Lead Agency for the Project and will provide the Project Manager; and

WHEREAS, the Project is located within the City of Wilmer and the City of Lancaster; and

WHEREAS, the County shall enter into separate agreements with the City of Wilmer; and

WHEREAS, Chapter 791 of the Texas Government Code and Texas Transportation Code Section 251 provides authorization for local governments to contract with each other for the performance of governmental functions and services, and joint funding of road or street projects.

WHEREAS, Chapter 562 of the Texas Local Government Code provides an authorization for local governments to contract with each other for water or sewer projects.

NOW THEREFORE THIS FUNDING AGREEMENT is made by and entered into by the City and the County for the mutual consideration stated herein.

Article I.

Project Funding Agreement

This FA is between the County and the City to establish a preliminary proposed budget for the Project which will facilitate the movement of public transportation to benefit both the City and County. This FA is to specifically identify the Project as well as any changes in the rights and responsibilities of each of the parties as set forth in the Master Agreement which is hereby incorporated herein as if written word for word and any additions thereto. All terms of the Master Agreement remain in full force and effect except as modified herein. In the event of any conflict between the Master Agreement and this FA, this FA shall control.

Article II

Incorporated Documents

This FA incorporates, as if fully reproduced herein word for word and number for number, the following items: Master Agreement authorized by County Commissioners Court Order 2011-861 dated May 10, 2011, and additions thereto as incorporated herein.

Article III
Term of Agreement

This FA becomes effective when signed by the last party whose signature makes the respective agreement fully executed. This Agreement shall remain in effect until:

1. Incorporated into the Project Specific Agreement; or
2. Terminated upon the terms and conditions as set forth in the Master Agreement, Article IV Section A, Termination.

Article IV
Project Description

This FA is entered into by the parties to develop a water transmission pipeline within the Cities of Wilmer, Texas and Lancaster, Texas. The “Project”, as that term is used herein, is defined as the design, the right of way, construction and reconstruction of the water transmission pipeline from the intersection of Pleasant Run Road and Cornell Road in the city of Lancaster, going east along Pleasant Run Road and terminates in the city of Wilmer. This Project also includes sewer line design.

The final design will be submitted to the City for approval, prior to proceeding with the final design and any right of way acquisition. The City shall review and comment on all construction drawings and documents within thirty (30) days. If the County has not received comments within thirty (30) days, the County will assume the City has reviewed the plans, had no comments and the Project may proceed.

Additional funds under MCIP 31403 may become available for road way construction at a later date. Dallas County is currently working with other entities to secure funds for the roadway construction that is shown in Attachment “A” - Pleasant Run Road Infrastructure Summary; attached hereto and incorporated herein.

Article V
Fiscal Funding

Notwithstanding anything to the contrary herein, this FA is expressly contingent upon the availability of County funding for each item and obligation contained herein. City shall have no right of action against the County of Dallas as regards this FA, specifically including any funding by County of the Project in the event that the County is unable to fulfill its obligations under this FA as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this FA or failure of any funding party to budget or authorize funding for this FA during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the County, at its sole discretion, may provide funds from a separate source or terminate this FA. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Notwithstanding anything to the contrary herein, this FA is expressly contingent upon the availability of City funding for each item and obligation contained herein. County shall have no right of action against the City as regards this FA, specifically including any funding by City of the Project in the event that the City is unable to fulfill its obligations under this FA as a result of the lack of sufficient funding for any item or obligation from any source utilized to fund this FA or failure of any funding party to budget or authorize funding for this FA during the current or future fiscal years. In the event of insufficient funding, or if funds become unavailable in whole or part, the City, at its sole

discretion, may provide funds from a separate source or terminate this FA. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.

Article VI **Agreements**

- I. **County and City Responsibilities:**
1. County will be the Lead Agency for the Project.
 2. City and County have mutually agreed that the Project limits **within the City of Lancaster are along the Pleasant Run Road going east starting at Cornell Road and terminating at Pinto Road within the City.**
 3. County and City shall execute the necessary agreements for the completion of the Project and incorporated herein by this FA.
- II. **City Responsibilities:**
1. City shall provide documentation of City commitment to meet the Project funding.
 2. City shall provide funding, if necessary, for the Project in excess of the amount of County participation.
 3. City will attend all Project task force meetings and public meetings.
 4. City will review comments in a timely manner.
 5. City will review and provide any comments on the final design.
 6. City shall be responsible for maintaining the water transmission pipeline within its city after the project is complete.
- III. **County Responsibilities:**
1. County shall use the total funding committed by City and County solely for the purpose of eligible Projects Costs.
 2. County shall provide a final accounting of Project Costs once the Project is completed and accepted by the City. The accounting shall have sufficient detail for the Auditor to verify Project Costs and authorized any final amounts due for reimbursement to County.

Article VII **Funding**

- I. **Funding**
- County and City mutually agrees to proportionately fund the Direct Project and Program cost as follows:
1. Notwithstanding any provision in the Master Agreement, this FA, any amendment thereto, or any other agreement between the parties regarding this Project, the total Project cost is estimated at Ten Million Dollars and no cents (\$10,000,000.00); excluding Right of Way. The County's total obligation to this Project is to provide funding in the amount not to exceed Ten Million Dollars and no cents (\$10,000,000.00), including County in-house delivery costs of the Project. The County's Ten Million Dollar obligation will be split 50/50 with funding from MCIP 196 (Transportation) and MCIP 196 (Facilities).
 2. The County in-house Project delivery costs may include, but are not limited to, preliminary scoping and research, special services, site inspection and preliminary utility coordination.

3. The city of Wilmer and the city of Lancaster both agree to accumulatively reimburse Dallas County for fifty percent (50%) of total estimated cost of the water transmission pipeline Project costs in the amount of Five Million Dollars and no cents (\$5,000,000.00). The city of Lancaster will provide Twenty-One and One-half percent (21.5%) of the Project's total costs of the water transmission line, in an amount not to exceed Two Million One Hundred Fifty Thousand Dollars (2,150,000.00). The city of Wilmer will provide Twenty-Eight and One Half Percent (28.5%) of the Project's total costs of the water transmission line in an amount not to exceed Two Million, Eight Hundred Fifty Thousand Dollars (2,850,000.00).
4. The city of Lancaster agrees to reimburse the County for its share of the Project costs related to the water transmission pipeline through the utilization of tax increment financing over a twenty year period. The City must pay the County first from any proceeds. More specifically, the City agrees to:
 - (a) Create a tax increment finance district with the boundaries shown in Attachment "B" "Proposed Lancaster Water Project TIF District, attached hereto and incorporated herein no later than December 312014.
 - (b) Begin contributing, no later than the tax year starting January 1, 2018, the first **Thirty-Three Percent (33%)** of the increment generated within the district towards the City's share of reimbursement. To facilitate this reimbursement, the County Planning and Development Department will invoice the city of Lancaster each year no later than April 1 after the end of the tax year and the city of Lancaster will then submit a payment for this invoice within sixty (60) days.
 - (c) Continue contributing this generated increment for a period not to exceed twenty years or until the City's total increment contribution reaches an amount equivalent to 21.5% of the Project's total costs (which shall not exceed \$2,150,000), whichever occurs first. It is understood that if, at the end of twenty years, the total amount of increment generated and contributed does not reach 21.5% of the Project's total costs, then the City's reimbursement obligation will nevertheless be considered to have been satisfied as long as the City has paid the County first from any proceeds.
5. If total Project costs of the water transmission pipeline exceed **Ten-Million Dollars (\$10,000,000)**, Lancaster and Wilmer agree to amend the Project's scope to remain within the current estimated **not to exceed amount**.

Article VIII **Miscellaneous**

- I. No Third Party Beneficiaries, The terms and provisions of this FA are for the benefit of the parties hereto and not for the benefit of any third party. It is the express intention of City and County that any entity other than City or County receiving services or benefits under this FA shall be deemed an incidental beneficiary only. This FA is intended only to set forth the contractual right and responsibilities of the parties hereto.
- II. Applicable Law. This FA is and shall be expressly subject to the Sovereign Immunity of County and Governmental Immunity of City, Title 5 of the Texas Civil Practice and Remedies Code, as amended, and all applicable Federal and State Law. This FA shall be governed by and construed in accordance with the laws and case decisions of the State of Texas. Exclusive venue for any legal action regarding this FA filed by either City or County shall be in Dallas County, Texas.

- III. Notice. Any notice provided for in this Agreement to be given by either party to the other, shall be required to be in writing and shall be deemed given when personally delivered, or two (2) business days after being deposited in the United States Mail, postage prepaid, certified, returned receipt requested, or registered addressed as follows:

To County: County of Dallas
Ms. Alberta L. Blair, P.E.
Director of Public Works
Dallas County Administration Building
411 Elm Street, Fourth Floor
Dallas County, Texas 75202-3389

To City: City of Lancaster, Texas
Director of Public Works
125 North Dallas Avenue, Suite 101
Lancaster, Texas 75134

Either party may change its address for notice by giving the other party notice thereof.

- IV. Assignment. This FA may not be assigned or transferred by either party without the prior written consent of the other party.
- V. Binding Agreement; Parties Bound. This FA has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties, their successors and permitted assigns.
- VI. Amendment. This FA may not be amended except in a written instrument specifically referring to this FA and signed by the parties hereto.
- VII. Number and Gender. Words of any gender used in this FA shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the Context Clearly Requires Otherwise.
- VIII. Counterparts. This FA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- IX. Severability. If one or more of the provisions in this FA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not cause this FA to be invalid, illegal or unenforceable, but this FA shall be construed as if such provision had never been contained herein, and shall not affect the remaining provisions of this FA, which shall remain in full force and effect.
- X. Entire Agreement. This FA embodies the complete agreement of the parties, supersedes all oral or written previous and contemporary agreements between the parties and relating to matters in the FA.
- XI. Contingent. This Agreement is expressly subject to and contingent upon formal approval by the Dallas County Commissioners Court and by resolution of the City Council. This Agreement is also contingent upon the Agreement between Dallas County and the City of Wilmer. If that agreement terminate, this agreement may terminate as well.

The City of _____, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution _____, Dated the ____ day of _____, 20__ .

The County of Dallas, State of Texas, has executed this agreement pursuant to Commissioners Court Order Number _____ and passed on the ____ day of _____, 20__.

County of Dallas

City of Lancaster, Texas

Clay Lewis Jenkins, County Judge

By: _____
Title: _____

Date

Date

Approved as to Form:
Craig Watkins
District Attorney

Attest:

Teresa Guerra Snelson
Chief, Civil Division

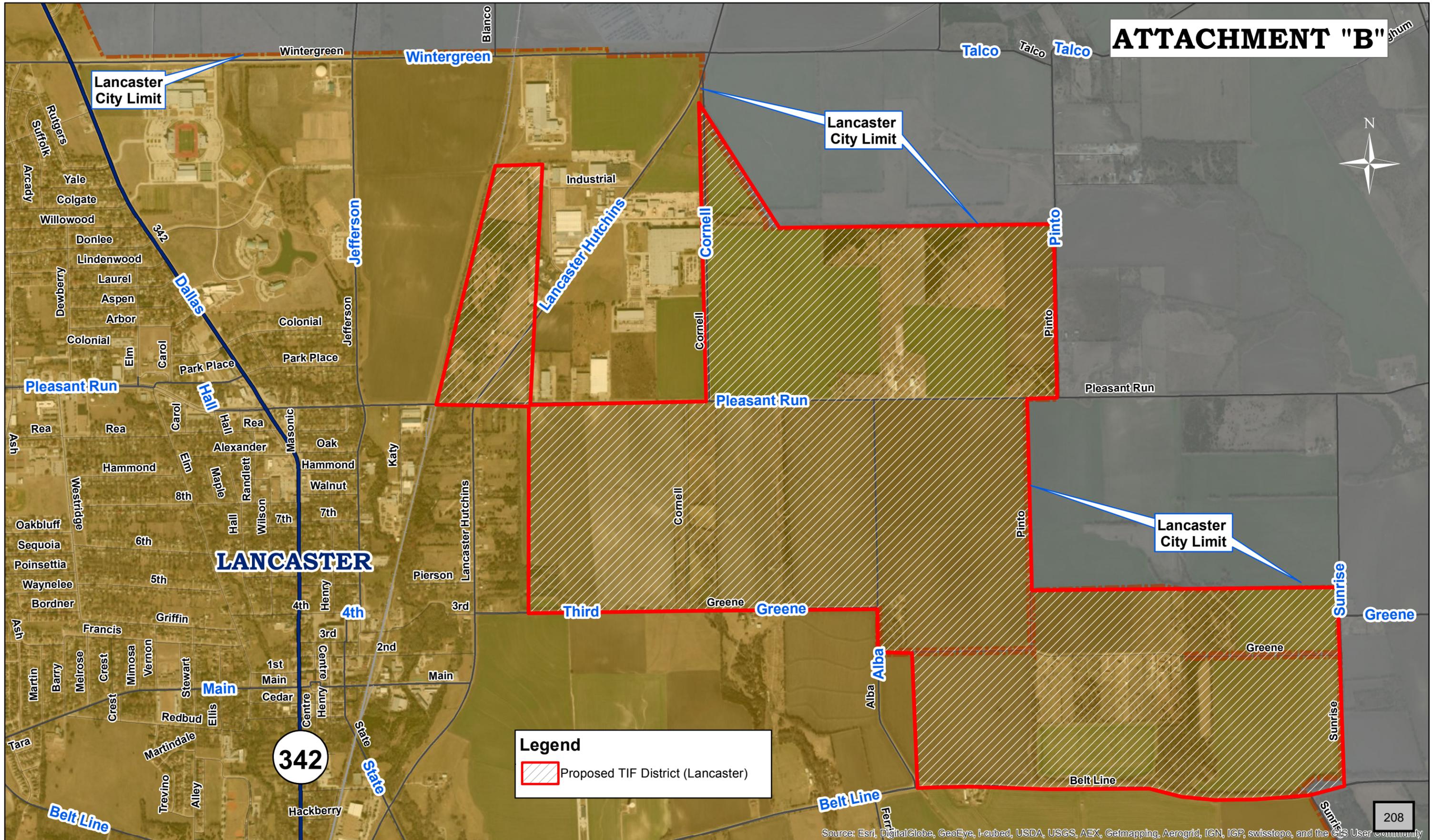
By: _____
Sherri Turner
Assistant District Attorney

City Secretary/ Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

PROPOSED LANCASTER WATER PROJECT TIF DISTRICT

ATTACHMENT "B"



Legend

- Proposed TIF District (Lancaster)

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 15

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

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Professional and Committed City Workforce

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.

Submitted by:

Sorangel O. Arenas, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

April 28, 2014

Item 16

The City Council shall convene into closed executive session pursuant to Section 551.071(a) and (b) to discuss and deliberate with the City Attorney the following pending matter in litigation, settlement and/or matters involving attorney-client privilege:

- (a) Cause No. DC-13-10151; Healthspace Regions Lancaster, LLC v. City of Lancaster in the 191st Judicial District Court of Dallas County.**

This request supports the City Council 2013-2014 Policy Agenda.

Goal: Professional and Committed City Workforce

Executive Session matters.

Submitted by:

Sorangel O. Arenas, City Secretary