



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

**211 N. HENRY STREET, LANCASTER, TEXAS**

**Monday, June 25, 2012 – 7:00 P.M.**



**CALL TO ORDER**

**INVOCATION: MINISTERIAL ALLIANCE**

**PLEDGE OF ALLEGIANCE: MAYOR PRO TEM MARCO MEJIA**

**PRESENTATION: RECOGNITION OF THE LANCASTER HIGH SCHOOL BOYS AND GIRLS TRACK TEAMS**

**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 June 11, 2012 and Special Meeting held June 18, 2012.
- 2C. Consider an ordinance amending the Code of Ordinances by amending Chapter 3, Section 3.7002, Exceptions and Amendments, Section 111.7 Court Review of the International Property Maintenance Code, 2006 Edition by deleting Section 111.7 in its entirety and replacing with a new Section 111.7 Court Review of said International Code providing for court appeal to the District Court of Dallas County, Texas.
- 3C. Consider Resolution 2012-06-47 authorizing continued participation with the Steering Committee of Cities Served by Oncor; and authorizing payment of ten cents (\$0.10) per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company, LLC.
- 4C. Consider Resolution 2012-06-48 approving the terms and conditions of an agreement by and between the City of Lancaster and Insituform Technologies, Inc. for pipe rehabilitation on the Keller Branch Phase 1 Sanitary Sewer Line Replacement Project in an amount not to exceed eight hundred twenty-three thousand two hundred fifty-nine dollars (\$823,259).

**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 21, 2012 @ 5:00pm 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 25, 2012

**1**

AG12-001

**Consider approval of minutes from the City Council Regular Meeting held June 11, 2012 and Special Meeting held June 18, 2012.**

**Background**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held June 11, 2012
- City Council Special Meeting held June 18, 2012

**Prepared and submitted by:**

Dolle K. Downe, City Secretary  
June 19, 2012

## MINUTES

### LANCASTER CITY COUNCIL MEETING OF JUNE 11, 2012

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on June 11, 2012 at 7:00 p.m. with a quorum present to-wit:

**Councilmembers Present:**

Mayor Marcus E. Knight  
Walter Weaver  
Stanley Jaglowski  
Marco Mejia  
Mayor Pro Tem James Daniels  
LaShonjia Harris

**Councilmembers Absent:**

Deputy Mayor Pro Tem Nina Morris

**City Staff Present:**

Opal Mauldin Robertson, City Manager  
Breanna Colvin, Community Relations Coordinator  
Larry Flatt, Police Chief  
Thomas Griffith, Fire Chief  
Sean Johnson, Parks and Recreation Director  
Sheree Haynes, Finance Director  
Rona Stringfellow Govan, Managing Director Public Works / Development Services  
Shwetha Pandurangi, City Engineer  
Nathaniel Barnett, Senior Planner  
Donald McKinney, Water/Waste Water Superintendent  
Mark Divita, Airport Manager  
Dolle Downe, City Secretary  
Robert E. Hager, City Attorney

**Call to Order:**

Mayor Knight called the meeting to order at 7:00 p.m. on June 11, 2012.

**Invocation:**

Pastor Urban Brown with Life in Christ Family Church gave the invocation.

**Pledge of Allegiance:**

Councilmember Jaglowski led the pledge of allegiance.

**Citizens Comments:**

Ellen Clark, 954 Nokomis, commented that the weeds in the flower beds along the north side of the building [Historic Town Square] are an embarrassment and she came on a Saturday to work on the landscaping; stated that if the City is going to plant, they should take care of the landscaping as well.

Breanna Colvin, 211 N. Henry Street, invited everyone to attend the upcoming Best Southwest Juneteenth celebration on Saturday, June 16 at the DeSoto Town Center from 1 to 10 p.m. with the concert beginning at 5 p.m.

Dewayne Hardin, 2622 Arcady Lane, commented that he wanted citizens to know they are being charged more for water if they report a plumbing problem and not to be intimidated by staff working in water billing; stated that he was charged \$2,500; asked Council to help, saying Council is supposed to help the citizens, not intimidate them with excessive charges and cut-off notices; commented that he is collecting signatures for class action for submission to the U.S. Attorney General.

James Lewis, 818 Katy Street, stated that he ran a good race for the mayoral position and congratulated Mayor Knight on his win; offered his hand in peace to work with the Mayor and Council to help people and the City.

David Robison, 420 Red Bud Lane, asked Council to look at the cargo container ordinance saying that it needs to be amended; stated that the containers are very well made and in a backyard with screening, they are good for storage; commented that commercial locations such as Wal-Mart use cargo containers all the time and that he thinks residential uses are a soft target for enforcement; stated he has been ticketed even though the container is not visible; asked Council to amend the ordinance to include a grandfather clause and not make citizens criminal by code enforcement actions.

Kerry McCabe, 206 E. Colonial Drive, asked Council to amend the cargo container ordinance indicating he had been robbed of tools three times, but with the cargo container he can secure and protect tools; stated that the cargo container is painted to match the environment and is a place for a multi-camera security system; urged Council to change the ordinance.

**Consent Agenda:**

City Secretary Downe read the consent agenda.

- 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.**

Councilmember Mejia pulled item 3C from the consent agenda.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Jaglowski, to approve consent items 1C and 2C. The vote was cast 6 for, 0 against [Morris absent].

Councilmember Mejia commented that the Third Street bridge has been out of service for six to twelve months and that getting it repaired is a good investment in the City's infrastructure, noting that a 90/10 grant through the Texas Department of Transportation means the City can get the work done on a \$340,000 project for \$34,000.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Jaglowski, to approve Resolution 2012-06-45 approving the terms and conditions of a Local Project Advance Funding Agreement made by and between the State of Texas and the City of Lancaster for the improvements of the bridge on Third Street at Keller Branch. The vote was cast 6 for, 0 against [Morris absent].

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.**

Senior Planner Barnett outlined the request for a Specific Use Permit by the applicant to develop vacant property for a minor auto repair shop to restore damaged bumpers and deliver them to retail outlets, noting that the request is compatible with the City's Comprehensive Plan.

Councilmember Mejia asked how long the building has been vacant. Senior Planner Barnett stated that it has been vacant at least three years.

Mayor Knight opened the public hearing.

Marco Marchan, owner of Bumper World, commented they are looking to expand their business and their existing space is too small to increase production; commented that a water base is used for repair to the bumpers; asked Council to favorably consider their request.

There were no other speakers regarding the request for a Specific Use Permit.

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

Councilmember Mejia stated that this is a great opportunity to bring a business into the City that will occupy a building that has been vacant for three years or more.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Weaver, to approve an ordinance amending the Comprehensive Zoning Ordinance and Map of the City of Lancaster, Texas, 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. The vote was cast 6 for, 0 against [Morris absent].

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.**

**MOTION:** Councilmember Weaver made a motion, seconded by Councilmember Jaglowski, to authorize 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 on July 23, 2012. The vote was cast 6 for, 0 against [Morris absent].

**EXECUTIVE SESSION:**

At 7:29 p.m. Council recessed to go into Executive Session. At 7:34 p.m. the City Council convened into closed Executive Session pursuant to:

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.**

The City Council recessed from Executive Session at 7:55 p.m. and reconvened into open session at 7:57 p.m.

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

Mayor Knight announced that no action was necessary on Executive Session item (A).

**MOTION:** Mayor Pro Tem Daniels made a motion, seconded by Councilmember Mejia, to authorize the City Manager to negotiate a contract for the purchase of approximately 1.245 acres, 0.78 acres for easement and 0.983 acres from Harlan Properties in an amount not to exceed \$90,000 and generally located north of Pleasant Run Road, east of Houston School Road and south of IH-20. The vote was cast 6 for, 0 against [Morris absent].

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

The meeting was adjourned at 7:59 p.m.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Dolle K. Downe, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

## MINUTES

### LANCASTER CITY COUNCIL MEETING OF JUNE 18, 2012

At 7:00 p.m. the City Council of the City of Lancaster, Texas, met in a Special Meeting at the James R. Williams Pump Station at 1999 Jefferson on June 18, 2012 with a quorum present to wit:

#### **Councilmembers:**

Mayor Marcus E. Knight  
Walter Weaver  
Stanley Jaglowski  
Marco Mejia, elected Mayor Pro Tem  
James Daniels, elected Deputy Mayor Pro Tem  
LaShonjia Harris  
Nina Morris

#### **City Staff Present:**

Opal Mauldin Robertson, City Manager  
Cheryl Womble, Executive Assistant to City Manager  
Angie Arenas, Assistant City Secretary  
Ed Brady, Economic Development Director  
Dori Lee, Human Resources Director  
Larry Flatt, Police Chief  
Thomas Griffith, Fire Chief  
Rona Stringfellow Govan, Managing Director Public Works / Development Services  
Sean Johnson, Parks and Recreation Director  
Sheree Haynes, Finance Director  
Dolle Downe, City Secretary

#### **Call to Order**

Mayor Knight called the special meeting to order at 7:00 p.m. on June 18, 2012.

#### **1. Consider election of a Mayor Pro Tempore.**

Currently seated Mayor Pro Tem Daniels nominated Councilmember Marco Mejia for Mayor Pro Tem. Councilmember Jaglowski nominated currently seated Deputy Mayor Pro Tem Nina Morris for Mayor Pro Tem. A role call vote was cast 5 for, 2 against [Jaglowski, Morris] for Marco Mejia to serve as Mayor Pro Tempore.

#### **2. Consider election of a Deputy Mayor Pro Tempore.**

Mayor Pro Tem Mejia nominated Councilmember Daniels for Deputy Mayor Pro Tem. Currently seated Deputy Mayor Pro Tem Morris nominated herself for Deputy Mayor Pro Tem. A role call vote was cast 5 for, 2 against [Jaglowski, Morris] for James Daniels to serve as Deputy Mayor Pro Tempore.

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

The meeting was adjourned at 7:04 p.m.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Dolle K. Downe, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
June 25, 2012

**2**

AG12-002

**Consider an ordinance amending the Code of Ordinances by amending Chapter 3, Section 3.7002, Exceptions and Amendments, Section 111.7 Court Review, of the International Property Maintenance Code, 2006 Edition by deleting Section 111.7 in its entirety and replacing with a new Section 111.7 Court Review of said International Code providing for court appeal to District Court of Dallas County, Texas.**

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

**Goal: Healthy, Safe and Vibrant Neighborhoods**

**Background**

Due to the recent Supreme Court ruling *Stewart vs. City of Dallas*, a movement began to determine what method cities should use to consider future substandard building cases. At the March 19, 2012 Lancaster City Council work session, staff proposed amendments that would have dissolved the current Property Standards and Appeals Board and place the decision responsibility under the Municipal Judge. The Lancaster City Council voted to preserve the Property Standards and Appeals Board to continue to consider and approve all Board Orders for substandard property cases brought before them.

After further review of the present 2006 International Property Maintenance Code as adopted on December 13, 2010, the City Attorney advised staff that Section 111.7 "Court Review" did not adequately state the necessary steps in the appeal process after the Property Standards and Appeals Board issued a Board Order. Further clarification was needed in order for an aggrieved person to exercise their right to apply to the District court to appeal the determination of the Board action. This amendment would clarify that the aggrieved person has the right to file an application within thirty (30) days following the decision of the Board and that such appeal be by de nova.

Currently within the 2006 International Property Maintenance Code, Section 111.7 "Court reviews" allows any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law.

### **Considerations**

- **Operational** - The proposed amendment would allow the person or property owner de nova appeal rights before the District Court with regard to rulings by the Property Standards and Appeals Board and assign a specific time frame (30 days) such appeal had to be filed in order to be valid.
- **Legal** - The City Attorney has prepared the attached ordinance.
- **Financial** - There is no financial impact with the passage of this ordinance.
- **Public Information** - There are no public information requirements.

### **Options/Alternatives**

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

### **Recommendation**

Staff recommends approval of the ordinance as presented.

### **Attachments**

- Ordinance

**Prepared and submitted by:**  
Larry King, Building Official

**Date:** June 13, 2012

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 3, BY AMENDING SECTION 3.7002, EXCEPTION AND AMENDMENTS, BY AMENDING THE SECTION 111.7 COURT REVIEW, OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, 2006 EDITION BY ADDING A NEW SECTION 111.7 OF SAID INTERNATIONAL CODE PROVIDING FOR COURT APPEAL TO DISTRICT COURT OF DALLAS COUNTY, TEXAS; PROVIDING FOR TRIAL DE NOVO THERETO; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 3 of the Lancaster Code of Ordinances be, and the same is, hereby amended by repealing Article 3.7000, Property Maintenance Code, Exceptions and Amendments to Section 111.7 by adding a new Section 111.7 to Section 3.7002, Court Review in its entirety, which shall read as follows:

**“ARTICLE 3.7000 PROPERTY MAINTENANCE CODE**

.....

**Sec. 3.7002. Exceptions and Amendments**

.....

**“\*\*Section 111.7 Court Review**, Delete as written and replace with the new Section 111.7 Appeal to Municipal Court as follows;

**Court Review**

Any person aggrieved by a decision of the Property Standards and Appeals Board, shall have the right to apply to the District court to appeal the determination of the Property Standards and Appeals Board. Application for appeal shall be filed within thirty (30) days following the decision of the commission and; such appeal shall be by trial de novo.”

SECTION 2. That all provisions of the Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other

provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

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

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 25th day of June, 2012

**APPROVED:**

\_\_\_\_\_  
MARCUS E. KNIGHT, MAYOR

**ATTEST:**

\_\_\_\_\_  
DOLLE K. DOWNE, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
ROBERT E. HAGER, CITY ATTORNEY  
(REH.mpm)

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
June 25, 2012

**3**

AG12-003

**Consider a resolution authorizing continued participation with the Steering Committee of Cities Served by Oncor; and authorizing the payment of \$0.10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company, LLC.**

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

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

**Background**

The City of Lancaster is a member of a 150-member city coalition known as the Steering Committee of Cities Served by Oncor.

The Steering Committee undertakes activities on behalf of municipalities and has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for nearly two decades.

The Steering Committee is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Oncor Electric Delivery Company within the City. It has recently analyzed and negotiated the settlement of the 2011 Oncor rate case.

The resolution approves the assessment of a ten cent (\$0.10) *per capita* fee to fund the activities of the Steering Committee. The total annual assessment is \$3,636.10.

**Considerations**

- **Operational** – The Steering Committee of Cities Served by Oncor is involved in the rate cases, appeals, rulemakings and legislative efforts impacting the rates charged by Oncor to customers within its member cities. The City does not have the required resources, technical and legal expertise on staff to properly monitor and review these rate related cases. The Steering Committee of Cities Served by Oncor has a staff and legal counsel dedicated to rate cases, appeals, rulemakings, and the legislative efforts of Oncor Electric Delivery Company. The approval of this resolution will continue Steering Committee membership for the City of Lancaster and in turn

representation of the interests of municipal and residential consumers in electric utility regulatory matters.

- **Legal** - The resolution was prepared by Steering Committee counsel.
- **Financial** – The approval of this resolution will authorize the payment of a \$0.10 per capita assessment in the amount of \$3,636.10 (based on a population of 36,361) to the Steering Committee of Cities Served by Oncor.
- **Public Information** – There are no public information requirements.

### **Options/Alternatives**

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

### **Recommendation**

Staff recommends approval of the resolution as presented.

### **Attachments**

- Resolution
- List of Steering Committee Cities served by Oncor

**Prepared and submitted by:**  
Opal Mauldin Robertson, City Manager

**Date:** June 25, 2012

**RESOLUTION NO. 2012-06-47**

**A RESOLUTION OF THE CITY COUNCIL OF THE COL, TEXAS, AUTHORIZING CONTINUED PARTICIPATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR; AND AUTHORIZING THE PAYMENT OF 10 CENTS PER CAPITA TO THE STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ONCOR ELECTRIC DELIVERY COMPANY, LLC; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company, LLC (Oncor) within the municipal boundaries of the city; and

**WHEREAS**, the Steering Committee has historically intervened in Oncor (formerly known as TXU) rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries; and

**WHEREAS**, the Steering Committee is participating in Public Utility Commission dockets and projects, as well as court proceedings, affecting transmission and distribution utility rates; and

**WHEREAS**, the City is a member of the Steering Committee of Cities Served by Oncor; and

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

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

**SECTION 1.** That the City is authorized to continue its membership with the Steering Committee of Cities Served by Oncor to protect the interests of the City of Lancaster and protect the interests of the customers of Oncor Electric Delivery Company, LLC residing and conducting business within the City limits.

**SECTION 2.** The City is further authorized to pay its assessment to the Steering Committee at the rate of ten cents (\$0.10) per capita.

**SECTION 3.** A copy of this Resolution and the assessment payment check made payable to "Steering Committee of Cities Served by Oncor" shall be sent to Jay Doegey, Chair, Steering Committee of Cities Served by Oncor, c/o City Attorney's Office, Mail Stop 63-0300, P. O. Box 90231, Arlington, Texas 76004-3231.

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 25<sup>th</sup> day of June 2012.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Dolle K. Downe, City Secretary

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

## STEERING COMMITTEE CITIES SERVED BY ONCOR (150)

Addison	Everman	Midland
Allen	Fairview	Midlothian
Alvarado	Farmers Branch	Murchison
Andrews	Fate	Murphy
Anna	Flower Mound	Nacogdoches
Archer City	Forest Hill	New Chapel Hill
Argyle	Fort Worth	North Richland Hills
Arlington	Frisco	Oak Leaf
Azle	Frost	Oak Point
Bedford	Gainesville	Odessa
Bellmead	Garland	O'Donnell
Belton	Glenn Heights	Ovilla
Benbrook	Grand Prairie	Palestine
Beverly Hills	Granger	Pantego
Big Spring	Grapevine	Paris
Breckenridge	Gunter	Plano
Bridgeport	Haltom City	Pottsboro
Brownwood	Harker Heights	Prosper
Buffalo	Heath	Ranger
Burkburnett	Henrietta	Rhome
Burleson	Hewitt	Richardson
Caddo Mills	Highland Park	Richland Hills
Cameron	Honey Grove	River Oaks
Canton	Howe	Roanoke
Carrollton	Hurst	Robinson
Cedar Hill	Hutto	Rockwall
Celina	Iowa Park	Rosser
Centerville	Irving	Rowlett
Cleburne	Jolly	Sachse
Coahoma	Josephine	Saginaw
Colleyville	Justin	Seagoville
Collinsville	Kaufman	Sherman
Comanche	Keller	Snyder
Commerce	Kerens	Southlake
Coppell	Killeen	Springtown
Copperas Cove	Krum	Stephenville
Corinth	Lake Worth	Sulphur Springs
Crowley	Lakeside	Sunnyvale
Dallas	Lamesa	Sweetwater
Dalworthington Gardens	Lancaster	Temple
DeLeon	Lewisville	Terrell
De Soto	Lindale	The Colony
Denison	Little Elm	Trophy Club
Duncanville	Little River Academy	Tyler
Early	Malakoff	University Park
Eastland	Mansfield	Venus
Edgecliff Village	McKinney	Waco
Eules	Mesquite	Watauga

Waxahachie  
White Settlement  
Wichita Falls  
Willow Park  
Woodway  
Wylie

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
June 25, 2012

**4**

AG12-004

**Consider a resolution approving the terms and conditions of an agreement by and between the City of Lancaster and Insituform Technologies, LLC for pipe rehabilitation on the Keller Branch Phase I Sanitary Sewer Line Replacement project in an amount not to exceed \$823,259.00.**

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

**Goal: Sound Infrastructure**

**Background**

The services obtained through the agreement will include rehabilitation and pipe bursting for pipes located within the projects as described below.

**Keller Branch Sanitary Sewer Line Replacement Phase 1**

The Keller Branch line serves the eastern portion of the City, extending from the connection point at Ten Mile Creek to the most northern part of the city. The majority of the line is vitrified clay tile. During heavy rain events it experiences sanitary sewer overflows at Jefferson & Pleasant Run, Pierson, and 700 E. Main. We need to upgrade the existing under sized line to a 16" to 18" PVC line. This project is to eliminate occurrences of sanitary sewer overflows during rain events and will accommodate existing flows and future growth.

From Station 39+09 (south of Beltline) following the Keller Branch Creek, crossing Lancaster Hutchins and Beltline roads with bores and connection to the TRA Interceptor. See Attached Map

The service includes all labor, materials, equipment, bonding and insurance necessary to repair the pipes. Phase 1 of the Keller Branch sewer line replacement is the start of the Sanitary Sewer Overflow (SSO) Plan Agreement and Outreach Initiative mandated by the TCEQ which will keep us in Compliance.

**Considerations**

- **Operational** - Replacement of these lines will reduce maintenance costs in labor and materials due to service interruptions and improve sewer services. It will also result in a reduction of overflows caused by heavy rain. Once this has been installed the Water/Wastewater staff will be responsible for maintenance.

- **Legal** - The City maintains an executed Interlocal Agreement with the BuyBoard, a cooperative agency. Texas law authorizes cooperative agreements, like this one to help save time in developing specifications and avoid the duplication of the competitive bidding process.
- **Financial** - \$800,000 will be funded from the 2011 C.O. Bond sale and \$23,259 from the Wastewater Department's operating budget.
- **Public Information** - There are no public information requirements.

### **Options/Alternatives**

1. Council may approve the agreement.
2. Council may reject the agreement and direct staff.

### **Recommendation**

Staff recommends approving the resolution as presented.

### **Attachments**

- Resolution
- Keller Branch Sanitary Sewer Line Replacement Agreement "Exhibit A"
- Map

### **Prepared and submitted by:**

Donald McKinney, Water/Wastewater Superintendent  
Rona Stringfellow, Managing Director of Public Works/Development Services  
Sheree Haynes, Finance Director

**Date:** June 13, 2012

**RESOLUTION NO. 2012-06-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT WITH INSITUFORM TECHNOLOGIES, LLC FOR PIPE REHABILITATION ON THE KELLER BRANCH PHASE I SANITARY SEWER LINE REPLACEMENT PROJECT IN AN AMOUNT NOT TO EXCEED \$823,259.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, repairs are needed to the Keller Branch sanitary sewer line; and

**WHEREAS**, the City Council desires to utilize the BuyBoard's Interlocal contract with Insituform Technologies for the repairs.

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

**SECTION 1.** The City Council approves an agreement which is attached hereto and incorporated herein as Exhibit A for a sanitary sewer line rehabilitation project with Insituform Technologies, LLC. in an amount not to exceed eight hundred twenty-three thousand two hundred fifty-nine dollars and no cents (\$823,259.00).

**SECTION 2.** The City Manager is authorized to execute 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 take effect immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 25<sup>th</sup> 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, Texas

## Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and Insituform Technologies, LLC., (hereinafter referred to as the "Contractor") for rehabilitation of Keller Branch Phase I Sanitary Sewer Line Project, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

---

### ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

#### 1.1 THE CONTRACT

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

#### 1.2. THE CONTRACT DOCUMENTS

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

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

#### 1.3 ENTIRE AGREEMENT

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

#### 1.4 NO PRIVACY WITH OTHERS

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

#### 1.5 INTENT AND INTERPRETATION

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

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

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

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

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

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

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

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

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

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

#### **1.6 OWNERSHIP OF CONTRACT DOCUMENTS**

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

### **ARTICLE II: THE WORK**

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

#### **2.2 WORK**

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

***BuyBoard Proposal Dated 06-08-12***

***Rehabilitation and pipe bursting of the Keller Branch Phase I***

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

### **ARTICLE III: CONTRACT TIME**

#### **3.1 TIME AND LIQUIDATED DAMAGES**

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than one hundred fifty (150) working days from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

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

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

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

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The

Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

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

### **3.2 SUBSTANTIAL COMPLETION**

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

### **3.3 TIME IS OF THE ESSENCE**

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

## **ARTICLE IV: CONTRACT PRICE**

### **4.1 THE CONTRACT PRICE**

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of \$823,259.00

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

## **ARTICLE V: PAYMENT OF THE CONTRACT PRICE**

### **5.1 SCHEDULE OF VALUES**

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and/or to the Architect a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been

acknowledged and accepted in writing by the Architect and the Owner.

### **5.2 PAYMENT PROCEDURE**

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

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

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

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

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

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

### **5.3 WITHHELD PAYMENT**

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

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

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

### **5.4 UNEXCUSED FAILURE TO PAY**

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the

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

### **5.5 SUBSTANTIAL COMPLETION**

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

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

### **5.6 COMPLETION AND FINAL PAYMENT**

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

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the

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

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

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

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

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

#### **ARTICLE VI: THE OWNER**

##### **6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER**

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

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

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

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

##### **6.2 RIGHT TO STOP WORK**

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

##### **6.3 OWNER'S RIGHT TO PERFORM WORK**

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

#### **ARTICLE VII: THE CONTRACTOR**

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

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

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

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

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

**7.4 WARRANTY**

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

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

**7.6 SUPERVISION**

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

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

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall

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

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

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

**7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

**7.10 CLEANING THE SITE AND THE PROJECT**

**7.10.1** The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

## **7.11 ACCESS TO WORK AND INSPECTIONS**

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

## **7.12 INDEMNITY AND DISCLAIMER**

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

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

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

## **7.13 NONDISCRIMINATION**

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

## **7.14 PREVAILING WAGE RATES**

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

## **7.15 JOB SITE SAFETY PRECAUTIONS**

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

## **7.16 WARNING DEVICES AND BARRICADES**

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Architect to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to

the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Lancaster and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

## **7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS**

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

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

## **ARTICLE VIII: CONTRACT ADMINISTRATION**

### **8.1 THE ARCHITECT**

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

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

### **8.2 ARCHITECT'S ADMINISTRATION**

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

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

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

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

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

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

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

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

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

### **8.3 CLAIMS BY THE CONTRACTOR**

8.3.1 The Architect shall determine all claims and matters in dispute between the Contractor and Owner with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Architect within seven (7) days of the event or

occurrence or the first appearance of the condition giving rise to the claim or dispute who shall render a written decision within a reasonable time thereafter. The Architect's decisions shall be final and binding on the parties. In the event that either party objects to the Architect's determination as to any submitted dispute, that party shall submit a written objection to the Architect and the opposing party within ten (10) days of receipt of the Architect's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

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

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

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

The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

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

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

## **8.4 FIELD ORDERS**

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

## **8.5 MEDIATION**

8.5.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Architect and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and

each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Architect's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

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

## **ARTICLE IX: SUBCONTRACTORS**

### **9.1 DEFINITION**

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

### **9.2 AWARD OF SUBCONTRACTS**

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

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

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

## **ARTICLE X: CHANGES IN THE WORK**

### **10.1 CHANGES PERMITTED**

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

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

### **10.2 CHANGE ORDER DEFINED**

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

### **10.3 CHANGES IN THE CONTRACT PRICE**

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

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

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause

substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

#### **10.4 MINOR CHANGES**

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

#### **10.5 EFFECT OF EXECUTED CHANGE ORDER**

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

#### **10.6 NOTICE TO SURETY; CONSENT**

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

### **ARTICLE XI: UNCOVERING & CORRECTING WORK**

#### **11.1 UNCOVERING WORK**

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

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

#### **11.2 CORRECTING WORK**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting

such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

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

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

#### **11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK**

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

### **ARTICLE XII: CONTRACT TERMINATION**

#### **12.1 TERMINATION BY THE CONTRACTOR**

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

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice

from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

## **12.2 TERMINATION BY THE OWNER**

### **12.2.1 FOR CONVENIENCE**

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

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

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

#### 12.2.1.4

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

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

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

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

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the

entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

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

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

### **12.2.2 FOR CAUSE**

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

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

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

## **ARTICLE XIII: INSURANCE**

### **13.1 CONTRACTOR SHALL MAINTAIN INSURANCE**

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims

which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

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

### 13.2 TYPES AND AMOUNTS OF INSURANCE

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

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

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

### 13.3 Builders Risk

This insurance shall be written in completed value form and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be

less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

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

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

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

### 13.4 ADDITIONAL INSURED / PROJECT INFORMATION

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

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

### 13.5 WRITTEN NOTIFICATION

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

### 13.6 PREMIUMS AND ASSESSMENTS

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

### 13.7 CERTIFICATE OF INSURANCE

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

### 13.8 PRIMARY COVERAGE

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

### 13.9 WORKER'S COMPENSATION INSURANCE COVERAGE

13.9.1 The Contractor shall:

1) provide coverage for its employees providing services on a project, for the duration of the

project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

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

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

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

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

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

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

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

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

#### **Required Workers' Compensation Coverage**

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

*regardless of the identity of their employer or status as an employee."*

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

and

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE XIV: MISCELLANEOUS**

**14.1 LAWS AND ORDINANCES**

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

**14.2 GOVERNING LAW**

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

**14.3 SUCCESSORS AND ASSIGNS**

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

**14.4 SURETY BONDS**

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

authorized to do business in the State of Texas by the State Board of Insurance.

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

**14.5 SEVERABILITY**

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

**14.6 AMENDMENTS**

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

**14.7 NOTICES**

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

**EXECUTED In single or multiple originals, this 26th day of June, 2012.**

CITY OF LANCASTER

Insituform Technologies, Inc.

\_\_\_\_\_  
Opal Mauldin Robertson, City Manager

\_\_\_\_\_  
Type/Print Name and Title

ATTEST:

1103 Postwood Drive  
Corinth, TX 76210

\_\_\_\_\_  
Dolle K. Downe, City Secretary

**LOCATION MAP**

El Bethune Rd

MH Sta. 39+09

Keller Branch Ph I

MH Sta. 25+15

MH Sta. 16+56

MH Sta. 9+85

TRA Connect

Nokomis Rd

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10/30/2011 10:55

32°34'31.66"N 86°44'42.70"W elev: 475 ft

Google