



**NOTICE OF CANVASS AND SPECIAL MEETING
AGENDA**

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

211 N. HENRY STREET, LANCASTER, TEXAS

Monday, May 21, 2012 – 7:00 P.M.



[City Council photographs will be taken at 6:00 p.m.]

CALL TO ORDER

INVOCATION: MINISTERIAL ALLIANCE

PLEDGE OF ALLEGIANCE: COUNCILMEMBER WALTER WEAVER

PRESENTATION: LANCASTER HIGH SCHOOL AUDIO/VISUAL PROGRAM STUDENTS

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.)

ACTION:

1. Consider Resolution 2012-05-38 of the City Council of the City of Lancaster, Texas, canvassing the returns and declaring the results of the General Election for the office of Mayor held on May 12, 2012.

Considera resolución 2012-05-38 del consejo municipal de la ciudad de Lancaster, Texas, escrutinio los resultados y declarando los resultados de la elección general de la oficina del alcalde el 12 de mayo de 2012.

2. Administer Oaths of Office; present Certificates of Election; seat newly elected councilmembers.

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.)

- 3C. Consider approval of minutes from the City Council Regular Meeting held April 23, 2012.
- 4C. Consider Resolution 2012-05-39 authorizing the submission of applications to Dallas County for funding under the Fiscal Year 2012 Community Development Block Grant (CDBG) Program for reconstruction of existing roadways [Baskin Drive from Henry Street to Ames Road; Colgate Drive from Dallas Avenue to Dewberry Boulevard; and Idlewild Court from Idlewild Lane to IH-35E service road].

- 5C. Consider Resolution 2012-05-40 approving the terms and conditions of a professional services agreement with Freese and Nichols, Inc. to perform engineering services in connection with the project known as Phase II MS4 Storm Water Management Program Assistance for Texas Commission on Environmental Quality (TCEQ) in an amount not to exceed \$80,900.

- 6C. Consider Resolution 2012-05-41 accepting the second amendment to the permanent drainage easement and additional temporary construction easement from Dallas County, Texas, Grantor, to the City of Lancaster, Texas granting the City of Lancaster a six month temporary construction easement from May 1, 2012 to October 31, 2012 for installation, construction, repairing, maintaining, altering and preserving drainage improvements across Ten Mile Creek Preserve with all other terms and conditions of the original easement remaining in full force and effect.

ACTION:

- 7. Discuss and consider Resolution 2012-05-42 denying Atmos Energy Corp., Mid-Tex Division's requested rate change; and requiring the company to reimburse the City's reasonable rate making expenses.

- 8. Discuss and consider Resolution 2012-05-43 authorizing continued participation with the Atmos Cities Steering Committee; authorizing the payment of five cents (\$0.05) per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation.

- 9. Consider election of a Mayor Pro Tempore.

- 10. Consider election of a Deputy Mayor Pro Tempore.

EXECUTIVE SESSION:

- 11. The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney to seek legal advice on pending litigation and/or settlement concerning Cause No. 11-10174 Con-Way Truckload, Inc. vs. the City of Lancaster.

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

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 May 17, 2012 @ 5:00 p.m. and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

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AG12-001

Consider Resolution 2012-05-38 of the City Council of the City of Lancaster, Texas, canvassing the returns and declaring the results of the General Election for the office of Mayor held on May 12, 2012.

Background

At a time posted in accordance with the Open Meetings Act and as required by the Texas Election Code § 67.004(a), the canvass of the returns is read and results declared. The Mayor asks for a motion and vote from the City Council approving the canvass and results of the general election held May 12, 2012. Only two members of the authority constitute a quorum for the purpose of canvassing an election. Election results must be canvassed not later than the 11th day (May 23) following the election.

Considerations

Under the Election Code, the last day to receive ballots from voters outside of the United States is Thursday, May 17. Saturday, May 19 is the last day for the Ballot Board to convene to qualify and count any provisional ballots. At this writing, the City has three outstanding military/overseas ballots pending. No provisional ballots are pending.

Due to these deadlines, a copy of the canvass from Dallas County Elections will not be available until Monday, May 21. I will provide a copy of the Dallas County canvass at Monday's meeting and an updated canvass resolution.

Attachments

- Draft Resolution of Canvass in English and Spanish

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

Date: May 15, 2012

RESOLUTION NO. 2012-05-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE GENERAL ELECTION FOR THE OFFICE OF MAYOR HELD ON MAY 12, 2012.

GENERAL ELECTION

Lancaster, Texas

May 12, 2012

CANVASS OF RETURNS AND DECLARATION OF RESULTS OF ELECTION

BE IT REMEMBERED THAT on this the 21st day of May 2012, at a meeting of the City Council of the City of Lancaster, Texas, a quorum being present, the meeting was called to order and the following business was transacted.

Upon motion it was unanimously ordered that the City Council consider the official returns of a General Election held in the City on May 12, 2012, for the election of Mayor for a three-year term and Councilmember for District 5 to fill an unexpired term ending May 2013.

WHEREUPON said official returns were opened, examined, canvassed and the results declared as follows:

CANVASS OF RETURNS AND DECLARATION OF RESULTS

WHEREAS, heretofore, the City Council of the City of Lancaster, Texas, called a General Election to be held in the City on May 12, 2012, to elect a Mayor for a three-year term and Special Election to elect a Councilmember for District 5 to fill an unexpired term ending May 2013; and

WHEREAS, on March 26, 2012, City Council approved Resolution No. 2012-03-30 which declared the unopposed candidate in District 5 (LaShonjia Harris) to be elected to said office to fill an unexpired term ending May 2013;

WHEREAS, immediately after said election the Presiding Judge and other officials holding said election made their returns of the results thereof to the City Council as follows, and said returns being made according to law, and duly authenticated, and it being shown that written notice of said election was posted for the time and in the manner provided by law, and all other proceedings pertaining to said election having been shown to have been done and performed at and within the manner provided by law, and all papers pertaining thereto having been returned and filed with the City Council and no protest or objection being made to or regarding any matter pertaining to said election.

NOW, THEREFORE, be it resolved by the City Council of the City of Lancaster, Texas, after examining said returns and opening and canvassing the votes of said election, that the results of said election are as follows:

That the following number of votes were cast for the following named candidates for the office of Mayor, to-wit:

	EARLY VOTING	ELECTION DAY	BY MAIL	ADA	PROVISIONAL VOTING	TOTAL VOTES	%
James Lewis	77	70	0	1	0	148	16.80%
Marcus Knight	430	295	6	2	0	733	83.20%

It appearing that Marcus Knight received a majority of all votes cast for the office of Mayor, Marcus Knight is hereby declared to be elected to the office of Mayor to serve a three-year term after qualifying.

IT IS FURTHER ORDERED that this canvass and declaration of results of said election be entered in the Minutes of the City Council.

This Resolution, declaring the results of the general election, shall become effective immediately after its passage.

DULY PASSED by the City Council of the City of Lancaster, Texas, on this the 21st day of May 2012.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

RESOLUCIÓN NO. 2012-05-38

UNA RESOLUCIÓN DEL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS, ESCRUTINIO LOS RESULTADOS Y DECLARANDO LOS RESULTADOS DE LA ELECCIÓN GENERAL DE LA OFICINA DEL ALCALDE EL 12 DE MAYO DE 2012.

ELECCIONES GENERALES

Lancaster, Texas

12 de mayo 2012

**ESCRUTINIO DE LOS RESULTADOS Y LA DECLARACIÓN DE
RESULTADOS DE LAS ELECCIONES**

DEBE RECORDARSE QUE en este día el 21 de mayo de 2012, en una reunión del Consejo Municipal de la Ciudad de Lancaster, Texas, que haya quórum, la reunión fue llamada al orden y el negocio de las siguientes transacciones fue.

Al movimiento se ordenó por unanimidad que el Ayuntamiento considere los resultados oficiales de una elección general celebrada en la ciudad el 12 de mayo de 2012, para la elección del alcalde por un período de tres años y el concejal del Distrito 5 para llenar un término no vencido que termina mayo de 2013.

CON QUE dichas declaraciones oficiales se abrieron, examinados, los resultados escrutados, y declaró lo siguiente:

CAMPAÑA DE DEVOLUCIONES Y DECLARACIONES DE LOS RESULTADOS

CONSIDERANDO que, hasta ahora, el Consejo Municipal de la Ciudad de Lancaster, Texas, llamó una elección general que se celebrará en la ciudad el 12 de mayo de 2012, para elegir a un Alcalde por un término de tres años y Elección Especial para elegir a un concejal para el Distrito 5 para llenar un término no vencido que finalizó en mayo de 2013; y

escrutinar los resultados y la Declaración de
Los resultados de la elección

CONSIDERANDO que, el 26 de marzo de 2012, el Ayuntamiento aprobó la Resolución 2012-03-30 que declaró el candidato sin oposición en el Distrito 5 (LaShonjia Harris) para ser elegido para dicho cargo para ocupar un término no vencido que finalizó en mayo de 2013;

CONSIDERANDO que, inmediatamente después de dicha elección el Juez Presidente y otros funcionarios de la celebración de dicha elección hizo sus declaraciones de los resultados de la misma al Ayuntamiento de la siguiente manera, y dijo que se vuelve conforme a derecho y debidamente autenticada, y está demostrado que la notificación por escrito de dicha elección fue publicada por el tiempo y en la forma prevista por la ley, y todos los demás procedimientos relativos a dicha elección que se ha demostrado que se han realizado y se realiza en y dentro de la forma prevista por la ley, y todos los documentos pertenecientes a los mismos después de haber sido devuelto y presentado ante el Ayuntamiento y ninguna protesta u objeción que se hizo o sobre cualquier cuestión relacionada con dicha elección.

AHORA, POR LO TANTO, se resuelve por el Consejo Municipal de la Ciudad de Lancaster, Texas, después de examinar dichas declaraciones y la apertura y el escrutinio de los votos de dicha elección, que los resultados de dicha elección son los siguientes:

Que el siguiente número de votos fueron emitidos para los siguientes candidatos nombrados para el cargo de alcalde, a saber:

	<u>Votacion Temprana</u>	<u>Dia de Eleccion</u>	<u>Por Correo</u>	<u>ADA</u>	<u>Votacion Provisional</u>	<u>Total de Votos</u>	<u>%</u>
James Lewis	77	70	0	1	0	148	16.80%
Marcus Knight	430	295	6	2	0	733	83.20%

No aparece que Marcus Knight recibió una mayoría de todos los votos emitidos para el cargo de alcalde, Marcus Knight se declara a ser elegidos para el cargo de Alcalde para servir un término de tres años después de la calificación.

SE ORDENA ADEMÁS que este escrutinio y declaración de los resultados de dicha elección se consignará en el acta del Concejo Municipal.

escrutinar los resultados y la Declaración de
Los resultados de la elección

Esta Resolución, declarando los resultados de las elecciones generales, se hará efectiva inmediatamente después de su pasaje.

Debidamente aprobada por el Consejo Municipal de la Ciudad de Lancaster, Texas, el día 21 de mayo de 2012.

APROBADO:

Marcus E. Knight, el Alcalde

DOY FE:

Dolle K. Downe, Secretaria de la Ciudad

APROBADA EN FORMA:

Robert E. Hager, Abogado de la Ciudad

escrutinar los resultados y la Declaración de
Los resultados de la elección

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

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AG12-002

**Administer oaths of office, present Certificates of Election, and
seat newly elected councilmembers.**

Background

In accordance with Texas Election Code, after the completion of a canvass, the local canvassing authority prepares a Certificate of Election for each candidate who is elected to office. The oath of office is administered, followed by the presentation of the Certificate of Election.

After the City Council has approved the Canvass of the May 12, 2012 General Election, the newly elected councilmembers will be given the Oath of Office and presented with a Certificate of Election.

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

Date: May 14, 2012

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

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AG12-003

Consider approval of minutes from the City Council Regular Meeting held April 23, 2012.

Background

Attached for your review and consideration are minutes from the:

- City Council Meeting held April 23, 2012

Prepared and submitted by:

Dolle K. Downe, City Secretary
May 11, 2012

MINUTES

LANCASTER CITY COUNCIL MEETING OF APRIL 23, 2012

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on April 23, 2012 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Walter Weaver
Stanley Jaglowski
Marco Mejia
Mayor Pro Tem James Daniels
Deputy Mayor Pro Tem Nina Morris
Council District 5 vacant

City Staff Present:

Opal Mauldin Robertson, City Manager
Alicia Oyedele, Assistant to the City Manager
Ed Brady, Economic Development Director
Dori Lee, Human Resources Director
Larry Flatt, Police Chief
Thomas Griffith, Fire Chief
Rona Stringfellow Govan, Managing Director Public Works / Development Services
Jim Brewer, Assistant Director Public Works / Development Services
Larry King, Building Official
Nathaniel Barnett, Senior Planner
Sheree Haynes, Finance Director
Cami Loucks, Library Director
Kevin Moore, Recreation Superintendent
Mark Divita, Airport Manager
Dolle Downe, City Secretary
Robert E. Hager, City Attorney

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on April 23, 2012.

Invocation:

Pastor Charles Dixon with First Baptist Church gave the invocation.

Pledge of Allegiance:

Deputy Mayor Pro Tem Morris led the pledge of allegiance.

Presentation:

Mayor Knight read and presented a proclamation to the American Red Cross and expressed the City's appreciation for their assistance during natural disasters and particularly for their role in our community during the tornado. American Red Cross representatives thanked the Mayor and the City for the way the City came together to help those in need.

Citizens Comments:

Carolyn Morris, 887 Wintergreen, stated that with regard to consent item 5, she would like to see the person's name that is in violation of the attendance policy, stating that she had requested to be on a City board and to date has not heard anything about the board; stated the City did a great job following the tornado and area is clean especially in the alleyways; stated that homeowners she talked with are pleased with the City's efforts and thanked staff and other responders.

James Adams, 2003 Hash Road, stated that he lives in unincorporated Dallas County in an area that the City plans to annex; commented that City Council's disdain and disregard for the law is now killing people; indicated that he has said repeatedly that the City cannot afford to take in additional land but the City did and since the County no longer takes care of the roads, the roads are in disrepair; stated that over the Easter weekend there was a horrible accident and death; stated that the City is responsible for the roads and did not take care of them; asked what other Lancaster citizens might say if they knew residents in the newly annexed area were getting trash service free and that the City went around the law and is threatening the trash provider that was providing service; stated the Council has blatant disregard for the law and urged Council to re-evaluate what is going on.

Ronnie Lowe, 124 Martin Drive, Director of Lancaster Outreach Center; said thank you for the assistance during the tornado; commented that all the agencies working with the City made positive comments about the City and how well organized and seamless the disaster processes were; commended the City for their action; stated the Outreach Center has set up a special account for tornado disaster relief with approximately \$37,000 in funds; thanked City staff for their assistance during the disaster.

James Lewis, 818 Katy Street, commented that hearing about the accident and death touches his heart; commented that the City has treated him poorly and bullying in the City has got to stop; stated that the City had bulldozed his property and continues to bully people; said that Council can fix these things and in particular the no parking issue on Jefferson; stated that the bullying must stop.

Thomas Allen, 200 N. Crest, commented that following the 1994 tornado, the City set up an overlay and moratorium that would allow the homeowner to put back the same footprint of their home for a time period of 180 days as long as it met safety codes; suggested that the same may be necessary this time, as it may be the only chance for some to rebuild their homes and their lives.

Stanley Jaglowski, 112 Cayman Drive, stated that in the few weeks since the tornado he would like to share his findings, commenting that first and foremost, Chief Griffith's execution of the Emergency Operations Plan was excellent due to his diligence and practice drills; said that the Emergency Operations Center (EOC) ran smoothly throughout the disaster period; stated that numerous neighboring cities assisted through mutual aid agreements; thanked the Dallas County Sheriff's Department and noted that the media did not report that no Lancaster residents were arrested in the affected area; thanked the Lancaster I.S.D. for their help by providing a facility in which to operate the Disaster Assistance Center; stated that "L" stands for Lancaster, Leadership, Loyalty, and Longevity; ended saying he was keeping all in his prayers.

Consent Agenda:

City Secretary Downe read the consent agenda.

- 1C. Consider approval of minutes from the City Council Regular Meeting held March 26, 2012 and Emergency Meeting held April 3, 2012.
- 2C. Consider Resolution 2012-04-32 canceling the regular City Council meetings scheduled for May 14 and 28, 2012; and providing for a called Special Meeting on May 21, 2012.
- 3C. Consider Resolution 2012-04-33 approving the terms and conditions of the City owned T-Hangar non-commercial lease from Building 680 at the Lancaster Regional Airport.
- 4C. Consider Resolution 2012-04-34 awarding Bid 2012-22 for T-Hangar 660 and 670 roof replacements to Covenant Design & Construction, LLC in an amount not to exceed \$57,182.
- 5C. Consider Resolution 2012-04-35 declaring certain board, commission, and committee position(s) vacant due to excessive absences.

Deputy Mayor Pro Tem Morris pulled item 5C from the consent agenda.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve consent items 1C – 4C. The vote was cast 6 for, 0 against.

Deputy Mayor Pro Tem Morris commented that attendance records for City boards and commission are public records.

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Daniels, to approve Resolution 2012-04-35 declaring certain board, commission, and committee position(s) vacant due to excessive absences [consent item #5C]. The vote was cast 6 for, 0 against.

6. Conduct a public hearing and consider Resolution 2012-04-36 approving the 2012-2013 Standards of Care for Youth Programs operated by the Lancaster Parks and Recreation Department.

Kevin Moore, Recreation Superintendent, stated that updated Standards of Care are required each year under Chapter 42 of the Human Resources Code and noted that following thorough review, there were no significant changes required to the Standards for this year.

Deputy Mayor Pro Tem Morris commented that the Parks and Recreation Department is doing a great job with the summer camp program.

Mayor Knight opened the public hearing.

There were no speakers regarding the 2012-2013 Standards of Care for Youth Programs.

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Daniels, to close the public hearing and approve Resolution 2012-04-36 approving the 2012-2013 Standards of Care for Youth Programs operated by the Lancaster Parks and Recreation Department as presented. The vote was cast 6 for, 0 against.

7. Conduct a public hearing regarding use of allocated funds under the Fiscal Year 2012 Dallas County Community Development Block Grant (CDBG) program.

City Manager Mauldin Robertson stated Lancaster is eligible to receive \$105,679 in Community Development Block Grant (CDBG) funds for fiscal year 2012, commenting that it will be staff's recommendation to use the funds for roadway improvements.

Mayor Pro Tem Daniels asked how the funds have been used in the past. City Manager Mauldin Robertson commented that for the past three years funds have been used for road repairs.

Councilmember Mejia asked that the focus for street repairs be on Henry and 7th Streets. City Manager Mauldin Robertson stated that eligible, recommended streets would be presented at the Council work session on May 7, 2012.

Mayor Knight opened the public hearing.

Speaking regarding use of CDBG funds were:

James Adams, 2003 Hash Road, asked that Council consider repairing streets in the newly annexed area, noting that the only attention streets have received in the annexed area was when the Bike Rally event was held; commented that Nokomis, Reindeer, and Stainback, among others, were all in need of repair.

Ronnie Lowe, 124 Martin Drive, called but declined the opportunity to speak.

There were no other speakers regarding use of the CDBG funds for fiscal year 2012.

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Daniels, to close the public hearing. The vote was cast 6 for, 0 against.

8. Discuss and consider Resolution 2012-04-37 establishing the reappraisal of certain real property located within the corporate limits of the City which was damaged as a result of severe storms and tornado; providing authorization to reappraise such damage to real property; providing for reappraisal; and providing for proration of taxes as a result of natural disaster.

City Manager Mauldin Robertson stated that under the Texas Property Tax Code, a reappraisal district, following approval by the governing body, could reappraise homes in a disaster area and provide for prorating of taxes on the property for the year in which the disaster occurred. City Manager Mauldin Robertson stated that Dallas County had approved this action and the Lancaster I.S.D. would consider the matter soon.

Deputy Mayor Pro Tem Morris asked if this would result in reduced taxes. City Manager Mauldin Robertson commented that homes in the affected area may be reappraised for this current tax year resulting in decreased property taxes.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Mejia, to approve Resolution 2012-04-37 establishing the reappraisal of certain real property located within the corporate limits of the City which was damaged as a result of severe storms and tornado. The vote was cast 6 for, 0 against.

EXECUTIVE SESSION:

At 7:40 p.m. Council recessed to go into Executive Session. At 7:42 p.m. the City Council convened into closed Executive Session pursuant to:

9. **The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney to seek legal advice on pending litigation and/or settlement concerning Cause No. 11-10174 Con-Way Truckload, Inc. vs. the City of Lancaster.**
10. **Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.**

The City Council recessed from Executive Session at 8:26 p.m. and convened into open session at 8:28 p.m.

No action was taken following the Executive Session.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Mejia, to adjourn. The vote was cast 6 for, 0 against.

The meeting was adjourned at 8:29 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

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AG12-004

Consider a resolution authorizing the submission of applications to Dallas County for funding under the Fiscal Year 2012 Community Development Block Grant (CDBG) program for reconstruction of existing roadways [Baskin Drive from Henry Street to Ames Road; Colgate Drive from Dallas Avenue to Dewberry Boulevard; and Idlewild Court from Idlewild Lane to IH-35E service road].

This request supports the City Council 2011-2012 Policy Agenda.

Goal: Financially Sound City Government
Goal: Sound Infrastructure

Background

The City of Lancaster is eligible to receive \$105,679 in Community Development Block Grant (CDBG) funds for fiscal year 2012. In addition, there are funds totaling \$27,731.93 that may be carried forward from completed 2008 and 2010 projects. City Council conducted its required public hearing at the April 23, 2012 regular meeting. City Council discussed use of CDBG funds at the work session on May 7, 2012.

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 has used this funding for either demolition of substandard structures or residential roadway projects. For the past three years, staff has identified residential roadway project(s) for consideration. Council has previously approved the following roadway projects for submission.

Year Roadway Project

2009 Cheshier Road, from Beltline Road to its end
2010 Henry Road from Wintergreen Road to Baskin Drive
2011 Stanford Drive from Arcady Lane to Arlington Lane

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 scoring, estimated cost within the allocated dollar amount, and are eligible under the CDBG program. The streets are listed in priority order.

NAME	FROM STREET	TO STREET	EST. COST	LENGTH LINEAR FT.
BASKIN DR	HENRY RD	AMES RD	\$ 61,000	918
COLGATE DR	DALLAS AVE	DEWBERRY BLVD	\$ 36,500	942
MARSALIS RD	PLEASANT RUN RD	GREEN DR	\$ 94,000	1401
PARK CIRCLE DR	GREEN DR	IDLEWILD LN	\$ 41,000	618
IDLEWILD CT	IDLEWILD LN	I-35E EAST SERVICE RD	\$ 35,000	525
GANT DR	BRADY DR	MARSALIS RD	\$ 6,000	901
BALOMEDE ST	WINTERGREEN RD	BELVEDERE RD	\$ 65,500	1090

Considerations

- **Operational** - If participating in the program, Council must adopt a resolution identifying the project(s) and submit the application by May 25, 2012. You may notice on the project application, the due date says May 18; Dallas County extended Lancaster's deadline to May 25 at the City's request due to the timing of the receipt of the information following the tornado. The 2012 CDBG funds will not be available for use until October 2012.
- **Legal** - As required by law, the City conducted a public hearing to receive input from citizens regarding use of the allocated CDBG funds at its meeting on April 23, 2012. Comments were received from one individual requesting consideration of roadway repair in the newly annexed area.
- **Financial** - The City is eligible to receive \$105,679 in CDBG funding for fiscal year 2012. Funds not used on completed projects may be designated for carry-over for eligible roadway projects; funds totaling \$27,731.93 are available for carry-over (\$1,787.69 from the 2008 project and \$25,944.24 from the 2010 project). The grand total for use on CDBG project(s) is \$133,410.93.
- **Public Information** – The notice of public hearing was published in the *Focus Daily News* on April 13, 2012 and in the *Dallas Morning News* on April 16, 2012 as part of Dallas County's notice. The City conducted its public hearing at their meeting on April 23, 2012.

Recommendation

Staff recommends the following 3 roadway projects:

		Estimated Cost	Map Segment Number
Baskin Drive	from Henry Street to Ames Road	\$ 61,000	1
Colgate Drive	from Dallas Avenue to Dewberry Blvd.	\$ 36,500	2
Idlewild Court	from Idlewild Lane to I-35E service road	\$ 35,000	3
		<u>\$132,500</u>	

Attachments

- Resolution
- Map of Road Reconstruction Projects – Exhibit A
- Project Applications
- Map - City of Lancaster Low to Moderate Income Areas

Prepared and submitted by:

Jim Brewer, Assistant Director Public Works / Development Services
Dolle K. Downe, City Secretary

Date: May 8, 2012

RESOLUTION NO. 2012-05-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE SUBMISSION OF APPLICATIONS TO DALLAS COUNTY FOR FUNDING UNDER THE FISCAL YEAR 2012 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR RECONSTRUCTION OF EXISTING ROADWAYS [BASKIN DRIVE FROM HENRY STREET TO AMES ROAD; COLGATE DRIVE FROM DALLAS AVENUE TO DEWBERRY BOULEVARD; AND IDLEWILD COURT FROM IDLEWILD LANE TO IH-35E SERVICE ROAD]; DESIGNATING A REPRESENTATIVE FOR ALL MATTERS RELATED TO THE PROJECT(S); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Dallas County has determined, based on 2000 Census information, that the City of Lancaster is eligible to receive \$105,679 of Community Development Block Grant ("CDBG") funds for fiscal year 2012; and

WHEREAS, the City Council of the City of Lancaster desires that unused FY 2008 CDBG funds allocated to the City of Lancaster in the amount of \$1,787.69 and unused FY 2010 CDBG funds allocated to the City of Lancaster in the amount of \$25,944.24 be used for roadway projects; and

WHEREAS, Lancaster could benefit greatly from Community Development Block Grant funds; and

WHEREAS, it is necessary and in the best interest of the City of Lancaster to apply for Community Development Block Grant funds through Dallas County;

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

SECTION 1. The City Manager or her designee is hereby authorized to execute all necessary project application materials for the project of reconstruction of existing roadways [Baskin Drive from Henry Street to Ames Road; Colgate Drive from Dallas Avenue to Dewberry Boulevard; Idlewild Court from Idlewild Lane to IH-35E service road], as depicted on Exhibit A, which is attached hereto and incorporated herein by reference, to Dallas County for funding under the 2012 Community Development Block Grant Program.

SECTION 2. The City Manager or her designee shall act as the City's authorized representative in all matters related to the application and provide assurances that all requirements of the Community Development Block Grant Program are observed.

SECTION 3. Any prior resolutions 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 take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 21st day of May 2012.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



FY2012 DALLAS COUNTY CDBG PROJECT/ACTIVITY APPLICATION

Each project/activity must be on a separate application.

NAME OF CITY <u>Lancaster, Texas</u>
TITLE OF PROJECT/ACTIVITY <u>Street Reconstruction</u>
Baskin Dr. from Henry Rd. to Ames Rd.

- (1.) Number of beneficiaries: 1,149
- (2.) Percentage of beneficiaries being low/moderate income: 54%
- (3.) How was number of beneficiaries/percentage of beneficiaries being low/moderate income calculated?
 by a survey conducted on _____
 by 2000 census data _____
 other, explain _____
- (4.) Please provide below the required information for the project:
Census Tract 167.03 Block Group 167.034
Census Tract _____ Block Group _____
Census Tract _____ Block Group _____
Census Tract _____ Block Group _____
- (5.) Identify which national CDBG objective this project addresses:
 primarily assists low/moderate income
 eradicates blight
 eliminates community-threatening condition
 N/A (to be used for projects involving ADA accommodations and the elderly which are assumed to automatically address a national objective)

- (6.) Is the service area for this project city-wide?
 Yes
 No If no, a map with the project's service area boundaries clearly marked must be attached. In addition, for capital improvement projects, the map must **clearly** show the location of the project and its beginning and ending points.

(7.) Describe proposed project: This description should specifically explain what will be undertaken, where it will occur, why it needs to be undertaken, and what problems it will solve. Please be very specific in the description. If, for instance, the proposed project involves improving a road or replacing a water line, be sure to state that the project will cover a certain amount of linear feet from Point A to Point B; any problems with the road/line, etc.

Reconstruction of Baskin Dr. from Henry Rd. to Ames Rd. For a length of 918 lf.

Mill in place 8" deep with stabilizer, prime coat, single course chip seal then add

2" HMAC Type D overlay.

- (8.) Project represents:
 new project/activity
 continuation of on-going activity (i.e., code enforcement)
 completion of an existing project (i.e., a project--usually a capital improvement project--that has received funding in the past, but still needs additional funding in order to be constructed)

(9.) Attach a line-item budget for the proposed project/activity. Describe within this budget how proposed costs are derived. For capital improvement projects, also provide itemized costs and quantities for such components including, but not limited to, right-of-way/easement acquisition, surveying/engineering design, utility relocation, construction management, materials, and permits/fees. Where possible for capital improvement projects, have the estimates provided by a licensed professional engineer.

- (10.) Describe how project/activity is to be funded:
- | | |
|---|----------------------|
| • FY2012CDBG funding being allocated | \$105,679 |
| • CDBG funding from completed/canceled projects now being reallocated | \$27,731.93 |
| • Previous CDBG funding that has been allocated | \$124,844.00 FY 2011 |
| • Non-CDBG funding that has been allocated | -0- |
| • Additional funding still needed | -0- |

TOTAL BUDGET \$258,254.93

- (11.) If carry-over CDBG funding (amount from award letter) from previous projects is going to be used, identify the previous projects from which this funding is being reallocated and the amounts being reallocated (please note that carryover funds are not available until the project is officially completed and all outstanding invoices have been paid).

FY 2008 - \$1,787.69 demolition

FY 2010 - \$25,944.24 street project

- (12.) If non-CDBG funding is to be used, please describe whether the source of this funding (e.g.--City bond funds, City revenues, state/federal grant, private funding, etc.) has already been secured or when such funding will become available.

N/A

- (13.) If additional funding will still be needed, describe how additional funding will be provided (i.e., through future CDBG funds, city bond program, etc.).

N/A

- (14.) Describe what portions of the project, to the extent applicable, that will be implemented/ managed by the County, the City, another organization, or some combination of these entities.

The city would like to utilize the Dallas County Road and Bridge District #3 work crew to perform the work. The city will provide assistance as requested.

- (15.) Proposed start date for implementing project October 2012



FY2012 DALLAS COUNTY CDBG PROJECT/ACTIVITY APPLICATION

Each project/activity must be on a separate application.

NAME OF CITY <u>Lancaster, Texas</u>
TITLE OF PROJECT/ACTIVITY <u>Street Reconstruction</u>
Colgate Dr. from Dallas Ave. to Dewberry Blvd.

- (1.) Number of beneficiaries: 1,612
- (2.) Percentage of beneficiaries being low/moderate income: 53%
- (3.) How was number of beneficiaries/percentage of beneficiaries being low/moderate income calculated?
 by a survey conducted on _____
 by 2000 census data _____
 other, explain _____
- (4.) Please provide below the required information for the project:
Census Tract 167.04 Block Group 167.043
Census Tract _____ Block Group _____
Census Tract _____ Block Group _____
Census Tract _____ Block Group _____
- (5.) Identify which national CDBG objective this project addresses:
 primarily assists low/moderate income
 eradicates blight
 eliminates community-threatening condition
 N/A (to be used for projects involving ADA accommodations and the elderly which are assumed to automatically address a national objective)

- (6.) Is the service area for this project city-wide?
 Yes
 No If no, a map with the project's service area boundaries clearly marked must be attached. In addition, for capital improvement projects, the map must **clearly** show the location of the project and its beginning and ending points.

(7.) Describe proposed project: This description should specifically explain what will be undertaken, where it will occur, why it needs to be undertaken, and what problems it will solve. Please be very specific in the description. If, for instance, the proposed project involves improving a road or replacing a water line, be sure to state that the project will cover a certain amount of linear feet from Point A to Point B; any problems with the road/line, etc.

Reconstruction of Colgate Dr. from Dallas Ave. to Dewberry Blvd. For a length of 942 lf. Mill in place 8" deep with stabilizer, prime coat, single course chip seal then add 2" HMAC Type D overlay.

- (8.) Project represents:
 new project/activity
 continuation of on-going activity (i.e., code enforcement)
 completion of an existing project (i.e., a project—usually a capital improvement project—that has received funding in the past, but still needs additional funding in order to be constructed)

(9.) Attach a line-item budget for the proposed project/activity. Describe within this budget how proposed costs are derived. For capital improvement projects, also provide itemized costs and quantities for such components including, but not limited to, right-of-way/easement acquisition, surveying/engineering design, utility relocation, construction management, materials, and permits/fees. Where possible for capital improvement projects, have the estimates provided by a licensed professional engineer.

- (10.) Describe how project/activity is to be funded:
- | | |
|---|-----------------------------|
| • FY2012CDBG funding being allocated | <u>\$105,679</u> |
| • CDBG funding from completed/canceled projects now being reallocated | <u>\$27,731.93</u> |
| • Previous CDBG funding that has been allocated | <u>\$124,844.00 FY 2011</u> |
| • Non-CDBG funding that has been allocated | <u>-0-</u> |
| • Additional funding still needed | <u>-0-</u> |
| TOTAL BUDGET | <u>\$258,254.93</u> |

- (11.) If carry-over CDBG funding (amount from award letter) from previous projects is going to be used, identify the previous projects from which this funding is being reallocated and the amounts being reallocated (please note that carryover funds are not available until the project is officially completed and all outstanding invoices have been paid).

FY 2008 - \$1,787.69 demolition

FY 2010 - \$25,944.24 street project

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N/A

- (13.) If additional funding will still be needed, describe how additional funding will be provided (i.e., through future CDBG funds, city bond program, etc.).

N/A

- (14.) Describe what portions of the project, to the extent applicable, that will be implemented/ managed by the County, the City, another organization, or some combination of these entities.

The city would like to utilize the Dallas County Road and Bridge District #3 work crew to perform the work. The city will provide assistance as requested.

- (15.) Proposed start date for implementing project October 2012

(16.) Proposed completion date March 2013

(17.) Date(s) of public hearing(s) held by City to identify possible projects:
Monday, April 23, 2012

Contact person for project:	<u>Jim Brewer</u>
Phone number:	<u>972-218-1208</u>
Fax number:	<u>972-275-0943</u>
E-Mail address:	<u>jbrewer@lancaster-tx.com</u>
Authorized signature:	<u>Opal Mauldin Robertson</u>



FY2012 DALLAS COUNTY CDBG PROJECT/ACTIVITY APPLICATION

Each project/activity must be on a separate application.

NAME OF CITY <u>Lancaster, Texas</u>
TITLE OF PROJECT/ACTIVITY <u>Street Reconstruction</u>
Idlewild Ct. from Idlewild Ln. to I-35E East Service Rd.

- (1.) Number of beneficiaries: 1,108
- (2.) Percentage of beneficiaries being low/moderate income: 52%
- (3.) How was number of beneficiaries/percentage of beneficiaries being low/moderate income calculated?
 by a survey conducted on _____
 by 2000 census data _____
 other, explain _____
- (4.) Please provide below the required information for the project:
Census Tract 167.03 Block Group 167.035
Census Tract _____ Block Group _____
Census Tract _____ Block Group _____
Census Tract _____ Block Group _____
- (5.) Identify which national CDBG objective this project addresses:
 primarily assists low/moderate income
 eradicates blight
 eliminates community-threatening condition
 N/A (to be used for projects involving ADA accommodations and the elderly which are assumed to automatically address a national objective)

- (6.) Is the service area for this project city-wide?
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Reconstruction of Idlewild Ct. from Idlewild Ln. to I-35E service road. For a length of 525 lf. Mill in place 8" deep with stabilizer, prime coat, single course chip seal then add 2" HMAC Type D overlay.

- (8.) Project represents:
 new project/activity
 continuation of on-going activity (i.e., code enforcement)
 completion of an existing project (i.e., a project—usually a capital improvement project—that has received funding in the past, but still needs additional funding in order to be constructed)

(9.) Attach a line-item budget for the proposed project/activity. Describe within this budget how proposed costs are derived. For capital improvement projects, also provide itemized costs and quantities for such components including, but not limited to, right-of-way/easement acquisition, surveying/engineering design, utility relocation, construction management, materials, and permits/fees. Where possible for capital improvement projects, have the estimates provided by a licensed professional engineer.

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TOTAL BUDGET \$258,254.93

(11.) If carry-over CDBG funding (amount from award letter) from previous projects is going to be used, identify the previous projects from which this funding is being reallocated and the amounts being reallocated (please note that carryover funds are not available until the project is officially completed and all outstanding invoices have been paid).

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N/A

(13.) If additional funding will still be needed, describe how additional funding will be provided (i.e., through future CDBG funds, city bond program, etc.).

N/A

(14.) Describe what portions of the project, to the extent applicable, that will be implemented/ managed by the County, the City, another organization, or some combination of these entities.

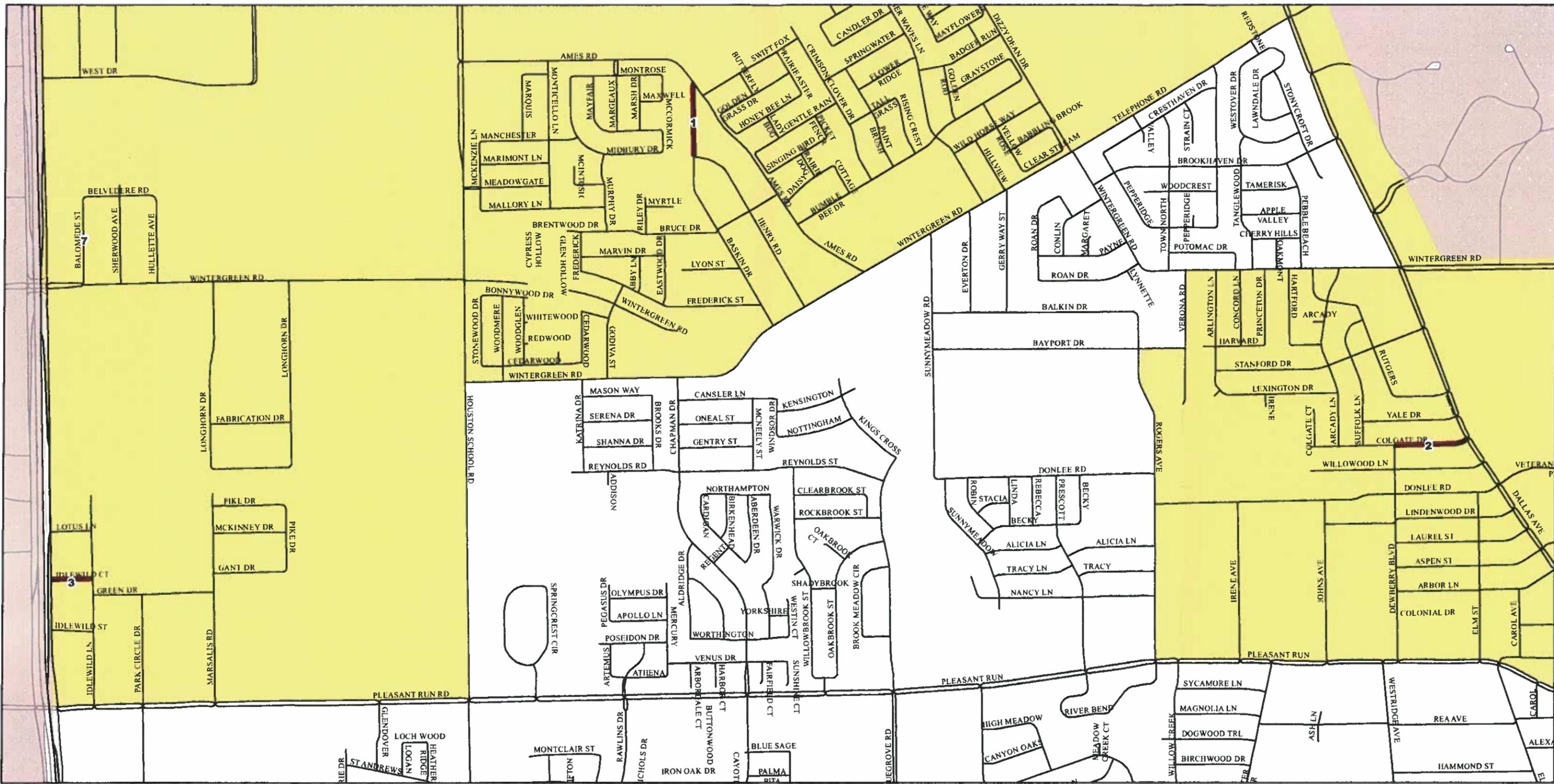
The city would like to utilize the Dallas County Road and Bridge District #3 work crew to perform the work. The city will provide assistance as requested.

(15.) Proposed start date for implementing project October 2012

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Contact person for project:	<u>Jim Brewer</u>
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E-Mail address:	<u>ibrewer@lancaster-tx.com</u>
Authorized signature:	<u>Opal Mauldin Robertson</u>



Legend

2012 CDBG Repair Recommendation

Lancaster City Limits

Census Block Groups Income %

>51%

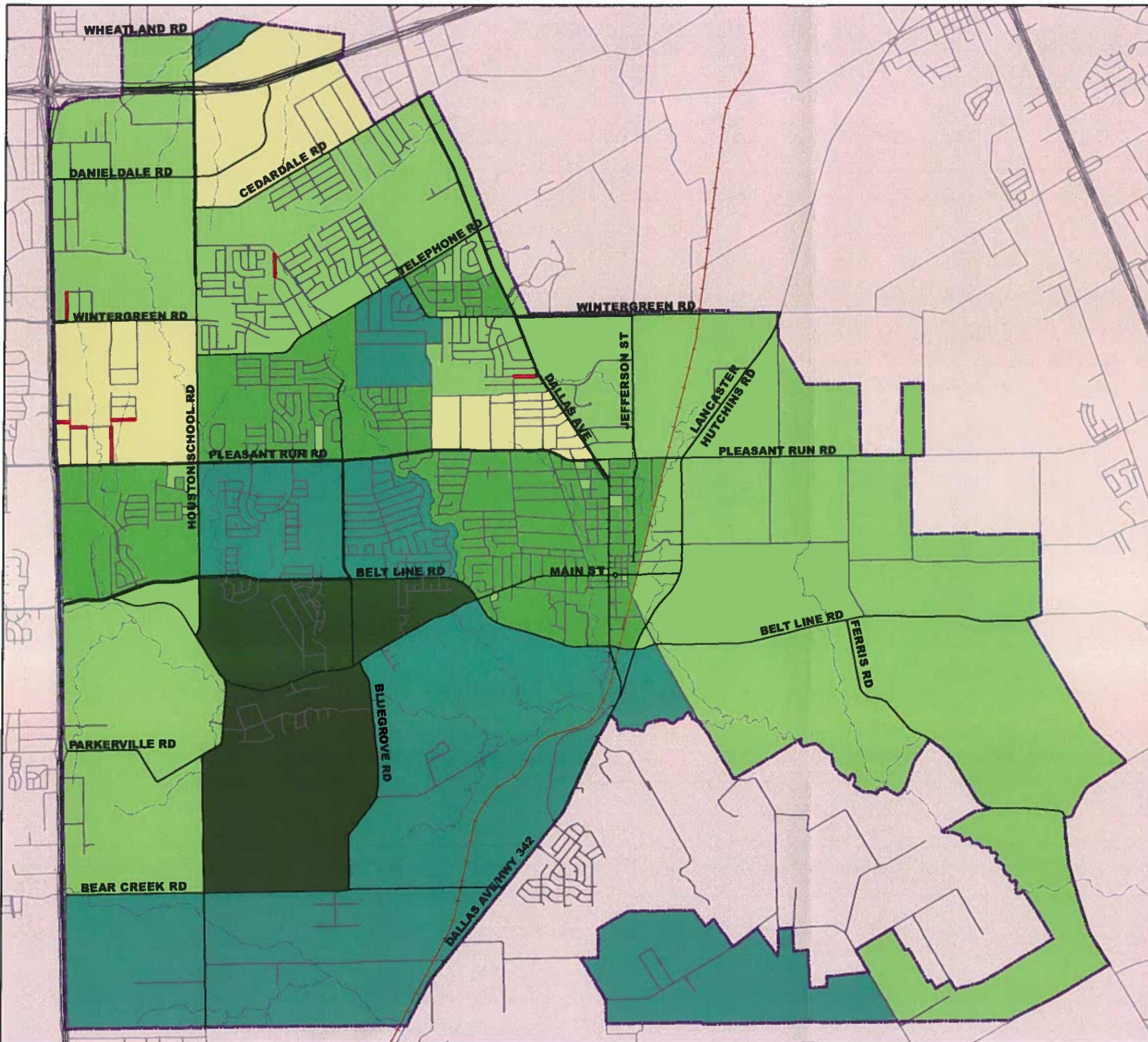


ID	Street Name	From street	To Street	Score	Rehab Type	Cost
1	BASKIN DR	HENRY RD	AMES RD	0	OVERLAY #2	\$61,000
2	COLGATE DR	DALLAS AVE	DEWBERRY BLVD	12	OVERLAY #4	\$36,500
3	IDLEWILD CT	IDLEWILD LN	I-35E EAST SERVICE RD	0	OVERLAY #1	\$35,000

City of Lancaster
Low to Moderate
Income Areas



City of Lancaster Low to Moderate Income Areas



Creeks
 Railroads
 Lancaster City Limits
 Recommended Street Repairs

CDBG

Income Level

- 1: \$23,409 - \$31,785
- 2: \$31,786 - \$41,433
- 3: \$41,434 - \$52,678
- 4: \$52,678 - \$70,088
- 5: \$70,089 - \$80,630

Legend

**HUD Income Limits for FY 2000
Dallas County**

Median	30%	50%	80%
\$60,800	\$18,250	\$30,400	\$48,560

Website: <http://www.huduser.org>



LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

5

AG12-005

Consider a resolution approving the terms and conditions of a professional services agreement with Freese and Nichols, Inc. to perform engineering services in connection with the project known as Phase II MS4 Storm Water Management Program Assistance for Texas Commission on Environmental Quality (TCEQ) in an amount not to exceed \$80,900.

This request supports the City Council 2011-2012 Policy Agenda.

Goal: Enhanced City Infrastructure and Facilities

Background

The U.S Environmental Protection Agency (EPA) issued regulations in 1999 to protect storm water quality in small cities and urbanized areas. In Texas, the Texas Commission on Environmental Quality (TCEQ) was delegated the responsibility for implementing the regulations, commonly called the Phase II MS4 Storm Water Management Program. The City of Lancaster is one of several hundred cities, counties, and other public entities required to develop a program to protect storm water quality under Phase II regulations.

The EPA required TCEQ to develop permit conditions for the Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR040000 by December 9, 2002 to regulate public entities such as the City of Lancaster. TCEQ finalized the permit August 13, 2007. With the permit requirements finalized, the City was required to develop and submit to TCEQ a plan for a storm water quality management program by February 11, 2008. The program was then implemented over the next five years, expiring in 2012.

With the assistance of Freese and Nichols, Inc. (FNI), the City has developed this storm water management plan (SWMP) to comply with the requirements of the Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR040000. The SWMP includes best management practices (BMPs) that will be implemented by the City to reduce storm water pollution to the "maximum extent practicable," as regulations require.

Existing City storm water programs and activities that protect the City's storm water quality were identified and are included in the SWMP. They will be supplemented with several new BMPs to provide even more protection of storm water quality.

A schedule to implement the storm water management program, as well as measurable goals to track the implementation progress, has been developed for each of the BMPs in this SWMP. Each BMP was selected based on the projected effectiveness in protecting storm water quality and its ability to aid in compliance with permit conditions.

The implementation schedule and measurable goals for the first five-year permit term were selected so that the storm water program will be steadily phased in over the permit term. The City has reviewed the implementation progress each year and made modifications to the storm water management program as necessary. Annual updates were provided to TCEQ.

With the assistance of Freese and Nichols, Inc. (FNI), the City now needs to implement the remainder of the BMPs. This agenda item brings forward an agreement for the completion and implementation of the remainder of the BMPs in order to be in compliance with TCEQ in the fifth and final year under the current permit requirements.

Considerations

- **Operational** - The MS4 II program will be managed by the Engineering Division and implemented with the cooperative efforts of the SWMP committee, consisting of staff from Community Relations, Public Works, Development Services, Parks, GIS, Planning and Fire departments.
- **Legal** - The City is required to obtain the storm water permit from the Texas Commission on Environmental Quality (TCEQ) and comply with state storm water rules.

The City Attorney has reviewed the proposed resolution and FNI Agreement for professional services.

- **Financial** - The fee for FNI Total Project Scope of Services to update the Phase II MS4 Storm Water Management Program Compliance Assistance is a lump sum not to exceed \$80,900. This sum will take into account compliance with TCEQ under the current permit requirements.
- **Public Information** - There are no public information requirements, except a 72 hour notice as required by the Texas Open Meetings Act.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
- Agreement
- Freese & Nichols Proposal

Prepared and submitted by:
Shwetha Pandurangi, PE, CFM, City Engineer

Date: May 7, 2012

RESOLUTION NO. 2012-05-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. (FNI) TO PERFORM ENGINEERING SERVICES IN CONNECTION WITH THE PROJECT KNOWN AS PHASE II MS4 STORM WATER MANAGEMENT PROGRAM ASSISTANCE FOR TCEQ COMPLIANCE FOR AN AMOUNT NOT TO EXCEED \$80,900; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Freese and Nichols, Inc. (FNI) will provide professional services to the City of Lancaster in connection with the Phase II MS4 Storm Water Management Program Assistance for TCEQ Compliance;

WHEREAS, the City Council of Lancaster desires to contract with FNI for the above referenced services;

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

SECTION 1. That the professional services agreement for a total amount not to exceed eighty thousand and nine hundred dollars (\$80,900) by and between the City of Lancaster and Freese and Nichols, Inc., 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 approved.

SECTION 2. That the City Manager is hereby authorized to execute said agreement as depicted in Exhibit "A".

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 21st day of May 2012.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”) and Freese and Nichols, Inc., a Texas corporation (“Professional”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the compliance assistance for the City’s Phase II MS4 Storm Water Management Program (the “Project”), as described in Exhibit “A” (the “Scope of Services”) on the terms and conditions set forth in this Agreement, (the “Services”); and

WHEREAS, the Professional desires to render the Services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

**Article I
Term**

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the Services, unless sooner terminated as provided herein.

1.2 Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

**Article II
Scope of Services**

2.1 The Professional agrees to provide the Services for the Project as set forth in the Scope of Services. Deviations from the Scope of Services may be authorized in writing from time to time by the City.

2.2 The City shall, prior to commencement of Services, provide the Professional with the information set forth in the Scope of Services, if any. City will assist the Professional by

placing at Professional's disposal all available information pertinent to the Project including previous reports and any other data relative to the Project. Professional shall have no liability for defects or negligence in the Services attributable to Professional's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by City. Professional shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by City to Professional that Professional may reasonably discover in its review and inspection thereof.

2.3 The parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

2.4 Upon execution of this Agreement the City has the right to use the Professional's instruments of service for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the City substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The City's Project Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the City's consultants and separate contractors, may reproduce applicable portions of the instruments of service for use in performing services or construction for the Project. Upon payment of all amounts due to Professional hereunder, all materials and reports prepared by the Professional in connection with this Agreement shall become the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports only for those purposes for which they were intended. Professional may retain copies for record purposes. The City agrees such documents are not intended or represented to be suitable for reuse by other parties. Any reuse by the City or by those who obtained said documents from the City without written verification or adaptation by Professional will be at City's sole risk and without liability or legal exposure to Professional, or to Professional's independent associates or consultant. Professional may reuse all drawings, report data and other project information in the execution of the Services provided under this Agreement in Professional's other activities. Any reuse by Professional will be at Professional's sole risk and without liability or legal exposure to the City, and Professional shall indemnify and hold harmless the City from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in the Scope of Services.

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in compensation document attached hereto as Exhibit "B". Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's

monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.2 Rates set forth in the Scope of Services shall remain in effect for the Term of the Agreement.

Article V Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid to Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement

between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. City, without invalidating the Agreement, may order changes to the general Scope of Services by the Agreement by altering, adding to and/or deducting from the Scope of Services to be performed, so long as said changes do not increase or decrease the Professional's costs and said changes are agreed to by the Parties. If any change under this Section causes an increase or decrease in Professional's cost of, or the time required for, the performance of any part of the Services under the Agreement, this Agreement may be amended to incorporate said changes by the mutual written agreement of the Parties. The City Manager, or designee, is authorized to execute any amendment to this Agreement.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the parties that the Professional in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Right-of-Access. The Professional shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Professional will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.

6.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Shwetha Pandurangi, P.E., CFM
City Engineer
City of Lancaster, Texas
700 East Main St
Lancaster, Texas 75146
972-275-1206– telephone
972-275-7220- fax

With Copy to:

Robert Hager
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201
214-965-9900 – telephone
214-965-0000 - fax

If intended for Professional:

Attn: Trey Shanks
Freese and Nichols, Inc.
1701 Market St., #500, LB51
Dallas, Texas 75202
214-217-2221 – telephone
214-217-2201 - fax

6.10 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed to: (1) name the City, its officers, and

employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) prior written notice for cancellation, non-renewal, and/or material changes of the policy.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) Copies of the policy endorsements and certificates of insurance evidencing the required insurance shall be submitted prior to commencement of services.

6.11 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.12 Consequential Damages. In no event shall Professional or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.

6.13 Audits and Records. Professional agrees that during the term hereof, the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Professional's records relating to the Services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the City or date of termination if sooner.

6.14 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

6.15 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

(Signature Page to Follow)

EXECUTED this _____ day of _____, 2012.

CITY OF LANCASTER, TEXAS

By: _____
Opal Robertson
City Manager

EXECUTED this 8th day of May, 2012.

FREESE AND NICHOLS, INC.

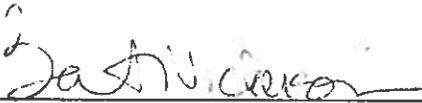
By: 
Barbara A. Nickerson,
Vice President

Exhibit A
Scope of Services

Freese and Nichols, Inc. (the "Professional") will render the following professional services to the City in connection with compliance assistance for the City's Phase II MS4 Storm Water Management Program:

Task 1: Phase II MS4 Compliance Management

Task 1A: Review City's Existing Recordkeeping and Documentation

Professional will meet at least one time with the City to review documents and records maintained for compliance purposes. The review will be conducted concurrently with City staff, and Professional will provide recommendations for:

- documentation to keep on file,
- records that can be discarded without expected compliance impacts, and
- additional documentation to maintain, if applicable.

Task 1B: Staff Coordination Meetings to Assess BMP Implementation and Compliance

Professional will conduct up to three (3) staff coordination meetings through November, 2012 (due date of Permit Year 5 annual report). The purpose of the meetings will be for Professional to review with City staff from each department required actions for permit compliance, to assess the progress toward meeting the current permit year's Best Management Practice (BMP) implementation goals, and to identify recommended actions to resolve off-target activities, if applicable. Professional will provide a meeting action memorandum to City staff after each meeting identifying compliance progress and upcoming milestones.

Task 1C: City Council Briefing

Professional will provide up to 12 hours of support assistance to City staff to prepare for one briefing to City Council regarding the Phase II MS4 storm water management program requirements, current activities, and future steps. Professional will provide available presentations given by Professional to Council in prior years for City staff reference. The presentation will be developed in coordination with City staff. Freese and Nichols will attend the Council presentation upon written request of the City as an Additional Service.

Task 1D: Annual Report for Permit Year 5

Professional will compile information documented and developed by City staff and Professional to complete the SWMP annual report for Permit Year 5 for submittal to the Texas Commission on Environmental Quality (TCEQ). A draft annual report will be provided to the City for review and comment 30 days prior to the compliance deadline of November 12, 2012. The final annual report will be provided for City submittal one week prior to the compliance deadline.

Exhibit A
Scope of Services

Task 2: Phase II MS4 Implementation Assistance

Task 2A: BMP 15/16-Storm System Mapping Assistance, Illicit Discharge Detection and Elimination (IDDE) Inspections and Training

Professional will coordinate with City staff to conduct field mapping of the City's storm system to meet the requirements of BMP 15 of the Phase II MS4 SWMP. Professional will map the location of readily identifiable MS4 outfalls within the City using GPS, as-builts, and desktop assessment approaches. Professional will conduct an IDDE inspection of each observed outfall and will document each inspection for the City's recordkeeping. Observations of immediate concern will be reported upon discovery to City staff.

It is our understanding that the City will be responsible for inventorying and mapping the storm system that drains to each MS4 outfall. Professional will provide limited technical support to the City to establish a framework for the City to collect field data electronically for input into GIS. Professional will provide limited technical support to the City to establish a framework for the City to process field-collected storm system data in GIS for the development of the storm system map. Professional will provide up to 40 hours of technical support for field collection approaches, such as data dictionaries, and GIS processing approaches.

Professional will provide guidance to the City to focus on the completion of the storm system map to meet permit compliance requirements. As time and budget permits, Professional will provide secondary assistance to the City to establish approaches for storm system maintenance and planning based on data collected in the field inventory.

Specific to completion of the map for compliance requirements by August 12, 2012, Professional will assist the City to verify that each of the following are identified in the storm system map.

1. Waters of the U.S., as shown on a USGS topographic map
2. Stormwater outfalls to waters of the U.S. within city limits and piped connections to other MS4s, as observable
3. Storm system network to each MS4 outfall, as observable.

Professional will provide on-the-job training for City staff concurrent with MS4 outfall mapping activities and IDDE inspections. Training will be conducted in the field, with City staff observing and at times participating in MS4 outfall mapping and IDDE inspections.

Task 2B: BMP 33-Limited Storm Water Quality Audit of City Facilities

Professional will provide one day (up to 8 hours) of on-site training for City staff to conduct an audit of City facilities to observe for structural and non-structural BMPs. Training will be focused on observations to identify areas of potential non-compliance with the Phase II MS4 permit conditions. Training will be conducted on-the-job with

Exhibit A
Scope of Services

Professional conducting facility audits alongside City staff. The observations, findings, and recommendations of the facility audits conducted during training will be valid and will be considered functional audits for the purposes of completing BMP 33 requirements.

Task 3: On-call Support

Professional will provide up to 40 hours of support for additional activities not specified above related to compliance with the Phase II MS4 SWMP, including, but not limited to the following:

- Staff training for facility inspections, storm water quality protection activities, and other related activities
- Recordkeeping and documentation
- Ordinance updates to meet permit requirements
- Public education and outreach
- Detailed facility audits
- Coordination or meetings with the TCEQ regarding prior annual reports or upcoming reports

RESPONSIBILITIES OF THE CITY OF LANCASTER

The City shall perform the following in a timely manner so as not to delay the services of Freese and Nichols:

- A. Designate in writing a person to act as the City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define The City's policies and decisions with respect to Freese and Nichols' services for the Project.
- B. Assist Freese and Nichols by placing at Freese and Nichols' disposal all available information pertinent to the Project including previous reports, existing electronic and hard copy storm system mapping, and any other data relative to the Project.
- C. Arrange for access to and make all provisions for Freese and Nichols to enter upon public and private property as required for Freese and Nichols to perform services under this Agreement.
- D. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Freese and Nichols, obtain advice of an attorney, insurance counselor and other consultants as The City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Freese and Nichols.
- E. Provide staff to perform field collection of storm system data.
- F. Provide for staff equipment, potentially including but not limited to GPS units, digital cameras, field-ready laptops or tablets, manhole cover pullers, tape measures, and other materials necessary for field collection of storm system data.

Exhibit A
Scope of Services

DESIGNATED REPRESENTATIVES

Freese and Nichols and the City designate the following representatives:

City of Lancaster's Designated Representative — Shwetha Pandurangi, P.E., CFM , 700 E. Main Street, Lancaster, Texas 75146, 972-218-1206 (Phone), 972-275-7220 (Fax), spandurangi@lancaster-tx.com

Freese and Nichols' Project Manager — Trey Shanks, 1701 N. Market St. #500, L851, Dallas Texas, 75202, 214-217-2221 (Phone), 214-217-2201 (Fax), ts@freese.com

Freese and Nichols' Accounting Representative — Ms. Jana Collier, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109, 817-735-7354 (Phone), 817-735-7496 (Fax)

Exhibit A
Scope of Services

TIME OF COMPLETION

Freese and Nichols is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule:

<u>Task</u>	<u>Description</u>	<u>Date</u>
1	Phase II MS4 Compliance Management	
1A	Review City's Existing Recordkeeping and Documentation	Within 60 days of Notice to Proceed (NTP)
1B	Staff Coordination Meetings to Assess BMP Implementation and Compliance	At City's discretion (tentatively June, August, and October 2012)
1C	City Council Briefing	At staff discretion, but prior to August, 2012
1D	Annual Report for Permit Year 5	By November 12, 2012
2	Phase II MS4 Implementation Assistance	
2A	BMP 15/16 - Storm System Mapping Assistance, Illicit Discharge Detection and Elimination (IDDE) Inspections and Training	By July 31, 2012
2B	BMP 33 - Storm Water Quality Audit of City Facilities	By July 31, 2012
3	On-call Support	As requested by the City

If Freese and Nichols' services are delayed through no fault of Freese and Nichols, Freese and Nichols shall be entitled to equitable adjustment of compensation and Freese and Nichols shall be entitled to adjust contract schedule consistent with the number of days of delay.

Exhibit B
Compensation

COMPENSATION

Professional proposes to furnish its services as described in the Scope of Services attached as Exhibit A of the Agreement, and in compliance with the Terms of Agreement. The total fee for provision of the Scope of Services shall be the lump sum fee of Eighty Thousand Nine Hundred Dollars (\$80,900). If Professional sees the Scope of Services changing so that additional services are needed, Professional will notify the City for the City's approval before proceeding. Additional services shall be computed based on the Schedule of Charges as indicated herein.

BASIC SERVICES

<u>Task</u>	<u>Description</u>	<u>Lump Sum Fee</u>
1	Phase II MS4 Compliance Management	\$15,000
2	Phase II MS4 Implementation Assistance	\$59,200
3	On-call Support	\$6,700
PROJECT TOTAL		\$80,900

Exhibit B
Compensation

LUMP SUM WITH ADDITIONAL WORK BASED ON COST TIMES MULTIPLIER

- A. **Basic Services:** Compensation to Professional for provision of the Scope of Services shall be the lump sum of Eighty Thousand Nine Hundred Dollars (\$80,900). If Professional sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, Professional will notify City for City's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.
- B. **Schedule of Charges for Additional Work:**

Staff Member

Salary Cost Times Multiplier of 2.3

Salary Cost is defined as the cost of payroll of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for the time directly chargeable to the project, plus social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, longevity payments, sick leave, vacation and holiday pay applicable thereto. (Salary Cost is equal to 1.632 times payroll. This factor is adjusted annually).

Other Direct Expenses

Actual Cost Times Multiplier of 1.15

Other direct expenses shall include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from Fort Worth and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-Professional employees and CAD services performed In-house by non-FM employees where FM provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to Professional if a Professional employee was performing the same or similar services.

Rates for In-house Services

Computer

\$10.00 per hour

Plotter

Bond \$ 2.50 per plot
Special \$ 5.00 per plot
Color \$ 5.75 per plot

Testing Apparatus

Density Meter \$700.00 per month
Gas Detection \$20.00 per test

Printing

Black and White

\$0.10 per copy

Color

\$0.50 per copy

Binding

\$5.75 per book



Innovative approaches
Practical results
Outstanding service

4055 International Plaza, Suite 200 • Fort Worth, Texas 76109 • 817-735-7300 • fax 817-735-7491 • www.freese.com

May 7, 2012

Ms. Rona Stringfellow-Govan
Director of Development Services
1425 N. Dallas Avenue, Suite 101
Lancaster, Texas 75134

Re: Phase II MS4 Storm Water Management Program Compliance Assistance

Dear Ms. Stringfellow-Govan:

We are pleased to submit this proposal for providing professional services to the City of Lancaster for Phase II MS4 compliance assistance. This scope and fee of this proposed agreement is adapted to include direction provided by the City in a meeting with Freese and Nichols March 14, 2012.

We understand that the compliance assistance services are needed to meet the conditions of the City's Texas Pollutant Discharge Elimination System (TPDES) Phase II MS4 permit. We will use our experience developing numerous Phase II MS4 Storm Water Management Plans (SWMP) throughout Texas and our specific knowledge having developed the City of Lancaster's SWMP and assisted with implementation and annual reporting over the first four years of the permit term.

BASIC SERVICES

Freese and Nichols will render the following professional services in connection with the development of the Project:

Task 1: Phase II MS4 Compliance Management

Task 1A: Review City's Existing Recordkeeping and Documentation

FNI will meet at least one time with the City to review documents and records maintained for compliance purposes. The review will be conducted concurrently with City staff, and FNI will provide recommendations for:

- documentation to keep on file,
- records that can be discarded without expected compliance impacts, and
- additional documentation to maintain, if applicable.

Task 1B: Staff Coordination Meetings to Assess BMP Implementation and Compliance

FNI will three (3) staff coordination meetings through November 2012 (due date of Permit Year 5 annual report). The purpose of the meetings will be for FNI to review with City staff from each department required actions for permit compliance, to assess the progress toward meeting the current permit year's Best Management Practice (BMP) implementation goals, and to identify recommended actions to resolve off-target activities, if applicable. FNI will provide a meeting action memorandum to staff after each meeting identifying compliance progress and upcoming milestones.

Task 1C: City Council Briefing

FNI will provide up to 12 hours of support assistance to City staff to prepare for one briefing to City Council regarding the Phase II MS4 storm water management program requirements, current activities, and future steps. FNI will provide available presentations given by FNI to Council in prior years for City staff reference. The presentation will be developed in coordination with City staff. Freese and Nichols will attend the Council presentation upon written request of the City as an Additional Service.

Task 1D: Annual Report for Permit Year 5

FNI will compile information documented and developed by City staff and FNI to complete the SWMP annual report for Permit Year 5 for submittal to the Texas Commission on Environmental Quality (TCEQ). A draft annual report will be provided to the City for review and comment 30 days prior to the compliance deadline of November 12, 2012. The final annual report will be provided for City submittal one week prior to the compliance deadline.

Task 2: Phase II MS4 Implementation Assistance

Task 2A: BMP 15/16-Storm System Mapping Assistance, Illicit Discharge Detection and Elimination (IDDE) Inspections and Training

FNI will coordinate with City staff to conduct field mapping of the City's storm system to meet the requirements of BMP 15 of the Phase II MS4 SWMP. FNI will map the location of readily identifiable MS4 outfalls within the City using GPS, as-builts, and desktop assessment approaches. FNI will conduct an IDDE inspection of each observed outfall and will document each inspection for the City's recordkeeping. Observations of immediate concern will be reported upon discovery to City staff.

It is our understanding that the City will be responsible for inventorying and mapping the storm system that drains to each MS4 outfall. FNI will provide limited technical support to the City to establish a framework for the City to collect field data electronically for input into GIS. FNI will provide limited technical support to the City to establish a framework for the City to process field-collected storm system data in GIS for the development of the storm system map. FNI will provide up to 40 hours of technical support for field collection approaches, such as data dictionaries, and GIS processing approaches.

FNI will provide guidance to the City to focus on the completion of the storm system map to meet permit compliance requirements. As time and budget permits, FNI will provide secondary assistance to the City to establish approaches for storm system maintenance and planning based on data collected in the field inventory.

Specific to completion of the map for compliance requirements by August 12, 2012, FNI will assist the City to verify that each of the following are identified in the storm system map.

1. Waters of the U.S., as shown on a USGS topographic map
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FNI will provide on-the-job training for City staff concurrent with MS4 outfall mapping activities and IDDE inspections. Training will be conducted in the field, with City staff observing and at times participating in MS4 outfall mapping and IDDE inspections.

Task 2B: BMP 33-Limited Storm Water Quality Audit of City Facilities

FNI will provide one day (up to 8 hours) of on-site training for City staff to conduct an audit of City facilities to observe for structural and non-structural BMPs. Training will be focused on observations to identify areas of potential non-compliance with the Phase II MS4 permit conditions. Training will be conducted on-the-job with FNI conducting facility audits alongside City staff. The observations, findings, and recommendations of the facility audits conducted during training will be valid and will be considered functional audits for the purposes of completing BMP 33 requirements.

Task 3: On-call Support

FNI will provide up to 40 hours of support for additional activities not specified above related to compliance with the Phase II MS4 SWMP, including, but not limited to the following:

- Staff training for facility inspections, storm water quality protection activities, and other related activities
- Recordkeeping and documentation
- Ordinance updates to meet permit requirements
- Public education and outreach
- Detailed facility audits
- Coordination or meetings with the TCEQ regarding prior annual reports or upcoming reports

RESPONSIBILITIES OF THE CITY OF LANCASTER

The City shall perform the following in a timely manner so as not to delay the services of Freese and Nichols:

- A. Designate in writing a person to act as The City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define The City's policies and decisions with respect to Freese and Nichols' services for the Project.
- B. Assist Freese and Nichols by placing at Freese and Nichols' disposal all available information pertinent to the Project including previous reports, existing electronic and hard copy storm system mapping, and any other data relative to the Project.
- C. Arrange for access to and make all provisions for Freese and Nichols to enter upon public and private property as required for Freese and Nichols to perform services under this Agreement.
- D. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Freese and Nichols, obtain advice of an attorney, insurance counselor and other consultants as The City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Freese and Nichols.
- E. Provide staff to perform field collection of storm system data.
- F. Provide for staff equipment, potentially including but not limited to GPS units, digital cameras, field-ready laptops or tablets, manhole cover pullers, tape measures, and other materials necessary for field collection of storm system data.

DESIGNATED REPRESENTATIVES

Freese and Nichols and OWNER designate the following representatives:

City of Lancaster's Designated Representative – Shwetha Pandurangl, P.E., CFM , 700 E. Main Street, Lancaster, Texas 75146, 972-218-1206 (Phone), 972-275-7220 (Fax), spandurangi@lancaster-tx.com

Freese and Nichols' Project Manager – Trey Shanks, 1701 N. Market St. #500, LBS1, Dallas Texas, 75202, 214-217-2221 (Phone), 214-217-2201 (Fax), ts@freese.com

Freese and Nichols' Accounting Representative – Ms. Jana Collier, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109, 817-735-7354 (Phone), 817-735-7496 (Fax)

TIME OF COMPLETION

Freese and Nichols is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule:

<u>Task</u>	<u>Description</u>	<u>Date</u>
1	Phase II MS4 Compliance Management	
1A	Review City's Existing Recordkeeping and Documentation	Within 60 days of Notice to Proceed (NTP)
1B	Staff Coordination Meetings to Assess BMP Implementation and Compliance	At City's discretion (tentatively June, August, October)
1C	City Council Briefing	At staff discretion, but prior to August 2012
1D	Annual Report for Permit Year 5	By November 12, 2012
2	Phase II MS4 Implementation Assistance	
2A	BMP 15/16 - Storm System Mapping Assistance, Illicit Discharge Detection and Elimination (IDDE) Inspections and Training	By July 31, 2012
2B	BMP 33 - Storm Water Quality Audit of City Facilities	By July 31, 2012
3	On-call Support	As requested by the City

If Freese and Nichols' services are delayed through no fault of Freese and Nichols, Freese and Nichols shall be entitled to equitable adjustment of compensation and Freese and Nichols shall be entitled to adjust contract schedule consistent with the number of days of delay.

COMPENSATION

FNI proposes to furnish our services as described herein in accordance with Attachment CO, "Compensation". The total fee for Basic Services shall be the lump sum fee of Eighty Thousand Nine Hundred Dollars (\$80,900). If FNI sees the Scope of Services changing so that additional services are needed, FNI will notify the City for the City's approval before proceeding. Additional services shall be computed based on the Schedule of Charges found in Attachment CO.

BASIC SERVICES

<u>Task</u>	<u>Description</u>	<u>Lump Sum Fee</u>
1	Phase II MS4 Compliance Management	\$15,000
2	Phase II MS4 Implementation Assistance	\$59,200
3	On-call Support	\$6,700
PROJECT TOTAL		\$80,900

Payment of the services shall be due and payable upon submission of a statement for services. Statements for services shall not be submitted more frequently than monthly.

TERMS AND CONDITIONS OF AGREEMENT

We propose to furnish our services as described herein in accordance with Attachment TC, "Terms and Conditions of Agreement".

We appreciate this opportunity to submit this proposal. If additional information or clarification is desired, please do not hesitate to contact us. If you are in agreement with the services described above and wish for us to proceed with this assignment, please sign below and return one copy of the agreement for our files.

Yours very truly,

FREESE AND NICHOLS, INC.


Trey Shanks
Associate


Barbara A Nickerson
Vice-President

Approved:

CITY OF LANCASTER, TEXAS

By: _____

Title: _____

Date: _____

**COMPENSATION
LUMP SUM WITH ADDITIONAL WORK BASED ON COST TIMES MULTIPLIER**

A. **Basic Services:** Compensation to FNI for the Basic Services in Attachment SC shall be the lump sum of Eighty Thousand Nine Hundred Dollars (\$80,900). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

B. **Schedule of Charges for Additional Work:**

Staff Member

Salary Cost Times Multiplier of 2.3

Salary Cost is defined as the cost of payroll of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for the time directly chargeable to the project, plus social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, longevity payments, sick leave, vacation and holiday pay applicable thereto. (Salary Cost is equal to 1.632 times payroll. This factor is adjusted annually).

Other Direct Expenses

Actual Cost Times Multiplier of 1.15

Other direct expenses shall include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from Fort Worth and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

Rates for In-house Services

Computer

\$10.00 per hour

Printing

Black and White

\$0.10 per copy

Plotter

Bond \$ 2.50 per plot

Special \$ 5.00 per plot

Color \$ 5.75 per plot

Color

\$0.50 per copy

Binding

\$5.75 per book

Testing Apparatus

Density Meter \$700.00 per month

Gas Detection \$20.00 per test

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Owner as used herein refers to the City of Lancaster, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the AGREEMENT.
2. **CHANGES:** Owner, without invalidating the AGREEMENT, may order changes within the general scope of the WORK required by the AGREEMENT by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the AGREEMENT, an equitable adjustment will be made by mutual agreement and the AGREEMENT modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this AGREEMENT may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY OWNER:** Owner will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by Owner and Owner agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage (All limits in thousands):

Commercial General Liability		Workers' Compensation
General Aggregate	\$2,000	Each Accident
		\$500
Automobile Liability (Any Auto)		Professional Liability
CSL	\$1,000	\$3,000 Annual Aggregate

7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the AGREEMENT shall create any contractual relation between any subcontractor and Owner.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this AGREEMENT shall be the property of the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Owner shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this AGREEMENT in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this AGREEMENT, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the AGREEMENT, FNI will furnish Construction Representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will endeavor to protect Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Owner designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this AGREEMENT before the Construction Phase of the Project begins.
12. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to OWNER and in acceptance of the services as satisfactory by the OWNER. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this AGREEMENT will be added to FNI's compensation.

If OWNER fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to OWNER, suspend services under this AGREEMENT until FNI has been paid in full, all amounts due for services, expenses and charges.

13. **ARBITRATION:** No arbitration arising out of, or relating to, this AGREEMENT involving one party to this AGREEMENT may include the other party to this AGREEMENT without their approval.
14. **SUCCESSORS AND ASSIGNMENTS:** OWNER and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and FNI are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.

Neither OWNER nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.

15. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this AGREEMENT. Should there be any conflict between the Purchase Order and the terms of this AGREEMENT, then this AGREEMENT shall prevail and shall be determinative of the conflict.

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

6

AG12-006

Consider a resolution accepting the second amendment to the permanent drainage easement and additional temporary construction easement from Dallas County, Texas, Grantor, to the City of Lancaster, Texas granting the City of Lancaster a six month temporary construction easement from May 1, 2012 to October 31, 2012 for the installation, construction, repairing, maintaining, altering and preserving drainage improvements across Ten Mile Creek Preserve Lancaster, Texas with all other terms and conditions of the original easement remaining in full force and effect.

This request supports the City Council 2011-2012 Policy Agenda

Goal: Sound Infrastructure

Background

This is a request to approve the second amendment to permanent drainage easements and temporary construction easements from Dallas County, Texas for the construction of streambank protection on Ten Mile Creek at the Nokomis Road Bridge located at 709, 801 and 1007 Nokomis Road. The easement documents have been reviewed by the US Army Corp of Engineers, Dallas County, and City staff.

The actual construction commenced April 28, 2011 and was completed with a final walk through on April 30, 2012. As a result of the final walk through, an additional six month term is required to allow the City's contractor to finalize the construction of erosion control improvements across the County's Ten Mile Creek Preserve.

The original term of the easements was from April 28, 2009 to October 31, 2010. Dallas County Commissioner's Court consented to amend the Temporary Easement to extend the term an additional 18-month period commencing November 1, 2010 and ending April 30, 2012. Although the final walkthrough has been completed, the City has requested an additional six month extension to allow the City's contractor to finalize the construction of the erosion control improvements. The term of the temporary easement is from May 1, 2012 to October 31, 2012.

Considerations

- **Operational** - This was a joint project with the United States Army Corp of Engineers (USACE). USACE bid, awarded, and managed this project. The scope of work for the project was to install stream bank protection around the bridge abutments and portions of the banks of the creek near the bridge. The City Secretary will provide a certified copy of the resolution to Dallas County (Grantor), and they will record this easement in the real property records of Dallas County, Texas. The drainage easements provide use for any future maintenance necessary to be performed by the city.
- **Legal** - The resolution and easement documents have been reviewed and approved as to form by the City Attorney.
- **Financial** - The easements were conveyed at a cost to the city of \$15,248. This amount has been paid upon the inception of the contract.
- **Public Information** - There are no public information requirements for this action.

Options/Alternatives

1. Approve the resolution as presented.
2. Deny the easement request and direct staff

Recommendation

Staff recommends approval of this request as presented.

Attachments

- Resolution with "Exhibit A" Easement Document

Prepared and submitted by:

Rona Stringfellow-Govan, Managing Director of Public Works and Development Services

Date: May 11, 2012

RESOLUTION NO. 2012-05-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ACCEPTING THE SECOND AMENDMENT TO THE PERMANENT DRAINAGE EASEMENT AND ADDITIONAL TEMPORARY CONSTRUCTION EASEMENT FROM DALLAS COUNTY, TEXAS, GRANTOR, TO THE CITY OF LANCASTER, TEXAS GRANTING THE CITY OF LANCASTER A SIX MONTH TEMPORARY CONSTRUCTION EASEMENT FROM MAY 1, 2012 TO OCTOBER 31, 2012 FOR THE INSTALLATION, CONSTRUCTION, REPAIRING, MAINTAINING, ALTERING AND PRESERVING DRAINAGE IMPROVEMENTS ACROSS TEN MILE CREEK PRESERVE IN LANCASTER, TEXAS, WITH ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL EASEMENT REMAINING IN FULL FORCE AND EFFECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Dallas County, Texas ("Grantor"), a political subdivision of the state of Texas, is the owner of property whereon drainage improvements are needed; and,

WHEREAS, on April 28, 2011, construction commenced on the project to construct and install streambank erosion control features across Ten Mile Creek Preserve; and

WHEREAS, the project was substantially completed and the Temporary Construction Easement expired and terminated on April 30, 2012; and

WHEREAS, the temporary construction easement is needed to allow the City's contractor to finalize the construction of erosion control improvements across the County's Te Mile Creek Preserve and the City requested an extension to the Temporary Easement from Dallas County; and

WHEREAS, Dallas County Commissioners Court consented to amend the Temporary Easement to extend the term an additional 6-month period commencing May 1, 2012 and ending October 31, 2012;

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

SECTION 1. That the City of Lancaster hereby finds and determines that it is in the best interest of the public health, safety and welfare to accept the public utility easement from Dallas County, Texas, Grantor, which is described in Exhibit "A" attached hereto and incorporated herein, and the Mayor is hereby authorized to accept the same.

SECTION 2. That the City Secretary is authorized and directed to prepare a certified copy of this resolution and furnish the same to Grantor for their use to record this Easement in the real property records of Dallas County, Texas, to the City of Lancaster from the said Grantor, and its successors and assigns.

SECTION 3. That this Resolution shall take effect immediately from and after its adoption and execution.

DULY PASSED by the City Council of the City of Lancaster, Texas, this the 21st day of May 2012.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K.DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY

EXHIBIT "A"

(Attach a copy of the Easement Document & attachments thereto)

**SECOND AMENDMENT TO PERMANENT DRAINAGE EASEMENT
AND THE TEMPORARY CONSTRUCTION EASEMENT**

THE STATE OF TEXAS §

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF DALLAS §

This Agreement is to amend the First Amendment to the Permanent Drainage Easement and the Temporary Construction Easement dated October 26, 2010, filed November 22, 2010, recorded in Instrument No. 201000298974, Real Property Records, Dallas County, Texas (the "Amended Easement"), between DALLAS COUNTY, TEXAS (hereinafter "Grantor") and the CITY OF LANCASTER, TEXAS, a Texas home rule municipality (hereinafter "Grantee"), with its principal office at 211 North Henry Street, Lancaster, Texas, 75146-0946. Grantor is acting herein by and through its Commissioners Court, as authorized by Court Order 2012- _____ dated April _____, 2012.

WHEREAS, the Permanent Drainage Easement and Additional Temporary Construction Easement (the "Easement") was entered into on May 1, 2009, filed May 5, 2009, recorded in Instrument No. 200900127653, refiled June 4, 2009, in Instrument No. 200900159304, Real Property Records, Dallas County, Texas;

WHEREAS, the Amended Easement extended the term of the Temporary Construction Easement from October 31, 2010 to April 30, 2012;

WHEREAS, Grantor granted and conveyed, unto Grantee, its successors and assigns, Permanent Easements for the purpose of installing, constructing, repairing, maintaining, altering, and preserving drainage improvements, including erosion control measures in, under, over, along, upon and across the Permanent Property for the purpose of storm drainage run off, with the right and privilege of ingress, egress, and regress in, along, upon, under and across the Permanent Property to inspect, operate, maintain, repair and improve the drainage improvements contained therein, in, into, upon, over, across and under that land described in Exhibit "A", attached hereto and incorporated herein;

WHEREAS, Grantor granted to Grantee Temporary Construction Easements for the purpose of initially constructing the drainage improvements as described in Exhibit "B", attached hereto and incorporated herein; and

W I T N E S S E T H

The Amended Easement will expire on April 30, 2012. Therefore, both parties do hereby mutually agree to further extend and amend the Amended Easement with all other terms of the original Easement, remaining in full force and effect, except as modified below:

Amend Section 1 (B) of the Easement, as amended, to extend the term of the Temporary Construction Easement, as described in Attachment "A", attached hereto and incorporated herein, from May 1, 2012 and ending October 31, 2012.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper corporate officers and proper individuals, the day and year first above written.

Executed this _____ day of _____, 2012.

GRANTOR:

GRANTEE:

DALLAS COUNTY, TEXAS

CITY OF LANCASTER, TEXAS

By: _____
Clay Lewis Jenkins, County Judge

By: _____
Printed Name: _____
Title: _____
Date: _____

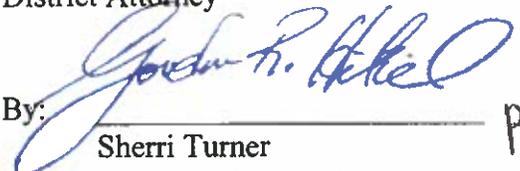
Recommended by:



Rick Loessberg
Director of Planning & Development

***Approved as to Form:**

Craig Watkins
District Attorney

By:  ph

Sherri Turner
Assistant District Attorney

*By law, the District Attorneys' 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).

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Clay Lewis Jenkins, County Judge of the County of Dallas, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Dallas, County, Texas, a political subdivision of the State of Texas, and that he executed the same as the act of the County of Dallas for the purposes and consideration therein expressed and in the capacity herein stated.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2012, by _____, _____ of the City of Lancaster, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the City of Lancaster, Texas, a Texas home rule municipality, and that he executed the same for the purposes and consideration therein expressed and in the capacity herein stated.

Notary Public, State of Texas
My Commission Expires _____

Grantor's Address:
County of Dallas
411 Elm Street, 3rd Floor
Dallas, Texas 75202-3389

Grantee's Address:
City of Lancaster, Texas
700 E. Main Street
Lancaster, Texas 75146



**AMENDMENT TO PERMANENT DRAINAGE EASEMENT
AND ADDITIONAL TEMPORARY CONSTRUCTION EASEMENT**

**THE STATE OF TEXAS §
COUNTY OF DALLAS §**

KNOW ALL PERSONS BY THESE PRESENTS:

This Agreement is to amend to the Permanent Drainage Easement and Additional Temporary Construction Easement (the "Easement") is entered into on the 26th day of October, 2010, to be effective November 1, 2010, between the DALLAS COUNTY, TEXAS (hereinafter "Grantor") and the CITY OF LANCASTER, TEXAS, a Texas home rule municipality (hereinafter "Grantee"), with its principal office at 211 North Henry Street, Lancaster, Texas, 75146-0946. Grantor is acting herein by and through its Commissioners Court, as authorized by Court Order 2010- 1821 dated October 26, 2010.

WHEREAS, Grantor granted and conveyed, unto Grantee, its successors and assigns, Permanent Easements for the purpose of installing, constructing, repairing, maintaining, altering, and preserving drainage improvements, including erosion control measures in, under, over, along, upon and across the Permanent Property for the purpose of storm drainage run off, with the right and privilege of ingress, egress, and regress in, along, upon, under and across the Permanent Property to inspect, operate, maintain, repair and improve the drainage improvements contained therein, in, into, upon, over, across and under that land described in Exhibit "A", attached hereto and incorporated herein;

WHEREAS, Grantor granted to Grantee Temporary Construction Easements for the purpose of initially constructing the drainage improvements as described in Exhibit "B", attached hereto and incorporated herein;

W I T N E S S E T H

The Temporary Construction Easement commenced on May 1, 2009 and will expire on October 31, 2010.

THEREFORE, both parties do hereby mutually agree to extend and amend the Easement with the terms of the existing Easement, except as modified below:

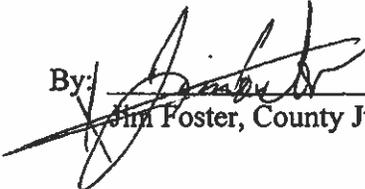
Amend Section 1 (B) of the Easement to extend the term of the Temporary Construction Easement, as described in Attachment "A", attached hereto and incorporated herein, from November 1, 2010 and ending on April 30, 2012.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper corporate officers and proper individuals, the day and year first above written.

Executed this 26th day of October, 2010.

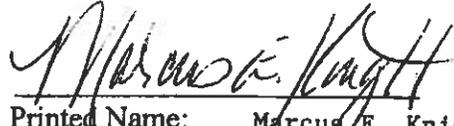
GRANTOR:

DALLAS COUNTY, TEXAS

By: 
John Foster, County Judge

GRANTEE:

CITY OF LANCASTER, TEXAS

By: 
Printed Name: Marcus E. Knight
Title: Mayor
Date: 11-08-10

Recommended by:


Rick Loessberg
Director of Planning & Development

***Approved as to Form:**


Gordon Hikel, Chief, Civil Division
Dallas County District Attorney

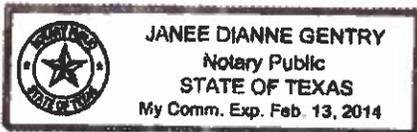
*By law, the District Attorneys' Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our 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).

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 26 day of October, 2010, by Jim Foster, County Judge of the County of Dallas, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Dallas, County, Texas, a political subdivision of the State of Texas, and that he executed the same as the act of the County of Dallas for the purposes and consideration therein expressed and in the capacity herein stated.

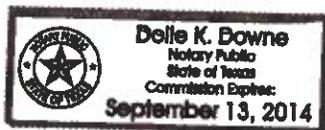
Jane Dianne Gentry
Notary Public, State of Texas
My Commission Expires: 2-13-2014



ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 11th day of November, 2010, by Marcus E. Knight, Mayor of the City of Lancaster, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the City of Lancaster, Texas, a Texas home rule municipality, and that he executed the same for the purposes and consideration therein expressed and in the capacity herein stated.



Delle K. Downe
Notary Public, State of Texas
My Commission Expires 9-13-2014

Grantor's Address:

County of Dallas
411 Elm Street, 3rd Floor
Dallas, Texas 75202-3389

Grantee's Address:

City of Lancaster, Texas
P.O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

ATTACHMENT A

1208



EASEMENT 200900159304

29 PGS

EASEMENT 200900127653

22 PGS

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.

THIS PERMANENT DRAINAGE EASEMENT IS BEING RE-FILED FOR THE SOLE PURPOSE OF ADDING EXHIBIT "B" WHICH WAS LEFT OFF WHEN ORIGINALLY FILED. ALL OTHER ASPECTS OF THIS DOCUMENT REMAINS THE SAME.

PERMANENT DRAINAGE EASEMENT AND ADDITIONAL TEMPORARY CONSTRUCTION EASEMENT

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF DALLAS

§

§

On this 1st day of May, 2009 ("Effective Date"), Dallas County, Texas ("County" or "Grantor"), a political subdivision of the State of Texas, acting by and through its Commissioners Court, grants to the City of Lancaster, Texas, a Texas home rule municipality, including its officers, employees, successors, and assigns (collectively, "City" or "Grantee"), a non-exclusive Permanent Drainage Easement ("Permanent Easement"), together with the right of ingress, egress, and regress therein, for and in consideration of City's compliance with the terms and conditions stated in this document, for the purpose specified below ("Permitted Project") over, under, and across the real property particularly referenced as a portion of the Ten Mile Creek Preserve located partly in unincorporated Dallas County and partly in the City of Lancaster, Texas, also known as 709, 801 and 1007 Nokomis Road, and more specifically described in Exhibit "A" (the "Permanent Property") attached hereto and incorporated herein by reference for all purposes.

Additionally, County hereby grants City, and City's contractors, subcontractors, as well as all their officers, agents and employees (collectively, "City" and "Subcontractor") a non-exclusive Temporary Construction Easement, together with the right of ingress and egress, for and in consideration of City's compliance, and City requiring and ensuring Subcontractor's compliance, with the terms and conditions stated in this document for the Permitted Project over, under and across the real property particularly referenced as a portion of Ten Mile Creek Preserve located partly in unincorporated Dallas County and partly in the City of Lancaster, Texas, also known as 709, 801 and 1007 Nokomis Road, and more specifically described in Exhibit "B" (the "Temporary Property") attached hereto and incorporated herein by reference for all purposes.

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 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 the 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 eighteen (18) months from the Effective Date ("Expiration Date") or the completion of the Permitted Project ("Completion Event").

2. PERMITTED PROJECT AND WORK PLANS.

- (A) **For Permanent Property.** Specifically the Permanent Property shall be used by City solely for installing, constructing, repairing, maintaining, altering and preserving drainage improvements, including erosion control measures in, under, over, along, upon and across the Permanent Property for the purpose of storm drainage run off, with the right and privilege of ingress, egress, and regress in, along, upon, under and across the Permanent Property to inspect, operate, maintain, repair and improve the drainage improvements contained therein. Prior to the commencement of the Permitted Project, City 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 erosion protection measures, for the Permitted Project. If approved, such specifications and plan, a true and correct copy of which 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 *Ten Mile Creek, Lancaster, Texas: Section 14 Streambank Erosion Protection Ten Mile Creek to Nokomis Bridge*, shall be incorporated herein by reference for all purposes. ("Plan Documents for Permanent Easement"). Should City wish to substantially deviate from such Plan Documents, City 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 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 City and Subcontractor solely for the purpose of a work area to construct drainage improvements on, in, under, over, along, upon and across the Property with the right and privilege

during the Term of this Temporary Construction Easement of ingress, egress, and regress in, along, upon, under and across the Temporary Property for the purpose of making additions to, improvements on and repairs to said drainage improvements or any part thereof. Prior to the commencement of the Permitted Project, City 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 erosion protection measures, for the Permitted Project. If approved, such specifications and plan, a true and correct copy of which 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 *Ten Mile Creek, Lancaster, Texas: Section 14 Streambank Erosion Protection Ten Mile Creek to Nokomis Bridge*, shall be incorporated herein by reference for all purposes. ("Plan Documents for Temporary Construction Easement"). Should City wish to substantially deviate from the Plan Documents for Temporary Construction Easement, City shall stop work or not commence the Permitted Project until County has reviewed, and/or commented, and approved the modified Plan Documents for Temporary Construction Easement for commencement or continuance. Upon approval of the modified Plan Documents for Temporary Construction Easement, the modified Plan Documents shall take effect and be incorporated herein by reference 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 City from use of the Property as authorized herein or result in intentional damage to or destruction of the drainage improvements constructed by City pursuant to this Easement.
3. 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, City 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, City shall provide a written notice to the County Director of Planning and Development by 5:00 P.M. of the day of Completion Event. City must vacate the Temporary Property by 5:00 P.M. of the Expiration Date or the day of the Completion Event.
4. PAYMENT. City shall pay County FIFTEEN THOUSAND TWO HUNDRED FORTY-EIGHT AND 00/100 DOLLARS (\$15,248.00) as additional consideration for the Easement.
5. CITY'S ASSURANCES. In connection with City's Permitted Project, to the extent the Property must be improved and modified as authorized under this Easement, and to the extent the following is reasonably within the City's control and cooperation, City shall (and shall require and ensure the same of Subcontractor):

- (A) Assure that the Permitted Project will not interfere with the use of the Property by the general public. City agrees, and shall require Subcontractor to agree, 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.
- (B) 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. City further agrees, and shall require Subcontractor to agree, to pay for any property damages not intended under this Easement and caused by City and/or Subcontractor; provided, however, City does not by this agreement waive any defenses available to City, including sovereign immunity, or the limitations on the waiver of sovereign immunity set forth in Chapter 101 of the Texas Civil Practices and Remedies Code, as amended.
- (C) Abate and remediate, or cause such abatement and remediation, at no cost to County, all materials placed or stored on the Property by City and/or Subcontractor that may be in violation of any laws 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.
- (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 City first entered to commence the 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, and shall not 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. City warrants, and shall require Subcontractor to warrant, 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 City or Subcontractor.

- (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 City's performance. City's restoration shall be completed in a timely manner. City agrees and shall require Contractor not to remove any extra soil from the construction of the drainage improvements from the Property. Extra soil will be distributed in low lying areas on the Property.
- (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. City agrees, and shall utilize, and shall require Subcontractor to utilize, good quality Texas seed. City and Contractor, however, are not responsible for the success of establishment of the wildflowers. City, acting as County's maintenance partner, hereby assumes co-responsibility for future maintenance of such wildflower areas.
- (I) County and City acknowledge and agree that City has submitted to County a "Tree Mitigation Plan" that has been approved by County and that County has in its possession a true and correct copy of said Tree Mitigation Plan. The Tree Mitigation Plan is incorporated herein by reference for all purposes in the same manner as the Plan Documents for Permanent Easement.
- (J) Assures that it is cognizant of the character of its maintenance, construction, operation and work on the Property.
- (K) Except during Permitted Project and periodic inspections, shall not park, and shall not permit to be parked, overnight any vehicles on the Property. No vehicle of any kind, type or nature will be abandoned on the Property by City or Subcontractor.
- (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 responsible for the issuance and compliance with any applicable building permits, certificates of occupancy, and any 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, City 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) Assures that City's and Subcontractor'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 except to the extent authorized

by the plans approved by County's Director of Public Works or his designated agent for the Permitted Project.

- (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, City 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, regardless 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, and shall require that Subcontractor agrees, that each is an independent contractor and not an agent, employee, laborer, representative, joint venturer, or joint enterpriser with County, or in any way a part of or acting on behalf of either the County or the Dallas County Commissioners Court, and each such subcontractor is responsible for its own acts, forbearance, negligence and deeds, and for those of their respective agents or employees in conjunction with the performance of work covered under this Easement.
- (S) Agree that County and its authorized agents have the right to enter the Property at any time for the purpose of examination and inspection, as well as repairs, alterations, or improvements to the Property as County may deem necessary or desirable, but that would not unreasonably interfere with City's use of the Easement or defeat the function of the erosion control measures constructed within the Easement.
- (T) Maintain the Property in good order, including removal from the Property not less frequently than weekly and prior to providing City's notice of completion, without cost to County, all debris, surplus, trash, substance and materials placed on the Property by City or Subcontractor. City shall dispose of same in proper trash receptacles and in accordance with applicable law, ordinance, regulation and County policy. City shall also remove all of its tools, equipment and materials from the Property at no cost to County upon the earlier of the Expiration Date or Completion Event.
- (U) Not erect, or permit others to erect, any structure on the Property except as approved in the Plan Documents for Permanent Easement.

6. **APPLICABLE LAWS AND AGENCY APPROVALS.** City, without any cost or expense to County, shall comply, and shall require Subcontractor and their agents to 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 City to all available remedies that County may pursue. City shall require Subcontractor to indemnify and hold County harmless for any failure by Subcontractor to so comply and for all actions resulting therefrom.
7. **HAZARDS/DANGERS ON PROPERTY.** City shall enter the Property at City'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. City shall not destroy or harm any federally, state, or locally protected animals.
8. **DUTY OF CARE IN PERFORMANCE.** If City or Subcontractor, including any of its materials and equipment, causes damage to the Property, or its adjacent property, the City 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 City. If City 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 City; this Easement shall be revoked at County's discretion, without any cost to County; and City 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.
9. **INSURANCE FOR TEMPORARY CONSTRUCTION EASEMENT.**
- (A) Without limiting any of the other obligations or liabilities of the City and its Subcontractor, City agrees that it will have and maintain, and will require its Subcontractor to 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, City shall require and ensure Subcontractor submit to City for delivery to the *Dallas County Director of Purchasing* (at the same address given below under this insurance heading) the following minimum insurance coverage that show the County as the certificate holder and covers 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 City must provide to County evidence of a certificate issued by the

Workers' Compensation Commission approving such Subcontractor's self-insurance. If Subcontractor has no employees (as defined by the Texas Workers' Compensation Act), City shall provide County with Subcontractor's 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. In the event that any work is subcontracted, City shall require Subcontractor to provide Workers' Compensation Insurance for all of the Subcontractor's employees, unless such employees are afforded protection by the City or Subcontractor. City shall bear the burden of requiring and ensuring all workers' compensation coverage for Subcontractor, who does not have workers' compensation coverage. City 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 City 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) Commercial General Liability Insurance, including Contractual Liability Insurance. City shall require and ensure that Subcontractor 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 One Million and 00/100 Dollars (\$1,000,000.00) and products and completed operations aggregate of One Million and 00/100 Dollars (\$1,000,000.00). 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.
- 3) Comprehensive Automotive Liability Insurance: Any liability associated with the operation of a vehicle by City, Subcontractor, in connection with the performance of services under this Temporary Construction Easement shall not be the responsibility of the County.
- 4) Excavation Liability Insurance ("XCU"). City shall require and ensure Subcontractor maintain a mandatory XCU coverage.

5) Umbrella Liability/Excess Coverage Insurance. In the event that Subcontractor is unwilling or unable to meet the minimum insurance requirements stated herein, City agrees to maintain Umbrella/Excess Insurance with a limit not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence for bodily injury, including death, loss or damage to property, and that shall follow the form of Commercial Liability Insurance and Auto Liability Insurance.

(C) City shall require and ensure that, with respect to the above referenced insurance, all Subcontractor's 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 Public Works
Administration Building
411 Elm St., 4th Floor
Dallas, TX 75202-3389*

5) City shall require and ensure that Subcontractor 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) City shall require and ensure that Subcontractor 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 City shall ensure that Subcontractor'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. All insurance policies or duly executed certificates for the same

required to be carried by Subcontractor under this Temporary Construction Easement, together with satisfactory evidence of the payment of the premium thereof, shall be delivered by City 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 Public Works
Administration Building
411 Elm St., 4th 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 Subcontractor 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 Subcontractor 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 City.
- (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 City's failure to provide, maintain, and require of Subcontractor 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 City and Subcontractor to stop work hereunder, which shall not constitute a Suspension of Work; and/or
 - 2) 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; and/or
 - b) demand on any bond, as applicable.
- (J) Approval, disapproval or failure to act by the County regarding any insurance supplied by City or Subcontractor shall not relieve City of liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the City from liability.

Nothing herein contained shall be construed as limiting in any way the extent to which City may be held responsible for payments of damages to persons or property resulting from City's or Subcontractor's performance of the work covered under this Temporary Construction Easement.

10. **INDEMNIFICATION.** County shall not be liable to City 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 City or any other person entering the Property by express or implied invitation of City, or (2) arising out of the use of the Property by City or (3) arising out of any breach or default by City 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 City for any loss or damage that may be occasioned by or through the acts or omissions of City the Property or of any other persons whomsoever. Further, County shall not be liable to City for any inconvenience or loss to City'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, City shall require that Subcontractor agree 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 interests), 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 Subcontractor; (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 Subcontractor on the Property. City shall further require that Subcontractor agree to defend County, 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, City shall require that Subcontractor 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.

Without in any way limiting or restricting the indemnification and defense agreements stated above, City shall require Subcontractor to agree that Subcontractor's insurers bear the entire risk of loss or injury to Subcontractor, or any other person present on the Property or performing any other act or service on City's or Subcontractor's behalf or at either of their request, and without seeking any contribution from County or its insurers.

City shall require that Subcontractor expressly agrees that County and its agents shall not be liable to Subcontractor 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 Subcontractor or any other person.

11. **ASSIGNMENT.** City shall not assign or transfer its rights under this Easement, in whole or in part, or permit any other person or entity, exclusive of City and Subcontractor 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.

12. **DEFAULT BY CITY.** In the event City or any subcontractor 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 City 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 repossession of the Property and damages occasioned by such default.

13. **REVERSION AND ABANDONMENT**

Because County is not conveying to City a fee simple title to Property, if City ceases to use the Property for the Permitted Project for a continuous period of twelve (12) months, the Easement shall automatically revert back and vest in County exactly as it stands immediately prior to the execution of this Easement to City. In such event, City shall execute, and shall require Subcontractor to 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.

14. **TERMINATION, SUSPENSION AND SURVIVAL.**

- (A) **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) City is in default or is in violation of any provision of this Easement and has failed to cure said default within the time authorized by this Easement after proper written notice by County; or (3) Upon written mutual agreement; or as additionally stated in other provision this Easement.
- (B) **Survival.** All provisions relating to insurance, indemnification, and duty of care by City shall survive Termination of this Easement.

15. **SURRENDER OF PROPERTY.** Upon the earlier occurrence of the Expiration Date or Completion Event, City shall surrender the Property to County.

16. **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) City shall not have any claim to the condemnation award or proceeds in lieu of condemnation.

17. **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.

18. **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 City 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

CITY:
City of Lancaster
Lancaster, Texas 75146-0946
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

Copy to:
Dallas County Director of Public Works
Administration Building
411 Elm St., 4th Floor
Dallas, TX 75202-3389

Copy to:
Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 N Akard
Dallas, Texas 75201

19. **MISCELLANEOUS GENERAL PROVISIONS.**

- (A) **Applicable Law.** This Easement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Easement is expressly made subject to City's and County's Sovereign Immunity, Title 5, TEXAS CIVIL PRACTICE & REMEDIES CODE, and all applicable State of Texas and Federal Laws and nothing herein shall be construed as waiving any defenses that City or County may have with respect to claims made against either or both of the parties.

- (B) **Entire Agreement.** This Easement, including all Exhibits, and Addendum, if any, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto.
- (C) **Binding Effect.** This Easement and the respective rights and obligations of the parties hereto 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 provision of this Easement shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.
- (E) **Default/Waiver/Mitigation.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Easement does not preclude pursuit of other remedies in this Easement or provided by law. County and City have a duty to mitigate damages.
- (F) **Rights and Remedies Cumulative.** The rights and remedies provided by this Easement are cumulative, and either party's using 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.
- (G) **Entirety and Amendments.** This Easement embodies the entire agreement between the parties and supercedes 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.
- (H) **Parties Bound.** Each party hereto executing same covenants and warrants that the party executing same has full authority to do so and that the execution thereof is the act of the City and County of Dallas; that such document has been delivered and constitutes a legal, valid and binding obligation of the parties, their successor and assigns and shall inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.
- (I) **Number and Gender.** Words of any gender used in this Easement shall be held and construed to include the other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.
- (J) **Third-Party Beneficiaries.** Nothing herein is written to create any third parties beneficiaries to this Easement.
- (K) **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.

The parties have caused this Easement to be executed in triplicate the day and year first above written.

COUNTY / GRANTOR:

BY: 
Jim Foster
County Judge

Date: 5/1/09

CITY / GRANTEE:

BY: 
Marcus E. Knight
Mayor

Date: 4-28-09

Recommended:

BY: 
Rick Loessberg
Director of Planning & Development

*Approved as to Form:

BY: 
Bob Schell
Chief, Civil Division
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).

EXHIBIT "A"
A VARIABLE WIDTH DRAINAGE EASEMENT

TRACT 1:

BEING A VARIABLE WIDTH DRAINAGE EASEMENT OUT OF THAT CERTAIN TRACT OF LAND SITUATED IN THE JAMES McMILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS AS DESCRIBED IN DEED TO BRUCE M. MORELAND, RECORDED IN VOLUME 74001, PAGE 2151 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN LETTER AGREEMENT FROM PATRICIA MORELAND TO DALLAS COUNTY, TEXAS, DATED OCTOBER 23, 2002, AND THE WILL DATED JUNE 6, 2000, AND THE FIRST CODICIL TO THAT WILL DATED JANUARY 28, 2002, AS RECORDED IN CAUSE NO. 02-1348-P3, OF DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT 3/4 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO LANCASTER CEMETERY ASSOCIATION OF LANCASTER, RECORDED IN VOLUME 1640, PAGE 208, OF SAID DEED RECORDS, AND THE NORTHEAST MOST WESTERLY CORNER OF SAID MORELAND TRACT;

THENCE NORTH 75 DEGREES 18 MINUTES 16 SECONDS EAST, 283.21 FEET ALONG THE COMMON LINE OF SAID MORELAND TRACT AND THE CEMETERY TRACT TO THE WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 32 DEGREES 20 MINUTES 24 SECONDS EAST, 356.15 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 30 DEGREES 26 MINUTES 36 SECONDS EAST, 401.36 FEET CONTINUING ALONG WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 154.02 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID MORELAND TRACT TO THE POINT OF BEGINNING;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 240.47 FEET, CONTINUING ALONG THE WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID MORELAND TRACT TO THE CENTER LINE OF TEN MILE CREEK;

THENCE ALONG THE CENTER LINE OF SAID TEN MILE CREEK THE FOLLOWING COURSES:

SOUTH 37 DEGREES 15 MINUTES 19 SECONDS WEST, 26.35 FEET;
SOUTH 55 DEGREES 37 MINUTES 11 SECONDS WEST, 27.81 FEET;
NORTH 71 DEGREES 33 MINUTES 54 SECONDS WEST, 21.64 FEET;
NORTH 38 DEGREES 39 MINUTES 35 SECONDS WEST, 51.56 FEET;
NORTH 34 DEGREES 36 MINUTES 10 SECONDS WEST, 63.10 FEET;
NORTH 41 DEGREES 03 MINUTES 17 SECONDS WEST, 16.55 FEET;
NORTH 55 DEGREES 26 MINUTES 15 SECONDS WEST, 44.00 FEET;
NORTH 54 DEGREES 27 MINUTES 33 SECONDS WEST, 67.70 FEET;
NORTH 49 DEGREES 59 MINUTES 41 SECONDS WEST, 15.46 FEET;

THENCE NORTH 63 DEGREES 48 MINUTES 09 SECONDS EAST, 145.39 FEET, DEPARTING CENTER LINE OF SAID TEN MILE CREEK TO THE POINT OF BEGINNING AND CONTAINING 23,802 SQUARE FEET OR 0.546 ACRES OF LAND.

Note: Bearing Basis - based on true North derived from GPS observations relative to NAD 83, Texas North Central Zone.

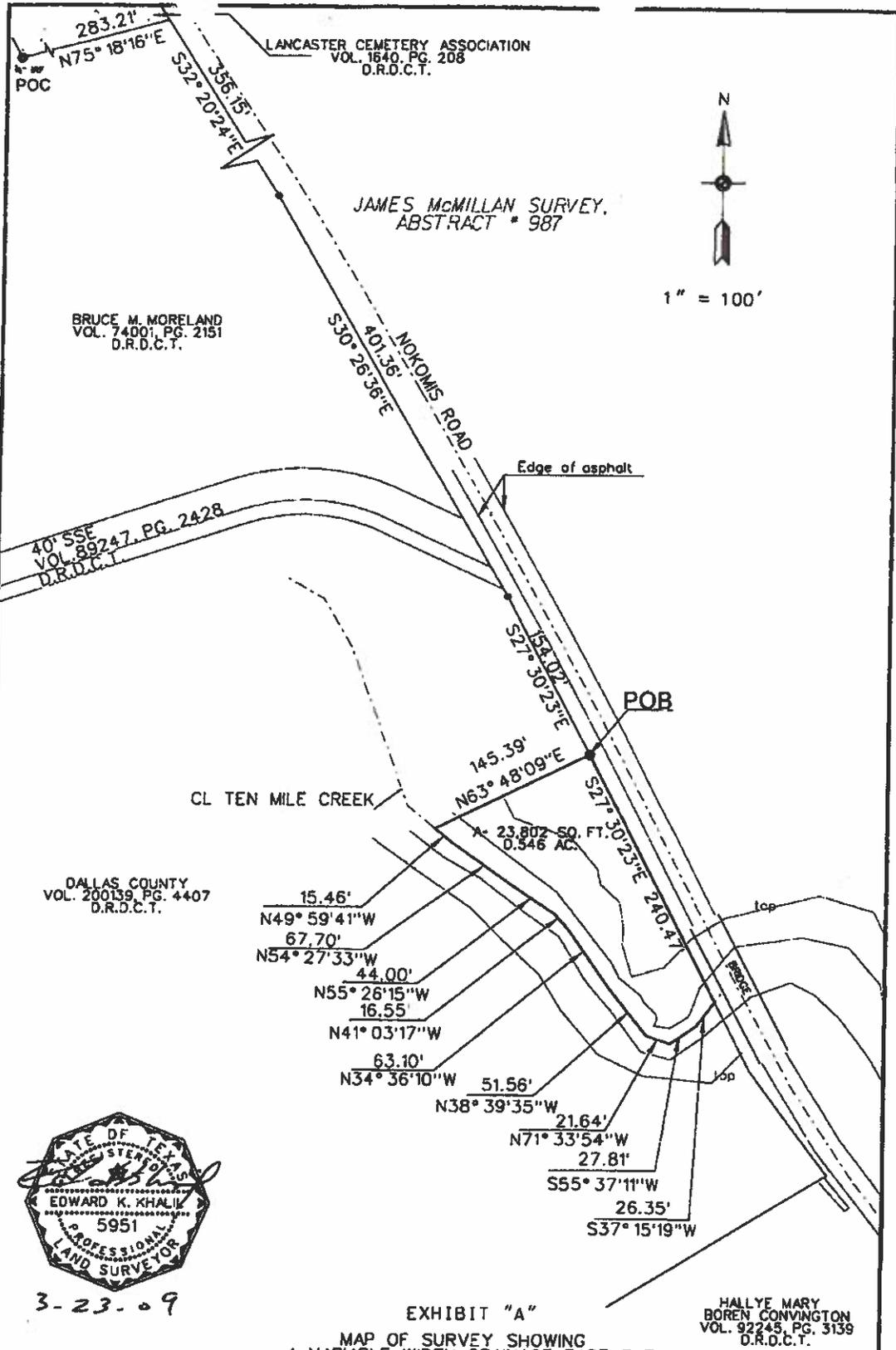
Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure and Practices, 663.19(9), this "report" consists of the Real Property Description included herein, and Map of Survey attached herewith.

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."

City of Lancaster
Nokomis Bridge Project
Parcel 1



3.23.09



1" = 100'



3-23-09

EXHIBIT "A"
 MAP OF SURVEY SHOWING
 A VARIABLE WIDTH DRAINAGE EASEMENT
 OUT OF THE
 JAMES McMILLAN SURVEY, ABSTRACT NO. 987
 DALLAS COUNTY, TEXAS

HALLEY MARY
 BOREN CONINGTON
 VOL. 92245, PG. 3139
 D.R.D.C.T.

City of Lancaster
 Nokomis Bridge Project
 Parcel 1

DRAWN BY : EK
 DATE: 08-13-08
 DGN. NO.: 080580p1.dgn
 APPROVED BY: EK



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 Fax: (817) 333-9935
 Dallas Office:
 3004 Fairmont Street
 Dallas, Texas 75201
 Office: (214) 631-3300
 Fax: (214) 631-3527

EXHIBIT "A"
A VARIABLE WIDTH DRAINAGE EASEMENT

TRACT 2:

BEING A VARIABLE WIDTH DRAINAGE EASEMENT OUT OF THAT CERTAIN TRACT OF LAND SITUATED IN THE JAMES MCMILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS AS DESCRIBED IN DEED TO DALLAS COUNTY, RECORDED IN VOLUME 2000139, PAGE 4407 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT 3/4 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO LANCASTER CEMETERY ASSOCIATION OF LANCASTER, RECORDED IN VOLUME 1640, PAGE 208, OF SAID DEED RECORDS, AND THE NORTHEAST MOST WESTERLY CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO BRUCE M. MORELAND, RECORDED IN VOLUME 74001, PAGE 2151 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS;

THENCE NORTH 75 DEGREES 18 MINUTES 16 SECONDS EAST, 283.21 FEET ALONG THE COMMON LINE OF SAID MORELAND TRACT AND THE CEMETERY TRACT TO THE WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 32 DEGREES 20 MINUTES 24 SECONDS EAST, 356.15 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 30 DEGREES 26 MINUTES 36 SECONDS EAST, 401.36 FEET CONTINUING ALONG WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 154.02 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID MORELAND TRACT TO A POINT FOR CORNER;

THENCE SOUTH 63 DEGREES 48 MINUTES 09 SECONDS WEST, 145.39 FEET, TO THE CENTER LINE OF TEN MILE CREEK AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTER LINE OF SAID TEN MILE CREEK THE FOLLOWING COURSES:

SOUTH 49 DEGREES 59 MINUTES 41 SECONDS EAST, 15.46 FEET;
SOUTH 54 DEGREES 27 MINUTES 33 SECONDS EAST, 67.70 FEET;
SOUTH 55 DEGREES 26 MINUTES 15 SECONDS EAST, 44.00 FEET;
SOUTH 41 DEGREES 03 MINUTES 17 SECONDS EAST, 16.55 FEET;
SOUTH 34 DEGREES 36 MINUTES 10 SECONDS EAST, 63.10 FEET;
SOUTH 38 DEGREES 39 MINUTES 35 SECONDS EAST, 51.56 FEET;
SOUTH 71 DEGREES 33 MINUTES 54 SECONDS EAST, 21.64 FEET;
NORTH 55 DEGREES 37 MINUTES 11 SECONDS EAST, 27.81 FEET;
NORTH 37 DEGREES 15 MINUTES 19 SECONDS EAST, 26.35 FEET TO THE EAST LINE OF SAID DALLAS COUNTY TRACT AND THE WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 66.88 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID DALLAS COUNTY TRACT TO A POINT FOR CORNER;

THENCE SOUTH 36 DEGREES 55 MINUTES 05 SECONDS EAST, 92.68 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID DALLAS COUNTY TRACT TO A POINT FOR CORNER;

THENCE NORTH 79 DEGREES 17 MINUTES 16 SECONDS WEST, 164.03 FEET DEPARTING THE EAST LINE OF SAID DALLAS COUNTY TRACT;

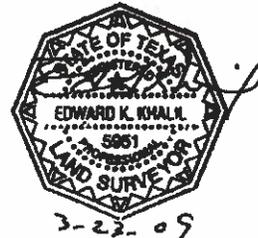
THENCE NORTH 61 DEGREES 49 MINUTES 52 SECONDS WEST, 61.52 FEET;

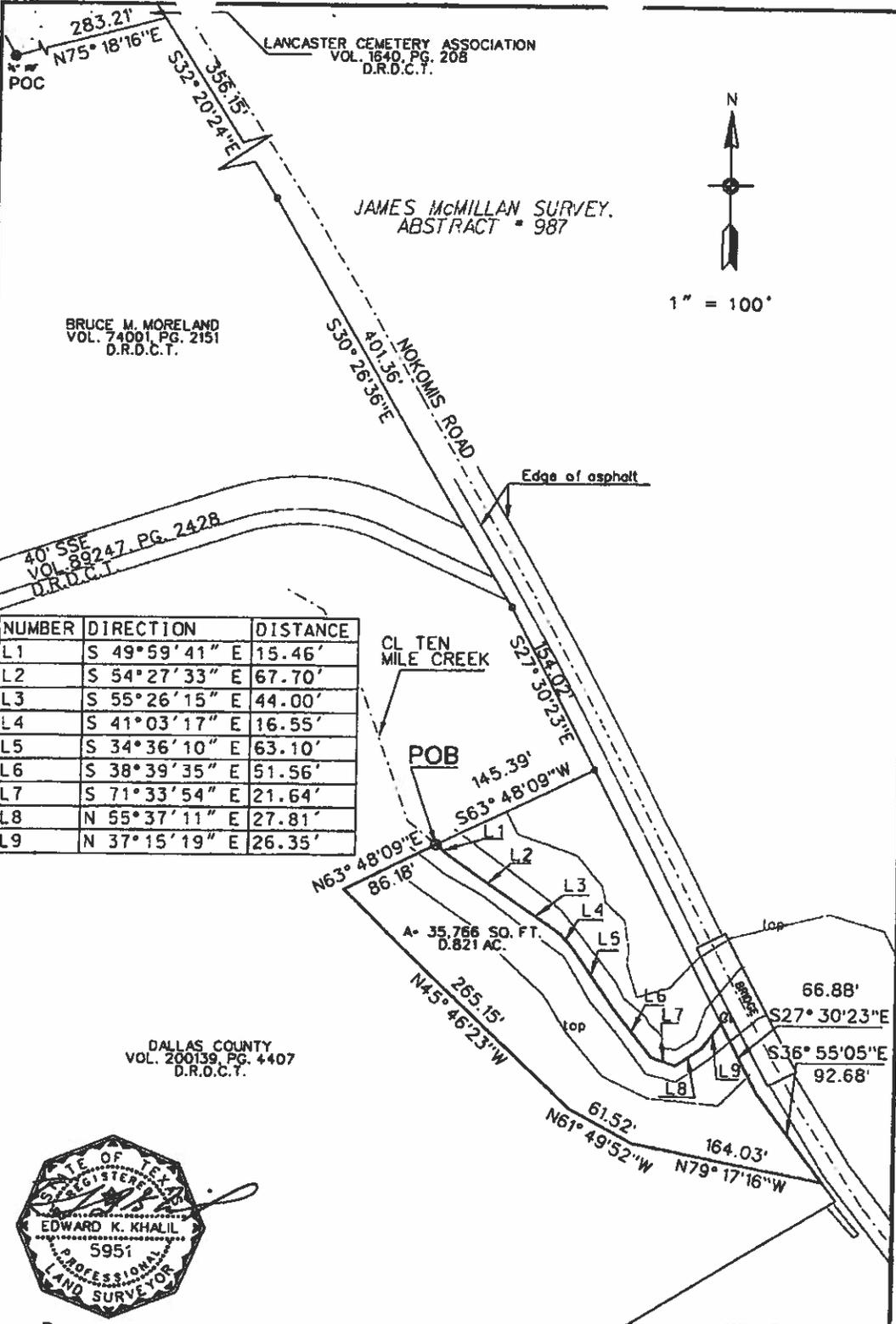
THENCE NORTH 45 DEGREES 46 MINUTES 23 SECONDS WEST, 265.15 FEET;

THENCE NORTH 63 DEGREES 48 MINUTES 09 SECONDS EAST, 86.18 FEET, TO THE CENTER LINE OF SAID TEN MILE CREEK AND THE POINT OF BEGINNING AND CONTAINING 35,766 SQUARE FEET OR 0.821 ACRES OF LAND MORE OR LESS.

Note: Bearing Basis - based on true North derived from GPS observations relative to NAD 83, Texas North Central Zone.
Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure and Practices, 663.19(9), this "report" consists of the Real Property Description included herein, and 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."

City of Lancaster
Nokomis Bridge Project
Parcel 3





NUMBER	DIRECTION	DISTANCE
L1	S 49° 59' 41" E	15.46'
L2	S 54° 27' 33" E	67.70'
L3	S 55° 26' 15" E	44.00'
L4	S 41° 03' 17" E	16.55'
L5	S 34° 36' 10" E	63.10'
L6	S 38° 39' 35" E	51.56'
L7	S 71° 33' 54" E	21.64'
L8	N 55° 37' 11" E	27.81'
L9	N 37° 15' 19" E	26.35'

DALLAS COUNTY
VOL. 200139, PG. 4407
D.R.D.C.T.



3-23-09

EXHIBIT "A"
MAP OF SURVEY SHOWING
A VARIABLE WIDTH DRAINAGE EASEMENT
OUT OF THE
JAMES McMILLAN SURVEY, ABSTRACT NO. 987
DALLAS COUNTY, TEXAS

HALLE MARY
BOREN CONVINGTON
VOL. 92745, PG. 3159
D.R.D.C.T.

City of Lancaster
Nokomis Bridge Project
Parcel 3

DRAWN BY : EK
DATE : 08-13-08
DGN. NO. : 080580P3.DGN
APPROVED BY : EK



A.N.A. CONSULTANTS, L.L.C.
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Fax: (817) 335-9935
Dallas Office:
3004 Fairmont Street
Dallas, Texas 75201
Office: (214) 631-3500
Fax: (214) 631-3527

EXHIBIT "A"
A VARIABLE WIDTH DRAINAGE EASEMENT

TRACT 3:

BEING A VARIABLE WIDTH DRAINAGE EASEMENT OUT OF THAT CERTAIN TRACT OF LAND SITUATED IN THE JAMES MCMILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS AS DESCRIBED IN DEED TO DALLAS COUNTY, RECORDED IN VOLUME 85232, PAGE 3278 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A PK NAIL FOUND IN THE MIDDLE OF NOKOMIS ROAD (VARIABLE WIDTH RIGHT-OF-WAY) FOR THE NORTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO EDMOND LOUIS DUNAWAY AND WIFE, ALANA MADDOX DUNAWAY, RECORDED IN VOLUME 76079, PAGE 1434, OF SAID DEED RECORDS, AND THE SOUTHWEST CORNER OF SAID DALLAS COUNTY TRACT FROM WHICH A 3/8 INCH IRON ROD FOUND IN THE SOUTH LINE OF SAID DALLAS COUNTY TRACT ALSO BEING THE NORTHEAST CORNER OF SAID DUNAWAY TRACT BEARS NORTH 59 DEGREES 10 MINUTES 56 SECONDS EAST, 455.35 FEET;

THENCE NORTH 31 DEGREES 14 MINUTES 54 SECONDS WEST, 503.03 FEET ALONG THE WESTERLY LINE OF SAID DALLAS COUNTY TRACT TO THE POINT OF BEGINNING;

THENCE NORTH 31 DEGREES 14 MINUTES 54 SECONDS WEST, 242.15 FEET ALONG THE WESTERLY LINE OF SAID DALLAS COUNTY TRACT;

THENCE DEPARTING THE WESTERLY LINE OF SAID DALLAS COUNTY TRACT THE FOLLOWING COURSES:

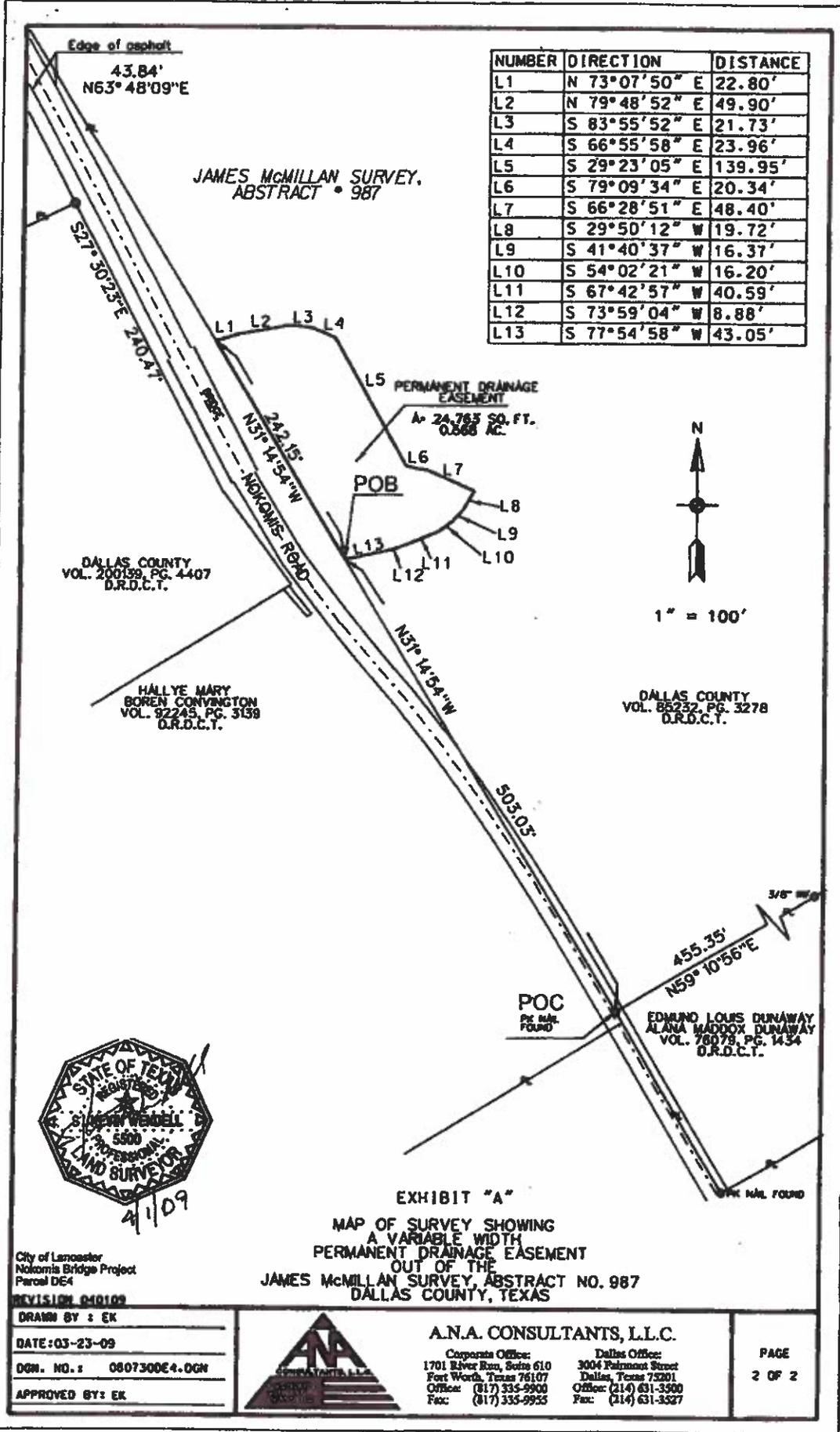
NORTH 73 DEGREES 07 MINUTES 50 SECONDS EAST, 22.80 FEET;
NORTH 79 DEGREES 48 MINUTES 52 SECONDS EAST, 49.90 FEET;
SOUTH 83 DEGREES 55 MINUTES 52 SECONDS EAST, 21.73 FEET;
SOUTH 66 DEGREES 55 MINUTES 58 SECONDS EAST, 23.96 FEET;
SOUTH 29 DEGREES 23 MINUTES 05 SECONDS EAST, 139.95 FEET;
SOUTH 79 DEGREES 09 MINUTES 34 SECONDS EAST, 20.34 FEET;
SOUTH 66 DEGREES 28 MINUTES 51 SECONDS EAST, 48.40 FEET;
SOUTH 29 DEGREES 50 MINUTES 12 SECONDS WEST, 19.72 FEET;
SOUTH 41 DEGREES 40 MINUTES 37 SECONDS WEST, 16.37 FEET;
SOUTH 54 DEGREES 02 MINUTES 21 SECONDS WEST, 16.20 FEET;
SOUTH 67 DEGREES 42 MINUTES 57 SECONDS WEST, 40.59 FEET;
SOUTH 73 DEGREES 59 MINUTES 04 SECONDS WEST, 8.88 FEET;

THENCE SOUTH 77 DEGREES 54 MINUTES 58 SECONDS WEST, 43.05 FEET TO THE POINT OF BEGINNING AND CONTAINING 24,763 SQUARE FEET OR 0.568 ACRES OF LAND MORE OR LESS.

Note: Bearing Basis - based on true North derived from GPS observations relative to NAD 83, Texas North Central Zone.
Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure and Practices, 663.19(9), this "report" consists of the Real Property Description included herein, and 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."

City of Lancaster
Nokomis Bridge Project
Parcel PDE4





NUMBER	DIRECTION	DISTANCE
L1	N 73°07'50" E	22.80'
L2	N 79°48'52" E	49.90'
L3	S 83°55'52" E	21.73'
L4	S 66°55'58" E	23.96'
L5	S 29°23'05" E	139.95'
L6	S 79°09'34" E	20.34'
L7	S 66°28'51" E	48.40'
L8	S 29°50'12" W	19.72'
L9	S 41°40'37" W	16.37'
L10	S 54°02'21" W	16.20'
L11	S 67°42'57" W	40.59'
L12	S 73°59'04" W	8.88'
L13	S 77°54'58" W	43.05'



1" = 100'



EXHIBIT "A"
 MAP OF SURVEY SHOWING
 A VARIABLE WIDTH
 PERMANENT DRAINAGE EASEMENT
 OUT OF THE
 JAMES McMILLAN SURVEY, ABSTRACT NO. 987
 DALLAS COUNTY, TEXAS

City of Lancaster
 Nokomis Bridge Project
 Parcel DE4

REVISION 041009
 DRAWN BY: EK
 DATE: 03-23-09
 DGN. NO.: 0807300E4.DGN
 APPROVED BY: EK



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 Fax: (817) 335-9935
 Dallas Office:
 3004 Palmomat Street
 Dallas, Texas 75201
 Office: (214) 631-3300
 Fax: (214) 631-3327

Unofficial Document

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



[Signature]

John F. Warren, County Clerk
Dallas County TEXAS

May 05, 2009 11:44:23 AM

FEE: \$96.00

200900127653

EXHIBIT "B"
A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT

TRACT 1:
BEING A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT OUT OF THAT CERTAIN TRACT OF LAND SITUATED IN THE JAMES McMILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS AS DESCRIBED IN DEED TO BRUCE M. MORELAND, RECORDED IN VOLUME 74001, PAGE 2151 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS AND BEING THE SAME TRACT OF LAND AS DESCRIBED IN LETTER AGREEMENT FROM PATRICIA MORELAND TO DALLAS COUNTY, TEXAS, DATED OCTOBER 23, 2002, AND THE WILL DATED JUNE 6, 2000, AND THE FIRST CODICIL TO THAT WILL DATED JANUARY 28, 2002, AS RECORDED IN CAUSE NO. 02-1348-P3, OF DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT 3/4 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO LANCASTER CEMETERY ASSOCIATION OF LANCASTER, RECORDED IN VOLUME 1640, PAGE 208, OF SAID DEED RECORDS, AND THE NORTHEAST MOST WESTERLY CORNER OF SAID MORELAND TRACT;

THENCE NORTH 75 DEGREES 18 MINUTES 16 SECONDS EAST, 283.21 FEET ALONG THE COMMON LINE OF SAID MORELAND TRACT AND THE CEMETERY TRACT TO THE WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 32 DEGREES 20 MINUTES 24 SECONDS EAST, 356.15 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 30 DEGREES 26 MINUTES 36 SECONDS EAST, 401.36 FEET CONTINUING ALONG WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 154.02 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID MORELAND TRACT TO THE POINT OF BEGINNING;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 240.47 FEET, CONTINUING ALONG THE WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID MORELAND TRACT TO THE CENTER LINE OF TEN MILE CREEK;

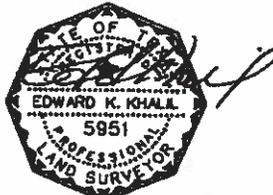
THENCE ALONG THE CENTER LINE OF SAID TEN MILE CREEK THE FOLLOWING COURSES:

SOUTH 37 DEGREES 15 MINUTES 19 SECONDS WEST, 26.35 FEET;
SOUTH 55 DEGREES 37 MINUTES 11 SECONDS WEST, 27.81 FEET;
NORTH 71 DEGREES 33 MINUTES 54 SECONDS WEST, 21.64 FEET;
NORTH 38 DEGREES 39 MINUTES 35 SECONDS WEST, 51.56 FEET;
NORTH 34 DEGREES 36 MINUTES 10 SECONDS WEST, 63.10 FEET;
NORTH 41 DEGREES 03 MINUTES 17 SECONDS WEST, 16.55 FEET;
NORTH 55 DEGREES 26 MINUTES 15 SECONDS WEST, 44.00 FEET;
NORTH 54 DEGREES 27 MINUTES 33 SECONDS WEST, 67.70 FEET;
NORTH 49 DEGREES 59 MINUTES 41 SECONDS WEST, 15.46 FEET;

THENCE NORTH 63 DEGREES 48 MINUTES 09 SECONDS EAST, 145.39 FEET, DEPARTING CENTER LINE OF SAID TEN MILE CREEK TO THE POINT OF BEGINNING AND CONTAINING 23,802 SQUARE FEET OR 0.546 ACRES OF LAND.

Note: Bearing Basis -- based on true North derived from GPS observations relative to NAD 83, Texas North Central Zone.
Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure and Practices, 663.19(9), this "report" consists of the Real Property Description included herein, and Map of Survey attached herewith.
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City of Lancaster
Nokomis Bridge Project
Parcel 1



6-2-09

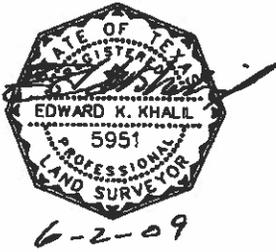
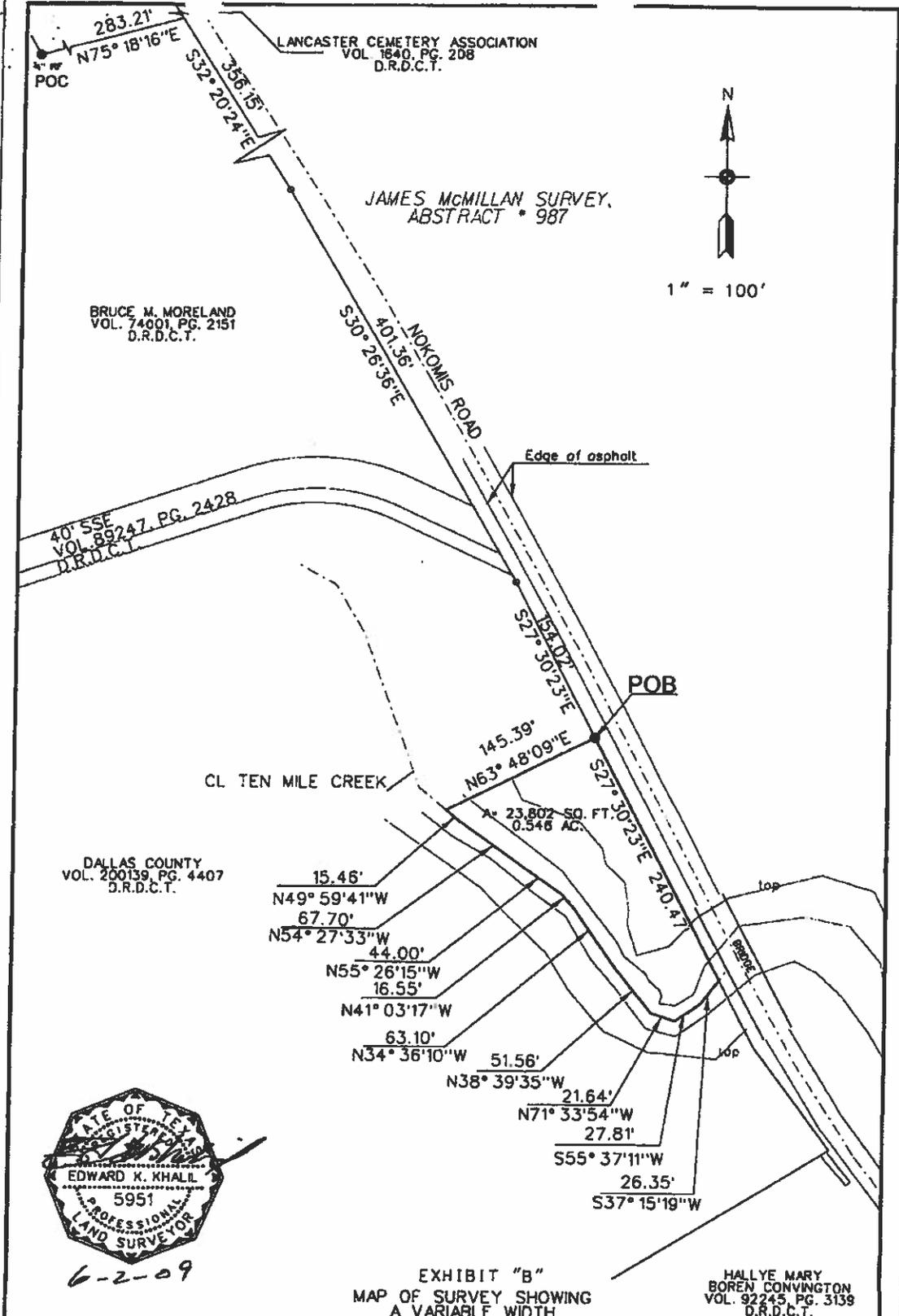


EXHIBIT "B"
MAP OF SURVEY SHOWING
A VARIABLE WIDTH
TEMPORARY CONSTRUCTION
EASEMENT OUT OF THE
JAMES McMILLAN SURVEY, ABSTRACT NO. 987
DALLAS COUNTY, TEXAS

City of Lancaster
Nokomis Bridge Project
Parcel 1
TCE 060209

DRAWN BY : EK

DATE: 08-13-08

DGN. NO.: 080580p1.dgn

APPROVED BY: EK



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Dallas, Texas 75201
Office: (214) 631-3500
Fax: (214) 631-3527

EXHIBIT "B"

A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT

TRACT 2:

BEING A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT OUT OF THAT CERTAIN TRACT OF LAND SITUATED IN THE JAMES MCWILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS AS DESCRIBED IN DEED TO DALLAS COUNTY, RECORDED IN VOLUME 2000139, PAGE 4407 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT 3/4 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO LANCASTER CEMETERY ASSOCIATION OF LANCASTER, RECORDED IN VOLUME 1640, PAGE 208, OF SAID DEED RECORDS, AND THE NORTHEAST MOST WESTERLY CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO BRUCE M. MORELAND, RECORDED IN VOLUME 74001, PAGE 2151 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS;

THENCE NORTH 75 DEGREES 18 MINUTES 16 SECONDS EAST, 283.21 FEET ALONG THE COMMON LINE OF SAID MORELAND TRACT AND THE CEMETERY TRACT TO THE WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 32 DEGREES 20 MINUTES 24 SECONDS EAST, 356.15 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 30 DEGREES 26 MINUTES 36 SECONDS EAST, 401.36 FEET CONTINUING ALONG WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 154.02 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID MORELAND TRACT TO A POINT FOR CORNER;

THENCE SOUTH 63 DEGREES 48 MINUTES 09 SECONDS WEST, 145.39 FEET, TO THE CENTER LINE OF TEN MILE CREEK AND THE POINT OF BEGINNING;

THENCE ALONG THE CENTER LINE OF SAID TEN MILE CREEK THE FOLLOWING COURSES:

SOUTH 49 DEGREES 59 MINUTES 41 SECONDS EAST, 15.46 FEET;
SOUTH 54 DEGREES 27 MINUTES 33 SECONDS EAST, 67.70 FEET;
SOUTH 55 DEGREES 26 MINUTES 15 SECONDS EAST, 44.00 FEET;
SOUTH 41 DEGREES 03 MINUTES 17 SECONDS EAST, 16.55 FEET;
SOUTH 34 DEGREES 36 MINUTES 10 SECONDS EAST, 63.10 FEET;
SOUTH 38 DEGREES 39 MINUTES 35 SECONDS EAST, 51.56 FEET;
SOUTH 71 DEGREES 33 MINUTES 54 SECONDS EAST, 21.64 FEET;
NORTH 55 DEGREES 37 MINUTES 11 SECONDS EAST, 27.81 FEET;
NORTH 37 DEGREES 15 MINUTES 19 SECONDS EAST, 26.35 FEET TO THE EAST LINE OF SAID DALLAS COUNTY TRACT AND THE WEST LINE OF NOKOMIS ROAD;

THENCE SOUTH 27 DEGREES 30 MINUTES 23 SECONDS EAST, 66.88 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID DALLAS COUNTY TRACT TO A POINT FOR CORNER;

THENCE SOUTH 36 DEGREES 55 MINUTES 05 SECONDS EAST, 92.68 FEET ALONG SAID WEST LINE OF NOKOMIS ROAD AND THE EAST LINE OF SAID DALLAS COUNTY TRACT TO A POINT FOR CORNER;

THENCE NORTH 79 DEGREES 17 MINUTES 16 SECONDS WEST, 164.03 FEET DEPARTING THE EAST LINE OF SAID DALLAS COUNTY TRACT;

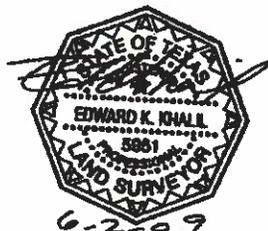
THENCE NORTH 61 DEGREES 49 MINUTES 52 SECONDS WEST, 61.52 FEET;

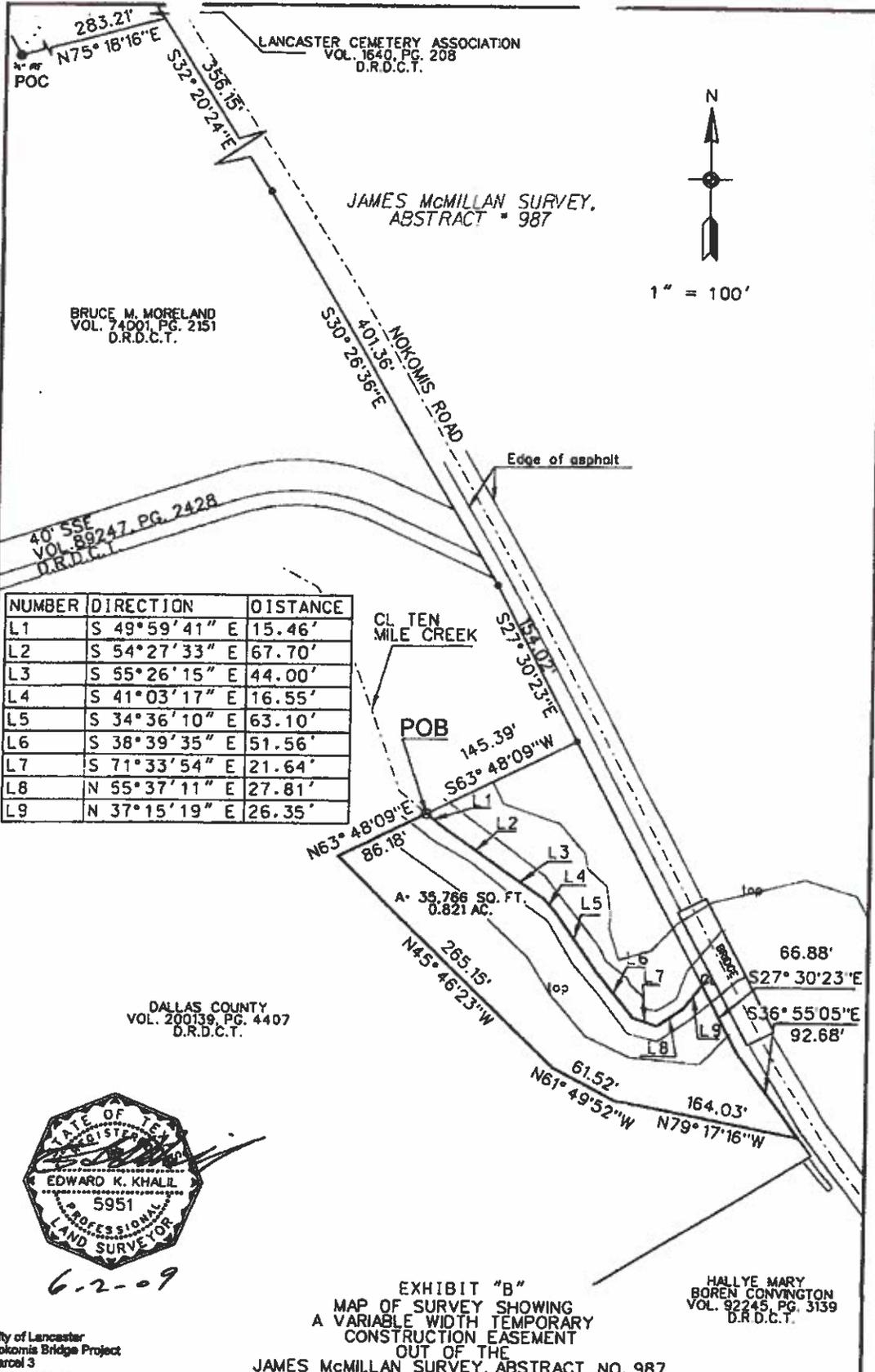
THENCE NORTH 45 DEGREES 46 MINUTES 23 SECONDS WEST, 265.15 FEET;

THENCE NORTH 63 DEGREES 48 MINUTES 09 SECONDS EAST, 86.18 FEET, TO THE CENTER LINE OF SAID TEN MILE CREEK AND THE POINT OF BEGINNING AND CONTAINING 35,766 SQUARE FEET OR 0.821 ACRES OF LAND MORE OR LESS.

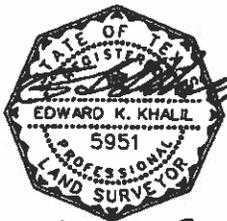
Note: Bearing Basis - based on true North derived from GPS observations relative to NAD 83, Texas North Central Zone.
Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure and Practices, 663.19(9), this "report" consists of the Real Property Description included herein, and Map of Survey attached herewith.
Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure 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."

City of Lancaster
Nokomis Bridge Project
Parcel 3





NUMBER	DIRECTION	DISTANCE
L1	S 49°59'41" E	15.46'
L2	S 54°27'33" E	67.70'
L3	S 55°26'15" E	44.00'
L4	S 41°03'17" E	16.55'
L5	S 34°36'10" E	63.10'
L6	S 38°39'35" E	51.56'
L7	S 71°33'54" E	21.64'
L8	N 55°37'11" E	27.81'
L9	N 37°15'19" E	26.35'



6-2-09

City of Lancaster
Nokomis Bridge Project
Parcel 3

TCE 080209

DRAWN BY : EK
DATE: 08-13-08
DGN. NO. : D80580P3.DGN
APPROVED BY: EK



A.N.A. CONSULTANTS, L.L.C.

Corporate Office: 1701 River Run, Suite 610
Fort Worth, Texas 76107
Office: (817) 333-9900
Fax: (817) 333-9955

Dallas Office: 3004 Fairmont Street
Dallas, Texas 75201
Office: (214) 631-3500
Fax: (214) 631-3527

PAGE
2 OF 2

EXHIBIT "B"
MAP OF SURVEY SHOWING
A VARIABLE WIDTH TEMPORARY
CONSTRUCTION EASEMENT
OUT OF THE
JAMES McMILLAN SURVEY, ABSTRACT NO. 987
DALLAS COUNTY, TEXAS

HALLYE MARY
BOREN CONVINGTON
VOL. 92245, PG. 3159
D.R.D.C.T.

DALLAS COUNTY
VOL. 200139, PG. 4407
D.R.D.C.T.

BRUCE M. MORELAND
VOL. 74001, PG. 2151
D.R.D.C.T.

LANCASTER CEMETERY ASSOCIATION
VOL. 1640, PG. 208
D.R.D.C.T.

JAMES McMILLAN SURVEY,
ABSTRACT # 987

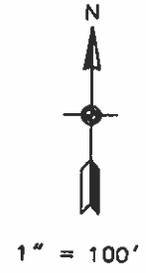


EXHIBIT "B"

A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT

TRACT 3:

BEING A VARIABLE WIDTH TEMPORARY CONSTRUCTION EASEMENT OUT OF THAT CERTAIN TRACT OF LAND SITUATED IN THE JAMES MCMILLAN SURVEY, ABSTRACT NUMBER 987, DALLAS COUNTY, TEXAS AS DESCRIBED IN DEED TO DALLAS COUNTY, RECORDED IN VOLUME 85232, PAGE 3278 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A PK NAIL FOUND IN THE MIDDLE OF NOKOMIS ROAD (VARIABLE WIDTH RIGHT-OF-WAY) FOR THE NORTHWEST CORNER OF A TRACT OF LAND AS DESCRIBED IN DEED TO EDMUND LOUIS DUNAWAY AND WIFE, ALANA MADDOX DUNAWAY, RECORDED IN VOLUME 76079, PAGE 1434, OF SAID DEED RECORDS, AND THE SOUTHWEST CORNER OF SAID DALLAS COUNTY TRACT FROM WHICH A 3/8 INCH IRON ROD FOUND IN THE SOUTH LINE OF SAID DALLAS COUNTY TRACT ALSO BEING THE NORTHEAST CORNER OF SAID DUNAWAY TRACT BEARS NORTH 59 DEGREES 10 MINUTES 56 SECONDS EAST, 455.35 FEET;

THENCE NORTH 31 DEGREES 14 MINUTES 54 SECONDS WEST, 419.15 FEET ALONG THE WESTERLY LINE OF SAID DALLAS COUNTY TRACT TO THE POINT OF BEGINNING;

THENCE NORTH 31 DEGREES 14 MINUTES 54 SECONDS WEST, 503.46 FEET ALONG THE WESTERLY LINE OF SAID DALLAS COUNTY TRACT;

THENCE DEPARTING THE WESTERLY LINE OF SAID DALLAS COUNTY TRACT THE FOLLOWING COURSES:

NORTH 63 DEGREES 48 MINUTES 09 SECONDS EAST, 43.84 FEET;
SOUTH 26 DEGREES 11 MINUTES 59 SECONDS EAST, 81.36 FEET;
SOUTH 61 DEGREES 59 MINUTES 40 SECONDS WEST, 31.56 FEET;
SOUTH 31 DEGREES 14 MINUTES 54 SECONDS EAST, 45.64 FEET;
SOUTH 80 DEGREES 52 MINUTES 50 SECONDS EAST, 67.51 FEET;
NORTH 66 DEGREES 36 MINUTES 45 SECONDS EAST, 90.04 FEET;
SOUTH 84 DEGREES 34 MINUTES 15 SECONDS EAST, 143.85 FEET;
SOUTH 88 DEGREES 08 MINUTES 06 SECONDS EAST, 45.47 FEET;
SOUTH 57 DEGREES 00 MINUTES 45 SECONDS EAST, 103.15 FEET;
SOUTH 32 DEGREES 47 MINUTES 53 SECONDS EAST, 86.75 FEET;
SOUTH 57 DEGREES 12 MINUTES 22 SECONDS WEST, 150.73 FEET;
SOUTH 33 DEGREES 10 MINUTES 28 SECONDS WEST, 143.61 FEET;

THENCE SOUTH 88 DEGREES 31 MINUTES 03 SECONDS WEST, 76.09 FEET TO THE POINT OF BEGINNING AND CONTAINING A TOTAL AREA OF 98,291 SQUARE FEET OR 2.256 ACRES OF LAND, SAVE AND EXCEPT 24,763 SQUARE FEET OR 0.568 OF AN ACRE OF LAND CONTAINED WITHIN THE PROPOSED PERMANENT DRAINAGE EASEMENT FOR A NET AREA OF 73,528 SQUARE FEET OR 1.688 ACRES OF LAND MORE OR LESS.

Note: Bearing Basis - based on true North derived from GPS observations relative to NAD 83, Texas North Central Zone.

Note: In accordance with the Texas Board of Professional Land Surveying, General Rules of Procedure and Practices, 663.19(9), this "report" consists of the Real Property Description included herein, and 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."

City of Lancaster
Nokomis Bridge Project
Parcel TCE4



5-20-09

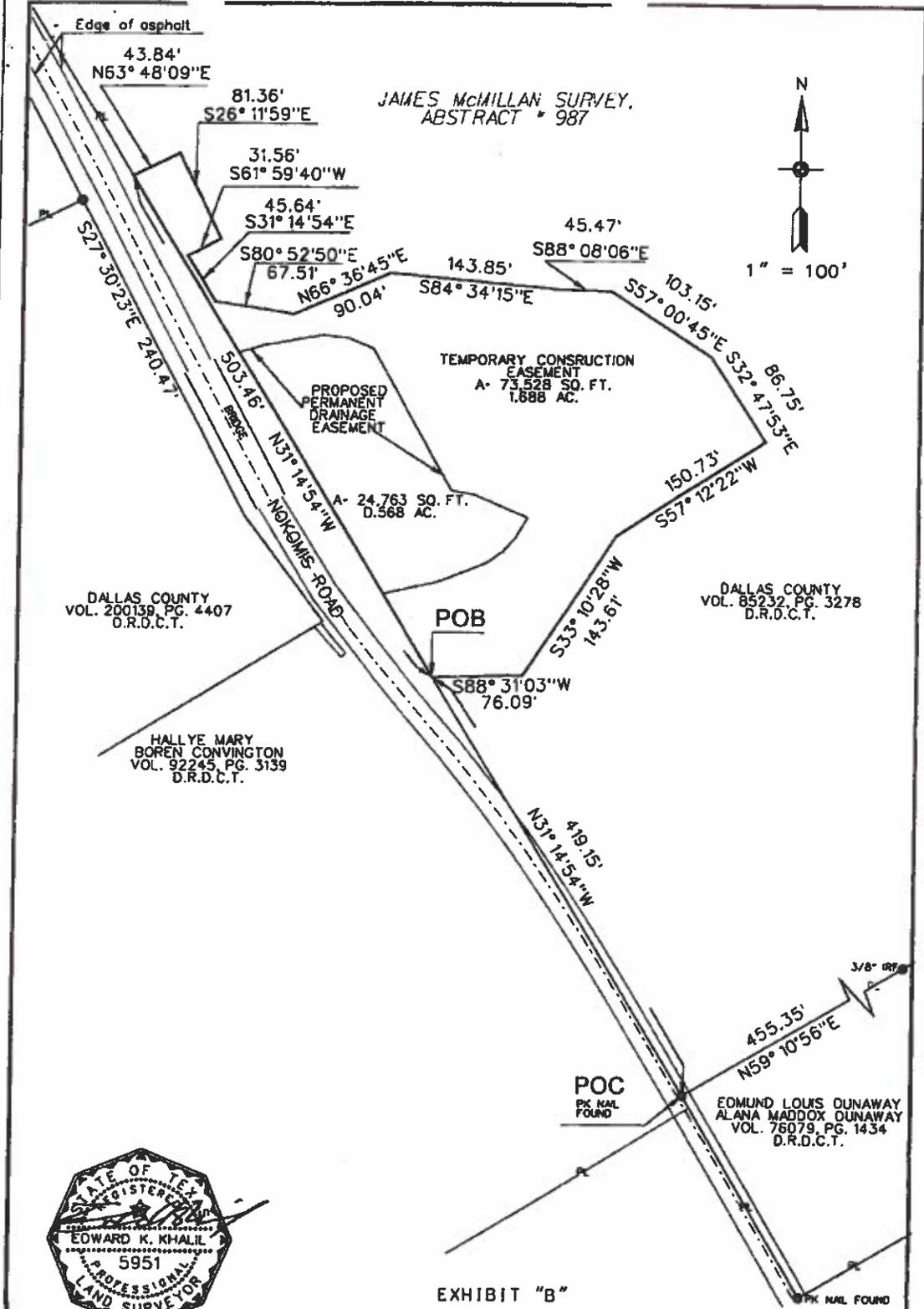


EXHIBIT "B"
 MAP OF SURVEY SHOWING
 A VARIABLE WIDTH
 TEMPORARY
 CONSTRUCTION EASEMENT
 OUT OF THE
 JAMES McMILLAN SURVEY, ABSTRACT NO. 987
 DALLAS COUNTY, TEXAS

City of Lancaster
 Nokomis Bridge Project
 Parcel TCE4
 REVISION 040109

DRAWN BY : EK

DATE: 03-23-09

DGN. NO. : 080730TCE4.DGN

APPROVED BY: EK



A.N.A. CONSULTANTS, L.L.C.

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 Dallas, Texas 75201
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 Fax: (214) 631-3527

Unofficial Document

Filed and Recorded
Official Public Records
John F. Warren, County Clerk
Dallas County, TEXAS
11/22/2010 12:45:24 PM
\$ 00



A handwritten signature in black ink, appearing to be "JFW".

201000298974

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS




John F. Warren, County Clerk
Dallas County TEXAS

June 04, 2009 12:13:33
FEE: \$120.00

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LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

7

AG12-007

Discuss and consider a resolution denying Atmos Energy Corp., Mid-Tex Division's requested rate change; and requiring the company to reimburse the City's reasonable rate making expenses.

This request supports the City Council 2011-2012 Policy Agenda.

Goal: Financially Sound City Government

Background

On January 31, 2012, Atmos Energy Corporation, Mid-Tex Division ("Atmos Mid-Tex" or "Company") filed with Atmos Cities Steering Committee ("ACSC") city members that exercise original jurisdiction a request for a rate increase in excess of \$49 million. On February 27, 2012 the City of Lancaster passed a resolution suspending the effective date of the proposed increase to allow ACSC attorneys and consultants to study the request. The ACSC Settlement Committee has met with Company officials to negotiate a settlement. While ACSC has given the Company a settlement offer, Atmos Mid-Tex does not want to provide a written offer before the expiration of city jurisdiction on June 11, 2012.

The City of Lancaster suspended the proposed effective date of March 6, 2012, extending city jurisdiction until June 4, 2012. On April 25, 2012, the Company extended its effective date by a week, which similarly extended the June 4, 2012 deadline to June 11, 2012. It does not appear that settlement could be achieved within a time frame that would allow the City to take action prior to June 11, 2012. Thus, ACSC members are encouraged to pass a denial resolution. Atmos Mid-Tex has promised to support the action which does not preclude a subsequent settlement. If settlement is achieved, ACSC will return to member cities with a request for approval of the settlement.

The ACSC Settlement Committee recommends the ACSC cities pass resolutions denying Atmos Mid-Tex's proposed rate increase. The denial resolution will prevent the Company's proposed rate increase from automatically taking effect on June 11, 2012, and allow more time to engage in settlement discussions. Atmos will appeal The City of Lancaster's denial to the Railroad Commission which will trigger a 185-day time frame for action by the Commission. Settlement will hopefully occur before a hearing takes place.

Considerations

- **Operational** - This is a request for the approval of the attached resolution for the denial of the Atmos Mid-Tex RRM filing that requests an increase for residential, commercial, industrial, and transportation rates applicable to service within the boundaries of the City of Lancaster. The denial of the Company's proposed rate increase facilitates further settlement discussions and prevents the Company's proposed rates from automatically going into effect on June 11. The Company has expressed a desire for settlement while an appeal from the cities' denial of the rate increase is pending at the RRC. Should a settlement be reached, the City may be required to pass an ordinance setting new rates pursuant to the settlement.
- **Legal** - A copy of the resolution has been reviewed and approved as to form by the ACSC legal counsel.
- **Financial** – On an Atmos Mid-Tex system wide basis, Atmos Energy proposes to increase its annual revenues by approximately \$49 million or 11.94%. For the City of Lancaster, the implementation of the RRM filing would entail an approximate Atmos Mid-Tex revenue increase of \$176,160, a percentage increase of 4.4%.
- **Public Information** - This meeting was properly noticed and is being held 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 and redirect staff.

Recommendation

Staff recommends approval of the resolution as presented denying the Atmos Mid-Tex proposed rate increase.

Attachments

- Resolution

Prepared and submitted by:
Opal Mauldin Robertson, City Manager

Date: May 21, 2012

RESOLUTION NO. 2012-05-42

RESOLUTION OF THE CITY OF LANCASTER DENYING ATMOS ENERGY CORP., MID-TEX DIVISION'S ("ATMOS MID-TEX") REQUESTED RATE CHANGE; REQUIRING THE COMPANY TO REIMBURSE THE CITY'S REASONABLE RATEMAKING EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND ACSC'S LEGAL COUNSEL.

WHEREAS, the City of Lancaster, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and is a regulatory authority under the Gas Utility Regulatory Act ("GURA") and under Chapter 104, §104.001 et seq. of GURA, has exclusive original jurisdiction over Atmos Mid-Tex's rates, operations, and services within the City; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC"), a coalition of over 150 similarly situated cities served by the Company that have joined together to facilitate the review and response to natural gas issues affecting rates charged in the Atmos Mid-Tex Division; and

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC and the Company worked collectively to develop a Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three-year experiment by ACSC as a substitute to the current GRIP process instituted by the Legislature; and

WHEREAS, ACSC and the Company agreed to extend the RRM process in reaching a settlement in 2010 on the third RRM filing; and

WHEREAS, in 2011, ACSC and the Company engaged in good faith negotiations regarding the continuation of the RRM process, but were unable to come to ultimate agreement; and

WHEREAS, on or about January 31, 2012, the Company filed a Statement of Intent with the cities retaining original jurisdiction within its Mid-Tex service division to increase rates by approximately \$49 million; and

WHEREAS, Atmos Mid-Tex proposed March 6, 2012, as the effective date for its requested increase in rates; and

WHEREAS, the City suspended the effective date of Atmos Mid-Tex's proposed rate increase for the maximum period allowed by law and thus extended the City's jurisdiction until June 4, 2012; and

WHEREAS, on April 25, 2012, the Company extended the effective date for its proposed rates by one week, which similarly extended the City's jurisdiction until June 11, 2012; and

WHEREAS, the ACSC Executive Committee hired and directed legal counsel and consultants to prepare a common response to the Company's requested rate increase and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, ACSC's consultants conducted a review of the Company's requested rate increase and found justification that the Company's rates should be decreased; and

WHEREAS, ACSC and the Company have engaged in settlement discussions but will be unable according to Company representations to reach settlement in sufficient time for cities to act before June 11, 2012; and

WHEREAS, failure by ACSC members to take action before June 11, 2012 would allow the Company the right to impose its full request on residents of said ACSC members; and

WHEREAS, the ACSC Settlement Committee recommends denial of the Company's proposed rate increase in order to continue settlement discussions pending the Company's appeal of cities' denials to the Railroad Commission of Texas; and

WHEREAS, the GURA § 103.022 provides that costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

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

SECTION 1. That the rates proposed by Atmos Mid-Tex to be recovered through its gas rates charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

SECTION 2. That the Company shall continue to charge its existing rates to customers within the City and that said existing rates are reasonable.

SECTION 3. That the City's reasonable rate case expenses shall be reimbursed by the Company.

SECTION 4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5. A copy of this Resolution shall be sent to Atmos Mid-Tex, care of David Park, Vice President Rates & Regulatory Affairs, at Atmos Energy Corporation, Mid-Tex Division, 5420 LBJ Freeway, Suite 1862, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 21st day of May 2012.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

8

AG12-008

Discuss and consider a resolution authorizing continued participation with the Atmos Cities Steering Committee; authorizing the payment of five cents (\$0.05) per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation.

This request supports the City Council 2011-2012 Policy Agenda.

**Goal: Financially Sound City Government
Goal: Healthy, Safe, & Vibrant Neighborhoods**

Background

The Atmos Cities Steering Committee (ACSC) is a permanent standing coalition of more than 150 Texas cities that has been authorized to represent more than 60 percent of the total load served by Atmos Energy Corporation, Mid-Tex Division. Through council resolutions, to represent the interests of municipal and residential consumers in gas utility regulatory matters, the ACSC supports safe service at fair prices.

Most municipalities have retained original jurisdiction over gas utility rates and services within municipal limits. The Atmos Cities Steering Committee ("ACSC") is composed of municipalities in the service area of Atmos Energy Corporation, Mid-Tex Division regardless of whether original jurisdiction has been retained. Atmos is a monopoly provider of natural gas. Because Atmos has no competitors, regulation of the rates that it charges its customers is the only way that cities can ensure that natural gas rates are fair. Working as a coalition to review the rates charged by Atmos allows cities to accomplish more collectively than each city could do acting alone. Cities have more than 100 years experience in regulating natural gas rates in Texas.

ACSC is the largest coalition of cities served by Atmos Mid-Tex. ACSC protects the authority of municipalities over the monopoly natural gas provider and defends the interests of residential and small commercial customers within the cities. Although many of the activities undertaken by ACSC are connected to rate cases (and therefore expenses are reimbursed by the utility), ACSC also undertakes additional activities on behalf of municipalities for which it needs funding support from its members.

This population based assessment protocol for 2012 is a per capita fee of \$0.05 based on the population figures (Lancaster - 36,361) as shown by TML. In addition, the budget was amended to cover annual administrative expenses. The total expense to the City of Lancaster is \$1,818.05.

Considerations

- **Operational** – The ACSC is involved in the rate cases, appeals, rulemakings and legislative efforts impacting the rates charged by Atmos to customers within its member cities. The City does not have the required resources, technical and legal expertise on staff to properly monitor and review these rate related cases. ACSC has a staff and legal counsel dedicated to rate cases, appeals, rulemakings, and the legislative efforts of Atmos Energy Corporation Mid-Tex Division. The approval of this resolution will secure continued ACSC membership for the City of Lancaster and in turn representation of the interests of municipal and residential consumers in gas utility regulatory matters.
- **Legal** – The resolution was prepared by ACSC counsel.
- **Financial** – The approval of this resolution will authorize the payment of per capita assessment expenses in the amount of \$1,818.05 to Atmos Cities Steering Committee, which has been included in the FY 11/12 budget.
- **Public Information** – There are no public information requirements.

Options/Alternatives

1. Approve the resolution as presented.
2. Deny the resolution and direct staff.

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
- ACSC Member Cities List

Prepared and submitted by:
Opal Mauldin Robertson, City Manager

Date: May 21, 2012

RESOLUTION NO. 2012-05-43

A RESOLUTION AUTHORIZING CONTINUED PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE; AND AUTHORIZING THE PAYMENT OF FIVE CENTS PER CAPITA TO THE ATMOS CITIES STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ATMOS ENERGY CORPORATION.

WHEREAS, the City of Lancaster is a regulatory authority under the Gas Utility Regulatory Act (GURA) and has exclusive original jurisdiction over the rates and services of Atmos Energy Corporation, Mid-Tex Division (Atmos) within the municipal boundaries of the city; and

WHEREAS, the Atmos Cities Steering Committee (ACSC) has historically intervened in Atmos rate proceedings and gas utility related rulemakings to protect the interests of municipalities and gas customers residing within municipal boundaries; and

WHEREAS, ACSC is participating in Railroad Commission dockets and projects, as well as court proceedings, affecting gas utility rates; and

WHEREAS, the City is a member of ACSC; and

WHEREAS, in order for ACSC to continue its participation in these activities which affects the provision of gas utility service and the rates to be charged, it must assess its members for such costs;

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

SECTION 1. That the City is authorized to continue its membership with the Atmos Cities Steering Committee to protect the interests of the City of Lancaster and protect the interests of the customers of Atmos Energy Corporation, Mid-Tex Division residing and conducting business within the City limits.

SECTION 2. It is further authorized to pay its 2012 assessment to the ACSC in the amount of five cents (\$0.05) per capita.

SECTION 3. A copy of this Resolution and approved assessment fee payable to "***Atmos Cities Steering Committee***" shall be sent to:

Mary Bunkley
Treasurer, Atmos Cities Steering Committee
c/o Arlington City Attorney's Office, Mail Stop 63-0300
Post Office Box 90231
Arlington, Texas 76004-3231

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 21st day of May 2012.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

ACSC Cities (154 Total)

Abilene	Fate	Palestine
Addison	Flower Mound	Pantego
Allen	Forest Hill	Paris
Alvarado	Fort Worth	Parker
Angus	Frisco	Pecan Hill
Anna	Frost	Plano
Argyle	Gainesville	Ponder
Arlington	Garland	Pottsboro
Bedford	Garrett	Prosper
Bellmead	Grand Prairie	Quitman
Benbrook	Grapevine	Red Oak
Beverly Hills	Haltom City	Reno (Parker County)
Blossom	Harker Heights	Richardson
Blue Ridge	Haskell	Richland
Bowie	Haslet	Richland Hills
Boyd	Hewitt	River Oaks
Bridgeport	Highland Park	Roanoke
Brownwood	Highland Village	Robinson
Buffalo	Honey Grove	Rockwall
Burkburnett	Hurst	Roscoe
Burleson	Iowa Park	Rowlett
Caddo Mills	Irving	Royse City
Carrollton	Justin	Sachse
Cedar Hill	Kaufman	Saginaw
Celeste	Keene	Seagoville
Celina	Keller	Sherman
Cisco	Kemp	Snyder
Cleburne	Kennedale	Southlake
Clyde	Kerrville	Springtown
College Station	Killeen	Stamford
Colleyville	Krum	Stephenville
Colorado City	Lakeside	Sulphur Springs
Comanche	Lake Worth	Sweetwater
Coolidge	Lancaster	Temple
Coppell	Lewisville	Terrell
Corinth	Lincoln Park	The Colony
Corral City	Little Elm	Trophy Club
Crandall	Lorena	Tyler
Crowley	Madisonville	University Park
Dalworthington Gardens	Malakoff	Venus
Denison	Mansfield	Vernon
DeSoto	McKinney	Waco
Duncanville	Melissa	Watauga
Eastland	Mesquite	Waxahachie
Edgecliff Village	Midlothian	Westlake
Emory	Murphy	Whitesboro
Ennis	Newark	White Settlement
Euless	Nocona	Wichita Falls
Everman	North Richland Hills	Woodway
Fairview	Northlake	Wylie
Farmers Branch	Oak Leaf	
Farmersville	Ovilla	

LANCASTER CITY COUNCIL
Agenda Communication for
May 21, 2012

9

AG12-009

Consider election of a Mayor Pro Tempore.

Background

Section 3.05 (b) of the City Charter provides for the election of a Mayor Pro Tem and a Deputy Mayor Pro Tem. Section 3.05 (c) of the City Charter provides that the Mayor Pro Tem shall act as Mayor during the disability or absence of the Mayor and in this capacity shall have the rights conferred upon the Mayor.

Options

Council may elect a Mayor Pro Tem at this time or defer the action until the next regular meeting.

Recommendation

No staff recommendation. This is a matter for Council decision.

Attachments

- Section 3.05 *Mayor, Mayor Pro Tem and Deputy Mayor Pro Tem* from the City's Home Rule Charter

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

Date: May 11, 2012

- (2) have resided in their district for a minimum of one (1) year prior to the date of the election and shall reside in that district during the term of office.

In the event that a citizen's residence is changed solely as a result of an approved redistricting plan in accordance with law, the one (1) year district residency requirement shall not apply.

SECTION 3.03 Compensation

The City Council shall serve without compensation. The City Council shall be entitled to reimbursement for actual expenses incurred in the performance of official duties.

SECTION 3.04 Mayor and the City Councilmember; Qualifications; How Nominated and Elected; Official Ballot.

(A) The names of candidates for City Councilmember and Mayor shall be placed on the official ballot upon the filing of a petition, in accordance with the TEXAS ELECTION CODE, with the City Secretary stating the candidate has resided in the City of Lancaster for a period of at least one year prior to such election. If filing for a Council district, the candidate must have also resided within the district for which the candidate is filing for a period of at least one (1) year prior to such election, except as provided herein. The petition shall be signed, in addition to the candidate, by twenty-five (25) qualified voters residing within the district for which the candidate is seeking election, or in the case of the Mayor, twenty-five (25) qualified voters of the City. Upon filing, such name shall be printed upon the official ballot. The order in which the names of the candidates for City Council shall appear on the ballot shall be determined by lot, in a drawing held under the supervision of the City Secretary.

(B) If a member of the Council shall file as a candidate for nomination or election to any public office other than his current office on the City Council, such candidacy shall constitute an automatic resignation.

SECTION 3.05 Mayor, Mayor Pro-Tem and Deputy Mayor Pro-Tem

(A) The Mayor shall preside at all meetings of the City Council, and shall be recognized as head of the City government for all ceremonial purposes, and by the Governor for purposes of military law, but shall have no regular administrative duties. The Mayor may participate in the discussion of all matters coming before the City Council. The Mayor shall be entitled to vote as a member thereof on all legislative or other matters. He shall sign resolutions/ordinances and conveyances made or entered into by the City and all bonds issued under the provisions of this Charter; and such other documents that he/she may be authorized by Council or by law. The Mayor shall not have power to veto any legislative or other matter.

(B) The City Council shall elect a Mayor Pro Tem and a Deputy Mayor Pro Tem at the first meeting as provided herein.

(C) The Mayor Pro-Tem shall be a Councilmember elected by the City Council at the first regular meeting after each election of Councilmembers and/or Mayor. The Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor, and in this capacity shall have the rights conferred upon the Mayor.

(D) The Deputy Mayor Pro-Tem shall be a Councilmember elected by the City Council at the first regular meeting after each election of Councilmembers and/or Mayor. The Deputy Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor and Mayor Pro-Tem, and in this capacity shall have the rights conferred upon the Mayor.

SECTION 3.06 Vacancies, Forfeiture and Filling of Vacancies

(A) The office of a Councilmember or the Mayor shall become vacant upon his/her death, resignation, forfeiture of, or removal from office by any manner authorized by law.

(B) Any person on the City Council who ceases to possess the required qualifications for office or who is convicted of a felony or is convicted of violating any State laws regulating conflicts of interest of municipal officers shall forfeit his/her office. Every forfeiture shall be declared and enforced by the City Council.

(C) If there is a vacancy in the office of Mayor, a new Mayor shall be elected as provided by state law.

(D) A vacancy in the office of any Councilmember shall be filled by special election in accordance with the TEXAS ELECTION CODE. If the vacated office is that of Mayor Pro-Tem (or Deputy Mayor Pro-Tem), the City Council shall elect a new Mayor Pro-Tem (or Deputy Mayor Pro-Tem) at the next regular meeting.

(E) Vacancies filled by special election shall be for the remainder of the term that was vacated.

SECTION 3.07 Duties and Powers of the City Council

(A) The City Council shall have all powers necessary and incident to the proper discharge of the duties imposed upon it and is hereby invested with all powers necessary to carry out the terms of this Charter; it being intended that the City Council and Mayor shall have and exercise all powers enumerated in this Charter or implied thereby and all powers that are or hereafter may be granted to municipalities by this Charter, the Constitution or laws of the State of Texas.

(B) Any member of the City Council shall have the unabridged right to place an item on the agenda of a duly convened meeting of the Council; nothing contained in this Charter shall be construed to limit or circumscribe such right.

(C) During each calendar year, the City Council shall undertake one (1) annual review of the performance of the City Manager in writing. The City Manager shall be responsible for

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AG12-010

Consider election of a Deputy Mayor Pro Tempore.

Background

Section 3.05 (b) of the City Charter provides for the election of a Mayor Pro Tem and a Deputy Mayor Pro Tem. Section 3.05 (d) of the City Charter provides that the Deputy Mayor Pro Tem shall act as Mayor during the disability or absence of the Mayor and Mayor Pro Tem and in this capacity shall have the rights conferred upon the Mayor.

Options

Council may elect a Deputy Mayor Pro Tem at this time or defer the action until the next regular meeting.

Recommendation

No staff recommendation. This is a matter for Council decision.

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

Date: May 11, 2012

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AG12-011

The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney to seek legal advice on pending litigation and/or settlement concerning Cause No. 11-10174 Con-Way Truckload, Inc. vs. the City of Lancaster.

Executive session matter.

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

Date: May 14, 2012

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AG12-012

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

Background

This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.

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

Date: May 14, 2012