



NOTICE OF REGULAR MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS



211 N. HENRY STREET, LANCASTER, TEXAS

Monday, June 11, 2012 – 7:00 P.M.

CALL TO ORDER

INVOCATION: MINISTERIAL ALLIANCE

PLEDGE OF ALLEGIANCE: COUNCILMEMBER STANLEY JAGLOWSKI

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

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

- 1C. Consider approval of minutes from the City Council Regular Meeting held May 21, 2012.
- 2C. Consider Resolution 2012-06-44 approving the terms and conditions of the City owned T-hangar non-commercial lease from building 680 at the Lancaster Regional Airport.
- 3C. Consider Resolution 2012-06-45 approving the terms and conditions of a Local Project Advance Funding Agreement made by and between the State of Texas, acting through the Texas Department of Transportation and the City of Lancaster for the improvements of the bridge on Third Street at Keller Branch.

PUBLIC HEARING:

4. Conduct a public hearing and consider an ordinance amending the Comprehensive Zoning Ordinance and Map of the City of Lancaster, Texas, as heretofore amended, by granting a change in zoning from Commercial Highway District (CH) to Commercial Highway District - Specific Use Permit (CH-SUP) to grant a Specific Use Permit to allow for a minor automotive repair use on property generally located on the southwest corner of the intersection of Daniieldale Road and Balomede Avenue and more commonly known as 3300 Daniieldale Road and 3359 Balomede Avenue.

ACTION:

5. Consider Resolution 2012-06-46 approving and authorizing publication of a notice of intention to hold a Public Hearing to receive comments on updates to the City of Lancaster roadway and Water/Wastewater Master Plans and Impact Fees.

EXECUTIVE SESSION:

6. The City Council shall convene into closed executive session pursuant to;
 - (A) 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; and
 - (B) Section § 551.072 of the TEXAS GOVERNMENT CODE to deliberate the purchase, exchange, lease, or value of real property north of Pleasant Run Road, east of Houston School Road and south of IH-20.
7. 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 June 7, 2012 @ 5:00 pm 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
June 11, 2012

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AG12-001

Consider approval of minutes from the City Council Regular Meeting held May 21, 2012.

Background

Attached for your review and consideration are minutes from the:

- City Council Meeting held May 21, 2012

Prepared and submitted by:

Dolle K. Downe, City Secretary
May 31, 2012

MINUTES

LANCASTER CITY COUNCIL MEETING OF MAY 21, 2012

The City Council of the City of Lancaster, Texas, met in Special session in the Council Chambers of City Hall on May 21, 2012 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Walter Weaver
Stanley Jaglowski
Mayor Pro Tem James Daniels
LaShonjia Harris, new councilmember seated
Deputy Mayor Pro Tem Nina Morris

Councilmember Absent:

Marco Mejia

City Staff Present:

Opal Mauldin Robertson, City Manager
Cheryl Womble, Executive Assistant to City Manager
Amber Dorsey, Community Relations Assistant
Ed Brady, Economic Development Director
Sean Johnson, Parks and Recreation Director
Dori Lee, Human Resources Director
Larry Flatt, Police Chief
Thomas Griffith, Fire Chief
Sheree Haynes, Finance Director
Rona Stringfellow Govan, Managing Director Public Works / Development Services
Shwetha Pandurangi, City Engineer
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 May 21, 2012.

Invocation:

Pastor Clyde Hairston with Harvest Time Church gave the invocation.

Pledge of Allegiance:

Councilmember Weaver led the pledge of allegiance.

Presentation:

Mayor Knight presented a Certificate of Appreciation to students of the Lancaster High School Audio/Visual Program and teacher Kimberly Simpson thanking them for their support and efforts during the tornado.

Citizens Comments:

Girl Scouts Troop of Lancaster presented the City with items collected for citizens affected by the tornado. Mayor Knight thanked the girl scouts for their efforts to help those in need.

Jackie Gorena with Irving I.S.D. and students from Stipes and Britain Elementary presented a check to help with tornado relief in the City. Mayor Knight thanked the elementary students and their sponsor for their efforts and generous donation.

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.

City Secretary Downe read Resolution 2012-05-38 canvassing the returns and declaring the results of the General Election held on May 12, 2012 as follows:

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; and

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:

	<u>EARLY VOTING</u>	<u>ELECTION DAY</u>	<u>BY MAIL</u>	<u>ADA</u>	<u>PROVISIONAL VOTING</u>	<u>TOTAL VOTES</u>	<u>%</u>
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.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve Resolution 2012-05-38 canvassing the returns and declaring the results of the General Election held on May 12, 2012. The vote was cast 5 for, 0 against [Mejia absent; Harris not seated at this time].

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

City Secretary Downe administered the Oath of Office for LaShonjia Harris and presented the Certificate of Election.

Councilmember Harris commented that it is an honor to serve, and that she is following in huge footsteps of former Councilmember Clyde Hairston. Councilmember Harris thanked her supporters and particularly her neighbors in Millbrook East, stating that without their support she would not be standing here today. Councilmember Harris stated that she will work diligently to serve the district and community.

City Secretary Downe administered the Oath of Office for Marcus Knight and presented the Certificate of Election.

Mayor Knight stated that he was grateful to have another opportunity to serve and truly cherishes the opportunity to work with this community. Mayor Knight acknowledged several important people starting with his wife, Tengemara, and said to her that there is no way he could have done it without her; introduced his children Avery, Sanaa and Mia, and stated how proud he is of his family and that they could share this experience with him. Mayor Knight introduced his parents, Richard and Mavis Knight, and thanked them. Mayor Knight acknowledged Mark Beasley, his campaign treasurer, and stated that he appreciated his support and hard work. Mayor Knight recognized several others who have been strong supporters and closed saying that he is proud to serve this community in a manner that everyone will be proud of.

Mayor Knight commented that usually this meeting is centered around seating newly elected councilmembers but since there is so much business to conduct, asked Council to consider a brief recess so that newly elected councilmembers could visit with family and supporters.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Weaver, to take a brief recess. Deputy Mayor Pro Tem Morris asked Mayor Pro Tem Daniels to amend the motion to a ten minute recess; he agreed and the amended motion was seconded by Councilmember Jaglowski. The vote was cast 6 for, 0 against [Mejia absent].

City Council recessed at 7:23 p.m. and reconvened at 7:35 p.m.

Consent Agenda:

City Secretary Downe read the consent agenda.

- 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.**

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Weaver, to approve consent items 3C - 6C. The vote was cast 6 for, 0 against [Mejia absent].

- 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.**

City Manager Mauldin Robertson outlined the request for denial of Atmos Mid-Tex's filing for an increase for residential, commercial, industrial and transportation rates applicable to service within the City.

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Daniels, to approve Resolution 2012-05-42 denying Atmos Energy Corp., Mid-Tex Division's requested rate change. The vote was cast 6 for, 0 against [Mejia absent].

- 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.**

City Manager Mauldin Robertson stated that participation in the Atmos Cities Steering Committee provides resources for the proper technical and legal review of rate related cases and other matters with regard to Atmos Energy activities.

MOTION: Councilmember Weaver made a motion, seconded by Councilmember Jaglowski, to approve Resolution 2012-05-43 authorizing continued participation with the Atmos Cities Steering Committee; and 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. The vote was cast 6 for, 0 against [Mejia absent].

9. Consider election of a Mayor Pro Tempore.

10. Consider election of a Deputy Mayor Pro Tempore.

Mayor Knight suggested that since a member of Council was absent, Council may want to postpone the election of a Mayor Pro Tempore and Deputy Mayor Pro Tempore.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Weaver, to defer election of a Mayor Pro Tem until a special meeting to be held June 18, 2012. A roll call vote was cast 4 for, 2 against [Jaglowksi, Morris] [Mejia absent].

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Weaver, to defer election of a Deputy Mayor Pro Tem until a special meeting to be held June 18, 2012. A roll call vote was cast 4 for, 2 against [Jaglowksi, Morris] [Mejia absent].

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.

City Manager Mauldin Robertson stated that an executive session is not necessary at this time.

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

The meeting was adjourned at 7:45 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL
Agenda Communication for
June 11, 2012

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AG12-002

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

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

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (building 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for Community T-hanger 680-117 (956 square feet) for a tenant, Mr. Philip Shepard.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement and resolution was reviewed and approved as to form by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this small size Community T-hangar is \$170.00 per month.
- **Public Information** – There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
- Exhibit "A" Lease Agreement

Prepared and submitted by:
Mark Divita, Airport Manager

Date: May 5, 2012

RESOLUTION NO. 2012-06-44

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

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

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

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

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of June 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER REGIONAL AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this _____ day of _____, 20 _____, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and Philip Shepard, (LESSEE"), evidences the following:

I.

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

1. **Premises:** Hangar Row and Suite **680-117**, located at the Airport, and consisting of approximately **956** square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the _____ day of _____, 20 _____. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$170.00** per month, due and payable in advance on the first day of each month.

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

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

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

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

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

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

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

II.

STANDARD TERMS AND PROVISIONS

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

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

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

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

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

made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LESSEE: Philip Shepard

6456 Runnemedede Ln.

Dallas, TX 75214

214-821-5294

Phil737shep@gmail.com

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

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

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

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

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

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

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

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

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL
Agenda Communication for
June 11, 2012

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AG12-003

Consider a resolution approving the terms and conditions of a Local Project Advance Funding Agreement made by and between the State of Texas, acting through the Texas Department of Transportation, and the City of Lancaster for the improvements of the bridge on Third Street along Keller Branch.

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

Goal: Enhanced City Infrastructure and Facilities

Background

The City owns the bridge on Third Street along Keller Branch, which is currently closed to thru traffic due to severe surface and structural damage. The improvement costs are estimated by Texas Department of Transportation (TxDOT) to be \$339,065.25. The City has acquired federal grant funds managed by TxDOT for a sum of \$305,158.73.25 (90% of project cost). The remainder of the cost of \$33,906.52 (10% of the total project cost) is to be provided by the City. The Scope of Work includes the replacement and rehabilitation of the bridge on Third Street along Keller Branch. The project will include preliminary engineering study followed by review and final design which will be followed by construction. In order to proceed, TxDOT requires execution of the attached Local Project Advance Funding Agreement (LPAFA).

Considerations

- **Operational** - The overall schedule for design and construction is twelve to eighteen months.
- **Legal** - The City Attorney has reviewed and approved as to form the proposed resolution and the LPAFA for professional services.
- **Financial** – Funding is provided by the Street Maintenance Budget. The City's cost share commitment is estimated by TxDOT at \$33,906.53 as indicated on Attachment D in the attached LPAFA. The initial payment of \$7,500 to TxDOT is required 30 days in advance of design. The second payment of \$26,406.53 to TxDOT is required 45 days in advance of project letting for construction. An additional \$10,000 has been budgeted for any project cost overruns/contingencies that will be paid for by the City.

Estimated City cost share tabulation:

\$ 7,500.00	1 st payment
\$26,406.53	2 nd payment
<u>\$10,000.00</u>	contingencies
\$43,906.53	

Options/Alternatives

1. City Council may approve the resolution and LPAFA Agreement as presented.
2. City Council may reject the LPAFA Agreement and provide direction to staff.

Recommendation

Staff recommends approval of the resolution and LPAFA Agreement.

Attachments

- Resolution
- LPAFA Agreement

Prepared and submitted by:

Shwetha Pandurangi, PE, CFM, City Engineer

Date: June 1, 2012

RESOLUTION NO. 2012-06-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LOCAL PROJECT ADVANCE FUNDING AGREEMENT MADE BY AND BETWEEN THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION, AND THE CITY OF LANCASTER, ACTING BY AND THROUGH ITS DULY AUTHORIZED OFFICERS, FOR THE IMPROVEMENTS OF THE BRIDGE AT THIRD STREET ALONG KELLER BRANCH; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Government Code Chapter 791 and Texas Transportation Code §201.209 and Chapter 221, authorizes the State to contract with municipalities and political subdivisions; and

WHEREAS, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interests of the City to enter into an agreement with the Texas Department of Transportation for the improvements of the bridge at Third Street along Keller Branch;

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

SECTION 1. The City Council of the City of Lancaster, Texas, hereby approves the Local Project Advance Funding Agreement, attached hereto and incorporated herein by reference as Exhibit "A", for the Improvements of the Bridge at Third Street along Keller Branch.

SECTION 2. The City Manager of the City of Lancaster is authorized to execute the appropriate documents to implement the agreement.

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

SECTION 4. Should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas on this the 11th day of June 2012.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

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STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System**

THIS Local Project Advance Funding Agreement (the LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State," and the City of Lancaster acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, Title 23 United States Code Section 144 authorizes federal funds to assist the states in the replacement or rehabilitation of deficient bridges located on public highways, roads, and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Local Government owns one or more bridges on a public road or street located at 3rd Street at Keller Branch, and these bridges are included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order Number 112696, dated May 26, 2011; and

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance, which is attached to and made a part of this agreement as Attachment A for the development of the specific programmed replacement or rehabilitation project, called the "Project". The Project is identified in the location map shown as Attachment B, which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth, it is agreed as follows:

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AGREEMENT

1. Period of this Agreement

The period of this LPAFA is as stated in the Master Agreement, without exception.

2. Termination of this Agreement

Termination of this LPAFA shall be under the conditions as stated in the Master Agreement. The LPAFA may be terminated by the State if the project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds.

3. Amendments

Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.

4. Remedies

Remedies for defaults under this LPAFA shall be made as described in the Master Agreement, without exception.

5. Scope of Work

The scope of work for this LPAFA is the replacement or rehabilitation of the bridges identified in the recitals of this LPAFA. This replacement or rehabilitation shall be accomplished in the manner described in the plans, specifications, and estimates developed in accordance with this LPAFA and which are incorporated in this agreement by reference.

6. Right of Way and Real Property

- A. The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.
- B. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the sites of these bridges and adjacent right of way or relocation right of way to perform surveys, inspections, construction, and other activities necessary to replace or rehabilitate these bridges and approaches.

7. Adjustment of Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted,

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removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this LPAFA.
- B. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment D, Estimate of Direct Costs.
- C. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment. The Local Government does not need to provide certifications to the State concerning this matter.
- D. The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

9. Compliance with Texas Accessibility Standards and ADA

Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.

10. Architectural and Engineering Services

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

11. Construction Responsibilities

Construction responsibilities will be carried out by the State, as stated in the Master Agreement, without exception.

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12. Project Maintenance

Project maintenance will be undertaken as provided for in the Master Agreement, without exception.

13. Local Project Sources and Uses of Funds

- A. A Project Cost Estimate is provided in Attachment D, Estimate of Direct Costs.
- B. A source of funds estimate is also provided in Attachment D. Attachment D shows the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- C. The Local Government participation is based upon the State's estimate of the eligible work at the time this LPAFA is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information.
- D. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- E. After execution of this LPAFA, but thirty (30) days prior to the performance of any work by the State, the Local Government shall remit to the State the amount specified in Attachment D as the local contribution for preliminary engineering. The Local Government will pay, at a minimum, its funding share for this estimated cost of preliminary engineering.
- F. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's

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estimated construction oversight and construction costs and any other costs owed.

- G. If, at the completion or termination of the Project, the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- H. Whenever funds are paid by the Local Government to the State under this LPAFA, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to the State Project.
- I. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- J. The State will not pay interest on any funds provided by the Local Government.
- K. The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this LPAFA.
- L. The amounts shown on Attachment D are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the federal HBRRP. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
- M. Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to N/A percent (N/A%).
- N. The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this LPAFA.
- O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract

or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)

- A. **Applicability.** If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment D, Estimate of Direct Costs, but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a PWP and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the EMPs. Attachment C to this LPAFA shows a list of EMPs under this LPAFA.
- B. **Project Cost Estimate for PWP.** Attachment D to this LPAFA shows the estimated direct preliminary engineering, construction engineering, and construction costs for the PWP in total and local match fund participation being waived or partially waived.
- C. **Credit against EMP Work.** Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit will be reflected in Attachment D to this LPAFA.
- D. **Responsibilities of the Local Government on EMPs**
 - 1. The Local Government shall be responsible for all engineering and construction, related costs, and compliance with all applicable state and federal environmental regulations and permitting requirements.

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2. The structural or safety improvement work on the EMPs shall be performed subsequent to the final execution of this LPAFA but within three (3) calendar years after the earliest contract award of the related PWP.
 3. Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMPs shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related to those items, whichever is longer. A notice of completion of work on the EMPs shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMPs. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.
 4. Failure by the Local Government to adequately complete the EMPs within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- E. Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State one-hundred percent (100%) of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and one-hundred percent (100%) of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

15. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

State: District Engineer
Texas Department of Transportation
4777 W. Highway 80
Mesquite, Texas 75150-6643

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Local Government: City Manager
City of Lancaster
211 N. Henry Street
Lancaster, Texas 75146

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

16. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

17. Lobbying Certification

The parties to this LPAFA reaffirm that no federal funds were used to lobby for Project funds, but that if any lobbying occurred, it has been reported to the State, pursuant to the requirements of the Master Agreement.

18. Incorporation Master Agreement Provisions

This LPAFA incorporates all of the governing provisions of the Master Agreement in effect on the date of final execution of this LPAFA, unless such Master Agreement provision is specifically excepted in this agreement.

19. Local Government Restrictions

In the case that the local government has an existing, future, or proposed local ordinance, commissioners court order, rule, policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

20. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

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21. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

22. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in

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Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

23. Federal Funding Accountability and Transparency Act Requirements

- A.** Any recipient or sub-recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.
- B.** For sub-awards greater than \$25,000, the Local Government, as a recipient of federal funding, agrees that it shall:
1. Obtain and provide to the State and the federal government, a Central Contracting Registry (CCR) number with the federal government (Federal Acquisition Regulation, Part 4, Sub-part 4.1100). The CCR number may be obtained by visiting the CCR web-site whose address is:
<https://www.bpn.gov/ccr/default.aspx>;
 2. Obtain and provide to the State and the federal government, a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top executives to the State and Federal government if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and
 - ii. Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

CSJ #0918-47-062
District #18- Dallas
Code Chart 64 #23850
Project: 3rd Street At Keller Branch
NBI Structure #180570M01230001
Federal Highway Administration
CFDA #20.205
Not Research and Development

24. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$500,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at http://www.txdot.gov/contact_us/audit.htm.
- C. If expenditures are less than \$500,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

25. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

CSJ #0918-47-062
District #18- Dallas
Code Chart 64 #23850
Project: 3rd Street At Keller Branch
NBI Structure #180570M01230001
Federal Highway Administration
CFDA #20.205
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

By: _____
Opal Mauldin-Robertson
City Manager

Date: _____

THE STATE OF TEXAS

Gregg Freeby, P.E.
Director, Bridge Division
Texas Department of Transportation

Date

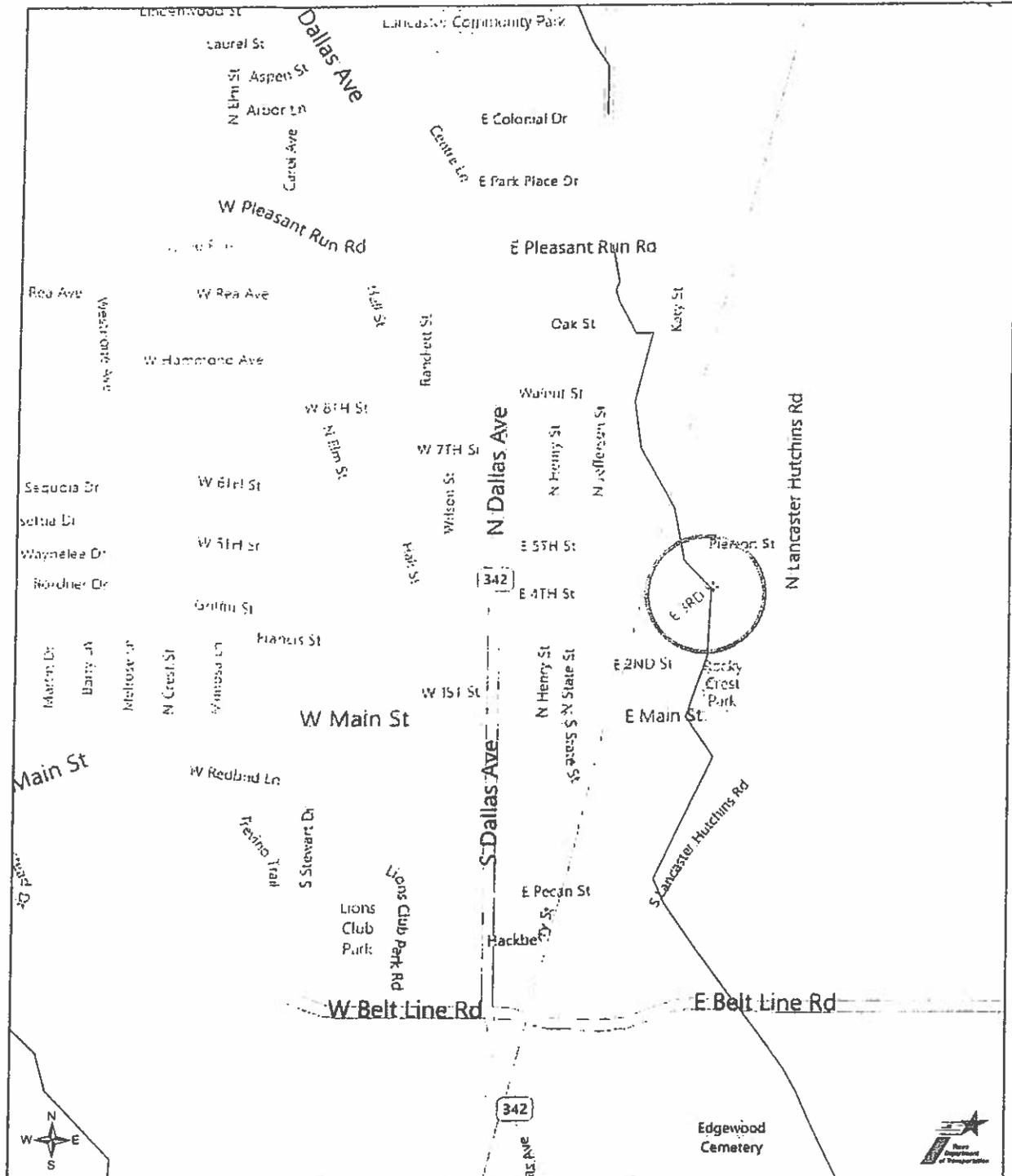
CSJ #0918-47-062
District #18- Dallas
Code Chart 64 #23850
Project: 3rd Street At Keller Branch
NBI Structure #180570M01230001
Federal Highway Administration
CFDA #20.205
Not Research and Development

ATTACHMENT A
RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

SEE ATTACHED

CSJ #0918-47-062
District #18- Dallas
Code Chart 64 #23850
Project: 3rd Street At Keller Branch
NBI Structure #180570M01230001
Federal Highway Administration
CFDA #20.205
Not Research and Development

ATTACHMENT B PROJECT LOCATION MAP



CSJ #0918-47-062
 District #18- Dallas
 Code Chart 64 #23850
 Project: 3rd Street At Keller Branch
 NBI Structure #180570M01230001
 Federal Highway Administration
 CFDA #20.205
 Not Research and Development

**ATTACHMENT D
 ESTIMATE OF DIRECT COSTS**

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) \$75,000.00	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation		(3) \$7,500.00
Construction	\$240,409.00	
Engineering and Contingency (E&C)	\$23,656.25	
The Sum of Construction and E&C	(2) \$264,065.25	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		(4) \$26,406.53
Amount of Advance Funds Paid by Local Government *		(5) \$33,906.53
Amount of Advance Funds to be Paid by Local Government *		(6) \$0.0
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6) \$N/A
Total Project Direct Cost	(1+2) \$339,065.25	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown on Attachment C. N/A

LANCASTER CITY COUNCIL
Agenda Communication for
June 11, 2012

4

AG12-004

Conduct a Public Hearing and consider an ordinance amending the Comprehensive Zoning Ordinance and Map of the City of Lancaster, Texas, as heretofore amended, by granting a change in zoning from Commercial Highway District (CH) to Commercial Highway District – Specific Use Permit (CH-SUP) to grant a Specific Use Permit to allow for a minor automotive repair use on property generally located on the southwest corner of the intersection of Danieldale Road and Balomede Avenue, and more commonly known as 3300 Danieldale Road and 3359 Balomede Avenue, Lancaster, Texas.

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

Goal: Quality Development

Background

The applicant is requesting a Specific Use Permit (SUP) for property located in the Commercial Highway zoning district. The proposed use is for a minor auto repair shop. Minor auto repair uses are allowed but must obtain a SUP in commercial highway zoning because of the potential adverse impact it could have to the highway corridor.

The applicant is requesting this SUP to be allowed to convert an existing vacant building into a minor auto repair use primarily for the repair of damaged bumpers and to deliver them to retail outlets. The applicant is proposing to screen any outside storage of bumpers with the existing fencing material of chain link and slats currently located on the property. The property has the appropriate amount of parking that is required by the Lancaster Development Code (LDC) and a striped fire lane as required by the Fire Code.

In staff's analysis, it is noted that the subject property is not located on the highway service road. There are no proposed uses of hazardous chemicals or other fluids that would require special drainage or storage on the subject property. There are two points of access for the subject property giving it adequate access/egress points. Adjacent properties include a major auto repair shop and an equipment rental facility. Therefore, it has been determined that the applicants' proposal would not deter from the area.

1. **Location and Size:** The property is generally located at the southwest corner of the intersection of Daniieldale Road and Balomede Avenue and addressed as 3300 Daniieldale Road and 3359 Balomede Avenue. The property under consideration is approximately 1.61 acres of land.
2. **Current Zoning:** The subject property is currently zoned CH – Commercial Highway.
3. **Adjacent Properties:**
 North: CH, Commercial Highway District (vacant building)
 South: CH, Commercial Highway District (vacant property)
 East: CH, Commercial Highway District (vacant property)
 West: CH – SUP, Commercial Highway District with a Specific Use Permit for Major Auto Repair and Commercial Highway District with a Specific Use Permit for an Equipment Rental and Storage Yard (Lancaster Tire Service)
4. **Comprehensive Plan Compatibility:** The Comprehensive Plan identifies this site as suitable for commercial uses. This proposal is compatible with the Comprehensive Plan.
5. **Public Notification:** The Public Hearing notice appeared in the Focus Daily Newspaper on April 13, 2012 and 17 property owner notifications were mailed out on March 23, 2012. One (1) property owner notification has been returned in favor of the proposal. Zoning signs were placed on the subject property on March 28, 2012, satisfying the noticing requirement for this request.
6. **Case/Site History:**

Date	Body	Action
04/24/12	P&Z	Z12-03 SUP for Minor Auto Repair received unanimous vote (4-0) to recommend approval of the SUP with a 2-year renewal

Considerations

- **Operational** - This is a request for a Specific Use Permit (SUP) to develop a Minor Auto Repair use. The applicant is seeking to develop a vacant property in accordance with the Zoning Ordinance regulations.
- **Legal** - The City Attorney has prepared an ordinance for the proposed development.
- **Financial** - There are no financial considerations for this case.
- **Public Information** - The Public Hearing notice appeared in the Focus Daily Newspaper on April 13, 2012 and 17 property owner notifications were mailed out on March 23, 2012. One (1) property owner notification has been returned in favor of the

proposal. Zoning signs were placed on the subject property on March 28, 2012, satisfying the noticing requirement for this request.

Options/Alternatives

1. Approve the SUP request, in accordance with staff and/or P&Z recommendations.
2. Approve the SUP request with modifications and state those modifications.
3. Approve the SUP request, as proposed.
4. Postpone consideration of this item.
5. Deny the SUP request.

Recommendation

P&Z

At the April 24, 2012 meeting, the Planning and Zoning Commission made a recommendation to approve the SUP request for a Minor Auto Repair use with a provision to review the SUP every two years to ensure the provisions required are being adhered to. Due to the number of auto-related uses clustered in the area, P&Z believes review of this use is warranted. This is not a sunset provision as it does not call for a termination of the use after two years, only a review for compliance.

STAFF

Staff recommends **approval** of the item as proposed by the applicant and in conformance with the Lancaster Development Code.

Attachments

- Ordinance
- Property Owner notification in support
- Planning and Zoning Commission Agenda Communication/with attachments (April 24, 2012)
- Unapproved Planning and Zoning Commission Meeting Minutes Excerpt (April 24, 2012)

Prepared and submitted by:
Nathaniel Barnett, Senior Planner

Date: May 30, 2012

ORDINANCE NO. 2012-06-45

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF LANCASTER, TEXAS, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM COMMERCIAL HIGHWAY DISTRICT (CH) TO COMMERCIAL HIGHWAY DISTRICT – SPECIFIC USE PERMIT (CH-SUP) TO GRANT A SPECIFIC USE PERMIT TO ALLOW FOR A MINOR AUTOMOTIVE REPAIR USE ON PROPERTY GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF DANIELDALE ROAD AND BALOMEDE AVENUE, AND MORE COMMONLY KNOWN AS 3300 DANIELDALE ROAD AND 3359 BALOMEDE AVENUE, LANCASTER, TEXAS; PROVIDING FOR SPECIAL CONDITIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Lancaster, in compliance with the laws of the State of Texas with references to the granting of zoning classification changes, have given the requisite notices by publication and otherwise, and have held due hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof; the said governing body is of the opinion that the request made in Zoning Case No. Z12-03 should be approved, and in the exercise of legislative discretion have concluded that the Comprehensive Zoning Ordinance and Official Zoning Map for the City of Lancaster, Texas should be amended.

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

SECTION 1. That the Comprehensive Zoning Ordinance and Map of the City of Lancaster, Texas, duly passed by the governing body of the City of Lancaster, Texas, as heretofore amended, be and the same is hereby amended to grant a change in zoning from Commercial Highway District (CH) to Commercial Highway District-Specific Use Permit (CH-SUP) to grant and allow for a minor automotive repair use on property generally located on the southwest corner of the intersection of Danieldale Road and Balomedede Avenue and more commonly known as 3300 Danieldale Road and 3359 Balomedede Avenue, Lancaster, Texas (the "Property").

SECTION 2. That a Specific Use Permit is hereby granted to allow for a minor automobile repair use on the subject Property subject to the following special conditions:

A. The SUP is limited to the use and operation of the site as currently configured. Expansion of the existing building or substantial alteration that would change the building occupancy or intensity of use shall require reconsideration and approval of this SUP.

B. There shall be no overnight outside storage of any automobiles or any tools or materials related to minor automotive repair (including tires) on the subject Property.

SECTION 3. That the above Property shall be used only in the manner and for the purposes provided by the Development Code of the City of Lancaster, as heretofore amended and as amended herein.

SECTION 4. That all provisions of the ordinances of the City of Lancaster in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other provisions of the ordinances of the City of Lancaster not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. If any article, paragraph, subdivision, clause or provision of this ordinance or the Lancaster Development Code, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision thereof, or of the Lancaster Development Code, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 6. Any person, firm or corporation violating any of the provisions of this ordinance or the Lancaster Development Code of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of Two Thousand (\$2,000.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of June 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



City of Lancaster Planning Division



NOTICE OF PUBLIC HEARING

TO: Property Owner

RE: Application to re-zone property from CH – Commercial Highway to CH – Commercial Highway with an SUP for a minor automotive repair use

LOCATION: 3300 Daniieldale Road and 3359 Balomede Avenue. A location map depicting the property and the 200-ft notification area is attached for reference. This notice and the notification area are required under Chapter 211.007 of the Texas Local Government Code.

EXPLANATION OF REQUEST: The Applicant requests to rezone the subject property from Commercial Highway to Commercial Highway with a Specific Use Permit for an automotive repair use doing business as Bumper World. The business will store and repair bumpers.

- I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:
- I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS:

SIGNATURE:

[Handwritten Signature]

ADDRESS:

614 Griffith Ave, Terrell, TX 75160

Your written comments are being solicited in the above case. Additional information is available in the Planning Division, 700 East Main Street, Lancaster, Texas 75146. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on Tuesday, April 3, 2012 at 7:00 pm. The City Council will hold a public hearing and take action on the above case at their meeting on Monday, April 23, 2012 at 7:00 pm. Meetings are typically held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

Please legibly respond in ink. If the signature and/or address is missing, your comments will not be recorded. Your response must be received in the Planning Division by 5 p.m. on Monday, April 2, 2012 for your comments to be reviewed by the Planning and Zoning Commission. Responses received after that time will be forwarded to the P&Z Commission and/or City Council at the public hearing.

If you have any questions concerning this request, please contact the Planning Division
Phone 972-218-1240
FAX 972-275-1823

RETURN BY FAX OR MAIL
City of Lancaster, Planning Division
700 East Main Street
Lancaster, TX 75146

PLANNING & ZONING COMMISSION

Agenda Communication for
April 24, 2012

#4

Z12-03 Conduct a Public Hearing and Consider a Request for a Specific Use Permit for a Minor Auto Repair use for Property Generally Located at the Southwest Corner of the intersection of Danieldale Road and Balomede Avenue and addressed as 3300 Danieldale Road and 3359 Balomede Avenue.

Background

1. **Location and Size:** The property is generally located at the southwest corner of the intersection of Danieldale Road and Balomede Avenue and addressed as 3300 Danieldale Road and 3359 Balomede Avenue. The property under consideration is approximately 1.61 acres of land.
2. **Current Zoning:** The subject property is currently zoned CH – Commercial Highway.
3. **Adjacent Properties:**
North: CH, Commercial Highway District (vacant building)
South: CH, Commercial Highway District (vacant property)
East: CH, Commercial Highway District (vacant property)
West: CH – SUP, Commercial Highway District with a Specific Use Permit for Major Auto Repair and Commercial Highway District with a Specific Use Permit for an Equipment Rental and Storage Yard (Lancaster Tire Service)
4. **Comprehensive Plan Compatibility:** The Comprehensive Plan identifies this site as suitable for commercial uses. This proposal is compatible with the Comprehensive Plan.
5. **Public Notification:** The Public Hearing notice appeared in the Focus Daily Newspaper on March 23, 2012 and 17 property owner notifications were mailed out on March 23, 2012. One (1) property owner notification has been returned in favor of the proposal. Zoning signs were placed on the subject property on March 28, 2012, satisfying the noticing requirement for this request.
6. **Case/Site History:** N/A

Considerations

The purpose of the SUP process is to authorize and regulate certain uses allowed in a particular zoning designation, yet ensure that such uses are not detrimental to surrounding property, and are consistent with the stated purpose of the zoning district. An SUP can address issues regarding conditions of operation, location, sign display, timeframe, etc. Minor auto repair uses are required to obtain an SUP in commercial highway zoning because of the potential negative impacts they may have to the highway corridor with regards to aesthetics, noise, and/or odors.

The applicant is requesting a Specific Use Permit (SUP) for a minor auto repair shop to restore damaged bumpers and deliver them to retail outlets. The subject property can be accessed from Danieldale and Balomede and the existing access drive is striped for a 24' fire lane. It has existing parking with the appropriate number of spaces to meet the parking requirement. The subject property has a chain link fence with slats already in existence to provide screening for any outdoor storage that may occur. It also has the required screened dumpster.

Staff has concluded that the subject property meets the intent and regulations of the Lancaster Development Code for renovation. The proposed use is adjacent to properties on the west that already have SUPs for a major auto repair use and an equipment rental facility. Thus, it has been determined by Staff that the proposed use will not negatively impact the Interstate 35E corridor.

Options/Alternatives

- 1) Recommend approval, as requested.
- 2) Recommend approval in accordance with modifications and said modifications shall be stipulations of approval.
- 3) Postpone consideration.
- 4) Recommend denial of the request.

Recommendation

Staff recommends **approval** of the item (Option 1).

Approval Process

Upon recommendation by the Planning and Zoning Commission, the City Council will conduct a public hearing and render a final decision for this item at their April 23, 2012, regular meeting.

Attachments

Site Plan
Photos of existing property
Property Owner Notification map
Property Owner Notification listing

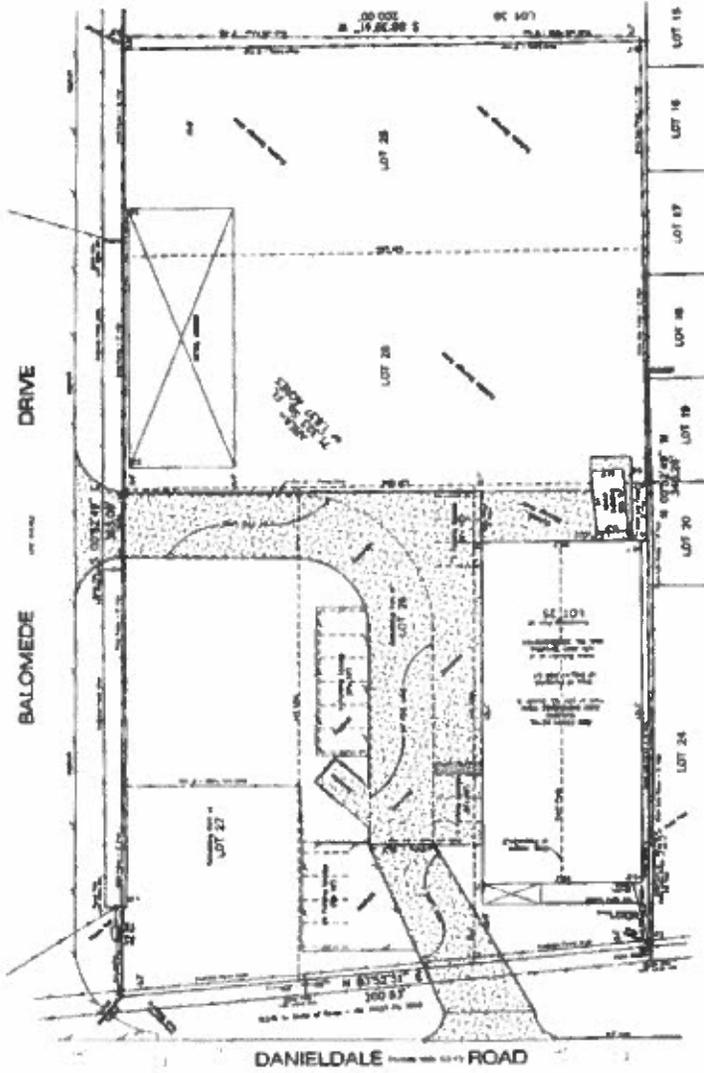
Planning and Zoning Commission
Agenda Communication
April 24, 2012
Page 3

Prepared By and Submitted By:

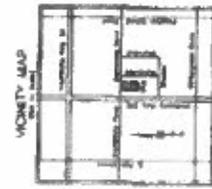
Nathaniel Barnett, Senior Planner

Date: April 19, 2012

SITE PLAN
 3300 Danielsdale Road
 February 20, 2012



F. Theodor Zornig
 Department
 MAR 2 2012
 Approved
 Accepted



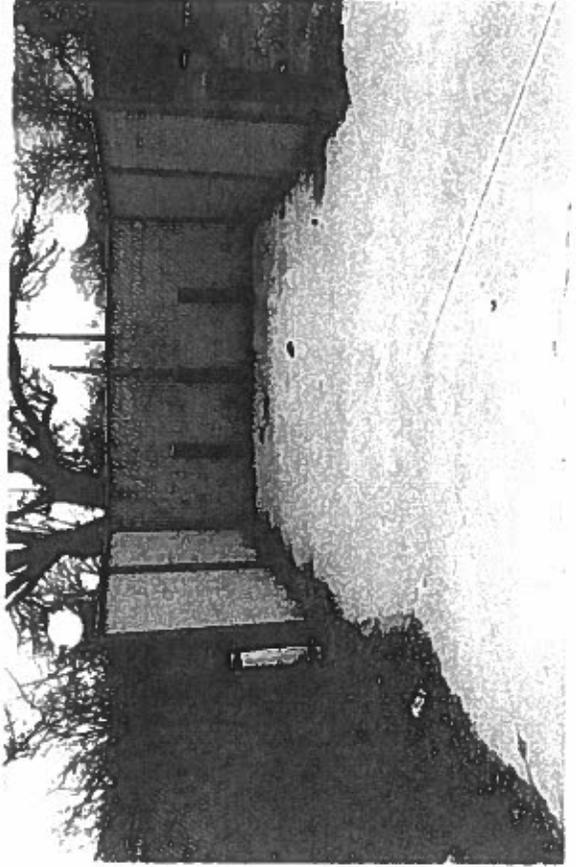
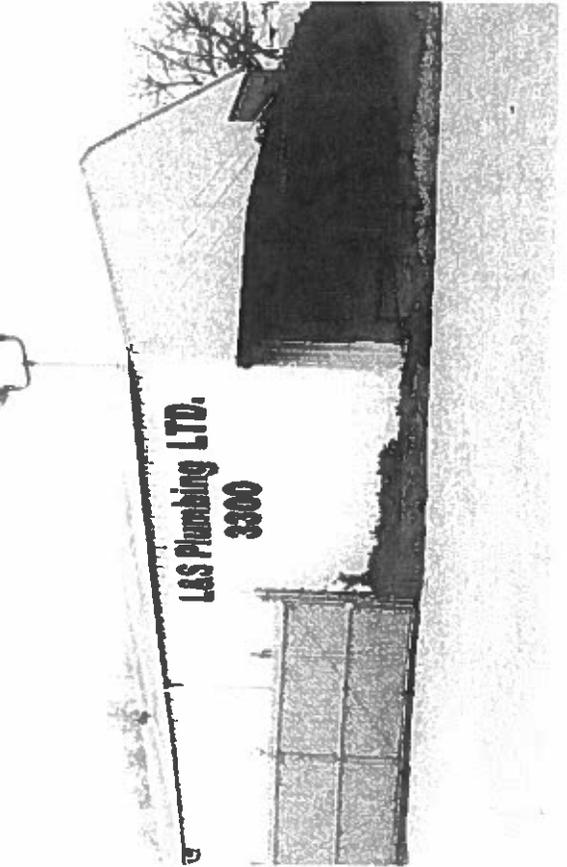
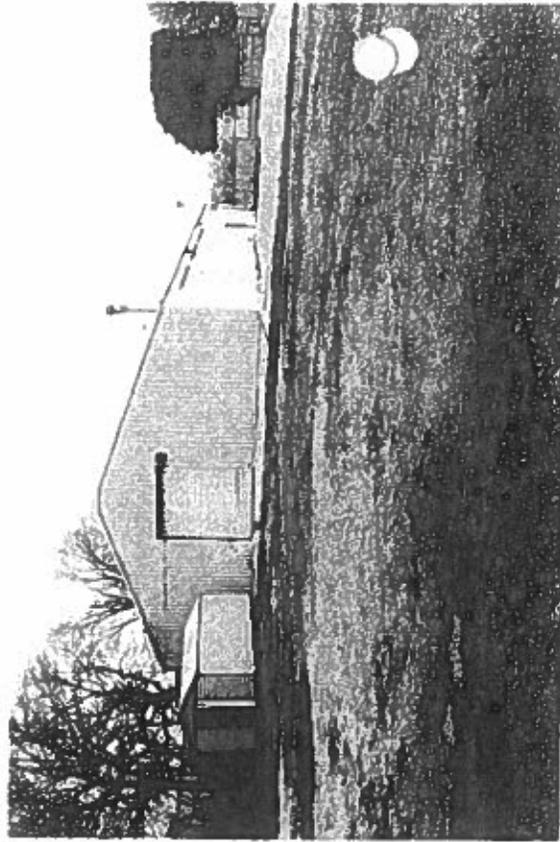
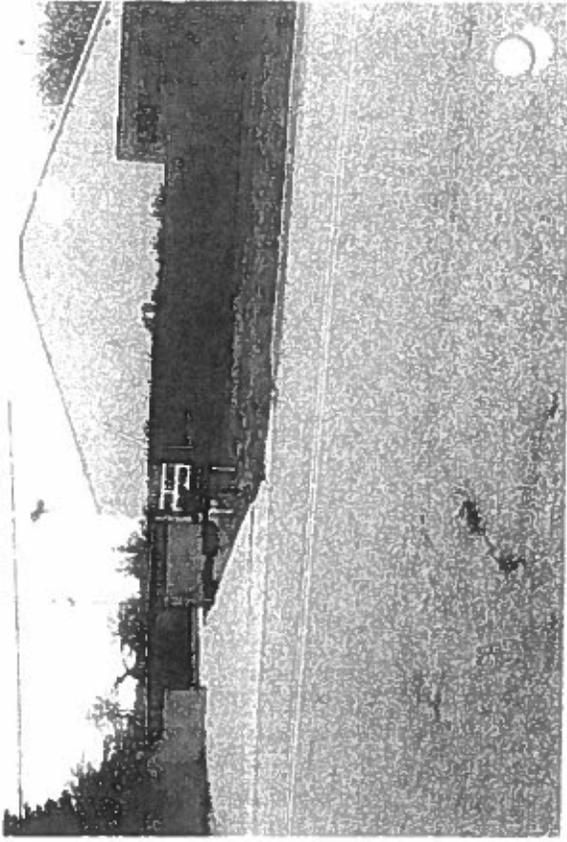
LEGEND

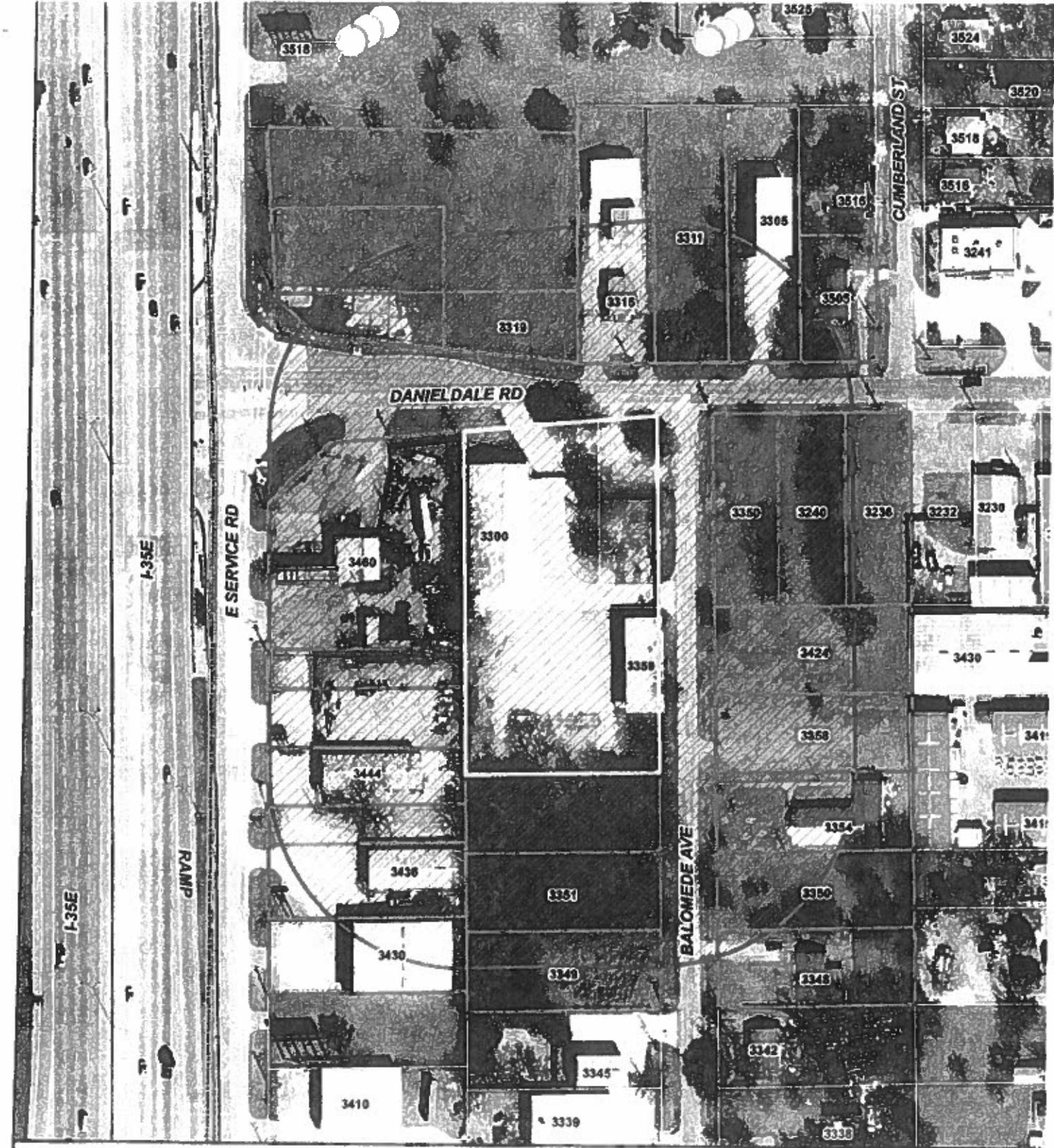
	Building Footprint
	Parking Space
	Easement
	Utility Line
	Property Line

- 1. All buildings shall be built in accordance with the approved plans.
- 2. All parking spaces shall be paved.
- 3. All lots shall be planted with trees.

SURVEYING ASSOCIATES
 1018 SOUTH BRIDGEMAN AVE
 PHOENIX, ARIZONA 85026
 (602) 998-8888







City of Lancaster
3300 Daniieldale Rd
200' Notification Area

Parcels

 Subject Parcel

 Notification Parcels

 200' Notification Area

0 65 130 260 Feet

Owner Name	Owner Address	City	State	Zip
MASON JEFFREY K	104 CEDAR DR	OAK LEAF	TEXAS	75062-3613
ARGUMANIZ GILBERT & VICTORIA A	1200 W RED OAK RD	RED OAK	TEXAS	75212-3246
WHITE SAMMY D & CYNTHIA	1516 W IRVING BLVD	IRVING	TEXAS	75154-0154
CRENSHAW KENNETH WAYNE	3000 PINEWOOD DR STE 101	ARLINGTON	TEXAS	75146-3605
MONTERO JUAN S	3042 SEEVERS AVE	DALLAS	TEXAS	75154-3802
CUIN JULIO	3210 TUMALO TRL	DALLAS	TEXAS	75134-1540
LUTHER THOMAS A	3343 BALOMEDE ST	LANCASTER	TEXAS	75216-4220
LUTHER S A	3345 BALOMEDE ST	LANCASTER	TEXAS	75154-3938
LUTHER S A	3351 BALOMEDE ST	LANCASTER	TEXAS	75134-1540
SMITH TRACY JR	3353 SHELIA LN APT 150	DALLAS	TEXAS	75180-4332
ARGUMANIZ GILBERT	3444 N INTERSTATE 35 E	LANCASTER	TEXAS	75154-3938
MONTERO JUAN S	3460 N INTERSTATE 35 E	LANCASTER	TEXAS	75134-1505
DEMARCUS M BANKS MEMORIAL INSPIRED HOUSE OF PRAYER	4624 INDIAN CREEK DR	BALCH SPRINGS	TEXAS	75220-6026
RODRIGUEZ RAMIRO	506 BELLAH DR	IRVING	TEXAS	75134-1505
COLLIER TERI J	614 GRIFFITH AVE	TERRELL	TEXAS	75061-7225
CHESHIER JIMMY E ETAL	739 S DALLAS AVE	LANCASTER	TEXAS	76010-5344
MASON JEFFREY K	PO BOX 154	RED OAK	TEXAS	75134-1505



**REGULAR MEETING MINUTES
PLANNING & ZONING COMMISSION
CITY OF LANCASTER, TEXAS
TUESDAY, APRIL 24, 2012**



PUBLIC HEARING

4. **Z12-03** Conduct a Public Hearing and Consider a Request for a Specific Use Permit for a Minor Auto Repair use for Property Generally Located at the Southwest Corner of the intersection of Danieldale Road and Balomede Avenue and addressed as 3300 Danieldale Road and 3359 Balomede Avenue.

Senior Planner Nathaniel Barnett gave the presentation regarding the request for a SUP to allow a minor auto repair use. Senior Planner Barnett stated that the applicant wanted to use an existing vacant building for the repairing of bumpers from automobiles. He stated that there would be no toxic chemicals used with this use. Chair Colton asked about the parking for the facility. Senior Planner Barnett stated that the subject property has more than the required parking that existed already. Chair Colton asked about a stipulation of a timeframe for the SUP to have the use reviewed periodically. Senior Planner Barnett stated that the commission has the ability to recommend to Council a timeframe to review a use that has the potential to have negative impacts. The commissioners determined that a two-year renewal of the SUP would be appropriate for the use due to the type of work to be done and the surrounding uses that could cause a proliferation of auto-related uses in the Danieldale corridor.

Chair Colton entertained a motion for the action item.

COMMISSIONER MITCHELL MADE THE MOTION TO APPROVE THE SUP WITH A TWO-YEAR RENEWAL, SECONDED BY COMMISSIONER PROTHRO.

**AYES: COLTON, MITCHELL, PROTHRO, WRIGHT
NAYES: NONE**

THE MOTION CARRIED 4-0.

Chair Colton entertained a motion to adjourn.

A MOTION WAS MADE BY CHAIR COLTON AND SECONDED BY VICE CHAIR WRIGHT TO ADJOURN.

**AYES: COLTON, MITCHELL, PROTHRO, WRIGHT
NAYES: NONE**

THE MOTION CARRIED 4-0.

LANCASTER CITY COUNCIL
Agenda Communication for
June 11, 2012

5

AG12-005

Consider a resolution approving and authorizing publication of a notice of intention to hold a Public Hearing to receive comments on updates to the City of Lancaster Roadway and Water/Wastewater Master Plans and Impact Fees.

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

Goal: Sound Infrastructure

Background

The Roadway & Water/Wastewater Master Plan and Impact Fees are being updated to include additional projects in response to current and future development needs. In accordance with Chapter 395 of the Local Government Code, a series of public meetings/hearings are required. City Council is required by State law to set a date and time for the public hearing to be held by the Council.

The consulting firms of Kimley Horn & Associates and Freese & Nichols, Inc. (FNI) will be present to answer any questions or provide additional information regarding the study results. The public hearing will allow comments to be made about impact fees, land use assumptions, and roadway and water/wastewater proposed projects for Lancaster.

Considerations

- **Operational** – Set public hearing for Impact Fee Study update.
- **Legal** – The resolution was prepared and approved to form by the City Attorney.
- **Financial** – No financial consideration at this time.
- **Public Information** - In accordance with Chapter 395 of the Local Government Code, City Council must set a date and conduct a public hearing to consider amendments to the Roadway and Water/Wastewater Master Plans and Impact Fee ordinance. Prior to holding the public hearing at a City Council meeting, Council must formally set the hearing date and time.

Options/Alternatives

1. Set the public hearing for July 23, 2012.
2. Select a later date for the public hearing.

Recommendation

Staff recommends that Council set July 23, 2012 as the date.

Attachments

- Resolution

Prepared and submitted by:
Nathaniel Barnett, Senior Planner

Date: May 29, 2012

RESOLUTION NO. 2012-06-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING AND AUTHORIZING PUBLICATION OF A NOTICE OF INTENTION TO HOLD A PUBLIC HEARING TO RECEIVE COMMENTS ON UPDATES TO THE CITY OF LANCASTER ROADWAY AND WATER/WASTE WATER MASTER PLAN AND IMPACT FEES; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING FOR SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster, Texas, has determined that the City's Roadway and Water/Wastewater Master Plan and Impact Fee Ordinance needs to be updated to include additional roadway and water projects in response to current and future development needs; and

WHEREAS, the City Council is required by State law to set a date and time for a public hearing to be held by Council to receive public comments on the proposed changes prior to adopting the amended Roadway and Water/Wastewater Master Plans and Impact Fee Ordinances;

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

SECTION 1. The City Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to hold a public hearing on the Roadway Master Plan and Water/Wastewater Master Plan and Impact Fees on July 23, 2012.

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

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

SECTION 4. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of June 2012.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL
Agenda Communication for
June 11, 2012

6

AG12-006

The City Council shall convene into closed executive session pursuant to:

- (A) 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; and**
- (B) Section § 551.072 of the TEXAS GOVERNMENT CODE to deliberate the purchase, exchange, lease, or value of real property north of Pleasant Run Road, east of Houston School Road and south of IH-20.**

Executive session matters.

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

Date: May 31, 2012

LANCASTER CITY COUNCIL
Agenda Communication for
June 11, 2012

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AG12-007

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 31, 2012