



NOTICE OF REGULAR MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS
Monday, October 24, 2011 – 7:00 P.M.



CALL TO ORDER

INVOCATION: MINISTERIAL ALLIANCE

PLEDGE OF ALLEGIANCE: MAYOR MARCUS E. KNIGHT

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.)

EXECUTIVE SESSION:

1. The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney regarding pending litigation and/or settlement offer concerning the Court of Appeals Fifth District of Texas Case No. 05-11-00804-CV, City of Lancaster, Texas v. Beth Adams.
2. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

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

- 3C. Consider approval of minutes from the City Council Regular Meeting held October 10, 2011.
- 4C. Consider Resolution 2011-10-89 of the City Council of the City of Lancaster, Texas, canceling the regular City Council meetings scheduled for November 28, 2011 and December 26, 2011; and providing an effective date.
- 5C. Consider Resolution 2011-10-90 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a Grant Agreement for the Routine Airport Maintenance Program by and between the City of Lancaster, Texas, as airport sponsor, and the Texas Department of Transportation, on behalf of the State of Texas; authorizing matching funds in the amount of \$50,000; authorizing the City Manager to sign said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

- 6C. Consider Resolution 2011-10-91 of the City Council of the City of Lancaster, Texas, approving and adopting the 2011 Minimum Standards for Commercial and Noncommercial Operators at the Lancaster Regional Airport; providing a repealing clause; providing a severability clause; and providing an effective date.
- 7C. Consider Resolution 2011-10-92 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a renewable thirty year contract by and between the City of Lancaster, Texas, and the City of Dallas, Texas, to purchase wholesale treated water; authorizing its execution by the City Manager; providing a repealing clause; providing a severability clause; and providing an effective date.

PUBLIC HEARING

- 8. Conduct a public hearing and consider an ordinance of the City of Lancaster, Texas, amending the Code of Ordinances by amending Chapter 11, Article 11.500, Freeport Goods, by repealing Section 11.502 and replacing with a new Section 11.502, to provide for the ad valorem taxation of tangible personal property in transit or "Super Freeport" goods pursuant to Section 11.253 of the Texas Tax Code; providing a repealing clause; providing a severability clause; and providing an effective date.

ACTION

- 9. Discuss and consider Resolution 2011-10-93 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a professional services agreement by and between the City of Lancaster and Freese and Nichols, Inc. (FNI) to perform services in connection with the site selection, tank design, bid process, and tank and water line construction of a two (2) million gallon elevated water storage tank for basic services for a lump sum fee of \$197,000 and for special services in an amount not to exceed \$163,000; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.
- 10. Receive reports on items of interest from the annual Texas Municipal League Conference held October 12-14, 2011 from councilmembers who attended the conference.

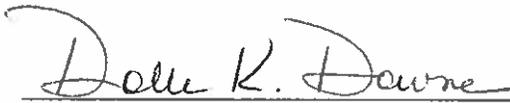
ADJOURNMENT

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 October 20, 2011 @ 5:00 p.m. and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL
Agenda Communication for
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AG11-001

The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney regarding pending litigation and/or settlement offer concerning the Court of Appeals Fifth District of Texas Case No. 05-11-00804-CV, City of Lancaster, Texas v. Beth Adams.

Executive session matter.

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

Date: October 20, 2011

LANCASTER CITY COUNCIL
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AG11-002

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

Background

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

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

Date: October 20, 2011

LANCASTER CITY COUNCIL
Agenda Communication for
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AG11-003

Consider approval of minutes from the City Council Regular Meeting held October 10, 2011.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held October 10, 2011

Prepared and submitted by:

Dolle K. Downe, City Secretary
October 14, 2011

MINUTES

LANCASTER CITY COUNCIL MEETING OF OCTOBER 10, 2011

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on October 10, 2011 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 Clyde Hairston
Deputy Mayor Pro Tem Nina Morris

Councilmember Absent:

James Daniels

City Staff Present:

Opal Mauldin Robertson, City Manager
Alicia Oyedele, Assistant to the City Manager
Rona Stringfellow Govan, Development Services Director
Larry Flatt, Police Chief
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on October 10, 2011.

Invocation:

Pastor Clyde Hairston with Harvest Time Church gave the invocation.

Pledge of Allegiance:

Councilmember Marco Mejia led the Pledge of Allegiance.

Citizens Comments:

Wanda Willis, 1335 Roan Drive, commented that the roads in her area need repair work, particularly Wintergreen to Houston School Road and that there are many potholes on Bayport and Rodgers that are tearing up cars.

James Leveretz, 504 C.R. 4557, Winnsboro, stated that Council should look on the Airport's website at the picture of the runway looking to the south; commented that when looking at the rows of hangars, there are two hangars that need repairs and materials for those repairs were brought in two years ago and still have not been used; stated that the airport is losing revenue because these repairs have not been made; asked Council to examine the new lease agreement to understand what is going on at the airport; commented that a license is needed to be able to inspect and determine if an aircraft is airworthy.

Consent Agenda:

City Secretary Downe read the consent agenda.

- 1C. Consider approval of minutes from the City Council Regular Meeting held September 26, 2011 and Special City Council Meeting held October 3, 2011.

- 2C. Consider Resolution 2011-10-84 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of an interlocal agreement by and between the City of Lancaster and Dallas County Health and Human Services to provide health services; authorizing the City Manager to sign said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**
- 3C. Consider Resolution 2011-10-85 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of an interlocal agreement by and between the City of Lancaster and Dallas County Health and Human Services to provide food establishment inspections and other environmental health services; authorizing the City Manager to sign said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**
- 4C. Consider Resolution 2011-10-86 of the City Council of the City of Lancaster, Texas, amending the Master Fee Schedule, Article 4.000 Business Related Fees, Section 4.400 Food Service Establishments to amend certain fees and charges assessed and collected by the City for food establishment inspections; providing a repealing clause; and providing an effective date.**
- 5C. Consider an ordinance of the City of Lancaster, Texas, amending the Lancaster Code of Ordinances by amending Article 12.2600 "Truck Idling" by amending Section 12.2602 to provide for year round enforcement; and amending Section 12.2603 by amending the exemptions and adopting limited exemptions for armored cars and commercial vehicles with idle reduction systems; providing an exemption for idling during government mandated rest periods; amending Section 12.2604 to provide for a maximum fine of \$500; providing a severability clause; providing a savings clause; providing a repealing clause; providing a penalty of fine for each offense; and providing an effective date.**
- 6C. Consider Resolution 2011-10-87 of the City Council of the City of Lancaster, Texas, declaring certain board, commission and committee position(s) vacant due to excessive absences; and providing an effective date.**

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

- 7. Discuss the proposed redistricting plan (Illustrative Plan 1) and consider possible action to adjust the proposed redistricting plan.**

Discutir el plan de redistribución propuesta (Plan Indicativo 1) y considerar las posibles medidas para ajustar el plan de redistribución propuesto.

John Long with Bickerstaff Heath Delgado Acosta LLP presented information in response to Deputy Mayor Pro Tem Morris' previous question about changes in the percentage of African American population in District 6 from the adopted plan with Census data from 2000 to the current proposed plan. Mr. Long indicated that for the year 2010 in District 6, African Americans make up 84.45% of the district's population and for the year 2000 benchmark in District 6, African Americans made up 83.59%. Mr. Long further noted that for the year 2000 and the plan as adopted, the African American population in District 6 is the same as the 2010 proposed plan at 84.45%.

Mr. Long commented that in response to Mayor Pro Tem Hairston's previous question about adding a certain piece of District 5 back into the plan, that to do so would bump the numbers too high without cutting into district 4.

Mr. Long indicated that the plan, as proposed, is less than 10% deviation, contains no retrogression and permits voters to elect the representative of their choice. In addition there is not a majority Hispanic district either before or after the redistricting.

Mayor Pro Tem Hairston commented that he understands that placing the portion back into District 5 that he asked about would throw off the numbers, and he has no problem with the map as it is presented.

8. **Discuss and consider Resolution 2011-10-88 of the City Council of the City of Lancaster, Texas, approving the redistricting of the City's single-member council districts and establishing new district boundary lines based on 2010 Census data for Lancaster City Council elections; directing the City's redistricting consultant to submit the adopted plan for preclearance under Section 5 of the federal Voting Rights Act; and providing for an effective date.**

Discutir y considerar 2011-10-88 Resolución del Consejo Municipal de la Ciudad de Lancaster, Texas, la aprobación de la redistribución de los distritos de la Ciudad del consejo de un solo miembro y el establecimiento de nuevas líneas de límites del distrito sobre la base de datos del Censo 2010 para la ciudad de Lancaster elecciones al Consejo, dirigir la redistribución de distritos de la ciudad de consultor para presentar el plan adoptado para preinspección en la sección 5 de la Ley Federal de Derechos, y proporcionar una fecha efectiva.

Mayor Knight commented that formal approval of the redistricting map is necessary for submission to the U.S. Department of Justice for preclearance.

MOTION: Mayor Pro Tem Hairston made a motion, seconded by Councilmember Weaver, to approve Resolution 2011-10-88 approving the redistricting of the City's single-member council districts and establishing new district boundary lines based on 2010 Census data for Lancaster City Council elections; directing the City's redistricting consultant to submit the adopted plan for preclearance under Section 5 of the federal Voting Rights Act. The vote was cast 6 for, 0 against [Daniels absent].

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

The meeting was adjourned at 7:19 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL
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AG11-004

Consider a resolution of the City Council of the City of Lancaster, Texas, canceling the regular City Council meetings scheduled for November 28, 2011 and December 26, 2011; and providing an effective date.

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

Goal: Civic Engagement

Background

The City Council generally meets on the second and fourth Mondays of each month. The City Charter only requires the City Council to meet at least once a month. This year, the second meeting in November falls on November 28, the Monday immediately following the Thanksgiving holiday. The second meeting in December is on December 26, a City holiday.

Considerations

Essential City business can be completed at the regularly scheduled meetings on November 14 and December 12. Setting the holiday meeting schedule now allows sufficient time for public notice of the revised meeting schedule and is helpful to staff for planning purposes.

Options

1. Approve the resolution canceling the November 28 and December 26 meetings.
2. Amend the resolution to cancel only one of these meetings.
3. Amend the resolution to reschedule the November 28 and/or December 26 meetings.
4. Reject the resolution and conduct the November 28 and/or December 26 meetings.

Recommendation

Staff recommends approval of the resolution canceling the November 28, 2011 and December 26, 2011 meetings.

Attachments

- Resolution

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

Date: October 14, 2011

RESOLUTION NO. 2011-10-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, CANCELING THE REGULAR CITY COUNCIL MEETINGS SCHEDULED FOR NOVEMBER 28, 2011 AND DECEMBER 26, 2011; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 3.10 (A) of the Lancaster Home Rule Charter provides that the City Council shall hold at least one (1) regular meeting each month and additional meetings as it deems necessary; and

WHEREAS, the Lancaster City Council is of the opinion that all essential City business may be conducted at the regularly scheduled meetings of November 14, 2011 and December 12, 2011; and

WHEREAS, in the spirit of the holiday season, the Lancaster City Council has determined that the second regularly scheduled meetings of November and December 2011 are not vital to conducting City business;

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

Section 1. The regularly scheduled meetings of the City Council set for November 28, 2011 and December 26, 2011 are hereby canceled.

Section 2. This resolution shall take effect immediately from and after its adoption and it is so resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of October 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL
Agenda Communication for
October 24, 2011

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AG11-005

Consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a Grant Agreement for the Routine Airport Maintenance Program by and between the City of Lancaster, Texas, as Airport Sponsor, and the Texas Department of Transportation, on behalf of the State of Texas; authorizing matching funds in the amount of \$50,000; authorizing the City Manager to execute said agreement; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.

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

**Goals: Financially Sound City Government
Sound Infrastructure**

Background

The Routine Airport Maintenance Program (RAMP) is a 50/50 grant program designed by TxDOT from state funding for smaller Texas airports to assist with the routine maintenance requirements. Lancaster Regional Airport has fully participated in and benefited from this program in past years.

Considerations

- **Operational** – Utilization of the RAMP program has assisted with the routine maintenance and upkeep on the five city-owned T-hangars. Three roofs have been replaced in the last three fiscal years utilizing RAMP funds. The remaining roofs are in poor condition and deteriorating rapidly and date back to the 1970's. T-hangar roof leaks are a constant source of concern from tenant pilots. The Airport plan is to apply funds for installing new roofs on the last two City owned T-hangars. This cost has been averaging \$25,000 per building. Funds will also be applied to other problematic areas such as airport fuel tank maintenance and capacity, weather station maintenance, ramp sweeping and other airside/landside maintenance items.

The Airport Advisory Board and airport tenants are aware and fully supportive that the airport uses this grant funding source to improve and maintain airport assets.

This grant was unanimously approved by the Airport Advisory Board (see Item #4 on the attached draft minutes).

- **Legal** – The resolution has been approved as to form by the City Attorney.
- **Financial** – The City match is \$50,000 and is included in the FY 2012 budget.
- **Public Information** – There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff strongly recommends adoption of the resolution approving the Routine Airport Maintenance Program grant agreement and authorizing matching funds in the amount of \$50,000.

Attachments

- Resolution
- FY2012 Grant for Routine Airport Maintenance Program Agreement
- Airport Advisory Board Minutes dated 10-11-11

Prepared and submitted by:

Mark Divita, Airport Manager

Date: September 26, 2011

RESOLUTION NO. 2011-10-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A GRANT AGREEMENT FOR THE ROUTINE AIRPORT MAINTENANCE PROGRAM BY AND BETWEEN THE CITY OF LANCASTER, TEXAS, AS AIRPORT SPONSOR, AND THE TEXAS DEPARTMENT OF TRANSPORTATION, ON BEHALF OF THE STATE OF TEXAS; AUTHORIZING MATCHING FUNDS IN THE AMOUNT OF \$50,000; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Department of Transportation provides fifty percent matching grants under the Routine Airport Maintenance Program; and

WHEREAS, the Lancaster Regional Airport is in need of ongoing routine maintenance; and

WHEREAS, the City Council desires to continue participation in the Routine Airport Maintenance Program;

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

Section 1. The City Council hereby approves the terms and conditions of the grant agreement for the FY2011 Routine Airport Maintenance Program, by and between the City of Lancaster, Texas, and the Texas Department of Transportation, attached hereto and incorporated herein by reference as Exhibit "A".

Section 2. The City Manager of the City of Lancaster, Texas is authorized to execute said grant 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 24th day of October 2011.

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

APPROVED:

Marcus E. Knight, Mayor

**TEXAS DEPARTMENT OF TRANSPORTATION
GRANT FOR ROUTINE AIRPORT MAINTENANCE PROGRAM**

(State Assisted Airport Routine Maintenance)

**TxDOT Project No.: AM 2012LNCAS
TxDOT CSJ No.: M218LNCAS**

Part I - Identification of the Project

TO: The City of Lancaster, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Grant is made between the Texas Department of Transportation, (hereinafter referred to as the "State"), on behalf of the State of Texas, and the City of Lancaster, Texas, (hereinafter referred to as the "Sponsor").

This Grant Agreement is entered into between the State and Sponsor shown above, under the authority granted and in compliance with the provisions of the Transportation Code, Chapter 21.

The project is for **airport maintenance** at the Lancaster Regional Airport.

Part II - Offer of Financial Assistance

1. For the purposes of this Grant, the annual routine maintenance project cost, Amount A, is estimated as found on Attachment A, Scope of Services, attached hereto and made a part of this grant agreement.

State financial assistance granted will be used solely and exclusively for airport maintenance and other incidental items as approved by the State. Actual work to be performed under this agreement is found on Attachment A, Scope of Services. State financial assistance, Amount B, will be for fifty percent (50%) of the eligible project costs for this project or \$50,000.00, which ever is less, per fiscal year and subject to availability of state appropriations.

Scope of Services, Attachment A, of this Grant, may be amended, subject to availability of state funds, to include additional approved airport maintenance work. Scope amendments require submittal of an Amended Scope of Services, Attachment A.

Services will not be accomplished by the State until receipt of Sponsor's share of project costs.

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

Work shall be accomplished by August 31, 2012, unless otherwise approved by the State.

2. The State shall determine fair and eligible project costs for work scope. Sponsor's share of estimated project costs, Amount C, shall be as found on Attachment A and any amendments.

It is mutually understood and agreed that if, during the term of this agreement, the State determines that there is an overrun in the estimated annual routine maintenance costs, the State may increase the grant to cover the amount of the overrun within the above stated percentages and subject to the maximum amount of state funding.

The State will not authorize expenditures in excess of the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

3. Sponsor, by accepting this Grant certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right to audit any books and records of the Sponsor to verify expended funds.

Upon execution of this Agreement and written demand by the State, the Sponsor's financial obligation (Amount C) shall be due in cash and payable in full to the State. State may request the Sponsor's financial obligation in partial payments. Should the Sponsor fail to pay their obligation, either in whole or in part, within 30 days of written demand, the State may exercise its rights under Paragraph V-3. Likewise, should the State be unwilling or unable to pay its obligation in a timely manner, the failure to pay shall be considered a breach and the Sponsor may exercise any rights and remedies it has at law or equity.

The State shall reimburse or credit the Sponsor, at the financial closure of the project, any excess funds provided by the Sponsor which exceed Sponsor's share (Amount C).

4. The Sponsor specifically agrees that it shall pay any project costs which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount B) as stated in Paragraph II-1.
5. Scope of Services may be accomplished by State contracts or through local contracts of the Sponsor as determined appropriate by the State. All locally contracted work must be approved by the State for scope and reasonable cost. Reimbursement requests for locally contracted work shall be submitted on forms provided by the State and shall include copies of the invoices for materials or services. Payment shall be made for no more than 50% of allowable charges.

The State will not participate in funding for force account work conducted by the Sponsor.

6. This Grant shall terminate upon completion of the scope of services.

Part III - Sponsor Responsibilities

1. In accepting this Grant, if applicable, the Sponsor guarantees that:
 - a. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State in connection with this Grant; and
 - b. the Airport or navigational facility which is the subject of this Grant shall be controlled by the Sponsor for a period of at least 20 years; and
 - c. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Grant; and
 - d. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
 - e. it shall not enter into any agreement nor permit any aircraft to gain direct ground access to the sponsor's airport from private property adjacent to or in the immediate area of the airport. Further, Sponsor shall not allow aircraft direct ground access to private property. Sponsor shall be subject to this prohibition, commonly known as a "through-the-fence operation," unless an exception is granted in writing by the State due to extreme circumstances; and
 - f. it shall not permit non-aeronautical use of airport facilities without prior approval of the State; and
 - g. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and
 - h. all fees collected for the use of the airport shall be reasonable and nondiscriminatory. The proceeds from such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility; and

- i. an Airport Fund shall be established by resolution, order or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or any other revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent approval of a grant or loan, Sponsor has complied with the requirements of this subparagraph; and
 - j. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and
 - k. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State.
 - l. mowing services will not be eligible for state financial assistance. Sponsor will be responsible for 100% of any mowing services.
2. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting claim or liabilities which might be imposed on the State as the result of those activities by the Sponsor, the Sponsor's agents or employees.
3. The Sponsor's acceptance of this Offer and ratification and adoption of this Grant shall be evidenced by execution of this Grant by the Sponsor. The Grant shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport.

If it becomes unreasonable or impractical to complete the project, the State may void this agreement and release the Sponsor from any further obligation of project costs.

4. Upon entering into this Grant, Sponsor agrees to name an individual, as the Sponsor's Authorized Representative, who shall be the State's contact with regard to this project. The Representative shall receive all correspondence and documents associated with this grant and shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor, and coordinate schedule for work items as required.
5. By the acceptance of grant funds for the maintenance of eligible airport buildings, the Sponsor certifies that the buildings are owned by the Sponsor. The buildings may be leased but if the lease agreement specifies that the lessee is responsible for the upkeep and repairs of the building no state funds shall be used for that purpose.
6. Sponsor shall request reimbursement of eligible project costs on forms provided by the State. All reimbursement requests are required to include a copy of the invoices for the materials or services. The reimbursement request will be submitted no more than once a month.
7. The Sponsor's acceptance of this Agreement shall comprise a Grant Agreement, as provided by the Transportation Code, Chapter 21, constituting the contractual obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the airport maintenance and compliance with the assurances and conditions as provided. Such Grant Agreement shall become effective upon the State's written Notice to Proceed issued following execution of this agreement.

PART IV - Nomination of the Agent

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.
2. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:
 - a. accept, receive, and deposit with the State any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;
 - b. enter into contracts as necessary for execution of scope of services;
 - c. if State enters into a contract as Agent: exercise supervision and direction of the

project work as the State reasonably finds appropriate. Where there is an irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor or any service provider, the State shall issue a written order which shall prevail and be controlling;

- d. receive, review, approve and pay invoices and payment requests for services and materials supplied in accordance with the State approved contracts;
- e. obtain an audit as may be required by state regulations; the State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- f. reimburse sponsor for approved contract maintenance costs no more than once a month.

PART V - Recitals

- 1. This Grant is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party.
- 2. It is the intent of this grant to not supplant local funds normally utilized for airport maintenance, and that any state financial assistance offered under this grant be in addition to those local funds normally dedicated for airport maintenance.
- 3. This Grant is subject to the applicable provisions of the Transportation Code, Chapters 21 and 22, and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Grant or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
 - a. Of primary importance to the State is compliance with the terms and conditions of this Grant. If, however, after all reasonable attempts to require compliance have failed, the State finds that the Sponsor is unwilling and/or unable to comply with any of the terms of this Grant, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to this Grant, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to this Grant, provided however, these

remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Grant null and void, or (5) any other remedy available at law or in equity.

- b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Grant, or for enforcement of any of the provisions of this Grant, is specifically set by Grant of the parties in Travis County, Texas.
4. The State reserves the right to amend or withdraw this Grant at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.
5. This Grant constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.
6. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.

Part VI - Acceptances

Sponsor

The City of Lancaster, Texas, does ratify and adopt all statements, representations, warranties, covenants, agreements, and all terms and conditions of this Grant.

Executed this _____ day of _____, 20____.

City of Lancaster, Texas
Sponsor

Witness Signature

Sponsor Signature Opal Mauldin Robertson

City Secretary

City Manager

Witness Title

Sponsor Title

Certificate of Attorney

I, Robert E. Hager, acting as attorney for the City of Lancaster, Texas, do certify that I have fully examined the Grant and the proceedings taken by the Sponsor relating to the acceptance of the Grant, and find that the manner of acceptance and execution of the Grant by the Sponsor, is in accordance with the laws of the State of Texas.

Dated at _____, Texas, this _____ day of _____, 20____.

Witness Signature

Attorney's Signature Robert E. Hager

City Secretary

Witness Title

Acceptance of the State

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Date: _____

**Attachment A
Scope of Services
TxDOT CSJ No.: M218LNCAS**

Eligible Scope Items:	Estimated Costs	State Share	Sponsor Share
	Amount A	Amount B	Amount C
PAVEMENTS	\$0.00	\$0.00	\$0.00
GENERAL MAINTENANCE	\$96,700.00	\$48,350.00	\$48,350.00
PAVEMENT MARKINGS	\$0.00	\$0.00	\$0.00
GRADING/DRAINAGE	\$0.00	\$0.00	\$0.00
MISCELLANEOUS			
MISC - AWOS Maintenance	\$3,300.00	\$1,650.00	\$1,650.00
Total	\$100,000.00	\$50,000.00	\$50,000.00

Accepted by: City of Lancaster, Texas

Signature Opal Mauldin Robertson

Title: City Manager

Date: _____

Notes: (explanations of any specifications or variances as needed for above scope items) _____

MISCELLANEOUS: TxDOT to contract for AWOS maintenance, Sponsor to contract for AWOS AviMet Data Link, AWOS repairs/parts replacement. Other projects to be determined and added by amendment.

GENERAL MAINTENANCE: As needed, Sponsor may contract for services/purchase materials for routine maintenance/improvement of airport pavements, approach aids, lighting systems, fencing, sponsor owned and operated fuel systems, hangars, terminal buildings and security systems.

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

CERTIFICATION OF AIRPORT FUND

TxDOT CSJ No.: M218LNCAS

The City of Lancaster does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

City of Lancaster, Texas
(Sponsor)

By: Sheree Haynes

Title: Finance Director

Date: _____

State of Texas Single Audit Requirements

I, Sheree Haynes, do certify that the City of Lancaster will comply with all
(Designated Representative)

requirements of the State of Texas Single Audit Act if the City of Lancaster spends or receives more than \$500,000 in any funding sources during this fiscal year. And in following those requirements, the City of Lancaster will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold of \$500,000.00 in grant expenditures, please submit a letter indicating that your entity is not required to have a State Single Audit performed for the most recent audited fiscal year.

Signature

Finance Director

Title

Date

DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

TxDOT CSJ Number: M218LNCAS

The City of Lancaster designates, Mark Divita, Airport Mgr
(Name, Title)

as the Sponsor's authorized representative, who shall receive all correspondence and documents associated with this grant and who shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor.

City of Lancaster, Texas
(Sponsor)

By: _____
Opal Mauldin Robertson

Title: City Manager

Date: _____

DESIGNATED REPRESENTATIVE

Mailing Address: 730 Ferris Rd, Ste 102
Lancaster, TX 75146

Overnight Mailing Address: same as above

Telephone/Fax Number: 972 - 218 - 1274

Email address: mdivita@lancaster-tx.com



**MINUTES OF MEETING
AIRPORT ADVISORY BOARD
Tuesday, October 11, 2011
7:00 P.M.**



BOARD MEMBERS PRESENT:

Keith Hutchinson, Chairman
Andy Mungenast, Vice Chairman
Dr. Charles Waldrop, Jr.
John Stewart
Dean Byers
Tim Fagan

ALTERNATE PRESENT:

X Chris Chatmon X

CC LIAISON PRESENT:

X Walter Weaver X

STAFF PRESENT:

X Mark Divita, Airport Manager X

X Kellen Benbrook, Operations Supervisor X

CALL TO ORDER: The meeting was called to order by Chairman Keith Hutchinson at 7:00 p.m. with a quorum present.

Item #1: Approval of Minutes from September 13, 2011 Meeting

Dr. Waldrop motioned for approval. This was seconded by Mungenast. The vote carried unanimously.

Item #2: Airport Manager Staff Report

Divita provided a brief on the airport's sales statement FY to date in both graphic and tabular form. Fuel sales have recovered in September. Divita attributed this to the drop in fuel prices and cooler temperatures. The Airport's Profit/Loss statement was briefed as well. For FY11 the Airport reported a Net Loss of \$59,430. This is a smaller deficit than the last 3 years. The deficit has been shrinking.

Divita provided a brief mailing of notices for the rate increase and FY12 lease. Divita stated about 12 leases have been turned in so far and only 1 or 2 tenants have complained out the rate increase.

Item #3: Discuss and consider approval of new Minimum Standards for Lancaster Regional Airport.

Divita began reviewing the changes from last meeting and then informed the board that the City Manager has directed him to ensure the Minimum Standards have insurance requirements for commercial tenants according to the City's insurance minimums. Divita then briefed that the underwriter had no minimums for aviation businesses on an airport, but recommended \$500,000 minimum for liability and hanger keepers insurance. The board agreed with the recommendation. Stewart found an error on page 7.1 and Divita noted and corrected the items. Stewart motioned for approval of the Minimum Standards for Lancaster Regional Airport as amended and Fagan seconded. The vote carried unanimously.

Item #4: Discuss and consider approval of TxDOT Routine Airport Maintenance (RAMP) grant for FY12

Divita explained the RAMP grant is vital to the airport's maintenance plan and this is the grant we use every year to execute said plan. Divita mentioned the majority of this grant will go towards finishing the install on the roofing on the last two City owned T-hangars. Dr. Waldrop motioned for approval of the TxDOT Routine Airport Maintenance (RAMP) grant for FY12 and Stewart seconded. The vote carried unanimously.

Item #5: Set Agenda for Next Meeting

- Approval of Minutes
- Airport Manager Briefing
- Discuss and consider cancelling December meeting
- Set Agenda for Next Meeting

ADJOURNMENT: Stewart moved to adjourn. After a second by Mungenast, the motion was approved unanimously and the meeting adjourned at 7:27 p.m.

ATTEST:

APPROVED:

Mark Divita
Airport Manager

Keith Hutchinson
Chairman

LANCASTER CITY COUNCIL
Agenda Communication for
October 24, 2011

6

AG11-006

Consider a resolution of the City Council of the City of Lancaster, Texas, approving and adopting the 2011 Minimum Standards for Commercial and Noncommercial Operators at the Lancaster Regional Airport; providing a repealing clause; providing a severability clause; and providing an effective date.

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

Goal: Sound Infrastructure

Background

The Lancaster Regional Airport Minimum Standards were last updated in 2006. Since that time, many changes have occurred at the Airport effecting operations and infrastructure. The Minimum Standards have been updated to incorporate items that needed to be addressed as well as new items due to new construction under the Airport Master Plan. A black bar has been placed in the right margin of the Minimum Standards to show changes/additions to the Minimum Standards.

Considerations

- **Operational** - In order to more effectively manage the Airport, the Minimum Standards have been updated to aid staff in the execution of their duties. These updates are warranted as a result of recent infrastructure improvements on the airfield as a result of the Airport Master Plan construction.
- **Legal** - The Airport Advisory Board approved the revised Airport Minimum Standards at their meeting on October 11, 2011.
- **Financial** - There is no financial impact in adopting the updated Minimum Standards.
- **Public Information** - There are no public information requirements. Once approved by the City Council, the Minimum Standards will be made available and disseminated to all tenants at Lancaster Regional Airport via mail, e-mail, and downloadable on the airport's website.

Options/Alternatives

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

Recommendation

Staff recommends adoption of the resolution as presented.

Attachments

- Resolution
- 2011 Minimum Standards

Prepared and submitted by:
Mark Divita, Airport Manager

Date: October 12, 2011

RESOLUTION NO. 2011-10-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING AND ADOPTING THE 2011 MINIMUM STANDARDS FOR COMMERCIAL AND NONCOMMERCIAL OPERATORS AT THE LANCASTER REGIONAL AIRPORT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Airport Advisory Board, voted unanimously on October 11, 2011 to update the Minimum Standards of the Lancaster Regional Airport; and

WHEREAS, the City of Lancaster desires to provide updated Minimum Standards for commercial and noncommercial operators at the Lancaster Regional Airport;

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

SECTION 1. That the City Council hereby approves and adopts the Minimum Standards for Commercial and Noncommercial Operators at the Lancaster Regional Airport dated October 2011, which is attached hereto and incorporated herein as Exhibit "A" and is set forth in full.

SECTION 2. Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

SECTION 3. Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of October 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



MINIMUM STANDARDS

FOR

COMMERCIAL AND NONCOMMERCIAL OPERATORS

AT

LANCASTER REGIONAL AIRPORT
LANCASTER, TEXAS

OCTOBER 2011

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SECTION 1
GENERAL STANDARDS

Section 1 – General Standards

- GS-1. **Authorization of Implementation of Minimum Standards**
- GS-2. **Definitions:** Appendix A to these Minimum Standards contains definitions of terms commonly used in Rules and Regulations and in the Minimum Standards for Lancaster Municipal Airport. These definitions are subject to review, and possible modifications from time to time. The City reserves the option of adding to, deleting or changing the definitions if deemed necessary or prudent.
- GS-3. **Airport Open on Nondiscriminatory Basis:** Subject only to the provisions hereof, facilities on the airport shall be open to all classes of users on fair and not unjustly discriminatory bases. What constitutes discrimination shall, in the final analysis, be determined by the FAA, the determination of which shall be final.
- GS-4. **Compliance with Ordinances, Laws, Rules and Regulations:** All persons operating on the airport shall comply with applicable state and federal laws, rules and regulations and local ordinances.
- GS-5. **Hangar Space:** Except as otherwise provided in this section, no person may offer for hire on the airport any hangar or shelter for aircraft, related service equipment, or surface vehicle unless he has leased premises from the City as a GFBO or SFBO.
- GS-6. **Compliance with Health, Fire, Construction, and Zoning Codes:** All persons utilizing the airport shall comply with the requirements of all City health, fire, construction, and zoning codes applicable to the airport and its operation.
- GS-7. **Inspections:** To the extent necessary to protect the rights and interests of the Owner or to assure compliance with these minimum standards or a lease, the Airport Manager, City Manager or Designee, or any representative of the FAA or state agency having jurisdiction over the Airport shall have the right to enter and inspect, during reasonable hours, structures, premises, facilities, and improvements on the airport to determine compliance with all requirements of these standards and any applicable lease provisions.
- GS-8. **Surface Vehicles, Limits on Weight:** No vehicle with dual-wheeled axle loadings of more than 25,000 pounds is allowed on any paved or treated aircraft movement or parking areas.
- GS-9. **Civil Rights:** Persons using this airport shall comply with all provisions of the Civil Rights Act of 1964 and implementing Part 21 of the Regulations of the U.S. Department of Transportation, and are hereby specifically prohibited from discrimination against any group or individual on the basis of race, creed, color, national origin, or sex.
- GS-10. **Surface Vehicles on Airport:** Except to the extent needed to service or load aircraft, no private or commercial vehicle shall be driven or parked on any other than designated roads or auto parking areas.
- GS-11. **Complaints:** Complaints against any operator or his employee for violations of these standards shall be in writing alleging the infraction, date, persons, and any witnesses thereto and signed by the complainant and filed with the Airport Manager, City Manager, or Designee.

SECTION 2
COMMERCIAL OPERATIONS

Section 2 – Commercial Operations

- CO-1. **Commercial Operations:** No person may conduct any commercial activity or offer or provide any goods or services for compensation to the public at the airport unless that person is a General Fixed-Base Operator (GFBO) or a Specialty Fixed-Base Operator (SFBO) at the airport.
- CO-2. **General:** No person may conduct or provide for compensation to the public any goods, services, or equipment on the airport unless qualified as a GFBO or SFBO. Nothing contained herein or anywhere else in these standards will prohibit partners, co-owners, or members of legitimate nonprofit clubs (as limited elsewhere in these standards) from providing, servicing, or using their own flight equipment.
- CO-3. **General Fixed-Base Operator (GFBO):** As used herein, "GFBO" or General Fixed-Base Operator shall mean a primary commercial operator authorized to do business or to provide goods or services to the public for compensation on the airport and who meets at least the minimum requirements set out hereinafter.

Any person desiring to become a GFBO shall be required to lease either the (but never more than one) GFBO areas, which may be vacant at the time, or an equivalent acreage of land located elsewhere on the airport. If another GFBO area is to be developed for the first time, the person obtaining the lease/operating rights shall, in addition to other requirements herein, at his own expense construct at a location shown/to be shown on the ALP a paved aircraft parking apron of at least 30,000 square feet with at least a 10-year design life and have a 30,000 pound single wheel configuration aircraft load rating.

No person may operate as a GFBO unless that person has received and holds a currently valid GFBO Contract and a Certificate of Occupancy from the City.

A. Requirements

1. GFBO will lease at a rate stipulated by City Council at a compatible GFBO area on the airport of the same acreage. GFBO's shall be required to lease a minimum of one acre of GFBO areas as are designated.
2. GFBO, within one (1) year of lease agreement date, plus any extensions the City may grant, will commence construction of and within two (2) years of lease agreement date, plus any extension the City may grant, completes a fully equipped and operational facility required by these standards. If any GFBO fails to do so, Owner may on his motion, or on receiving from an otherwise qualified person a bona fide firm offer to lease and operate a GFBO on the tract shall, unilaterally cancel the GFBO lease and offer the tract for lease to others under the procedures set out hereinafter.
3. GFBO will provide prompt line service with at least one person on duty at all times from 7:00 am to 7:00 pm, 7 days a week and safely and courteously supply fuel, starting aid, and related light maintenance to aircraft and/or service vehicles on the airport.
4. GFBO will provide, at all times, at least two fully equipped positions on the paved parking apron for itinerant aircraft usage.
5. GFBO will provide (inside the pilot lounge) a pay or free telephone for use of the pilots during posted hours of operation.

6. GFBO will provide, for sale, current aircraft navigation maps or charts (Sectionals or WAC's, and Low-Altitude En Route) for Texas and any other States GFBO determines necessary.
7. GFBO will provide, at all times, a food vending and soft drink machine accessible to airport users.
8. GFBO will provide (at prominent and highly visible locations on or in front of the hangar/pilot lounge) a fire extinguisher of minimum capacity required under local fire codes for fighting fuel fires in/on/around aircraft normally using airport.
9. GFBO will possess and maintain public liability and premises operators' insurance coverage protecting both GFBO and City against as prescribed in Section 5 here to.
10. GFBO will lease space for and provide properly equipped tie-down locations for all GFBO owned/operated aircraft, all aircraft being serviced at GFBO, and at least four itinerant aircraft.

CO-4. Specialty Fixed-Based Operator (SFBO): A Specialty Fixed Based Operator (SFBO) is a person other than a GFBO who offers and/or provides for compensation to the public goods, services, or facilities on or for delivery on or in the vicinity of the Airport, including one or more of the following activities:

- A. Freight service;
- B. Aircraft engine/air frame/accessory modifications;
- C. Aircraft avionics installation/ modification/repair;
- D. Major and/or minor aircraft power plant/accessory repair;
- E. Major and/or minor aircraft air frame/accessory repair;
- F. Ground schools for pilots or mechanics;
- G. Flight schools providing for at least single-engine, private pilot (VFR) ratings within a reasonable length of time, and own or possess under exclusive lease at least one aircraft, IFR-certified, which must be based at the Airport and kept properly certified, and in top mechanical and physical condition;
- H. Helicopter pilot training;
- I. Other special flight instructions;
- J. Aerial photography;
- K. Air ambulance;
- L. Covered and uncovered aircraft parking;
- M. Other specialty activities not identified;
- N. Contract fuel sales;
- O. Sales of aircraft.

If an SFBO offers or provides contract fuel sales, one or more other activities must also be provided.

No person may operate as an SFBO unless that person has received and holds a currently valid Certificate of Occupancy from the City.

Conditions which must be met for the City to issue a written authorization to function as a SFBO are as follows:

- A. The person must have:

1. A lease with sufficient and appropriate space, including parking space, to conduct the functions of the SFBO as it has represented it will perform for a period of a minimum of twelve (12) months for either unimproved airport property or improved airport property with City-owned facilities on it, said lease having been recommended by the Airport Advisory Board and approved by the City Council (aircraft storage hangars and tie-down spaces shall not be used for a SFBO operation); or
2. A sublease from a GFBO or another SFBO with sufficient and appropriate space to conduct those functions as an SFBO which the Airport Advisory Board and City Council have approved and shall set out in the written authorization.
3. The person must make a request to the Airport Advisory Board and City Council, in writing, setting the specific functions that they will perform as an SFBO (the City shall limit the written authorization issued to those functions set out in the request).

CO-5. Aircraft Sales:

- A. **New Aircraft Sales:** A new aircraft sales SFBO engages in the sale of new aircraft (either on a retail or wholesale basis) of an aircraft manufacturer or used aircraft; and will provide such repair, services, and parts as necessary to meet any guarantee or warranty on aircraft sold.
- B. **Used Aircraft Sales:** A used aircraft sales SFBO engages in the purchasing and selling of used aircraft. These SFBOs may provide such repair, services, and parts as necessary to support the operation of aircraft sold. Some of the requirements for the sale of new aircraft may not be appropriate to the sale of used aircraft because of each aircraft's unique operational purpose.
- C. The aircraft sales SFBO shall provide necessary and satisfactory arrangements for repair and servicing of aircraft, but only for the duration of any sales guarantee or warranty period. The SFBO who is engaged in the business of selling new aircraft shall have available a representative example of the product(s), as required by the manufacturer.
- D. The SFBO shall have in his employ, and on duty during the appropriate business hours trained personnel in such numbers as are required. The SFBO shall also maintain, during all business hours, a responsible person in charge to supervise the operations in the leased area with the authorization to represent and act for and on behalf of the SFBO, and to provide appropriately rated pilots for aircraft demonstrations and make and model training in aircraft sold.
- E. At least one aircraft storage space (tie-down or hangar) shall be leased for each aircraft in inventory.

CO-6 Airframe, Engine and Accessory Maintenance and Repair:

- A. An aircraft airframe, engine, and accessory maintenance and repair SFBO provides one or a combination of airframe, engine and accessory overhauls and repair services on aircraft up to and may include business jet aircraft and helicopters. This category shall also include the sale of aircraft parts and accessories.
- B. The SFBO shall provide sufficient equipment, supplies, manuals and availability of parts equivalent as required for certification by the FAA.

- C. The SFBO shall have in his employ, and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the Minimum Standards set forth in this category of services in an efficient manner, but never less than one person currently certificated by the FAA with ratings appropriate to the work being performed and who holds an airframe, power plant or an aircraft inspector rating.
- D. At least two aircraft storage spaces (tie-downs or hangars) shall be leased for such SFBOs operations.

CO-8. Aircraft Lease or Rentals:

- A. An aircraft lease or rental SFBO engages in the rental or lease of aircraft to the public.
- B. The SFBO shall have available for rental, either owned or under written lease to SFBO, a certified and currently airworthy aircraft.
- C. The SFBO shall make available during business hours an appropriately rated and current FAA certified flight instructor for aircraft check flights as required.
- D. At least one tie-down or adequate hangar space shall be leased for each owned or leased aircraft.

CO-9. Flight Training:

- A. A flight training SFBO engages in instructing pilots in fixed and/or rotary wing aircraft, and provides dual flight instruction and related ground school instruction as necessary preparatory to taking written examinations and flight tests appropriate to the pilot certificates and ratings sought by the applicant.
- B. The SFBO shall have available for use in flight training, either owned or under written lease to SFBO, a certified and currently airworthy aircraft, which must be at least a two-place aircraft suitable for private pilot training.
- C. The SFBO shall employ at least one FAA certified flight instructor to provide the type of training offered.
- D. At least one tie-down or adequate hangar space shall be leased for each owned or leased aircraft.

CO-10. Aircraft Fuel and Oil Service:

- A. An aircraft fuel and oil service SFBO provides aviation fuels, lubricants and other services supporting itinerant aircraft operations and operations of aircraft based on the airport.
- B. Except as otherwise provided in any agreement between the SFBO and the City, an SFBO conducting aviation fuel and oil sales or service to the public on the Airport shall be required to provide the following services and equipment:
 - 1. Appropriate grades of aviation fuel.
 - a. 100 LL
 - b. Jet A
 - 2. An adequate inventory of generally accepted grades of aviation engine oil and lubricants.
 - 3. Fuel dispensing equipment, meeting all applicable Federal, State, and City Authority requirements for each type of fuel dispensed.

4. Proper equipment for aircraft towing, inflating aircraft tires, washing aircraft windscreens, and recharging aircraft batteries.
5. The safe storage and handling of fuel in conformance with all Federal, State, County and City requirements and fire codes pertaining to safe storage and handling of fuel.
6. The lawful and sanitary handling and timely disposal, away from the Airport, of all solid waste, regulated waste, and other materials including, but not limited to, used oil, solvents, and other regulated waste. The piling and storage of crates, boxes, barrels, and other containers will not be permitted within the leased premises.
7. Adequate grounding wires will be installed, continuously inspected and maintained on all fueling equipment, to reduce the hazards of static electricity.
8. An adequate supply of properly located fire extinguishers and other precautions and/or equipment required by applicable fire codes.
9. Unless provided by the City, the SFBO shall have a fixed fuel storage system that shall contain safety fixtures and filtration systems to ensure airline-type quality. The system shall be required to have at least 3000 gallons of storage for each type of fuel the SFBO is required to provide. The storage system must include adequate fuel spill prevention features and containment capabilities, together with an approved fuel Spill Prevention Countermeasures and Control Plan (SPCC), as applicable.
10. The prospective SFBO shall have his premises open and services available at least 8 hours per day, 7 days a week, and shall make provision for an office attendant to be on duty at all times during the required operating hours, unless otherwise negotiated with the City.
11. A designated parking space for each fueling vehicle shall be leased.
12. SFBO will be required to comply with paragraph CO-4.

CO-11. Avionics, Instruments or Propeller Repair Stations:

- A. An avionics, instrument, or propeller repair station SFBO engages in the business of and provides a shop for the repair of aircraft avionics, propellers, instruments, and accessories for general aviation aircraft. This category may include the sale of new or used aircraft avionics, propellers, instruments, and accessories. The SFBO shall hold the appropriate repair station certificates issued by FAA for the types of equipment he plans to service and/or install.
- B. The SFBO shall have in his employ and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the Minimum Standards set forth in this category in an efficient manner but never less than one person who is an FAA rated radio, instrument or propeller repairman.
- C. At least one aircraft storage space (tie-down or hangar) shall be leased.

CO-12. Aircraft Charter and Air Taxi:

- A. An air charter or air taxi SFBO engages in the business of providing air transportation (persons or property) to the general public for hire, on an unscheduled or scheduled basis under Code of Federal Regulations CFR 14 Part 135 of the Federal Aviation Regulations.

- B. The SFBO shall provide, either owned or under written lease, type, class, size and number of aircraft intended to be used by the SFBO, not less than one single-engine four-place aircraft which must meet the requirements of the commercial air taxi certificate held by the SFBO.
- C. The SFBO shall have in his employ and on duty during the appropriate business hours trained personnel in such numbers as are required to meet the Minimum Standards in an efficient manner but never less than one person who is an FAA certified commercial pilot and otherwise appropriately rated to permit the flight activity offered by SFBO.
- D. At least one tie-down or adequate hangar space shall be leased for each owned or leased aircraft.

CO-13. Aircraft Storage:

- A. Aircraft storage SFBO engages in the rental of conventional hangars or multiple T-hangars.
- B. The conventional hangar SFBO shall have his facilities available for the tenant's aircraft removal and storage on a continuous basis.
- C. The SFBO shall demonstrate that it can provide sufficient personnel trained to meet all requirements for the storage of aircraft with appropriate equipment.

CO-14. Specialized Commercial Flying Services:

- A. Specialized commercial flying services SFBO engages in air transportation for hire for the purpose of providing the use of aircraft for the following activities:
 1. Non-stop sightseeing flights that begin and end at the same airport.
 2. Aerial advertising.
 3. Aerial photography or survey.
 4. Power line or pipeline patrol.
 5. Fire fighting.
 6. Any other operations not specifically excluded from Part 135 of the Federal Aviation Administration Regulations.
- B. All SFBO's shall demonstrate that they have the availability of aircraft suitably equipped for the particular type of operation they intend to perform.
- C. The SFBO shall have in his employ, and on duty during appropriate business hours, trained personnel in such numbers as may be required to meet the Minimum Standards herein set forth in an efficient manner.

CO-15. Multiple Services:

- A. A multiple services SFBO engages in any two or more of the aeronautical services for which Minimum Standards have been herein provided.
- B. The SFBO shall comply with the aircraft requirements, including the equipment thereon for each aeronautical service to be performed except that multiple uses can be made of all aircraft owned or under lease by SFBO.
- C. The SFBO shall have in his employ, and on duty during the appropriate business hours, trained personnel in such numbers as are required to meet the Minimum Standards for each aeronautical service the SFBO is performing as herein provided. Multiple responsibilities may be assigned to meet the personnel requirements for each aeronautical service being performed by the SFBO.
- D. The SFBO providing three (3) or more services shall lease a sufficient number of aircraft tie-down spaces or hangar space to meet the combined needs of the operations proposed.

CO-16. Flying Clubs: See requirements for Flying Clubs in Airport Rules and Regulations, and in Minimum Standards Section NC-1.

CO-17. SFBO Subleasing from another SFBO: Prior to finalizing an agreement, the lessee and sub-lessee shall obtain the written approval of the Airport Advisory Board and City Council for the business proposed. Said sublease shall define the type of business and service to be offered by the sub-lessee SFBO.

The sub-lessee SFBO shall meet all of the Minimum Standards established by the City for the categories of services to be furnished by the SFBO. The Minimum Standards may be met in combination between lessee and sub-lessee. The sublease agreement shall specifically define those services to be provided by the lessee to the sub-lessee that shall be used to meet the standards.

CO-18. Environmental Issues: Any SFBO, person, party, firm or corporation operating on this airport must comply with all federal, state and local environmental laws, rules, and regulations.

CO-19. Aerial Applicators:

- A. No person may use the airport for loading, unloading, air frame/hopper/tank wash down, other than engine repair of any aircraft used to apply any insecticide, fungicide, rodenticide, or herbicide unless he first gets written permission from the City. The City shall not grant such a permit unless the applicant follows procedures for and obtains an SFBO permit and, in addition, agrees to and (if not provided by a GFBO-lessor) actually does provide at his own expense a paved work area with adequate provisions to collect all debris, liquids, and other materials from such aircraft and deposit same in a container and dispose of same in a manner approved by the Federal Environmental Protection Agency, Texas Department of Health, Texas Department of Water Resources, Texas Department of Agriculture, and code of ordinances and regulations of City of Lancaster and Dallas County.
- B. The aerial applicator shall bear full financial and legal responsibility for remediation and clean up of spills or other environmental contamination resulting from its operation.

SECTION 3
NON-COMMERCIAL OPERATIONS

Section 3 – Non-Commercial Operations

NCO-1. Flying Clubs/Cooperative and/or Partnership Ownership of Aircraft: Flying clubs, cooperative or partnership ownership operation of aircraft based on the airport are specifically authorized, provided:

- A. The flying club, association, partnership, or corporation is composed only of natural persons and is organized on a not-for-profit or solely cost-sharing basis.
- B. The flying club, association, partnership or corporation will provide and maintain public liability insurance as prescribed in Section 5.
- C. The flying club, association, partnership, or corporation leases, rents, or otherwise provides on the airport hangar space or tie-down space for each aircraft operated from the airport.
- D. Training, if provided at all, is provided only to its members.
- E. The flying club, association, partnership, or corporation registers with the Airport Manager, City Manager or Designee on the first business day of each year and provides the required copy of public liability insurance policy, a listing (with "n" numbers) of aircraft based and used at the airport, and a list of all members authorized to operate such aircraft.
- F. The flying club, association, partnership, or corporation and all members thereof otherwise operate in accordance with applicable federal and state law/regulations and these standards, and have written authorization from the Airport Manager, City Manager, or Designee to operate from the airport.

SECTION 4
LICENSES, CERTIFICATES, AUTHORIZATION

Section 4 – Licenses, Certificates, Authorizations

LCA-1. Licenses, Certifications, and Authorizations: No person shall operate on or from the airport (whether for compensation or not) unless he possesses or can confirm all licenses, certificates, and authorizations required by these standards and the various governmental authorities for such operations.

SECTION 5
INSURANCE

Section 5 – Insurance

- I-1. **Insurance:** Any public liability insurance policy required under these standards shall be carried with a Texas-licensed company. Also, a certificate showing that said insurance is in force, with the City as a co-insured and providing for a 30-day notice of cancellation, shall be furnished to the Airport Manager, City Manager or Designee.
- I-2. **Insurance on all Structures:** At all times during the term of the lease of land on the airport, the lessee, at his own expense, shall maintain with a Texas-licensed casualty company insurance on all structures on the leased property at the airport protecting the lessee and the Owner, as their interests may appear, against loss of damage by fire, accident, wind storm, hail, explosion, or smoke. Should loss occur and lessee for any reason abandon the lease, all proceeds shall (except to the extent otherwise claimable by the structure's mortgagee) become the property of the City.
- I-3. **Schedule of Minimum Insurance Requirements:**
- A. **GFBO or SFBO**
1. Commercial general aviation liability policy with coverage for premises. \$500,000 CSL¹
Hangar Keeper's Liability – Value of Aircraft in care, custody and control
- B. **AIRFRAME AND POWERPLANT REPAIR, AVIONICS, INSTRUMENTS, OR PROPELLER REPAIR**
1. Commercial general aviation liability policy with coverage for premises. \$500,000 CSL
Hangar Keeper's Liability – Value of Aircraft in care, custody and control
- C. **AIR TAXI AND/OR AIRCRAFT CHARTER**
1. Commercial general aviation liability policy with coverage for premises and operations. \$1,000,000 CSL
2. Aircraft liability with coverage for bodily injury and property damage, including passengers. \$1,000,000 CSL
- D. **AIRCRAFT RENTAL, FLIGHT TRAINING, COMMERCIAL FLYING CLUB**
1. Commercial general aviation liability policy with coverage for premises and operations. \$1,000,000 CSL
2. Aircraft liability with coverage for bodily injury and property damage, including passengers. \$1,000,000 CSL
- E. **SPECIALIZED COMMERCIAL AERONAUTICAL ACTIVITIES, AIRCRAFT SALES**
1. Commercial general aviation liability policy with coverage for premises and operations. \$1,000,000 CSL

¹ CSL = Combined Single Limit.

2. Aircraft liability, with coverage for bodily injury and property damage, including passengers. \$1,000,000 CSL

F. NON-COMMERCIAL FLYING CLUBS

1. Commercial general aviation liability policy with coverage for premises and operations. \$1,000,000 CSL
2. Aircraft liability, with coverage for bodily injury and property damage, including passengers.

G. AREIAL APPLICATORS

1. Commercial general aviation liability policy with coverage for premises and operations. \$1,000,000 CSL

H. AIRCRAFT HANGAR OPERATOR

1. General Liability Policy \$1,000,000 CSL
2. Hangar Keeper's Liability – Value of Aircraft in care, custody and control

I-4 SPECIAL CONDITIONS

- A. Any operator fueling aircraft shall have a minimum \$1,000,000 CSL general liability policy with the coverage specified in the Lancaster Municipal Airport Rules and Regulations.
- B. Any Operator using service vehicles on the Airport premises in support of its operations shall maintain additional coverage of Motor Vehicle Liability in the amount of \$500,000 CSL.

SECTION 6
BUILDING/IMPROVEMENT STANDARDS

Section 6 – Building/Improvement Standards

- BIS-1. Buildings and Structures:** All buildings and structures owned or used by operators on the airport are considered as "public buildings" and shall comply with Federal, State and local laws, codes and regulations.
- BIS-1a. Maintenance of the Airport:** Each lessee of land or facilities on the airport shall keep his leased area/facilities neat (freshly painted where appropriate), trimmed, clean, free from any type of hazard of life, limb, or property, free from junk and debris, and in an aesthetically pleasing condition. Maintenance of areas not leased shall be the responsibility of the City. No aircraft or other vehicle may be parked or kept at the airport unless it is kept operable and in sound structural and mechanical condition. Aircraft not meeting this test; i.e., those undergoing repair or appearing to be "junk", unusable, or unsightly, shall promptly be repaired or removed from the airport within 10 days written notice from Owner. Failure to do so after notice shall be considered a breach of these standards.
- BIS-2. Buildings and Structures Standard:** No person may construct, suffer, or maintain any structure or shelter, either permanent or temporary, unless specifically authorized by the City. Except as noted hereinafter, in no event shall the City authorize construction, erection, or continued presence of a structure unless it is of permanent metal and/or masonry construction, paved floors, aesthetically pleasing, and at a minimum, meet building, fire, and other codes or standards applicable in the City and/or at the airport, provided, however, that the City may on a case by case basis make exception to this policy insofar as applicable to GFBO's during the first six months the GFBO is open if first determined that such action is necessary to provide a minimal level of service to airport users.

SECTION 7
FUEL DELIVERY, STORAGE, SALES

Section 7 – Fuel Delivery, Storage, Sales

FDSS-1. Fire Regulations:

- A. Every person going upon or using the airport or its facilities in any manner shall abide by the International Fire Code 2006 (Ordinance 2010-12-40 adopted 12/13/10) and shall exercise the greatest care and caution to avoid and prevent fire.
- B. Aircraft shall not be fueled while the engine is running or while in a hangar or other enclosed place.
- C. Smoking or open flames within fifty (50) feet of any aircraft or fuel truck are prohibited.
- D. No one shall smoke, ignite a match or lighter in any building, except in offices, waiting rooms or buildings where specially permitted by the City Manager, Airport Manager, City Manager or Designee.
- E. Hangar entrances shall be kept clear at all times. No vehicles, parts, boxes, crates, cans, bottles, paper or other litter shall be permitted to accumulate in or about a hangar.
- F. The floors in all buildings shall be kept clean and free from oil, and no volatile, flammable substance shall be used for cleaning the floors.
- G. In all matters relating to aircraft fueling safety the provisions of NFPA Manual 407 "Aircraft Fuel Servicing, 2001", published and available from the National Fire Protection Association, Inc., 407 Atlantic Avenue, Boston, Massachusetts, 02210, shall prevail.

FDSS-2. Fueling of Aircraft – Safety Regulations:

- A. All aircraft shall be fueled in accordance with current airport Rules and Regulations.
- B. All aircraft will be properly grounded when being serviced with fuel.

FDSS-3. Fueling of Aircraft – Fuel Flowage Fees:

- A. The fuel flowage fees to be paid by lessees to the City on fuel delivered to lessees at Lancaster Regional Airport shall be as designated by the City Council.

SECTION 8
DOING BUSINESS WITH THE AIRPORT

Section 8 – Doing Business with the Airport

DB-1. Selection of Commercial/Operators: Where the City has more than one fully qualified applicant interested in commercial operations on a particular tract or facility on the airport, the City shall select the applicant in a fair and nondiscriminatory manner. Procedures for application/selection are given hereinafter.

DB-2. Selection of GFBO's/SFBO's:

- A. Following sufficient notice that applications for GFBO/SFBO lease/rights are to be accepted, on the designated day, (not less than 15 days following publication) Owner will review all applications to identify those applicants who meet the minimum requirements set out herein for GFBO/SFBO's. Application should address each of the relevant requirements and such other matters as may be pertinent to each proposal (application).
- B. The City, acting through the Airport Advisory Board, shall evaluate each application (proposal) on each of the following criteria:
 - 1. Financial integrity and stability – sufficient fiscal and credit to fulfill all requirements and obligations.
 - 2. Ownership experience – The aviation related experience of the principal(s) submitting an application.
 - 3. Management experience – Relevant managerial competence of the manager named in the application.
 - 4. Diversity and breadth of services proposed.
 - 5. Track record of the applicant in similar business endeavors.
 - 6. Quality of other enterprises operated by the applicant (either currently or in the past).
 - 7. Comprehensiveness and quality of applicants to become GFBO/SFBO.
 - 8. Miscellaneous attributes or intangibles – (must be specifically enumerated with support justifications).
- C. A recommendation by the Airport Advisory Board will be presented to the City Council for award (by resolution) of a GFBO/SFBO(s).
- D. All applicants will be advised in writing by the City Secretary of the Council of Award. The person(s) selected must, within five (5) days of the notice of award, confirm in writing his willingness to accept such award and to be bound by all Rules & Regulations, Minimum Standards and applicable FAA regulations. Should any person awarded GFBO/SFBO status decline to accept, the next person(s) will then be offered said GFBO/SFBO status until all vacant GFBO/SFBO positions are filled or until the list is depleted of acceptable applicants.

SECTION 9
LEASING

Section 9 – Leasing

- L-1. **Conflicts in Lease:** Should any portion of these Standards conflict with the conditions of any lease agreement executed by the City, the conditions in the executed lease agreement will take precedent over these Standards for the remainder of the lease term or renewal thereof.
- L-1a. **Leases/Operating Rights Nontransferable:** Except to the extent needed for a mortgagee to protect its legitimate interest in a leasehold and improvement thereon, land areas and/or facilities used or needed shall be held pursuant to lease only and shall not be transferable unless authorized in writing by the City.
- L-2. **Exclusive Rights:** No person may be granted in fact or by written instrument any exclusive right prohibited by Section 308 (a) of the Federal Aviation Act of 1958. Determination of the existence of a prohibited exclusive right shall in the final analysis be made by the FAA, and such determination shall be final. If FAA determines any provision of a written instrument or a practice in fact constitutes a grant of a prohibitive exclusive right, such provision or grant shall be deemed null and void for all purposes.
- L-3. **Use of Land within the Airport:** Property within the airport may be used only for aeronautical purposes, provided, however, that nothing herein shall prohibit a secondary non-aeronautical use of such land if 1) the primary aeronautical need is not interfered with; 2) it is not in violation of FAA regulations; 3) it is specifically authorized by the City and; 4) if such secondary use will benefit the airport or improve its maintenance or development is compatible with aeronautical purposes.
- L-4 **Ground Lease Procedures:** All Ground Lease Proposals shall use the following procedures and timing.

A request shall be made to the Airport Manager, City Manager or Designee, who will provide the applicant with instructions on the information that is needed to proceed with the request.

The following shall be required for all applications to lease:

1. Concept plan including preliminary sketches of construction and infrastructure build out.
2. Timeline to complete the project.
3. Intended aeronautical use of project, and a preliminary analysis of the project's impact on airport traffic and/or noise.

The Airport Manager, City Manager, or Designee will review the request for compliance with ALP, AMP, Airport Rules & Regulations, and Minimum Standards. The Airport Manager, City Manager, or Designee may at this time request changes to the proposed lease if above listed compliance factors are not met.

The Airport Manager, City Manager, or Designee and potential lessee will present the lease proposal at a regularly scheduled Airport Advisory Board meeting. The Airport Advisory Board may defer the proposed lease to the next scheduled Airport Advisory Board meeting if additional information or changes to the proposal are required.

All lease proposals will be forwarded to the City Council with a recommendation from the Airport Advisory Board for the next available meeting.

Applicant may appeal any Airport Advisory Board decision directly to the City Council. However, applicant may not use a direct appeal to City Council to bypass the Airport Advisory Board process.

- L-5. **Fees Due from Operators at/on Airport:** The following shall be due and payable to the City on

the last day of each calendar month for charges incurred during the calendar month next proceeding, as follows

- A. Sums due under any leases of land or land and improvements.
- B. Sums due under any agreement granting operating rights at or from the airport.

L-5a. **Terminal Apron Leasing:** No related persons/entities (legally, by third degree of consanguinity or affinity, or otherwise) may be granted GFBO rights on the entire terminal apron or on all or substantially all the land contiguous thereto.

L-6. **Lease Cancellation/Reduction in Scope:** Land leased on the airport must be promptly, effectively, and reasonably fully utilized. Any person leasing vacant land on the airport must commence construction of minimum facilities, as described in his lease with the City, no later than six (6) months from the date of the lease agreement, provided however, that the City may grant such extensions as the City may deem necessary. The facilities shall be completed not later than one (1) year after construction commences.

Total Cancellation: If any lessee fails to promptly and effectively utilize any of the leased premises, Owner may lease the tract to another qualified person in accordance with procedures set out elsewhere herein.

Partial Cancellation: If a lessee after such two (2) year period (and any extension that may be granted by the City) is using only part of the area leased to him, the City may, or on receiving from an otherwise qualified person a bona fide firm offer to lease the unused portion, unilaterally reduce the lease to the area being actually used, provided, however, that in no event (except where lease is totally cancelled) will a GFBO's or a SFBO's lease be reduced below the minimum required acreage for such operators.

L-6a. **Revocation of Leases/Grants:** The City, in its discretion, shall have the right to terminate any lease, license, or agreement authorizing any person to conduct any service or activity and/or to revoke any lease on any land or facility on the airport for any cause or reason provided by these standards or by law and, in addition, upon happening of one or more of the following:

- A. Filing of a petition of voluntary or involuntary bankruptcy by operator.
- B. The making by the person of any general assignment for the benefit of creditors.
- C. The abandonment or discontinuance of any permitted operation at the airport by any person or failure to conduct any service, operation, or activity which the lessee or person has agreed to provide under the terms of his contract.
- D. The failure of a person to promptly pay the City, when due, all rents, charges, fees, or other payments which are payable to the City in accordance with applicable leases or otherwise due hereunder.
- E. The failure of the person to remedy any default or breach or violation of these minimum standards by him or his employees within 30 days after notice from the Airport Manager, City Manager or Designee.
- F. Violation of the Minimum Standards or Rules and Regulation of the Airport, or failure to maintain current FAA licenses required for his operation.
- G. Intentionally or knowingly supplies the Owner with false or misleading information or misrepresents any material fact on his application or documents or in statements made to or before representatives of City.

- H. Operates or allowing any employee to operate an aircraft or any other equipment in a dangerous or hazardous manner which could endanger the general public or any member thereof in any manner.

L-7 Lease Extension or Renewal:

- A. The City may grant a lease extension renewal to any existing lease providing that the lessee meets the following conditions:

1. Prior leasing history has been satisfactory in all respects and no outstanding obligations or debt to the City exists.
2. The City staff, Airport Advisory Board and City Council approved of the extension or renewal terms
3. The lessee must apply for the extension or renewal following the same procedure as for a new lease at least 90 days prior to the effective date requested for extension as renewal.
4. The terms and conditions for the extension or renewal must be agreed upon by the City and the lessee prior to City approval of the request.

- L-8. **Rates and Charges:** All rates and charges imposed by the City upon any operator or user or by any commercial operator or user or other operators on the airport shall be uniformly applicable to all other such operators/users which make the same or similar use of the airport facility, provided, however, that nothing herein shall prevent granting of quantity discounts if such discounts are granted on a nondiscriminatory basis.

- L-9. **Lease Charges/Escalation Clauses/Terms:** All unimproved airport property shall be leased at an amount per square foot, per year as set by the City. The term of each lease for use of unimproved airport property shall be set by Owner, not to exceed thirty (30) years with up to two five (5) year options. Every lease of airport property shall be deemed to contain an automatic escalation clause requiring adjustment of lease charges at the end of each five (5) year period by the cumulative increase (since last adjusted) in the latest Consumer Price Index as published by the Bureau of Labor Statistics prior to lease anniversary and each five (5) years thereafter.

- L-10 **Late Charges:** The City may impose late charges as penalty for failure of tenants or lessees to make payments owed to the City in a timely manner. The amount of the penalty will be determined by the City.

APPENDIX A DEFINITIONS

Access taxiway: A taxiway that provides access to a particular location or area.

Active based aircraft: Aircraft that have a current Airworthiness Certificate and are based at an airport.

Actual runway length: The length of full-width usable runway from end to end of full strength pavement where those runways are paved, and which meet FAA criteria.

Advisory Circular (AC): FAA publications consisting of all non-regulatory material of a policy, guidance, and technical nature. Used as basic source for most airport design criteria.

Aircraft: A device that is used or intended to be used for flight in the air. (FAR Part 1)

Aircraft mix: The range of categories of aircraft which are to be accommodated at the airport. Mix is usually defined in percentages of categories such as multi engine, jet, turbo-prop, etc.

Aircraft movement areas: Areas on an airport suitable for aircraft operations and which meet FAA criteria.

Aircraft operations: A take-off or landing by an aircraft. There are two types of operations - local and itinerant.

- (1) Local operations are performed by aircraft which:
 - (a) Operate in the local traffic pattern of within sight of the airport.
 - (b) Are known to be departing for, or arriving from, flight in local practice areas within a 20-mile radius of the airport.
 - (c) Execute simulated instrument approaches or low passes at the airport.
- (2) Itinerant operations are all aircraft operations other than local operations.

Aircraft parking on terminal apron: The paved or surface-treated terminal aircraft parking apron shall be reserved for itinerant aircraft or for other aircraft while being fueled or while loading or unloading passengers, except that portion of the parking apron reserved for aircraft owners leasing space from the City for month to month parking.

Aircraft parking/tie-down: A specialized location on the airport that has at least 3-point tie-downs with ropes or chains adequate to hold aircraft immobile in gale-force winds.

Aircraft tie down: Positions on the ground surface that are available for securing aircraft.

Airport capacity: The rate of aircraft movements on the runway/taxiway system which results in a given level of delay, usually four minutes to departing aircraft.

Air navigation facility (NAVAID): Any facility used as, available for use as, or designed for use as an aid to air navigation, including lights, radio or other electronic communication, and any other device for guiding and controlling flight in the air or the landing or takeoff of aircraft.

Airport: The airport identified on the title plate hereof.

Airport Advisory Board (AAB): A seven member body of appointed citizens that study and make recommendations to the City Council regarding operations and facility improvements of the municipal airport.

Airport beacon: A visual navigation aid displaying alternating white and green flashes to indicate a lighted land based airport.

Airport elevation: The highest point of an airport's usable runways measured in feet from mean sea level.

Airport identifier - LNC: A coded identity assigned to the Lancaster, Texas airport by the Federal Aviation Administration.

Airport imaginary surfaces: Imaginary surfaces established at an airport for obstruction determination purposes and consisting of primary, approach-departure, horizontal, vertical, conical, and transitional surfaces. Building restriction lines are based upon these surfaces.

Airport Layout Plan (ALP): An FAA/TxDOT approved set of drawings showing airport boundaries, physical features and proposed additions to all areas owned or controlled by the sponsor for airport purposes, the location and nature of existing and proposed airport facilities and structures, and the location on the airport of the existing and proposed non-aviation areas and improvements thereon. The drawings also show local airspace, approach areas and obstructions in the approach areas.

Airport Manager: Person duly authorized by the City of Lancaster to perform duties required to manage the airport. To act on behalf of the City to the extent required for safe and efficient airport operations.

Airport Master Plan: An official document that presents the City concepts for the ultimate development of an airport. It presents the research and logic from which the plan was evolved and displays the plan in a graphic and written form.

Airport Reference Code (ARC): The Federal Aviation Administration classifies airports by use of the AIRPORT REFERENCE CODE (ARC), which is a coding system used to relate airport design criteria to the operational and physical characteristics of the airplanes intended to operate at the airport. This code is divided into two components. The first is depicted by a letter the airport approach category (operational characteristic) and relates to aircraft approach speed. The second component depicted by a roman numeral is the airplane design group and related to airplane wingspan (physical characteristic).

Airport sponsor: The City of Lancaster is the airport sponsor and is authorized to own and operate the airport, to obtain property interests, to obtain funds, and to be legally, financially, and otherwise able to meet all applicable requirements of current laws and regulations.

Airspace: Space in the air above the surface of the Earth or a particular portion of such space, usually defined by the boundaries of an area on the surface projected upward.

Airside facilities: The airfield on which aircraft operations are carried out, including runways and taxiways.

Altitude Above Ground Level (AGL): The height of an aircraft about the earth's surface.

Approach path: A specific flight course laid out in the vicinity of an airport and designed to bring aircraft in to safe landings; usually delineated by suitable navigational aids.

Approach surface: An imaginary surface longitudinally centered on the extended centerline of the runway, beginning at the end of the primary surface and rising outward and upward to a specified height above the established airport elevation.

Apron: A defined pavement area, intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, or maintenance.

Avigation easement: A grant of a property interest inland over which a right of unobstructed flight in the airspace is established, or used for related purposes such as noise mitigation.

Base leg: A segment of the airport traffic pattern that connects the downward leg and the final approach leg.

Based aircraft: The total number of active general aviation aircraft which use or may be expected to use an airport as a "home base".

Building area: An area on an airport to be used, considered, or intended to be used, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Building Restriction Line (BRL): A line shown on the airport layout plan beyond which airport buildings must not be positioned in order to limit their proximity to aircraft movement areas.

Common Traffic Advisory Frequency (CTAF): Is used by all aircraft to facilitate cooperation in their use of the airport. These conversations are generally related to the actual takeoff and/or landing of aircraft, but special activities close to the airport will often be accompanied by announcements on this frequency. See also UNICOM

City: The City of Lancaster, Texas.

Commercial operator: A person who provides for compensation, goods or services to the public on or from the airport, such as car rental agency, restaurant, etc.

Displaced threshold: A threshold that is located at a point on the runway other than the beginning.

Downwind leg: A flight path in the traffic pattern parallel to the landing runway in the direction opposite to landing. It extends to the intersection of the base leg. (See traffic pattern)

Effective runway length: (a) Effective runway length for takeoff means the distance from the end of the runway at which the takeoff is started to the point at which the obstruction clearance plane associated with the other end of the runway intersects the runway center-line. (FAR Part 121.171b) (b) Effective runway length for landing means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway to the far end thereof. (FAR Part 121-171.b)

Entrance taxiway: A taxiway that provides entrance for aircraft to the takeoff end of the runway.

Exit taxiway: A taxiway used as an exit from a runway to another runway, apron or other aircraft operating area.

FAR Part 77: Defines obstructions to air navigation and requires notice to FAA of certain types of construction on and near airports.

FAR Part 150, Airport Noise and Land Use Compatibility Planning: Designed to assist airport operators in determining the extent and nature of the noise problem at a given airport.

Federal Aviation Administration (FAA): Created by the act that established the Department of Transportation. Responsible for all civil aviation administration and regulation in the United States.

Federal Aviation Regulations (FAR): As codified in Title 14, Code of Federal Regulations.

Final approach area(s): Areas of defined dimensions protected for aircraft executing instrument approaches.

Final Approach (IFR): The flight path of an aircraft which is inbound to the airport on an approved final instrument approach course, beginning at the final approach fix or point and extending to the airport or the point where circling for landing or missed approach is executed.

Final Approach (VFR): A flight path, in the traffic pattern, of a landing aircraft in the direction of landing along the extended runway centerline from the base leg to the runway. (See traffic pattern).

Fixed Base Operator (FBO): A business enterprise located on the airport that provides goods and services to airport users, such as, fuel, lubricants, maintenance, or other accommodations to the general public.

Fuel flowage fees: Fees levied by the airport operator per gallon of aviation gasoline and jet fuel sold at the airport.

General aviation: That portion of civil aviation which encompasses all facets of aviation except air carriers holding a certificate of convenience and necessity from the Civil Aeronautics Board, and large aircraft commercial operators.

General aviation airports: Those airports with fewer than 2,500 annual enplaned passengers and those used exclusively by private and business aircraft not providing air-carrier passenger service.

General aviation itinerant operations: Takeoffs and landings of civil aircraft (exclusive of air carrier) operating on other than local flights.

General Fixed-Base Operator (GFBO): A person authorized under these standards to operate on the airport as a general fixed base operator (GFBO). See Section G on Commercial Operators/Rights.

Ground Lease: The right to use and occupy an area of the airport described in a ground lease agreement between the City of Lancaster and the lease holder.

Hangar Operator: The owner of a building or hangar space for lease or sale for the purpose of any general aviation related activity.

Heliport: An area of land, water, or structure used or intended to be used for the landing and takeoff of helicopters. (FAR Part 1)

Holding areas: Run-up areas located at or very near the ends of runways for pilots to make final checks and await final clearance for takeoff.

Horizontal surface: A specified portion of a horizontal plane located 150 feet above the established airport elevation which establishes the height above which an object is determined to be an obstruction to air navigation.

IFR airport: An airport with an authorized instrument approach procedure.

IFR conditions: Weather conditions below the minimum for flight under visual flight rules.

Instrument approach: An approach to an airport, with intent to land, by an aircraft flying in accordance with an IFR flight plan, when the visibility is less than 3 miles and/or when the ceiling is at or below the minimum initial altitude.

Instrument approach runway: A runway served by an electronic aid providing at least directional guidance adequate for a straight-in approach.

Instrument Flight Rules (IFR): FAR rules that govern the procedures for conducting instrument flight. (FAR Part 91)

Instrument Landing System (ILS): A system which provides in the aircraft, the horizontal and vertical guidance necessary for a landing.

Instrument Meteorological Conditions (IMC): Meteorological conditions expressed in terms of visibility, distance from cloud, and ceiling less than the minima specified for visual meteorological conditions.

Instrument runway: A runway equipped with electronic and visual navigation aids and for which a straight-in (precision or non-precision) approach procedure has been approved or is planned.

Itinerant operations: All aircraft arrivals and departures other than local operations.

Landing area: Any locality, either on land or water, including airports, heliports and STOL ports, which is used or intended to be used for the landing and takeoff or surface maneuvering of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging of passengers or cargo.

Landing roll: The distance from the point of touchdown to the point where the aircraft can be brought to a stop, or exit the runway.

Landside operations: Those parts of the airport designed to serve passengers including the terminal buildings, vehicular circular drive, and parking facilities.

Land use plan: Shows on-airport land uses as developed by the airport sponsor under the master plan effort and off-airport land uses as developed by surrounding communities.

Large aircraft: Aircraft of more than 12,500 pounds maximum certificated takeoff weight. (FAR Part 1)

Lighted airport: An airport where runway and associated obstruction lighting is available from sunset to sunrise or during periods of reduced visibility or on request of the pilot.

Line service: The dispensing of aviation fuel, checking aircraft engine oil, adding aircraft engine oil, windshield cleaning, etc.

Local operations: As pertaining to air traffic operations, aircraft operating in the local traffic pattern or within sight of the tower; aircraft known to be departing for, or arriving from, flight in local practice areas located within a 20-mile radius of the control tower; aircraft executing simulated instrument approaches or low passes at the airport.

Local traffic: Aircraft operating in the local traffic pattern or within sight of the tower, or aircraft known to be departing for or arriving from flight in local practice areas, or aircraft executing simulated instrument approaches at the airport.

Marking: On airports, a pattern of contrasting colors placed on the pavement, turf, or other usable surface by paint or other means to provide specific information to aircraft pilots and sometimes to operators of ground vehicles, on the movement areas.

National Plan of Integrated Airport Systems (NPIAS): The Airport and Airway Improvement Act of 1982. The legislation called for identification of national airport system needs including development costs in the short and long run.

Night: The time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time.

Noncommercial operators: A person who does not offer or provide goods or services to the public for compensation. See Section H herein on noncommercial operators.

Nonprecision Instrument Runway: A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance for which a straight-in or circling nonprecision instrument approach procedure has been approved.

Obstruction light: A light, or group of lights, usually red, mounted on a surface structure or natural terrain to warn pilots of the presence of a flight hazard; either an incandescent lamp with a red globe or a strobe light.

Obstruction marking/lighting: Distinctive marking and lighting to provide a uniform means for indicating the presence of obstructions.

Owner: The owner identified on the title page of these standards.

Parking apron: An apron intended to accommodate parked aircraft.

Person: Unless context clearly indicates otherwise, the "person" as used herein shall mean any natural person, estate, club, organization, firm, association (whether incorporated or not), partnership, corporation, or legal entity of any kind.

Precision Approach Path Indicator (PAPI): A visual approach aid for pilots on final approach to a runway. The PAPI allows the pilot to determine if the aircraft above, below or on the glide slope. A combination of red and white lights are used. There are also other visual approach aids such as VASI (Visual Approach Slope Indicator) that provided similar information.

Public airport: An airport for public use, publicly owned and under control of a public agency.

Public-use airport: An airport, public or private, open to the public without prior permission and without restrictions within the physical capacities of available facilities.

Reliever airports: A class of general aviation airports which have the function of relieving congestion at primary commercial airports and providing more access for general aviation to the overall community.

Relocated threshold: An area preceding the runway arrows unusable for takeoff or landing.

Restricted area: Airport property designated for the safe operation of aircraft or other uses requiring limited public access.

Runway: A defined rectangular area on a land airport prepared for the landing and takeoff run of aircraft along its length.

Runway bearing: The magnetic or true bearing of the runway centerline as measured from magnetic or true North.

Runway capacity: The number of aircraft operations which can be accommodated by a runway without undue delay to aircraft. Undue delays occur when delays to departures average four minutes during the peak two-hour period of the day.

Runway direction number: A whole number to the nearest one tenth of the magnetic bearing of the runway and measured in degrees clockwise from magnetic north.

Runway End Identification Lights (REIL): An airport lighting facility in the terminal area navigation system consisting of one flashing white high intensity light installed at each approach end corner of a runway and directed toward the approach zone, which enables the pilot to identify the threshold of a usable runway.

Runway length-landing: The measured length from the threshold to the end of the runway. Cannot include Runway Safety Area length.

Runway length-takeoff: The measured length from where the takeoff is designated to begin to the end of the runway.

Runway lights: Lights having a prescribed angle of emission used to define the lateral limits of a runway. Runway light intensity may be controllable or preset, and are uniformly spaced at intervals of approximately 200 feet.

Runway markings: (1) Basic marking-markings on runways used for operations under visual flight rules, consisting of centerline marking and runway direction numbers, and if required, letters. (2) Instrument marking-markings on runways served by non-visual navigation aids and intended for landings under instrument weather conditions, consisting of basic marking plus threshold marking. (3) All-weather marking-markings on runways served by non-visual precision approach aids and on runways having special operational requirements, consisting of instrument markings plus landing zone marking and side strips.

Runway orientation: The magnetic bearing of the centerline of the runway.

Runway protection zone: An area at ground level whose perimeter conforms to the runway's innermost approach surface projected vertically. It begins at the end of the primary surface and it terminates directly below the point or points where the approach surface reaches a height of 50 feet above the elevation of the runway end.

Runway safety area: Cleared, drained, graded, and usually turfed areas abutting the edges of the usable runway and symmetrically located about the runway. It extends 1000'x500' beyond each runway end for Runway 18-36, and 300'x150' beyond the ends of Runway 11-29. The width varies according to the type of runway.

Runway strength: The structural capability of a runway to support aircraft of a designated gross weight for each of single-wheel, dual-wheel, and dual-tandem-wheel landing gear types.

Runway threshold marking: Markings so placed as to indicate the longitudinal limits of that portion of the runway usable for landing.

Scheduled service: Airport transport service operated over routes based on published flight schedules, including extra sections and related non-revenue flights.

Secondary runway: A runway which provides additional wind coverage or capacity to expedite traffic handling.

Segmented circle: A basic marking device used to aid pilots in locating airports, and which provides a central location for such indicators and signal devices as may be required.

Shoulder: As pertaining to airports, an area adjacent to the edge of a paved surface so prepared to provide a transition between the pavement and the adjacent surface for aircraft running off the pavement, for drainage and sometimes for blast protection.

Single runway: An airport having one runway.

Small aircraft: Aircraft of 12,500 pounds or less maximum certificated takeoff weight. (FAR Part 1)

Specialty Fixed-Base Operator (SFBO): A person authorized to operate on the airport as a Specialty Fixed-Base Operator. See Section G on Commercial Operators/Rights.

Straight-in approach – IFR: An instrument approach wherein final approach is begun without first having executed a procedure turn, not necessarily completed with a straight-in landing or made to straight-in landing minimums.

Straight-in approach – VFR: Entry into the traffic pattern by interception of the extended runway centerline (final approach course) without executing any other portion of the traffic pattern. (See Traffic Pattern).

Taxi lane: A defined path in the aircraft parking area intended to provide taxiing aircraft access between the taxiways and the aircraft parking positions.

Taxiway: A defined path, usually paved, over which aircraft can taxi from one part of an airport to another.

Taxiway safety area: A cleared, drained, and graded area, symmetrically located about the extended taxiway centerline and adjacent to the end of the taxiway safety area.

Texas Council on Environmental Quality (TCEQ): The Texas state agency responsible for implementation and enforcement of state and federal environmental rules and regulations.

Terminal apron: An area provided for parking and positioning of aircraft in the vicinity of the terminal building for loading and unloading.

Terminal area: The area used or intended to be used for such facilities as terminal, hangars, shops, and other service buildings; automobile parking, fixed base operations, and garages and vehicle service facilities used in connection with the airport; and entrance and service roads used by the public within the boundaries of the airport.

Texas Department of Transportation (TxDOT): Acts as an agent of the state and of each political subdivision of Texas for the purposes of applying for, receiving, and disbursing federal funds. TxDOT administers The Aviation Facilities Development and Financial Assistance Program through its Aviation Division.

Terminal building: A building or buildings designed to accommodate the enplaning and deplaning activities of flight crews and passengers.

T-hangar: An aircraft hangar in which aircraft are parked alternately tail to tail, each in the T-shaped space left by the other row of aircraft or aircraft compartments.

Threshold: The designated beginning of the runway that is available and suitable for the landing of airplanes.

Total operations: All arrivals and departures performed by military, general aviation, and air carrier aircraft.

Traffic pattern: The traffic flow that is prescribed for aircraft landing at, taxiing on, or taking off from an airport. The components of a typical traffic pattern are upwind leg, crosswind leg, downwind leg, base leg, and final approach.

- a) Upwind Leg – A flight path parallel to the landing runway in the direction of landing.
- b) Crosswind Leg – A flight path at right angles to the landing runway off its upwind end.
- c) Downwind Leg – A flight path parallel to the landing runway in the direction opposite to landing. The downwind leg normally extends between the crosswind leg and the base leg.
- d) Base Leg – A flight path at right angles to the landing runway off its approach end. The base leg normally extends from the downwind leg to the intersection of the extended runway centerline.
- e) Final Approach – A flight path in the direction of landing along the extended runway centerline. The final approach normally extends from the base leg to the runway. An aircraft making a straight-in approach VFR is also considered to be on final approach.

Transitional surface: A surface which extends outward and upward from the sides of the primary and approach surfaces normal to the runway centerline which identifies the height limitations on an object before it becomes an obstruction to air navigation.

UNICOM: Frequencies authorized for aeronautical advisory services to private aircraft. Only one such station is authorized at any landing area. Services available are advisory in nature, primarily concerning the airport services and airport utilization.

VFR airport: An airport without an authorized or planned instrument approach procedure; also, a former airport design category indicating an airport serving small aircraft only and not designed to satisfy the requirements of instrument landing operations.

Visual approach: An approach wherein an aircraft on an IFR flight plan, operating in VFR conditions under the control of a radar facility and having an air traffic control authorization, may deviate from the prescribed instrument approach procedure and proceed to the airport of destination, served by an operational control tower, by visual reference to the surface.

Visual Approach Slope Indicator (VASI): An airport lighting facility in the terminal area navigation system used primarily under VFR conditions. It provides vertical visual guidance to aircraft during approach and landing by radiating a directional pattern of high intensity red and white focused light beams which indicate to the pilot that he is "on path" if he sees red/white, "above path" if white/white, and "below path" if red/red.

Visual Flight Rules (VFR): Rules that govern the procedures for conducting flight under visual conditions. (FAR Part 91)

Visual runway: A runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA-approved airport layout plan, a military service approved military airport layout plan, or by a planning document submitted to the FAA by competent authority. (FAR Part 77)

Wake vortex: A phenomenon resulting from the passage of an aircraft through the atmosphere. It is an aerodynamic disturbance that originates at the wingtips and trails in corkscrew fashion behind the aircraft. When used by ATC it includes vortices, thrust stream turbulence, jet wash, propeller wash, and rotor wash.

Wind cone: A free-rotating fabric truncated cone which when subjected to air movement indicates wind direction and wind force.

Wind rose: A diagram for a given location showing relative frequency and velocity of wind from all compass directions.

LANCASTER CITY COUNCIL
Agenda Communication for
October 24, 2011

7

AG11-007

Consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a renewable thirty year contract by and between the City of Lancaster, Texas, and the City of Dallas, Texas, to purchase wholesale treated water; authorizing its execution by the City Manager; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.

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

**Goals: Financially Sound City Government
Healthy, Safe and Vibrant Neighborhoods**

Background

Dallas is a regional water provider currently providing water services to Wholesale Potable Treated Water Customers located within Dallas' established service area in North Central Texas. The City of Lancaster is currently a customer of the City of Dallas. The current thirty year contract expires on November 11, 2011 and is up for renewal.

Dallas operates a water system to provide a regulatory compliant, safe and reliable water supply, adequate for the current water use and future growth of the City of Lancaster. In 2010, the City of Lancaster signed a Memorandum of Agreement (MOA), along with twenty three other municipalities, accepting the terms and conditions of the rate setting methodology utilized by the City of Dallas for the purchase of Wholesale Potable Treated Water. The City of Lancaster does not maintain a facility to produce potable treated water.

Considerations

- **Operational** - The City of Lancaster has been a customer of the City of Dallas for over thirty years. There are no plans in the future to build the infrastructure required to maintain a facility by the City of Lancaster to produce potable treated water.
- **Legal** - The City Attorney reviewed the contract and resolution.
- **Financial** - The anticipated costs for the purchase of Wholesale Potable Treated Water are included in the fiscal year 2011/2012 approved budget.

- **Public Information** - None

Options/Alternatives

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

Recommendation

Staff recommends approving the contract and resolution as presented.

Attachments

- Resolution
- Dallas Water Utilities Contract

Note: pages 5 - 21 and 23 - 27 of Exhibit A (Memorandum of Agreement) attached to the Dallas Water Utilities Contract are intentionally omitted; these pages are signature pages for other participating cities.

Prepared and submitted by:
Sheree Haynes, Finance Director
Clovia English, Director of Public Works

Date: October 14, 2011

RESOLUTION NO. 2011-10-92

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A RENEWABLE THIRTY YEAR CONTRACT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS, AND THE CITY OF DALLAS, TEXAS, TO PURCHASE WHOLESAL TREATED WATER; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster currently purchases wholesale treated water from the City of Dallas, and the City of Dallas currently delivers and sells wholesale treated water to the City of Lancaster as set forth under the terms, covenants, and conditions stated in the current contract; and

WHEREAS, the current contract between the parties for wholesale treated water will expire on November 11, 2011; and

WHEREAS, the City of Lancaster and the City of Dallas desire to enter into a new wholesale treated water contract;

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

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

SECTION 2. That the City Manager of the City of Lancaster, Texas, is hereby authorized to execute said agreement.

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

SECTION 4. That 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. That 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 24th day of October 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

WHOLESALE TREATED WATER CONTRACT BETWEEN
CITY OF DALLAS AND CITY OF LANCASTER

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS WHOLESALE TREATED WATER CONTRACT ("Contract") is made and entered into this the ___ day of _____, 2011, by and between the CITY OF DALLAS, a Texas home rule municipality (hereinafter called "Dallas"), and the CITY OF LANCASTER, TEXAS, a Texas home rule municipality (hereinafter called "Customer").

WHEREAS, Customer currently purchases wholesale treated water from Dallas, and Dallas currently delivers and sells wholesale treated water to Customer as set forth under the terms, covenants, and conditions stated the Current Contract; and

WHEREAS, from time to time, both Dallas and Customer have had the need to request the other to furnish water and/or wastewater service to each other's customers along common boundary lines wherein only one of the parties has facilities available; and

WHEREAS, the Current Contract with Dallas will expire on November 11, 2011; and

WHEREAS, Dallas and Customer desire to enter into a new wholesale treated water contract and reciprocal water and wastewater agreement; and

NOW, THEREFORE, Dallas and Customer, in consideration of the mutual terms, covenants, and conditions contained in this Contract, agree as follows:

Article 1. DEFINITIONS

1.1 Definitions. In addition to the definitions stated in the preamble hereof, the following words and phrases as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

"Current Contract" means that certain Wholesale Treated Water Contract dated and effective November 11, 1981, by and between Dallas and Customer.

"Customer's Service Area" means the area within Customer's incorporated limits, as amended from time to time through annexation or disannexation, and any service area described in a certificate of convenience and necessity issued by the TCEQ for the provision of retail public water service, even if such service area is outside of Customer's incorporated limits, such service area on the Effective Date being as set forth in Exhibit "B," attached hereto and incorporated herein by reference.

“Delivery Facilities” means the pipe, valves, meters, and other associated equipment and appurtenances necessary to connect Dallas’ water distribution system to Customer’s water distribution system at the Delivery Points so that delivery of Treated Potable Water from Dallas to Customer is made possible.

“Delivery Points” means those locations set forth in Exhibit “C,” attached hereto and incorporated herein by reference, or as may be added to or deleted by agreement of the parties from time to time, where Dallas’ water distribution system connects to Customer’s water system and at which delivery of Treated Potable Water occurs to Customer.

“Demand” means the maximum rate of flow of Treated Potable Water that may be taken by Customer from Dallas within a Water Year.

“Demand Schedule” means Customer’s written estimate of Customer’s annual requirements for delivery and use of Potable Treated Water from Dallas.

“Director” means the Director of Dallas’ Department of Water Utilities, or the Director’s designated representative.

“Effective Date” shall mean November 11, 2011.

“Memorandum of Agreement” or “MOA” means that certain *Memorandum of Agreement for Wholesale Treated Water* effective December 17, 2009, by and among Dallas, Customer and other local governmental entities, a copy of which is attached hereto as Exhibit “A,” and incorporated herein by reference.

“Potable Treated Water” means raw water that has been treated and purified to at least Drinking Water Standards as required by applicable TCEQ rules and regulations for Public Waters Systems, as amended from time to time.

“TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

“Water Year” means the period described by applicable ordinance of the City of Dallas, as may be amended from time to time, which on the Effective Date begins on June 1st of each calendar year and ends on May 31st of the immediately subsequent calendar year.

Article 2. TERM; TERMINATION OF CURRENT CONTRACT

2.1. Term. This Contract shall remain in full force and effect for a term of thirty (30) years from November 11, 2011 (“Effective Date”) unless terminated earlier as provided herein.

2.2 Termination of Current Contract. Upon the Effective Date, the Current Contract shall be null, void, and of no further legal force or effect except as to any provisions that expressly survive the termination of the Current Contract.

Article 3. WATER SALES

3.1 Sale and Delivery of Treated Water. Dallas agrees to sell and deliver to Customer, on a wholesale cost basis, Potable Treated Water in accordance with the specifications and restrictions contained in Article 4 of this Contract and in sufficient quantities to meet Customer's volume and demand requirements as provided in this Contract.

3.2 Limitations on Delivery. Customer understands and acknowledges that delivery of Potable Treated Water to meet Customer's volume and demand requirements is subject to and limited by available system supply and system deliverability, as reasonably determined by the Director as well as events of Force Majeure; provided, however, delivery of Potable Treated Water to Customer shall not be unreasonably withheld.

3.3 Demand Schedule. Not later than 60 days after the Effective Date, Customer shall provide to Dallas a Demand Schedule which factors in any reasonably anticipated increases or decreases in Demand during the term of this Contract. Customer shall either reaffirm or, if necessary, revise and update the Demand Schedule not later than ninety (90) days prior to the end of the fifth, tenth, fifteenth, twentieth, and twenty-fifth anniversaries of the Effective Date of this Contract. Customer shall also either reaffirm or update the Demand Schedule not later than ninety (90) days following receipt of a written request for same from Dallas.

3.4 Customer Changes in Demand. Customer may from time to time change its Demand as set forth in the Demand Schedule subject to Section 3.7, below. Except as provided in the Special Condition contained in Exhibit "D", Customer shall be required to pay Dallas the Annual Demand Charge based on Section 3.8.

3.5 Failure to Deliver Demand – Seven Days. If Dallas fails to make available the currently established Demand for seven (7) or more consecutive days, the Demand Charge for such days shall be an amount equal to the maximum rate of delivery of Potable Treated Water for the days in which full Demand was not met, multiplied by the current Annual Demand Charge, then divided by 365, then multiplied by the number of days the Demand was not met.

3.6 Failure to Deliver Demand – Thirty Days. If Dallas fails to make available to Customer the currently established Demand for thirty (30) or more consecutive days, the Demand Charge for that Water Year shall be calculated by using the maximum rate of delivery of Potable Treated Water to Customer for the days in which the full Demand was not met, multiplied by the current Annual Demand Charge.

3.7 Notice of Demand Changes. Customer shall give reasonable notice to Dallas of anticipated changes in its Demand. Such notice shall be given not less than six (6) months in advance of the effective date of the change if the requested change, when considered with other Dallas Customer requests, does not require the construction of additional facilities. The Director may waive the six-month notice requirement for good cause shown. If construction of additional facilities is required, enough additional advance notice shall be given as is necessary to allow for financing, design, and construction of the needed facilities.

3.8 Year on Which Annual Demand Charge is Based. Customer agrees, for each Water Year, to pay Annual Demand Charges based on the greater of: (a) the Demand for the current Water Year; or (b) the highest Demand established during the five (5) Water Years preceding the current Water Year.

Article 4. DELIVERY POINT, ACCESS, ETC.

4.1 Delivery Point. Dallas agrees to deliver Potable Treated Water sold to Customer for use within Customer's designated service area as identified in Exhibit B, at the Delivery Point(s).

4.2 Cost of Delivery Facilities. Except as set forth in Sections 4.3, 4.4, and 4.5, the cost for design and construction of all proposed Delivery Facilities, whether designated in Exhibit C or mutually agreed upon at a later date, shall be borne by Customer. Unless otherwise mutually agreed to by Dallas and Customer, Customer shall be responsible for the design, contracting, construction, and financing of Delivery Facilities and for the acquisition of any right-of-way for delivery of Treated Potable Water from the Dallas water system to the Delivery Points.

4.3 Oversizing of Delivery Facilities – Dallas Request. Dallas may elect to oversize a proposed Delivery Facility for the benefit of Dallas or other parties. If Dallas requires oversizing of a proposed Delivery Facility, Dallas shall be responsible for oversize costs to the extent of the documented difference in cost between the size of the Delivery Facility required for Customer's need and the size of the Delivery Facility specified by Dallas, including, but not limited to, any additional right of way or other temporary or permanent interests in real property that would not otherwise be required without the oversizing of the Delivery Facility.

4.4 Approval of Plans; Inspection. All designs, materials, and specifications for Delivery Facilities shall conform to Dallas' requirements. Plans for the construction of a proposed Delivery Facility shall be submitted to the Director for written approval prior to advertising for bids for such construction. Customer agrees that Dallas has the right to make periodic inspections during the construction phase of the Delivery Facilities. Final acceptance of completed Delivery Facilities is subject to the written approval of the Director. Dallas agrees that any approval or consent of Dallas or the Director required by this Section 4.4 shall not be unreasonably withheld or delayed.

4.5 Meters and Meter Vaults. Unless otherwise agreed by the parties, Dallas, shall construct and maintain meter vaults, meters, and all associated facilities, and obtain electric and telephone service in connection therewith, if needed. Customer agrees to reimburse Dallas for actual design and construction costs incurred pursuant to this Section 4.5, but only to the extent such costs are attributable to services provided to Customer, excluding costs of telemetry equipment, telephone and electric service.

4.6 Conveyance of Delivery Facilities to Dallas. Customer agrees that after final inspection and acceptance by the Director of completed Delivery Facilities, Customer will convey title of those facilities and rights-of-way in conjunction therewith to Dallas. Upon conveyance of title to Delivery Facilities by appropriate instrument, Dallas shall be responsible for operation and maintenance thereof. In no event shall Customer be required to transfer to Dallas fee simple title

to real property if an easement in that real property is sufficient to allow Dallas to operate, maintain, repair, replace, or reconstruct the Delivery Facility.

4.7 Additional Delivery Points. Customer may at any time during the term of this Contract request additional Delivery Points for delivery of Potable Treated Water under this Contract. The additional requests may be granted with the approval of the Director and shall, when so approved in writing, be deemed to be made a part of this Contract, thereby amending Exhibit C of this Contract without need for a further written supplemental agreement.

4.8 Access to Dallas Facilities. Customer agrees to provide ingress and egress to Customer's property located within Customer's incorporated limits to employees, contractors, and agents of Dallas to install, operate, inspect, test, and maintain facilities and read meters owned or maintained by Dallas; provided, however, Dallas' employees, contractors, and agents shall at all times comply with Customer's policies regarding security and safety as may be adopted from time to time by Customer for the purpose of safeguarding Customer's public water system and supply.

4.9 Access to Customer Facilities. Dallas agrees to provide ingress and egress to Dallas' property located within Dallas' incorporated limits to employees, contractors, and agents of Customer to install, operate, inspect, test, and maintain facilities and read meters owned or maintained by Customer; provided, however, Customer's employees, contractors, and agents shall at all times comply with Dallas' policies regarding security and safety as may be adopted from time to time by Dallas for the purpose of safeguarding Dallas' public water system and supply.

4.10 Accuracy of Meters. It shall be the duty of each party to notify the other party as soon as reasonably possible after a party obtains information that it believes indicates that a meter used to measure the delivery of Potable Treated Water under this Contract is registering inaccurately or malfunctioning. Each meter will be operated and maintained so as to record with commercial accuracy. Dallas will notify Customer prior to any meter tests. Either party has the right to request in writing that a meter be tested, with the other party having the right to witness the test. If Customer requires an independent testing service be used, Customer shall pay the cost of the testing service if any meter used to measure delivery under this Contract is found to be accurate. If the meter is found to be inaccurate, Dallas shall pay the cost of the testing service.

4.11 Liability; Loss of Water. All liability related to, and all accounting for loss of, all Potable Treated Water supplied under the terms of this Contract by Dallas to Customer shall belong to Dallas up to Dallas' side of the meter at each Delivery Point. Liability related to, and all accounting for loss of, all Potable Treated Water shall pass to Customer, after the Potable Treated Water passes to the Customer side of the meter at each Delivery Point.

Article 5. INSPECTION OF BOOKS AND RECORDS

Dallas agrees that Customer or its employees or agents may have access to and inspect the books and records of Dallas Water Utilities relating to the delivery and sale of Potable Treated Water to Customer, including, but not limited to, records relating to charges therefor

paid by Customer, during reasonable business hours after reasonable prior written notice to the Director. Customer agrees that Dallas or its employees or agents may have access to and inspect the books and records of the Customer's Water Utilities relating to the receipt and resale of Potable Treated Water to its end user customers during reasonable business hours and after reasonable prior written notice to Customer's City Manager.

Article 6. ADDITIONAL SURFACE WATER SUPPLIES

6.1 New Water Source; Reduce Demand Obligation. If Customer develops or acquires additional surface water supplies from any source other than Dallas, and Customer's reliance on such additional surface water supplies results in reduced Demand from Dallas, Dallas is released from its obligation to supply the Demand established pursuant to Section 3 of this Contract to the extent of such reduction in Customer's Demand. In this event, Dallas may adjust its supply obligation to levels commensurate with Customer's reduced demand on Dallas.

6.2 Payment for Reduction of Demand. Except as the result of a reduction in Demand as agreed pursuant to Article 3 of this Contract, if during the term of this Contract, Customer ceases (wholly or in part) to take water from Dallas for any reason, Customer shall for five (5) years or the balance of this Contract, whichever is less, remain liable for Demand Charges at the billing level in effect at the date of notification of such partial or total cessation. This obligation, once established, shall serve as liquidated damages and is intended to compensate Dallas for the expenditures incurred on Customer's behalf for the cost of installation of supply, transmission, treatment, delivery and service facilities. Provided, however, Dallas may waive Customer's obligation pursuant to this Section 6.2 in the event of nominal reductions based on Customer's plans if Dallas has received prior notice of the plans and concurred in the reduction. It is agreed by the parties that liquidated damages are a reasonable substitute for compensatory damages which are difficult or impossible to calculate herein. This obligation is intended by the parties not to be a penalty, but instead, a reasonable measure of damages.

Article 7. RATES AND PAYMENT

7.1 Setting of Charges by Dallas Ordinance. Rates charged Customer, including Demand Charges established herein, shall be established by ordinance of Dallas. The capital costs contributed by the Customer for Delivery Facilities and metering facilities shall be excluded from the rate base.

7.2 Rate Setting Method; Notice of Change. Customer understands that the Dallas City Council has the right to change, by ordinance, the rates charged as needed to cover all reasonable, actual and expected costs. Any change of rates shall be pursuant to principles set forth in the Memorandum of Agreement. Dallas shall give Customer a minimum of six (6) months written notice of intent to change rates. Dallas will furnish Customer a draft copy of the Cost of Service Study for Proposed Rates thirty (30) days prior to Dallas submitting a rate increase request to its City Council.

7.3 Customer Protest. Customer agrees to give Dallas a minimum of thirty (30) days notice of its intent to protest rates, or any other condition of service, before the TCEQ or any other state agency.

7.4 Monthly Invoice. Each month during the term of this Contract, Dallas agrees to deliver to Customer a statement of charges setting forth the amount of Potable Treated Water delivered to Customer through the Delivery Points for the period covered by the statement, the volume charge for that month, and any past due amounts carried over from prior invoices (including accrued interest) (“the Monthly Statement”). Payment is due upon receipt of the Monthly Statement. Customer agrees to pay promptly. The Demand Charge shall be billed on the Monthly Statement.

7.5 Late Payment. Customer agrees that a payment is deemed late if received by Dallas more than 30 days after the date of the Monthly Statement. Late payments shall accrue interest at the interest rate provided in Section 2-1.1 of the Dallas City Code, as amended, or as authorized by Ch. 2251 of the Texas Government Code, as amended, whichever applies. If any money due and owing by Customer to Dallas is placed with an attorney for collection, Customer agrees to pay to Dallas, in addition to all other payments provided for by this Contract, including interest, Dallas’ collection expenses, including court costs and reasonable attorney’s fees.

7.6 Malfunctioning Meter; Estimated Payments. In the event a meter(s) is discovered to be malfunctioning, the amount of Potable Treated Water that has passed through the meter will be estimated for each day the meter has not functioned correctly. The last correctly measured monthly consumption will be used as a basis for computing the amount of Potable Treated Water delivered to the Customer during the time the meter has not been functioning correctly.

7.7 Disputed Charges. Dallas and Customer agree that any disputed charges on the Monthly Statement shall be protested and resolved in accordance with Tex. Govt. Code §2251.042, as amended. Customer agrees that in the event it disputes any portion of the charges on the Monthly Statement, Customer will timely pay any undisputed amount in accordance with Section 7.4.

Article 8. CURTAILMENT, WATER CONSERVATION, AND DROUGHT CONTINGENCY PLANS

8.1 Dallas Curtailment of Water During Water Shortage. During a water shortage, Customer understands and acknowledges the Potable Treated Water being provided by Dallas under this Contract is subject to curtailment in accordance with Texas Water Code § 11.039, “Distribution of Water During Shortage,” Dallas’ water rights, and Dallas’ Drought Contingency Plan. Customer agrees that if water supplies or services are curtailed within Dallas, Dallas may impose a like curtailment on deliveries to Customer. Customer shall cooperate by imposing conservation measures upon its sales of Potable Treated Water to its end user customers.

8.2 Customer Water Conservation and Drought Contingency Plan. Customer agrees to institute and maintain usage practices which ensure water is used in a manner that prevents waste, conserves water resources for their most beneficial and vital uses, and protects the public

health. Customer agrees to develop and implement water conservation and drought contingency plans consistent with the applicable elements of Title 30, Texas Administrative Code, Chapter 288, "Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements." Customer agrees to furnish to Dallas electronic copies of its water conservation and drought contingency plans and associated TCEQ and TWDB implementation reports.

8.3 Receipt of Dallas Plans. Customer acknowledges that Dallas has provided a copy of its current Water Conservation Plan and Drought Contingency Plan and has advised Customer of where to locate copies of plan updates.

8.4 No Discrimination in Curtailments. To the extent Dallas imposes restrictions or grants privileges of general applicability to itself and customer cities, including rules relating to the curtailment of water delivery and availability, Dallas agrees to impose such restrictions and grant such privileges equitably and in a non-discriminatory fashion.

Article 9. RESALE, WATER RIGHTS, AND REUSE

9.1 No Resale Outside Service Area. Customer agrees not to sell Potable Treated Water purchased from Dallas to any person or entity outside Customer's Service Area unless Customer has received prior written approval from the Director. In granting such authorization, Dallas may establish the terms and conditions of the conveyance of such Potable Treated Water including, but not restricted to, the setting of monetary rates for sale of such water. "Convey" means sell, trade, donate, exchange, transfer title or contract therefor.

9.2 Resale Customers to Adopt Water Conservation and Drought Contingency Plans. In consideration of the written approval of the resale of Potable Treated Water, if so granted, Customer agrees that the wholesale water supply contract with each successive wholesale customer to whom Potable Treated Water is resold must contain a provision requiring said customer to develop and implement a water conservation plan or water conservation measures consistent with the requirements of Section 8.2.

9.3. Rights to Water and Return Flows. Customer understands, acknowledges, and agrees that Customer shall acquire no water rights or title or right to the use, reuse, or recycling of water generated as the result of Dallas' sale and delivery of treated water to Customer pursuant to this Contract. Dallas makes no claim and asserts no water rights related to the wastewater effluent return flows produced by Customer as a result of Customer's water use under this Contract, it being expressly understood and agreed to that Customer is not prohibited by this Contract from treating and using such wastewater effluent return flows in accordance with applicable law and TCEQ regulations.

Article 10. RIGHTS-OF-WAY AND STREET USE

10.1 Provision of Easements. Customer agrees to furnish any easements or rights-of-way necessary within or without Customer's boundaries reasonably necessary for Dallas to deliver Potable Treated Water to Customer as provided in Article 4, hereof, and to convey such easements or rights-of-way to Dallas as therein provided.

10.2 Use of Customer Streets, Alleys, and Easements. Subject to the prior written approval of Customer, Dallas may use Customer's streets, alleys and other public rights-of-way and public utility easements within Customer's boundaries for pipeline purposes to provide Potable Treated Water to Customer or to other customers without charges or tolls to the extent that Customer has the legal right to make such grant. Dallas agrees to make, at Dallas' cost, the necessary repairs to restore the streets, alleys or public rights-of-way used in accordance with Customer's then existing specifications for such work. Such use and repairs shall be pursuant to the terms and conditions of the conveyance Customer duly grants for such purposes.

10.3 Use of Dallas Streets, Alleys, and Easements. Subject to the prior written approval of Dallas, Customer may use Dallas' streets, alleys and other public rights-of-way and public utility easements within Dallas' boundaries for pipeline purposes to provide Potable Treated Water to Customer without charges or tolls to the extent that Dallas has the legal right to make such grant. Customer agrees to make at Customer's cost, the necessary repairs to restore the streets, alleys or public rights-of-way used in accordance with Dallas' then existing specifications for such work. Such use and repairs shall be pursuant to the terms and conditions of a private license duly granted by the Dallas City Council.

Article 11. CUSTOMER SYSTEM OPERATION STANDARDS

Customer agrees to operate its water distribution system subject to the following:

- A. Customer shall protect Customer's storage and distribution system from cross connections under the specifications required by health standards of the State of Texas.
- B. Customer agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage.
- C. Customer agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from Dallas to Customer.
- D. Customer agrees to maintain and operate its internal system in compliance with all local, state, and federal laws and regulations.

Article 12. MEMORANDUM OF AGREEMENT

The Memorandum of Agreement is incorporated herein, as if copied word for word and is made a part of this Contract. Any revision of the Memorandum of Agreement according to its terms and not in conflict herewith shall automatically be incorporated into and become a part of this Contract.

Article 13. FORCE MAJEURE; RELEASE; INDEMNITY

13.1 Force Majeure. Neither party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Contract due to causes beyond their respective control or because of applicable law, including, but not limited

to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

13.2 Release for Line Damages. CUSTOMER HEREBY AGREES TO RELEASE AND HOLD DALLAS WHOLE AND HARMLESS FROM ANY CLAIMS OR DAMAGES ARISING NOW AND IN THE FUTURE: (1) TO CUSTOMER'S WATER MAINS OR WATER SYSTEM RESULTING FROM THE RATE OF FLOW OR QUANTITY OF WATER DELIVERED; AND (2) AS A RESULT OF THE CHEMICAL OR BACTERIOLOGICAL CONTENT OF WATER PROVIDED TO CUSTOMER, UNLESS THE DAMAGES RESULTING FROM THE CHEMICAL OR BACTERIOLOGICAL CONTENT OF THE WATER ARE CAUSED BY THE NEGLIGENT ACT OR OMISSION OF DALLAS, ITS OFFICERS, EMPLOYEES, AGENTS, OR CONTRACTORS.

13.3 Indemnification. TO THE EXTENT ALLOWED BY LAW, CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD DALLAS, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY LIABILITY IN CLAIMS, ADMINISTRATIVE PROCEEDINGS OR LAWSUITS FOR JUDGMENTS, PENALTIES, FINES, COSTS EXPENSES AND ATTORNEY'S FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, OR FOR VIOLATIONS OF STATE OR FEDERAL LAWS OR REGULATIONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY: (A) A BREACH OF THIS CONTRACT BY CUSTOMER; (B) THE NEGLIGENT ACT OR OMISSION OF CUSTOMER IN THE PERFORMANCE OF THIS CONTRACT OR IN CUSTOMER'S DAY-TO-DAY WATER OR WASTEWATER UTILITY OPERATIONS; OR (C) THE CONDUCT OF CUSTOMER THAT CONSTITUTES A VIOLATION OF STATE OR FEDERAL LAWS OR REGULATIONS. PROVIDED, HOWEVER, THAT THE INDEMNITY STATED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM DALLAS' SOLE VIOLATION OF A STATE OR FEDERAL LAW OR REGULATION OR FROM THE SOLE NEGLIGENCE OF DALLAS, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF THE JOINT AND CONCURRING RESPONSIBILITY OF CUSTOMER AND DALLAS, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING GOVERNMENTAL IMMUNITY OR ANY OTHER DEFENSES OF THE PARTIES UNDER APPLICABLE TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

13.4 Equitable Remedies. Recognizing that Dallas' and Customer's undertakings as provided in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, Dallas and Customer agree that, in the event of any default, the other party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available to such party.

Article 14. SPECIAL PROVISIONS

This Contract shall incorporate and be subject to the following additional special provisions:

A. Provisions peculiarly applicable to the Contract with Customer as opposed to other wholesale treated water customers, which are set forth in Exhibit "D," attached hereto and incorporated herein by reference; and

B. Conditions under which the parties may provide reciprocal water or wastewater services to customers along their common boundaries and conditions under which the parties to this Contract may provide each other with temporary water or wastewater services, which conditions and provisions are set forth in Exhibit "E," attached hereto and incorporated herein by reference.

Article 15. MISCELLANEOUS PROVISIONS

15.1. Contract Administration. This Contract shall be administered on behalf of Dallas by the Director and on behalf of Customer by its authorized official or designated representative, who shall initially be Customer's Director of Public Works.

15.2. Notice of Contract Claim. This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Customer shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

15.3. Venue. The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

15.4. Governing Law. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of any other state.

15.5. Legal Construction. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and

this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

15.6 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

15.7 Captions. The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

15.8 Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as may otherwise be provided in this Contract, their assigns.

15.9 Notices. Except as otherwise provided in Section 15.2, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to DALLAS:

City of Dallas
Director of Water Utilities
1500 Marilla Street – 4/a/North
Dallas, Texas 75201

If to CUSTOMER:

City of Lancaster
Attn: City Manager
P. O. Box 548
Lancaster, Texas 75146

15.10 Conflict of Interest. The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer’s or employee’s office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

For purposes of this Section 15.10, the word “City” means “City of Dallas.”

15.11 Gift to Public Servant. This Contract shall be subject to the following additional provisions:

A. Dallas may terminate this Contract immediately if Customer has offered, or agreed to confer any benefit upon a Dallas employee or official that the Dallas employee or official is prohibited by law from accepting.

B. For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

C Notwithstanding any other legal remedies, Dallas may require Customer to remove any officer or employee of Customer from the administration of this Contract or any role in the performance of this Contract who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a Dallas employee or official.

15.12 Applicable Laws and Regulations. This Contract is made subject to, and Dallas and Customer agree to comply with, all applicable laws of the State of Texas, applicable rules, regulations and orders of the TCEQ and Texas Water Development Board (TWDB), Federal Law (including but not limited to environmental and water quality laws, rules, orders, and regulations), and the Charter and other ordinances of the City of Dallas and the City of Lancaster, as same may hereafter be amended. This Contract’s effectiveness is dependent upon Dallas’ and Customer’s compliance with Title 30, Texas Administrative Code, Section 295.101 and Title 30, Texas Administrative Code, Chapter 297, Subchapter J (relating to water supply contracts and amendments), as amended. This Contract may be subject to review and approval by TCEQ or TWDB. In the event of any final judgment finding any violation of the laws, rules, regulations, or orders described above, Customer shall be strictly liable for any damages caused to the property of Dallas as a result of such violation.

15.13 Authorization to Act. By their signature below, the representatives of Dallas and Customer state that they are authorized to enter into this Contract. Dallas and Customer shall

each provide documentation that this Contract has been authorized by its respective governing body.

15.14 Entire Agreement; No Oral Modifications. This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

EXECUTED this the ___ day of _____, 2011, by the City of Dallas, signing by and through its City Manager, duly authorized to execute same by Resolution No. 11-_____, adopted by the City Council on ~~November 7, 2011~~, and by Customer, acting through its duly authorized officials.
October 24, 2011

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager

BY _____
Assistant City Attorney


Submitted to City Attorney

BY _____
Assistant City Manager

ATTEST:

CUSTOMER:
CITY OF LANCASTER

BY _____
Dolle K. Downe, City Secretary

BY _____
Opal Mauldin-Robertson, City Manager

APPROVED AS TO FORM:

BY _____
Robert Hager, City Attorney

Exhibit A

MEMORANDUM OF AGREEMENT

Exhibit A

Memorandum of Agreement (MOA) for Wholesale Treated Water

Preamble: The 1979 MOA settled a rate dispute lawsuit between Dallas and its Wholesale Treated Water Customers regarding the wholesale treated water rate-setting methodology ("rate-setting methodology"), and as such has served the rate-setting methodology process well over the past 30 years. This amended agreement recognizes that changes to the rate-setting methodology have occurred over this timeframe, and incorporates consensus changes between Dallas and its Wholesale Treated Water Customers, and as such will serve to govern the rate-setting methodology for the next 30 years.

1. Purpose: Dallas is a regional water provider currently providing treated water service to Wholesale Treated Water Customers located within Dallas' established service area in North Central Texas. The purpose of this agreement is to establish the rate-setting methodology and formalize the mutual expectations of Dallas and its Wholesale Treated Water Customers with respect to rate-setting methodology. This rate-setting methodology will provide the basis for determining wholesale treated water rates after its effective date.
2. Applicability: This agreement is subject to all applicable orders, laws and regulations of the City of Dallas, State of Texas and the United States. If any state or federal governmental agency having jurisdiction disapproves any material part of this agreement during the term, the agreement is subject to cancellation by any party and renegotiation by Dallas and its Wholesale Treated Water Customers.
3. Water System Policy: Dallas operates a water system to provide a regulatory compliant, safe and reliable water supply, adequate for the current water use and future growth of Dallas and its Wholesale Treated Water Customers, and to avoid subsidization of any class of customers.
4. Definitions: A glossary which defines applicable cost of service terms is located in Appendix A of this MOA. Cost of service terms may be added, or the definition of an existing term amended, from time to time, without the necessity of amending this MOA. Additions and amendments will be reflected in the appendices attached to the annual cost of service studies.
5. Responsibilities:
 - a. Dallas is responsible for planning, financing, constructing, operating and maintaining the water supply system to the extent permitted by available water revenues, for developing cost of service information to support wholesale rate changes, and for informing Wholesale Treated Water Customers of wholesale rate changes and other pertinent utility information.

- b. Wholesale Treated Water Customers are responsible for keeping Dallas informed concerning their projected water supply needs and operating requirements for planning, managing and maintaining their retail systems to promote water conservation and efficient system operation, and for paying adequate rates to Dallas to cover the costs incurred by Dallas in providing service to them.

6. Rate-Setting Methodology for Wholesale Treated Water:

- a. Revenue requirements are to be determined on a utility basis, at original cost, including construction work in progress.
- b. Dallas is to receive a rate of return on rate base equal to embedded interest rate on water revenue bonds, commercial paper and other debt instruments plus 1.5 percent, which is agreed to be an adequate return to cover its costs and risks and as compensation for ownership and management responsibilities.
- c. All existing and future water supplies and associated facilities are to be included in a common water rate base. Wholesale Treated Water Customers, as a class, shall pay their proportionate share of costs for water supply, including that portion held for future use. For the 2010 cost of service study, wholesale treated water customers shall be allocated a percentage of total reservoir costs based on a 10-year future use percentage calculated using a 24-year linear regression. This percentage shall be increased or decreased in direct proportion to future changes in actual usage in conjunction with the cost of service studies. (Dallas will pay the balance of water supply costs which are not allocated to Wholesale Treated Water Customers under the cost of service allocation.) Allocation of costs other than water supply costs, including but not limited to operations and maintenance costs, shall be based on current use.
- d. Direct reuse of treated wastewater effluent is an Inside Dallas only cost and will be allocated to Inside Dallas customers only. Indirect reuse of treated wastewater effluent for lake augmentation will be included as a cost and as a benefit common-to-all.
- e. There will be a two part wholesale treated water rate (volume and demand), with allocation of costs in rate design so as to encourage conservation and efficient operation of the water systems of Dallas and its Wholesale Treated Water Customers.
- f. At the end of ten years from the Effective Date of the MOA, and each ten years thereafter, the City of Dallas or a majority of the Wholesale Treated Water Customers who are parties to this agreement may request a review of the above rate-setting methodology; and if so, the methodology shall be subject to renegotiation.

7. **Wholesale Treated Water Rates:** After the effective date of this MOA, Dallas will prepare a cost of service study to support wholesale treated water rates and allocations, and will submit it to the Wholesale Treated Water Customers to review and accept prior to submission to the Dallas City Council. Except as noted herein, the cost of service rate-setting principles will adhere to the 2009 cost of service study, including changes that have been identified and implemented since that date.
8. **Effective Date:** This MOA is effective as of December 17, 2009.
9. **Term:** The term of this MOA is thirty (30) years from its effective date, or until December 16, 2039, and for such additional periods as the parties may mutually agree upon.
10. **Approved changes:** Changes in the rate-setting methodology or other conditions may be made by mutual agreement of all parties at any time.
11. **Individual contracts:** This MOA is considered a replacement of and supersedes the 1979 MOA and shall automatically be incorporated and become a part of all existing wholesale treated water contracts without any further action or approval on the part of the City or of the Wholesale Treated Water Customers. Rate-setting methodology for individual contracts for wholesale treated water service between Dallas and its Wholesale Treated Water Customers will be consistent with this MOA. Dallas and its Wholesale Treated Water Customers will honor their existing water service contracts until such time as the contracts are amended or superseded by a new contract. Contracts for new Wholesale Treated Water Customers will be consistent with this MOA.
12. **Recognition of MOA Participants:** The MOA renegotiation process took place over many months during 2009 and 2010 and involved a number of meetings to discuss possible changes, revisions, and alternatives to the existing MOA. To that end, the City of Dallas would like to thank the individuals listed below for their outstanding input and contributions in the MOA update and renegotiation process, without whose help this revised document would not have been possible. Participants are listed in attached Appendix B.
13. **Authorization to Act:** By their signatures below, the representatives of Dallas and the Wholesale Treated Water Customers state that they are authorized to enter into this MOA. Dallas and the Wholesale Treated Water Customers will each provide documentation that this MOA has been authorized by its respective governing body.
14. **Counterparts:** This MOA may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

EXECUTED as of the 1st day of June, 2010, on behalf of Dallas by its City Manager, duly authorized by Resolution No. 10-1231, adopted on the 12th day of May, 2010 and approved as to form by its City Attorney.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager

BY 
Assistant City Attorney

Submitted to City Attorney

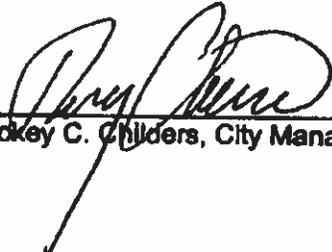
BY 
Assistant City Manager

EXECUTED as of the 24th day of May, 2010, on behalf of the City of Lancaster, Texas, by its City Manager, duly authorized by Resolution No. 2010-0551, adopted on the 24th day of May, 2010 and approved as to form by its City Attorney.

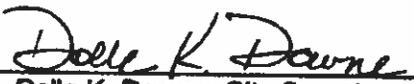
APPROVED AS TO FORM:

CITY OF LANCASTER, TEXAS

BY 
Robert E. Hagar, City Attorney

BY 
Rickey C. Childers, City Manager

ATTEST:

BY 
Dolle K. Downe, City Secretary

APPENDIX A GLOSSARY OF TERMS

Allocation - The apportioning of the common-to-all cost of service.

Common-To-All - Facilities, and their associated cost, that are dedicated to providing treated water service to both Dallas and Wholesale Treated Water Customers.

Construction Work in Progress (CWIP) - The utility's investment in facilities under construction but not yet dedicated to service.

Demand Costs - Costs associated with providing facilities to meet peak rates of use, or demand, placed on the system by the customers.

Depreciation - The wearing out or loss in service value of property used in utility operations.

Depreciation Rate - The rate of loss in service value, based on the expected service life of property.

Depreciation Reserve - The accumulated amount of the loss in service value of property.

Direct Reuse – The use of treated wastewater effluent from Dallas' wastewater treatment plants for non-drinking water purposes within the boundaries of the City of Dallas.

Embedded Interest Rate - Annual interest expense expressed as a percentage of average debt.

Indirect Reuse – The use of treated wastewater effluent from Dallas' wastewater treatment plants for raw water supply augmentation purposes.

Inside Dallas - The group of retail treated water service customers, comprised of residential, commercial and industrial customers served by Dallas Water Utilities.

Interest Expense - Payment made for the use of borrowed funds.

Materials & Supplies – Assets in inventory which are required to meet current obligations and service responsibilities of the utility.

Maximum Day Demand - The maximum demand placed on the system over a 24-hour period.

Maximum Hour Demand - The maximum demand placed on the system over a 60-minute period on the system's maximum day.

MGD - Million gallons per day flow rate.

Operating Expenses - Operation and maintenance charges incurred in operating a utility.

**APPENDIX A
GLOSSARY OF TERMS
(PAGE 2 OF 2)**

Original Cost - The amount of investment in facilities when first put into service.

Rate Base - Total investment dedicated to providing utility service.

Rate of Return - The percentage of return authorized to be earned on an investment (e.g. a rate base).

Reservoir Capacity - The amount of water available from a reservoir.

Reservoir Costs - Costs incurred in acquiring and maintaining an untreated water supply system.

ROFC - Rate of flow controller. A device limiting instantaneous flow rate to a specific amount. Instantaneous flow rate for rate setting purposes is a per day setting.

Standby Service - Connection to wholesale treated water customer which is not normally used, excluding bypass lines which are required by Dallas Water Utilities as a part of an active metering facility.

Test Period (or Test Year) - Selected to be representative of the period of time over which the new rates are expected to be in effect.

Treated Water - Raw water that has passed the purification process.

Unaccounted for Water - Water produced but not billed to customers that result from metering inaccuracies, system leakage, and miscellaneous unmetered uses.

Volume Costs - Costs that tend to vary directly with the amount of water produced and sold.

Water Supplies and Associated Facilities – Dallas' water supply system, including, but not limited to, all reservoirs, indirect reuse water, and all system infrastructure.

Wholesale Cost of Service - The sum total of: (1) operating expense, (2) depreciation expense, and (3) return on investment. Depreciation expense and rate of return are on the original cost of investment less accumulated depreciation, capitalized interest and contributed capital.

Wholesale Treated Water Customers – The group of water customers of the City of Dallas which currently have a wholesale treated water contract with Dallas.

Working Capital - Assets (funds) which are required to meet current obligations and service responsibilities of the utility.

APPENDIX B

MOA WORKING GROUP

Addison:	Randy Moravec Lauren Clark
Carrollton:	Bob Scott Lori Iwanicki David Gaines
Cedar Hill:	Ruth Antebi-Guten
The Colony:	Tod Maurina
Coppell:	Chad Beach Kim Tiehen
Dallas Fort Worth Airport:	Jerry Dennis
Dallas County W.C.&I.D. #6:	Robert Rodriquez Red Taylor William Freeman
Denton:	Tim Fisher
DeSoto:	Isom Cameron Tom Johnson
Duncanville:	Frank Trando Richard Summerlin Dennis Schwartz
Farmers Branch:	Charles Cox Mark Pavageaux
Flower Mound:	Chuck Springer Kenneth Parr
Glenn Heights:	Judy Bell
Grand Prairie:	Ron McCuller Doug Cuny
Grapevine:	Ramana Chinnakotla Kent Conkle
Irving:	Aimee Kaslik David Cardenas
Lewisville:	Carole Bassinger

Red Oak:

Charles Brewer

Richardson:

Kent Pfeil
Keith Dagen

University Park:

Kent Austin

Upper Trinity Regional Water District:

Tom Taylor
Larry Patterson

Dallas:

Jo M. (Jody) Puckett
Bobby Praytor
Charles Stringer
Terry Lowery
Denis Qualls
Jacqueline Culton
Tonia Barrix
Melissa Paschall-Thompson
Erica Robinson
Maria Salazar

WHEREAS, for over fifty years the City of Dallas ("Dallas") has been a regional provider of drinking water to both the citizens of Dallas and wholesale customers, currently a total of 23 Wholesale Treated Water Customers who are all located within Dallas' established service area in North Central Texas; and,

WHEREAS, on August 15, 1979, pursuant to Resolution No. 79240, the Dallas City Council approved a Memorandum of Agreement governing wholesale treated water rate-setting methodology (1979 MOA); and,

WHEREAS, the 1979 MOA became effective on December 17, 1979 for a term of 30 years after execution by Dallas and wholesale treated water customers; and,

WHEREAS, the 1979 MOA expired on December 17, 2009; and,

WHEREAS, Dallas and its Wholesale Treated Water Customers negotiated and reached consensus on a new agreement for wholesale treated water rate-setting methodology, which provides for full cost recovery plus a fair return on investment and which is also fair and equitable to all customers (new MOA); and,

WHEREAS, the term of the new MOA is December 17, 2009 through December 16, 2039; and,

WHEREAS, approval of the new MOA would be in the best interest of the City of Dallas; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the new MOA for wholesale treated water rate-setting methodology, as reflected in Attachment A is approved and that following approval as to form by the City Attorney, the City Manager is hereby authorized to execute this new MOA.

Section 2. That the City Manager is instructed and authorized to provide the new MOA to each Wholesale Treated Water Customer for execution.

Section 3. That the City Manager is hereby authorized to prepare a cost of service study for wholesale treated water rates in accordance with the terms and provisions of the new MOA.

Section 4. That Dallas hereby thanks all Wholesale Customer participants for their outstanding input and contributions in the MOA update and renegotiation process, without whose help this new MOA would not have been possible.

COUNCIL CHAMBER

10 123 1
May 12, 2010

Section 5. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so resolved.

DISTRIBUTION: Water-Administration, 4AN, Cheryl Glenn
Water-Administration, 4AN, James Carrigan
Office of Financial Services, 4FN, Sheila Robinson

APPROVED BY
CITY COUNCIL

MAY 12 2010


City Secretary

RESOLUTION NO. 2010-05-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A MEMORANDUM OF AGREEMENT AND AMENDING THE CONTRACT BETWEEN THE CITY OF DALLAS AND THE CITY OF LANCASTER FOR THE PURCHASE OF WHOLESALE TREATED WATER; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, for over fifty years the City of Dallas ("Dallas") has been a regional provider of drinking water to both the citizens of Dallas and wholesale customers, currently serving a total of 23 Wholesale Treated Water Customers who are all located within Dallas' established service area in North Central Texas; and,

WHEREAS, Dallas, acting through its Water Utilities Department ("DWU"), provides wholesale treated water service to Lancaster; and,

WHEREAS, Dallas' wholesale treated water rates are calculated and adopted in accordance with the terms and conditions of the 1979 Memorandum of Agreement ("1979 MOA"), which agreement settled a rate dispute lawsuit between Dallas and its Wholesale Treated Water Customers regarding the wholesale treated water rate-setting methodology; and,

WHEREAS, the 1979 MOA is attached to all of Dallas' wholesale treated water contracts; and,

WHEREAS, although both Dallas and the City of Lancaster agree that the 1979 MOA has served the rate-setting methodology process well over the past 30 years, the 1979 MOA expired on December 17, 2009, and a new agreement should be adopted; and,

WHEREAS, the MOA renegotiation process took place over many months during 2009 and 2010 and involved a number of meetings between Dallas and its wholesale customers to discuss possible changes, revisions, and alternatives to the 1979 MOA; and,

WHEREAS, Dallas and its Wholesale Treated Water Customers have reached consensus on a new 30-year memorandum of agreement ("New MOA") for wholesale treated water rate-setting methodology; and,

WHEREAS, the City Council of the City of Dallas has considered and approved the New MOA on May 12, 2010, and Dallas has requested that the governing bodies of its Wholesale Treated Water Customers also approve the New MOA; and,

WHEREAS, approval of the New MOA would be in the best interest of the City of Lancaster and its citizens;

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

SECTION 1. That the Wholesale Treated Water Contract, MOA, for rate-setting methodology as reflected in Exhibit "1" hereof, attached hereto and incorporated herein by reference for all purposes, is hereby in all things approved, and that the City Manager is hereby authorized to execute this agreement as provided herein.

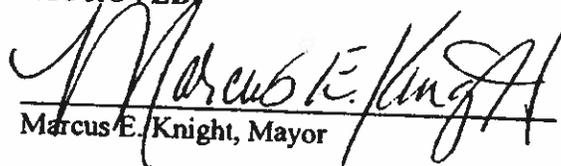
SECTION 2. All resolutions of the City of Lancaster heretofore adopted which are in conflict with the provisions of this resolution be, and the same are hereby repealed, and all resolutions of the City of Lancaster not in conflict with the provisions hereof shall remain in full force and effect.

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

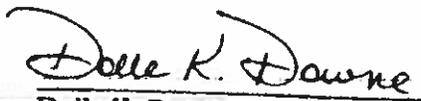
SECTION 4. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY PASSED by the City Council of the City of Lancaster, Texas, on this the 24th day of May 2010.

APPROVED:


Marcus E. Knight, Mayor

ATTEST:


Dolle K. Downe, City Secretary

APPROVED AS TO FORM:


Robert E. Hager, City Attorney

Exhibit B

DESCRIPTION AND MAP OF CUSTOMER'S SERVICE AREA

SEE ATTACHED MAP

Exhibit C

DELIVERY POINTS OF ENTRY AND METERING FACILITIES

Description: Wholesale Treated Water is currently provided to the City of Lancaster at two delivery points:

FACILITY NO. 1: Houston School Metering Station

Location: 8180 Houston School Road in the northeast quadrant of the intersection of Wheatland & Houston School Road in the City of Lancaster.

There is also a bypass meter for Facility No. 1 which is located in the intersection of Wheatland Road & Houston School Road within the City of Lancaster.

Description: A rate-of-flow controlled metering station is fed by a 24" Dallas main which is fed by a 66" Dallas transmission main running along Houston School Road. The station is equipped with a 24" Venturi meter and associated equipment. This meter connects to a 24" Lancaster main. Telemetry equipment is connected to Dallas' control station. This meter will currently deliver a maximum of 15 MGD.

The 6" F.M. maintenance/bypass meter is fed by a 12" Dallas main which is fed by a 66" Dallas transmission main running along Houston School Road, that reduces to a 6" main, then flanges to an 8" main and feeds into a 24" Lancaster main. This meter will currently deliver a maximum of 3.6 MGD.

Ownership: The metering vault is owned, operated, and maintained by the City of Dallas.

FACILITY NO. 2: Bonnie View Metering Station

Location: 1999 N. Jefferson Street metering station located on the southwest quadrant of the intersection of Bonnie View Road/Jefferson Street & Wintergreen Road in the City of Lancaster.

Description: A rate-of-flow controlled metering station is fed by a 24" Dallas main which is fed by a 30" Dallas water line that runs along Bonnie View Road and feeds into a 24" Lancaster main. The station is equipped with an 8" F.M. meter, a 10" turbine meter, and associated equipment. Telemetry equipment is connected to Dallas' control station. This meter will currently deliver a maximum of 6.0 MGD.

Ownership: This metering vault is owned, operated, and maintained by the City of Dallas

Anticipated Future Facilities:

Should additional delivery points be agreed upon in the future, this Exhibit C will be revised to recognize these facilities. Revisions to this Exhibit C in order to add, delete, or modify delivery points or metering facilities do not require city council approval.

Exhibit D

SPECIAL CONTRACT CONDITIONS/AGREEMENTS

No special conditions or agreements are required as of the Effective Date of this Contract.

If special conditions or agreements pertaining to this Contract are required in the future, Exhibit D will be amended. Amendments to this Exhibit D that do not materially effect the terms of the Contract do not require city council approval.

Exhibit E

RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT

1. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR SINGLE FAMILY RESIDENCES OR DUPLEXES – WHEN SERVICING CITY HAS MAINS IN PLACE

The City of Dallas, Texas, hereinafter called “Dallas” and the City of Lancaster, Texas, hereinafter called “Customer”, hereby mutually agree, that when mains of the servicing city are currently in place, to provide water and/or wastewater service to customers along the public streets, roadways, alleys and easements forming a common city limit boundary of Dallas and Customer upon written request of either city to the other, provided that neither city will be required to provide such service to customers of the other city if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said city.

The class of service contemplated by this Paragraph 1 anticipates a temporary connection until such time as the city requesting service will have water and wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the city in which the potential customer is located.

Nothing contained in this Agreement shall require that either city will be compelled to accept a customer classed under this Paragraph 1 after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

- A. Service will be provided to single family residences or duplexes situated on no more than one acre of land located immediately adjacent to the common boundary.
- B. The city providing the water and/or wastewater service contemplated under this Paragraph shall charge the customer so served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries.
- C. The customer being served will be required to pay all applicable fees related to the services provided including a connection service charge to the city furnishing service. The connection service charge shall be the then current amount established by the servicing city’s ordinances. If a service charge is not specified by the current ordinances for the size or type service to be provided, the service charge shall be the servicing city’s actual cost for rendering the service.

2. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR: (1) SINGLE FAMILY RESIDENCES OR DUPLEXES WHERE MAINS ARE NOT IN PLACE, (2) COMMERCIAL AND INDUSTRIAL COMPLEXES, (3) RESIDENTIAL SUBDIVISIONS, APARTMENTS OR TOWNHOUSES AND OTHER MULTI-DEWLLING RESIDENTIAL UNITS.

Dallas and Customer hereby mutually agree to provide temporary water or wastewater service, or both, to customers along the public streets, roadways, alleys and easements forming a common city limit boundary of Dallas and Customer upon written request of either city to the other, provided that neither city will be required to provide such service to customers of the other city if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said city.

The class of service contemplated by this Paragraph 2 anticipates a temporary connection until such time as the city requesting service will have water and wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the city in which the potential customer is located. Nothing contained in this Agreement shall require that either city will be compelled to accept a customer classed under this Paragraph 2 after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

- A. Service will be provided to the following type customers whose properties are located immediately adjacent to or in reasonable proximity of the common boundary:
- (1) Single family residences or duplexes where mains are not in place.
 - (2) Individual commercial and industrial properties containing no more than 200,000 square feet of building floor space, provided that commercial or industrial facilities in excess of 200,000 square feet consuming only nominal amounts of water or contributing only nominal amounts of wastewater may be considered as an exception to this provision.
 - (3) Specific residential subdivisions consisting of no more than 20 single family units and apartment complexes, townhouses or other types of multiple dwelling units consisting of nor more than 35 single family units in the immediate area for which service is being requested.
- B. The city providing the water and/or wastewater service contemplated under this Paragraph shall charge the customer served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries.
- C. As a precondition of receiving service, the customer being served may also be required to pay all or part of the costs determined to be necessary to extend service and to pay the normal service charges for the type service being offered. Applicability of costs of extending service shall be determined by the officials designated in paragraph 4.A. of this

Agreement. Normal service costs will be determined as contemplated by Paragraph 1.C. All construction work shall meet the specifications of the city within whose boundaries the facilities are constructed.

3. TEMPORARY RECIPROCAL SERVICES PROVIDED (1) DIRECTLY TO BORDERING CITIES AND (2) TO COMMERCIAL, INDUSTRIAL OR OTHER COMPLEXES NOT CONTEMPLATED BY PARAGRAPH 2.

When services are requested and it is determined by the city from which service is requested that the service is appropriate and can be offered without diminution of the level of service being provided to other customers of the servicing city, Dallas and Customer hereby mutually agree to provide temporary water and/or wastewater service on a reciprocal basis when (1) the service to be furnished is to be provided directly to the reciprocating city as the customer or, (2) the service to be furnished is for a commercial, industrial, or other customer not meeting the criteria for service consideration in Paragraph 2.

The class of service contemplated by this Paragraph 3 shall be offered at the option of the servicing city. Determination of service feasibility will be rendered upon written request being made by the city requiring service. Nothing contained in this Agreement shall require that either city will be compelled to offer service after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

The city providing the water or wastewater service contemplated under this Paragraph shall charge the customer served the same rate and associated charges as charged customers whose property lies within its own areas and boundaries.

The city requesting the service shall pay full cost of any extension, facilities or improvements required to make the service available. The amount of the charges shall be determined by the officials designated in Paragraph 4.A. of this Agreement. All construction work shall meet the specifications of the city within whose boundaries the facilities are constructed.

4. GENERAL TERMS AND CONDITIONS

Service will be provided from mains in the public streets, roadways, alleys and easements existing along the common boundaries of Dallas and Customer under the following terms and conditions, which shall apply equally to either city:

- A. Neither party to this Agreement is obligated to provide water or wastewater service to the other party, and each party has the right to refuse to provide water or wastewater service, as described in this Agreement, to the other party.
- B. The city requiring services shall initiate the request for reciprocal services by forwarding a written request for service. The request shall be accompanied by a map which identifies the location of the proposed properties. Approval of requests for service shall be in writing and will be forwarded or approved by the following:

If for Dallas:

Dallas Water Utilities
Director of Utilities
1500 Marilla – 4AN
Dallas, Texas 75201

If for Customer:

City of Lancaster
Attn: City Manager
P.O. Box 940
Lancaster, Texas 75146

- C. Meter boxes, service lines, laterals and other facilities necessary to provide service shall, upon installation, become the property of the city furnishing service.
- D. The customer to be served will sign a contract with the city furnishing service, agreeing to abide by all the ordinances of that city which relate to the furnishing of said service.
- E. The city requesting service under this Agreement hereby grants to the city providing such service authorization to go upon the public streets, roadways, alleys and easements of the former city for the purpose of installing, maintaining and removing such facilities as are necessary to provide service.

Customer agrees that, with prior written approval of Customer, Dallas may use streets, alleys and public rights-of-way within Customer's boundaries for the purposes detailed in this Agreement to provide retail water and wastewater service to Customer or to other customers without charges or tolls, provided that Dallas makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of the conveyance or license Customer duly grants for such purposes.

Dallas agrees that, with prior written approval of Dallas, Customer may use streets, alleys and public rights-of-way within Dallas' boundaries for the purposes detailed in this Agreement to provide retail water and wastewater service to Dallas or to other customers without charges or tolls, provided that Customer makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of a license duly granted by the Dallas City Council.

- F. If at any time the city requesting service under this Agreement shall construct a main capable of providing water and/or wastewater service to any customer being served under the terms of this Agreement, then upon request, the city so providing the service shall terminate same, reserving the right to remove its meters and materials from the property previously served; provided, the customer shall have a reasonable time, not to exceed one month, to connect to the new service.
- G. In the cases where a customer receives water service from one city and wastewater service from the other, the city furnishing water service will provide the other city with monthly meter readings and water consumption information on such customers and will permit appropriate employees of the city furnishing wastewater service to read and examine the meters serving such customers to determine the accuracy of readings so

furnished and to permit appropriate employees of the city furnishing wastewater service to examine water consumption records of such customers, provided that no meter shall be removed or adjusted except by the city furnishing water service.

5. CLAIMS OF LIABILITY

It is further mutually agreed by Dallas and Customer that insofar as the services contemplated hereunder are performed by either city within the jurisdiction of the other city and to that extent only, Dallas and Customer hereby mutually agree that they will release, hold harmless and defend the other city from all claims of liability which result from damage to property (real or personal) or persons arising directly or indirectly from the performance of the services provided for under this Agreement.

6. TERMINATION OR MODIFICATION

This Agreement is to remain in force for the term of the Contract to which it is attached.

LANCASTER CITY COUNCIL
Agenda Communication for
October 24, 2011

8

AG11-008

Conduct a public hearing and consider an ordinance of the City of Lancaster, Texas amending the Lancaster Code of Ordinances by amending Chapter 11, Article 11.500, Freeport Goods, by repealing Section 11.502 and replacing with a new Section 11.502, to provide for the ad valorem taxation of tangible personal property in transit or “Super Freeport” goods pursuant to Section 11.253 of the Texas Tax Code; providing for a repealing clause, providing for a severability clause; and providing for an effective date.

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

Goal: Quality Development

Background

During the 82nd State of Texas Legislative Session which adjourned on June 30, 2011, the comprehensive budget bill was passed which contained language amending the Property Tax Code as it concerns the goods-in-transit tax exemption. Goods-in-transit means tangible personal property. The Triple Freeport Exemption, which was adopted by the City, County and School District many years ago, exempts from tax these goods-in-transit which are transported in or out of the state within 175 days.

The “third party logistics” industry persuaded the 82nd Legislature to amend the law to treat goods-in transit they store and distribute in their facilities like those covered under the Triple Freeport Exemption. Third party logistics companies are those entities that store and distribute goods owned by other companies. In the past, these goods-in-transit handled by third party logistics companies have been taxed by the local jurisdictions.

The 82nd Legislature did allow for local jurisdictions to “opt out” of this new tax exemption if so desired. Even though Lancaster does not have any third party logistics companies at the present, at some point in the future it may, and opting out will ensure that this automatic tax exemption will not apply. Opting out of this new tax exemption will require repealing a section of the previous ordinance and replacing it with a new section.

Considerations

- **Operational** - There are no ongoing operational requirements associated with this matter.
- **Legal** - The City Attorney has reviewed all documents associated with this matter.
- **Financial** - Currently there is no financial impact associated with this matter.
- **Public Information** - A Public Hearing is required in order for action to be taken on this matter. The notice was posted in accordance with state law.

Options/Alternatives

1. The City Council may approve the ordinance concerning the goods in transit tax exemption as presented.
2. The City Council may approve the ordinance with changes.
3. The City Council may deny the ordinance. Not approving the ordinance will allow for future goods in transit handled by the third party logistics industry in Lancaster to be exempt from taxation.

Recommendation

After closing the public hearing, staff recommends approval of the ordinance as presented.

Attachments

- Ordinance

Prepared and submitted by:
Ed Brady, Director of Economic Development

Date: October 12, 2011

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE LANCASTER CODE OF ORDINANCES BY AMENDING CHAPTER 11, ARTICLE 11.500, FREEPORT GOODS, BY REPEALING SECTION 11.502 AND REPLACING WITH A NEW SECTION 11.502, TO PROVIDE FOR THE AD VALOREM TAXATION OF TANGIBLE PERSONAL PROPERTY IN TRANSIT OR "SUPER FREEPORT" GOODS PURSUANT TO SECTION 11.253 OF THE TEXAS TAX CODE; PROVIDING FOR A REPEALING CLAUSE, PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on or about November 12, 2007 the City adopted an ordinance, codified as Article 11.500, Section 11.502 of the Lancaster Code of Ordinances, which provided for the taxation of goods-in-transit; and

WHEREAS, Senate Bill 1 passed by the 82nd Texas Legislature, First Called Special Session, *inter alia*, amended Section 11.253 of the Tax Code regarding the exemption for "Goods-in-Transit"; and

WHEREAS, Section 11.253, Tax Code, was amended to prohibit a taxing unit from taxing Goods-in-Transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after October 1, 2011, to provide for the taxation of the Goods-in-Transit; and

WHEREAS, the governing body is required by the new legislation to take action to tax Goods-in-Transit after public hearing even if the governing body previously took action to tax Goods-in-Transit; and

WHEREAS, the City may choose to opt out of the local exemption for Goods-in-Transit by holding a public hearing and taking action to continue tax such goods on or after October 1, 2011, but prior to January 1, 2012; otherwise, such property will be exempt from taxation; and

WHEREAS, the City desires to continue to tax Goods-in-Transit beginning tax year 2012; and

WHEREAS, the City Council has conducted a public hearing as required by Section 1-n (d), Article VIII, Texas Constitution, at which citizens were provided an opportunity to speak; and

WHEREAS, the City Council finds that Article 11.500 of the Code of Ordinances should be repealed and replaced to comply with state law;

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

SECTION 1. That the Lancaster Code of Ordinances be, and the same is, hereby amended by repealing Article 11.500, Freeport Goods, Section 11.502 and replacing the same with a new Article 11.500, Section 11.502 to provide for taxation of goods-in-transit, which shall read as follows:

“ARTICLE 11.500 FREEPORT GOODS”

Sec. 11.501

Sec. 11.502 Taxation of Tangible Personal Property in Transit.

(a) Definitions. The following terms have the same meaning as defined in Section 11.253 of the Texas Tax Code as amended.

- (1) The terms “Dealer’s motor vehicle inventory,” “dealer’s vessel and outboard motor inventory,” “dealer’s heavy equipment inventory,” and “retail manufactured housing inventory” have the meanings assigned by Subchapter B, Chapter 23 of the Texas Tax Code, as amended.
- (2) The term “Goods-in-transit” is defined to mean tangible personal property that:
 - A. is acquired in or imported into this state to be forwarded to another location in this state or outside this state;
 - B. is stored under a contract of bailment by a public warehouse operator at one or more public warehouse facilities in this state that are not in any way owned or controlled by the owner of the personal property for the account of the person who acquired or imported the property;
 - C. is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and
 - D. does not include oil, natural gas, petroleum products, aircraft, dealer’s motor vehicle inventory, dealer’s vessel and outboard motor inventory, dealer’s heavy equipment inventory, or retail manufactured housing inventory;
- (3) The term “Location” means a physical address.
- (4) The term “Petroleum product” means a liquid or gaseous material that is an immediate derivative of the refining of oil or natural gas.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, BUSINESS & COMMERCE CODE.

(6) "Public warehouse operator" means a person that:

A. is both a bailee and a warehouse; and

B. stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

(b) Beginning tax year 2012 and continuing thereafter until further action is taken by the City Council, "Goods-in-Transit", as defined herein, shall be subject to ad valorem property taxation by the City."

SECTION 2. 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 as amended hereby, which shall remain in full force and effect.

SECTION 3. Any provision of any prior ordinance of the City whether codified or un-codified, which are in conflict with any provision of the Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or un-codified, which are not in conflict with the provisions of this Ordinance, 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 24th day of October 2011.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

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

LANCASTER CITY COUNCIL
Agenda Communication for
October 24, 2011

9

AG11-009

Discuss and consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a professional services agreement by and between the City of Lancaster and Freese and Nichols, Inc. (FNI) to perform services in connection with the site selection, tank design, bid process, and tank and water line construction of a two (2) million gallon elevated water storage tank for basic services for a lump sum fee of \$197,000 and for special services in an amount not to exceed \$163,000; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

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

Goal: Healthy, Safe & Vibrant Neighborhoods

Background

On December 9, 2010, the Texas Commission on Environmental Quality (TCEQ) performed a Compliance Evaluation Investigation of the City of Lancaster water distribution system. The City received a letter dated January 18, 2011 stating the investigation cited an Alleged Violation of: Failure to provide elevated storage capacity of 100 gallons per connection for the Upper Pressure Plane.

We currently have a 1 Million Gallon (MG) elevated storage tank for the Upper Pressure Plane located on Wintergreen Road at Houston School Road. Based on the number of connections on the day of the investigation the system is required to provide at least 1.178 million gallons elevated storage tank capacity (11,782 connections x .0001 = 1.178 MG). This means that our 1.0 MG elevated storage tank is only approved to serve up to 10,000 connections. Having surpassed the number of connections that can be supported by our existing 1 MG elevated tank per the TCEQ requirements, plus considering our existing tank's age and maintenance needs, we must take down the existing 1 MG elevated tank and construct a new 2 MG elevated storage tank to come into compliance with the TCEQ elevated storage requirement. The new tank will provide for future growth and development. The agreed upon schedule with the TCEQ to complete this project is as follows:

Conduct Site Study and Acquire Property: May—August 2011
Prepare Construction Documents: September 2011—March 2012
Advertise and Award Construction Contract: April 2012—May 2012
Construction of Elevated Storage Tank: June 2012—July 2013

As you can see, we are a little behind schedule because we could not move forward until we received council approval to issue the bonds and complete the bond issuance process. Bonds are currently scheduled to be issued towards the end of October 2011. Now that the bonds will soon be available we will be able to fund the consultant's fee and tank costs, and move to the site selection process. We hope to be back on track of the schedule by April 2012 which is to "Advertise and Award Construction Contract."

The latest Water Master Plan was prepared by Freese & Nichols, Inc. (FNI) and adopted by City Council on November 12, 2007. The plan outlines a Capital Improvement Plan for Water Systems Improvement for the years of 2007 to 2011. Projects are listed based on projected growth and TCEQ requirements. The number one project listed is the Ames Road Pump Station Expansion, which we completed June 2010. The number two project listed is the 2.0 MG elevated tank. A copy of the Water Master Plan projected CIP Water Systems Improvements needed is attached.

The Preliminary Opinion of Probable Construction Cost for the new tank is \$5,734,140. A copy of this opinion is attached.

FNI has performed the City's most recent Water Master Plans which identified the need for the new elevated storage tank. They have been involved in correspondence with the TCEQ regarding regulatory issues associated with the tank. They are assisting the City with submission of an application for grant funds to assist with the cost of the tank. They have a lot of recent experience designing and overseeing construction of elevated tanks in the Metroplex. FNI designed the pump station expansion that will be used to fill the elevated tank and thus has the background knowledge of the hydraulics involved. Due to regulatory issues, we are on a quick timeline and FNI has the background and familiarity to hit the ground running. Additionally, attached is a Statement of Qualifications that highlights their recent elevated storage tank design and construction management experience.

Attached is the professional services agreement from FNI to perform these services in connection with the site selection, tank design, bid process, and tank and water line construction of a Two (2) Million Gallon Elevated Water Storage Tank. We ask that council approve the resolution for the professional services agreement so that we can move forward with the construction of a new 2 MG elevated water tank to resolve our violation with the TCEQ.

Considerations

- **Operational** – The new two million gallon elevated tower will satisfy TCEQ requirements up to 20,000 connections which translates into an approximate population of 61,772.

- **Legal** – The TCEQ requires a minimum elevated storage water system capacity of 100 gallons per connection for each pressure plane.

The City Attorney has reviewed, modified and approved the Agreement for Professional Services and has reviewed and approved the resolution.

- **Financial** – The estimated cost of construction is \$5,734,140. Council approved an ordinance authorizing issuance of 2011 Series bonds at the September 26, 2011 council meeting. The bonds are currently scheduled to be issued October 27, 2011. Consultant compensation will be a lump sum fee of \$197,000 for Basic Services and a not to exceed fee of \$163,000 for Special Services.
- **Public Information** – There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
- FNI Professional Services Agreement
- Water Master Plan projected CIP Water Systems Improvements
- Preliminary Opinion of Probable Construction Cost
- Statement of Qualifications

Prepared and submitted by:
Clovia English, Director of Public Works

Date: October 20, 2011

RESOLUTION NO. 2011-10-93

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER AND FREESE AND NICHOLS, INC. (FNI) TO PERFORM SERVICES IN CONNECTION WITH THE SITE SELECTION, TANK DESIGN, BID PROCESS, AND TANK AND WATER LINE CONSTRUCTION OF A TWO (2) MILLION GALLON ELEVATED WATER STORAGE TANK AS OUTLINED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES FOR BASIC SERVICES FOR A LUMP SUM FEE OF \$197,000 AND FOR SPECIAL SERVICES FOR A NOT TO EXCEED FEE OF \$163,000; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Freese and Nichols, Inc. ("FNI") will provide professional services to the City of Lancaster; and

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

WHEREAS, the new two (2) MG water tower will satisfy elevated storage capacity requirements of the Texas Commission on Environmental Quality (TCEQ) and future development;

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

SECTION 1. That the City Council hereby approves and authorizes a professional services agreement for engineering consulting services, which is attached hereby and incorporated herein by reference as Exhibit "A", for basic services for a lump sum fee of one hundred and ninety seven thousand dollars (\$197,000) and for special services for a not to exceed fee of one hundred and sixty three thousand (\$163,000).

SECTION 2. That the City Manager is hereby authorized to execute the Agreement as depicted in Exhibit "A", which is attached hereto and incorporated herein.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of October 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF TARRANT §

This AGREEMENT is entered into by the City of Lancaster, hereinafter called "OWNER" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the AGREEMENTS herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this AGREEMENT: OWNER agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; OWNER agrees to pay to FNI compensation. The Project is described as follows: 2.0 MG Elevated Storage Tank
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of OWNER which is attached to and made a part of this AGREEMENT.
- III. **COMPENSATION:** OWNER agrees to pay FNI for all professional services rendered under this AGREEMENT in accordance with Attachment CO - Compensation which is attached hereto and made a part of this AGREEMENT. FNI shall perform professional basic services as outlined in the "Scope of Services" for a lump sum fee of \$197,000, and professional special services for a not to exceed fee of \$163,000. Details concerning the fee are included in Attachment CO.

If FNI's services are delayed or suspended by OWNER, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this AGREEMENT has been revised.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the OWNER and FNI.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than OWNER and FNI, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of OWNER and FNI and not for the benefit of any other party.

This AGREEMENT constitutes the entire AGREEMENT between OWNER and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this AGREEMENT, the _____ day of _____, 2011.

ATTEST:

City of Lancaster
(OWNER)

By: _____

Print or Type Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)

By: Scott A. Cole

Scott A. Cole, Principal
Print or Type Name and Title

Robert Mc Gee

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

ARTICLE I

BASIC SERVICES: FNI shall render the following basic professional services in connection with the development of the Project:

1. Perform a site study to evaluate three potential sites to construct the new elevated storage tank. The three potential sites are shown on Figure 1.
2. Prepare construction drawings and specifications for the elevated storage tank at the OWNER approved location.
3. Provide bid phase services.
4. Provide construction phase general representation services.

Task A. Elevated Storage Tank Site Study

1. Conduct one (1) kickoff meeting with the OWNER for the site selection effort
2. Perform a site visit to each site for site familiarization and to identify any tank constructability and site access issues.
3. Prepare a map review to identify any controlled air traffic facilities near the tank sites such as airports or heliports. Submit the map and other required information to the Federal Aviation Administration for review and listing of any potential restrictions.
4. FNI will develop a conceptual site plan for each site that includes conceptual locations of site boundary, tank location, and driveway length/location shown on an aerial photo.
5. FNI will use parcel data available from the Dallas County Appraisal District (DCAD) to determine the assessed value of the property by applying the assessed per square foot price to the conceptual boundary drawn in previous tasks.
6. From the current modeling effort that is being done on the Water Capital Improvement Program Update determine how well an EST at each site will perform hydraulically including drain/fill rates, competition with planned future tanks, system pressures, etc. In addition any water line improvements needed to enable the site to work hydraulically will be identified. The results of these model runs will be used in the overall decision-making matrix assembled to compare the sites. Fees for the modeling effort are not included herein.
7. FNI will develop a tank site criteria matrix to assist the OWNER in making a decision on the preferred tank site. Specifically the matrix will compare the following parameters of each site;
 - a. Height of tank required due to site elevation and resulting differential tank construction cost
 - b. Any Federal Aviation Administration restrictions
 - c. Length of connecting waterline required and resulting differential construction cost
 - d. Length of driveway required and resulting differential construction cost
 - e. Relative estimated value of land based on DCAD available values

8. The results of these study tasks will be summarized in a draft site selection memorandum and submitted to the Owner.
9. FNI will conduct one (1) site selection review meeting with the OWNER
10. FNI will revise the site selection memo based on comments received at the meeting and finalize the memorandum.
11. Upon authorization from OWNER staff FNI will submit an FAA permit for the chosen site.

Task B Elevated Storage Tank Design

Upon written notice to proceed from the OWNER, FNI will design the features associated with the elevated storage tank. The design shall include the following.

1. Design submittals shall be provided by FNI to the OWNER at 50%, 90%, and 100% of the drawings. The submittals shall include construction drawings, specifications, contract documents, bid proposal, updated schedule, and updated opinion of probable construction costs. Two (2) copies of these items shall be submitted to the OWNER at each of the submittal dates.
2. Provide final layout, elevation, details, and specifications for the elevated storage tank, showing tank and pedestal, inlet and outlet lines, drains, overflow, interior and yard piping, access ladders, valves and vaults, re-circulation arrangement, manways, logo, access roadway, fencing, landscaping, irrigation, and site drainage. Provide adequate detail to enable the tank manufacturer to prepare final design and shop drawings for the tank foundation and complete tank.
3. Provide plans, cross-sections, details, and specifications for the control valve vault.
4. Provide Electrical plans, details, and specifications for the elevated storage tank electrical equipment, instrumentation, controls, lighting, control valve, and security intrusion alarm features.
5. Provide final plans, profiles, details, and specifications for the yard piping. Provide details for connection of the yard piping to existing waterlines.
6. Provide plans, specifications, contract documents, and bid proposals for one construction contract to complete this project including removal of the existing 1 million gallon elevated tank at the Ames Pump Station. Preparation of plans, specifications, contract documents, and bid proposals for additional construction contracts will be an additional service.

Task C. Bid or Negotiation Phase

Upon completion of the design services and approval of "Final" drawings and specifications by OWNER, FNI will proceed with the performance of services in this phase as follows:

1. Assist OWNER in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in Consultant's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for OWNER to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by the OWNER.
2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders.

3. Maintain information on entities that have been issued a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
4. Assist OWNER by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
5. Assist OWNER in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by OWNER.
6. Assist OWNER in the preparation of Construction Contract Documents for the construction contract. Provide ten (10) sets of Construction Contract Documents, which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the OWNER and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide OWNER with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an additional service.
7. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.

Task D. Construction Phase

Upon completion of the bid or negotiation phase services, FNI (the "Consultant") will proceed with the performance of construction phase services as described below. Consultant will endeavor to protect the OWNER in providing these services. However, it is understood that Consultant does not guarantee the Contractor's performance, nor is Consultant responsible for supervision of the Contractor's operation and employees. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. Consultant shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

The OWNER agrees to include provisions in the construction contract documents that will require the construction contractors to include Consultant and their subconsultants on this project to be listed as an additional insured on contractors' insurance policies.

1. Assist OWNER in conducting pre-construction conference with the Contractor, review construction schedules prepared by the Contractor pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
2. Establish communication procedures with the OWNER and contractor.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects.

4. Based on Consultant's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that Consultant recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
5. Make one visit per month for the 13-month tank construction duration and one visit per month for the 4-month waterline construction duration if applicable. Visits will be to the site(s) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort Consultant will endeavor to protect the OWNER against defects and deficiencies in the work of Contractors and will report any observed deficiencies to the OWNER. Visits to the site in excess of the specified number are an additional service.
6. Notify the contractor(s) of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
7. Interpret the drawings and specifications for the OWNER and Contractor. Investigations, analyses, and studies requested by the Contractor and approved by the OWNER, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
8. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the OWNER to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the OWNER. Documentation of field orders, where cost to OWNER is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the OWNER are an additional service. Substitutions of materials or equipment or design modifications requested by the OWNER are an additional service.
9. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the OWNER on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the OWNER if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of Consultant are an additional service.
10. Conduct, in company with OWNER's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the OWNER in obtaining legal releases, permits, warranties, and spare parts from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor. Visiting the site to review completed work in excess of two (2) trips are an additional service.
11. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Two (2) sets of prints of "Record Drawings" shall be provided by Consultant to the OWNER. Consultant shall also provide a DWG electronic copy of the Record Drawings to the OWNER.

Task E. Resident Representative - Not Included.

ARTICLE II

SPECIAL SERVICES: FNI shall render the following special professional services in connection with the development of the Project, if authorized by the OWNER:

1. Prepare a design boundary/topographic survey of the OWNER approved site, and prepare a plat of the site.
2. If site 1 or site 3 is chosen by the OWNER, FNI will provide a design survey for approximately 2,000 LF of water line to connect the new elevated storage tank to the existing 30-inch water line in Houston School Road, and prepare up to five (5) easements for the water line. Additional easements can be provided as an additional service.
3. If site 1 or site 3 is chosen by the OWNER, FNI will provide design for approximately 2,000 LF of water line to connect the new elevated storage tank to the existing 30-inch water line in Houston School Road.
4. Provide a Phase I environmental site assessment (ESA) for the site chosen by the OWNER. This scope does not include a Phase II ESA. If the Phase I ESA identifies a significant potential for the occurrence of environmental concerns, then a Phase II ESA can be provided as additional services if requested by the OWNER.
5. Provide Geotechnical Engineering services in support of the elevated storage tank design. A total of four (4) borings will be provided.
6. Provide elevated storage tank inspections. Inspections will be provided for concrete foundations, concrete walls, steel erection and welding, protective coatings, and electrical components. This contract does not include the services of a resident construction representative. Resident construction representation can be provided as additional services if requested by the OWNER. This contract does not include the services of an independent materials testing laboratory. OWNER is to furnish the services of an independent testing laboratory to verify steel, concrete, and soil material compliance with specified requirements.
7. Obtain paint samples and laboratory analysis of samples. FNI will prepare lead abatement and waste handling specifications for demolition of existing elevated storage tank at the Ames Pump Station for inclusion in the construction documents.
8. FNI will obtain the services of a right of way acquisition specialist to assist the City in purchasing the selected elevated storage tank site. This contract does not include the services to assist with condemnation proceedings. Assistance for condemnation proceedings can be provided as an additional service. This contract includes up to 50 hours of effort for the right of way acquisition specialist to assist the OWNER with condemnation proceedings if required.

Task A. Elevated Storage Tank Design Survey and Plat

Upon written notice to proceed from the OWNER, FNI will survey and prepare a boundary/topographic survey map of the chosen water tank site, and prepare a plat for submission for the City's platting process.

1. Prepare a boundary survey, legal description, exhibit, and Plat of the elevated storage tank site for use by the OWNER to purchase this property. Land acquisition documents and County filing will be the responsibility of the OWNER.
2. Perform a design topographic survey of the elevated storage tank site. Survey all surface features within the survey area, including 1-foot contours, ditches, creeks, outlines of tree-lines, telephone

poles, fences, valves, vaults, manholes, roads, culverts, buildings, mailboxes, utility boxes, driveways, geotechnical borings, and all other such surface features. This information shall be sufficient to generate a contour model (DTM) of the proposed elevated storage tank site and to record a general description of the existing terrain. The survey shall include the top elevation of all manholes as well as the invert elevations of all conduits entering and exiting the manholes. FNI will prepare a final digital topographic/design survey drawing in AutoCad 2000 (or later version) format at a scale of 1"=30' including contour lines. The drawing shall show all features located, horizontal and vertical control points, property lines, and existing visible utilities. Other deliverables when requested shall include a copy of all field notes and field sketches, a hard copy coordinate list of points located in the field and a digital ASCII point list.

3. Stake up to four (4) geotechnical boring locations based upon electronic files provided to the sub consultant by the engineer. Then, survey up to four geotechnical boring locations after the geotechnical driller is complete.
4. Call DigTess to flag all existing underground franchise utilities, and survey these utilities into the design survey. Research existing OWNER of Lancaster utility plans, and include these lines in the survey.

Task B. Water Line Design Survey and Easements

Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following survey shall be provided for up to a four (4) acre site and 7,150 feet of waterline. It is assumed the waterline will be constructed within the existing road right-of-way. FNI the "Consultant" is responsible for the following:

1. Ownership Data – Research property ownership of the parcels adjoining the proposed waterline route, obtain copies of deeds, subdivision plats, right-of-way maps and ownership addresses along the route.
2. Ownership Map – Locate readily available property corners of parcels along the proposed route that may be affected by the proposed waterline alignment. Calculate property, street right-of-way and alley-way lines where no corner monumentation is found.
3. Perform a design topographic survey of the waterline route. Survey all surface features within the survey areas, including 1-foot contours, ditches, creeks, outlines of tree-lines, telephone poles, fences, valves, vaults, manholes, roads, culverts, buildings, mailboxes, utility boxes, driveways, geotechnical borings, and all other such surface features. Survey limits for the waterline shall be 50' on either side of the proposed route centerline. This information shall be sufficient to generate a contour model (DTM) of the proposed waterline and to record a general description of the existing terrain. The survey shall include the top elevation of all manholes as well as the invert elevations of all conduits entering and exiting the manholes. Prepare a final digital topographic/design survey drawing in AutoCad 2000 (or later version) format at a scale of 1"=30' including contour lines. The drawing shall show all features located, horizontal and vertical control points, property lines, and existing visible utilities. Other deliverables when requested shall include a copy of all field notes and field sketches, a hard copy coordinate list of points located in the field and a digital ASCII point list.
4. Control Points - Establish three (3) permanent vertical control benchmark and two (2) horizontal control points at the elevated storage tank site from the Texas State Plane Coordinate System NAD 83 and NAVD 88 control. In addition, horizontal control points shall be established at the beginning and end of the proposed waterline route and at 500' intervals (minimum). Provide all work in surface coordinates. The work shall meet the requirements of the TSPS Manual of Practice for Land Surveying in the State of Texas, categories 7 and 8, second order.

5. Call DigTess to flag all existing underground franchise utilities, and survey these utilities into the design survey. Research existing City of Lancaster utility plans, and include these lines in the survey.

6. Easements - Prepare an exhibit and boundary easement description for each tract that the proposed pipeline will cross. The legal descriptions and plats shall meet the criteria stated below. Easements shall be signed and sealed by a Registered Professional Land Surveyor, currently registered in the State of Texas. Each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract. A draft copy of each easement shall be submitted. After review by the OWNER, Consultant shall incorporate comments as appropriate and submit one final copy of the easements and deeds to the OWNER. This proposal is based upon preparation of 5 easement documents. Easements prepared in excess of this number will be an additional service.
 - a. Exhibit Plats and legal descriptions must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act. *The Manual of Practice for Land Surveying in the State of Texas*, as published by the Texas Society of Professional Surveyors, is the standard to which all consultant's survey work shall be performed. The latest revision will be used.
 - b. Legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed. Each legal description shall be accompanied by an exhibit plat which depicts the worded description. Legal descriptions and Exhibit Plats shall be reproduced on 8 1/2 x 11 size paper. All must be legible. The Exhibit Plat or Legal Description should be able to stand alone.
 - c. The Exhibit Plat should contain the following:
 - i. North Arrow
 - ii. Graphic Scale
 - iii. Legend
 - iv. Mathematical Closure
 - v. Abstract name and number
 - vi. Basis of bearing
 - vii. Controlling Monuments
 - viii. Check bearings and distances against legal description (They should be the same)
 - ix. Show adjoining
 - x. Show existing easements (with instrument recording information)
 - xi. Exhibit plat should acknowledge existence of the Legal description
 - xii. Line and curve tables are discouraged
 - xiii. Curve data must contain the following: delta, radius, length, long chord bearing and long chord distance. State if curve is tangent or non-tangent.
 - xiv. The survey plat shall bear the firm name, surveyors name, address, and phone number of the land surveyor responsible for the land survey, his/her official seal, his/her original signature, and date surveyed (663.19.5)
 - xv. Acreage to the appropriate number of decimal places. (no square feet)
 - d. The Legal Description shall contain the following (metes and bounds descriptions only):
 - i. General Description
 - Name of current owner of record
 - Type of conveyance record (warranty deed, quit claim deed, etc.)
 - The conveyance instrument recording information (Deed record Volume and Page)
 - Survey Name and Abstract Number
 - County, City, and State
 - Specific Description
 - POINT OF BEGINNING tied to a monumented corner of the parent tract

- Check bearings and distances against Exhibit plat (They should be the same)
- Curve data must contain the following: delta, radius, length, long chord bearing and long chord distance. State if curve is tangent or non-tangent.
- References to adjoining properties
- Basis of Bearing
- Legal description should acknowledge existence of the Exhibit plat
- Acreage to the appropriate number of decimal places. (no square feet)

Task C. Waterline Design

Upon written notice to proceed from the OWNER, FNI will design the features associated with the waterline. The design shall include the following;

1. Design submittals shall be provided by Consultant to the OWNER at 30%, 60%, and 90%. The submittals shall include construction drawings, specifications, contract documents, bid proposal, updated schedule, and updated opinion of probable construction costs. FNI will attend one review meeting per submittal with the OWNER to discuss comments and progress of the project. Two (2) copies of these items shall be submitted to the OWNER at each of the submittal dates.
2. Provide final engineering layouts, details, and specifications for the waterline, including plan and profile of the piping, in-line valves, fire hydrants, services, bored or open-cut casing, connections to existing and proposed lines, trenching, embedment, backfill, and paving repairs.
3. Provide plans, specifications, contract documents, and bid proposals for one construction contract to complete this project. FNI standard specifications shall be used. Preparation of plans, specifications, contract documents, and bid proposals for additional construction contracts will be an additional service.
4. Prepare applications for permit for work within county road right-of-ways. Attend one (1) County Commissioners Court hearing if necessary for the permission to construct the water line within county road right-of-way.

Task D. Phase 1 Environmental Site Assessment

Upon receipt of authorization, FNI will perform a phase 1 site assessment for the selected tank site. A Phase I ESA is a preliminary evaluation of the potential for chemical contamination which involves the review of historical land use records for the site, a site visit, and interviews with property owners and tenants. It does not involve the collection and analysis of samples from soils, groundwater, or other environmental media. If a Phase I ESA identifies a significant potential for the occurrence of environmental concerns, then a Phase II ESA is typically recommended to verify the presence or absence of chemical contamination. This scope does not include a Phase II ESA. A Phase II ESA can be provided as additional services.

This Phase I ESA will be conducted based on standards published by the Environmental Protection Agency All Appropriate Inquiries (AAI) Final Rule and ASTM International (ASTM) under Standard Guideline E1527-05, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

As a note, a Phase I ESA can reduce, but not eliminate, the level of risk for unidentified environmental contamination. No Phase I ESA can guarantee the absence of contamination. Only sampling and analysis can confirm the presence or absence of chemical contamination at a site. Sampling and analysis are

beyond the Scope of Services for this Phase I ESA. Additionally, this Phase I ESA does not include an investigation or survey for the presence of mold or asbestos.

In the absence of any standards, the opinions and conclusions found in the Phase I ESA will be based on caution and conservatism by an experienced professional. Environmental regulations are continually changing, and a site determined to be uncontaminated based on current regulations and/or technical standards could be considered a contaminated site in the future based on new or amended regulations or standards.

Freese and Nichols shall render the following professional services in connection with completion of the Phase I ESA:

1. **Historical Land Use Review:** Perform an investigation into prior ownership and past land uses on the subject property. Freese and Nichols will attempt to identify obvious uses of the subject property from the present back to the property's first developed use, or back to 1940, whichever is earlier. To accomplish this task, Freese and Nichols will review the following records (if available):
 - a. Interviews with City representatives and property owners/tenants.
 - b. Historical aerial photography.
 - c. City directory abstracts.
 - d. Sanborn fire insurance maps.
 - e. Recorded environmental easements or liens on the subject property.
2. **Regulatory Agency Records Review:** Freese and Nichols will review information found in federal and state regulatory records for the subject property, including records related to environmental-related permits, notices-of-violation, and incidents involving use, disposal, or accidental release of hazardous substances, petroleum products, or other waste materials. Local records, if available, related to the subject property will also be reviewed for indications of environmental concern.
3. **Site Reconnaissance Visit:** Freese and Nichols will perform a site reconnaissance visit to the subject property. Freese and Nichols anticipates that the site visit will require one half day of effort for two environmental scientists. Existing environmental conditions will be documented on the site. Freese and Nichols will look for potential indicators of environmental concerns such as stained soils or other surfaces, stressed vegetation, exposed piping, and evidence of improper use or disposal of regulated substances. Freese and Nichols will document the condition of the subject property using photographs. Copies of photographs will be included in the report.
4. **Report Preparation:** Following the completion of Subtasks 1 through 3, a report will be prepared for the subject property documenting the findings. The report will contain a narrative of the findings, recommendations for additional environmental investigations, as needed, and copies of all data obtained relevant to the subject property. The report will contain appropriate maps, figures, and photographs.

Task E. Geotechnical Engineering Services

FNI shall provide the following geotechnical engineering services in support of the project.

1. Review Dallas Sheet of Geologic Atlas of Texas to determine general subsurface conditions to be expected at the site.
2. Select approximate locations for exploratory borings. Engineer will check underground utilities, other existing construction, and accessibility. Surveyor will stake the specific boring locations and determine ground surface elevations for the borings.

3. Subcontract with a drilling contractor to drill a total of four (4) borings, one at 100-foot, one at 80-foot and two at 60-foot. The borings will be drilled with either continuous flight augers or hollow-stem augers. Obtain soil samples for testing using 3-inch diameter Shelby tubes for cohesive soils and using a 2-inch diameter split-barrel sampler for non-cohesive soils and perform THD cone penetrometer tests in the field. Backfill borings with cuttings and plug the upper foot of each boring with concrete sack mix to prevent a tripping hazard.
4. Provide an engineer or geologist experienced in logging borings to direct the drilling, log the borings, record the blow counts from the Standard Penetration Test (SPT) and THD cone penetrometer tests and handle the samples.
5. Select samples for laboratory testing, assign tests, deliver samples to a subcontract laboratory selected by FNI, and review test results. Tests expected include classification tests (liquid and plastic limits and percent passing the #200 Sieve), moisture contents, unconfined compression tests and absorption pressure swell tests.
6. Review subsurface conditions and soil properties found by the field and laboratory work and discuss the implications for design with FNI engineers.
7. Prepare a report of the geotechnical investigation presenting the boring locations, boring logs, lab test results and a discussion of general subsurface conditions at the site and their impact on design. The report will include recommendations for foundation design for the elevated storage tank and a discussion of construction issues.

Task F. Tank Construction Inspection

Freese and Nichols, Inc. will furnish the services of a field representative to perform inspections of the tank construction at the intervals detailed below. In addition, a professional engineer provided by FNI will attend the Pre-construction meeting held for each area of work.

1. Concrete Foundation – Approximately 10 site visits
 - a. Attend Pre-con meeting with foreman
 - b. Periodically check soil compaction efforts of Contractor to verify that specified fill and lift requirements are being followed
 - c. Verify concrete form dimensions, check anchor bolts, and verify steel placement prior to concrete placement
 - d. Observe concrete pours to verify independent testing laboratory retained by the OWNER is performing checks for slump, air entrainment, and concrete strength
2. Concrete Walls – Approximately 15 site visits
 - a. Attend Pre-con meeting with foreman
 - b. Check steel reinforcement in wall section prior to concrete placement for correct size, location, and separation distance between steel mats to allow for proper placement of concrete
 - c. Observe concrete pours/verify that the independent testing laboratory retained by the OWNER is performing checks for slump, air entrainment, and concrete strength
 - d. Observe removal of forms and check for voids, and monitor repair of air void holes

3. Steel Erection and Welding – Approximately 35 site visits
 - a. Attend Pre-con meeting with foreman and check welder's certification papers
 - b. Check dimensions of steel plates for correct thickness
 - c. Check edge preparation and bevels of plates
 - d. Check all surfaces for irregularities such as laminations and cracks
 - e. Check joint geometry and fit-up during erection
 - f. Observe proper welding procedures during erection
 - g. Check to insure back gouging or back grinding is performed
 - h. Check all accessories for correct size and location
 - i. Coordinate with testing laboratory with regard to selection of X-ray locations and observe film placement
 - j. Check all film for discontinuities and incomplete joint penetration
 - k. Check structure for removal of all erection lugs and grinding of burs
 - l. Confirm steel properly prepared for painting

4. Protective Coating Application – Approximately 35 site visits
 - a. Attend Pre-con meeting with foreman
 - b. Check shop blasting for profile and priming for thickness
 - c. Check all coating products to ensure they meet specifications
 - d. Determine thickness and condition of shop-applied prime coats
 - e. Check blast material and anchor profiles of steel
 - f. Check mixing and application of each of the coating products
 - g. Check dry film thickness after each coat is cured and before next coat is applied
 - h. Monitor testing of all immersed areas for pin-holes or holidays

5. Electrical Inspection – Approximately 5 site visits
 - a. Attend Pre-con meeting with foreman
 - b. Check to insure correct placement of electrical accessories and conduit

Note: This proposal for construction inspection does not include the services of an independent testing laboratory. OWNER is to furnish the services of an independent testing laboratory to verify steel, concrete, and soil material compliance with specified requirements.

TASK G. EXISTING ELEVATED STORAGE TANK PAINT ANALYSIS

1. FNI will collect a total of five samples of paint from the existing water storage tank – one from each leg and one from the pipe riser.
2. FNI will submit paint samples to an environmental laboratory for analysis for total lead. Additionally, each sample will also be tested for lead by the Toxicity Characteristic Leaching Procedure.
3. FNI will collect four samples of soils in the vicinity of the water storage tank. These samples will be tested for total lead to determine existing lead content in soils surrounding the tank to verify existing conditions prior to tank demolition.
4. FNI will prepare a sampling report documenting the results of our findings. Sample results will be compared to relevant waste disposal standards and construction worker safety criteria.
5. FNI will prepare lead abatement and waste handling specifications for inclusion in the construction documents.

TASK H. ELEVATED TANK SITE ACQUISITION SERVICES

1. Review records / surveys, research for property owner(s) and property values, prepare a comparative market analysis for submission to the City for approval of amounts to be included in the initial offer letter.
2. Conduct negotiations with property owner for land purchase. Confirm the comparative market analysis. Prepare the initial offer letter based on the approved value authorized by the City. Conduct follow up negotiations as necessary. Provide the landowner with a copy of the Comparative Market Analysis as necessary.
3. Have a formal appraisal prepared if landowner negotiations cannot be consummated.
4. Coordinate with the City and Title Company to obtain an updated title commitment along with other forms and certified copy of the instrument of conveyance. Attend closing and provide closing services in conjunction with Title Company.
5. Site acquisition costs and title company fees are not included in the fees for this service.
6. Provide up to 50 hours of assistance for condemnation proceedings if requested by OWNER.

ARTICLE III

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by OWNER, which are not included in the above described basic services, are described as follows:

- A. Field layouts or the furnishing of construction line and grade surveys.
- B. GIS mapping services or assistance with these services.
- C. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by OWNER.
- D. Providing renderings, model, and mock-ups requested by the OWNER.
- E. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by OWNER or 2) due to other causes not solely within the control of FNI.
- F. Preparation of a Phase II ESA. If a Phase I ESA identifies a significant potential for environmental concerns, then a Phase II ESA is typically recommended to verify the presence or absence and the extent of contamination. Phase II ESAs involve a limited site investigation involving sampling of environmental media and analysis for suspected chemicals of concern (COCs). If contamination is confirmed at a subject property, there are multiple options available through the Texas Commission on Environmental Quality (TCEQ) to further investigate and address any environmental concerns found. Review of files at Texas Commission on Environmental Quality (TCEQ) or U.S. Environmental Protection Agency (EPA) offices. If a record of a potential environmental concern is found on the subject property or an adjacent site, additional information and actual reports regarding site conditions can often be found in public records maintained by regulatory agencies. These detailed records are not available in the general review of databases maintained by regulatory agencies.

- G. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- H. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by OWNER.
- I. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- J. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- K. Conducting pilot plant studies or tests.
- L. Preparing Operation and Maintenance Manuals or conducting operator training.
- M. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- N. Furnishing the services of a Resident Project Representative to act as OWNER's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by FNI in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, FNI shall endeavor to provide further protection for OWNER against defects and deficiencies in the work. Furnishing the services of a Resident Project Representative is subject to the provisions of Article I, D and Attachment RPR.

If OWNER provides personnel to support the activities of the Resident Project Representative who is FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. It is understood and agreed that such personnel will work under the direction of and be responsible to the Resident Project Representative. OWNER agrees that whenever FNI informs him in writing that any such personnel provided by the OWNER are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.

- O. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- P. Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
- Q. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).

- R. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- S. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- T. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- U. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- V. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- W. Services required to resolve bid protests or to rebid the projects for any reason.
- X. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- Y. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- Z. Providing services after the completion of the construction phase not specifically listed in Article I.
- AA. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the OWNER.
- BB. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- CC. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- DD. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- EE. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- FF. Provide follow-up professional services during Contractor's warranty period.
- GG. Provide Geotechnical investigations, studies and reports.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

1. Elevated Storage Tank Site Study
 - a. Perform analysis and present a draft report within 30 days from notice to proceed.
 - b. Finalize report within five working days from receipt of comments from the Owner.
2. Phase 1 Environmental site Assessment – Report submitted within two weeks of authorization to proceed.
3. EST Design
 - a. 50% Design Submittal within 60 days of OWNER written notice to proceed
 - b. 90% Design Submittal within 60 days of OWNER approval of 50% Design Submittal
 - c. 100% Design Submittal within 30 days of OWNER approval of 90% Design Submittal
4. Waterline Design
 - a. 30% Design Submittal within 60 Days of OWNER written notice to proceed
 - b. 60% Design Submittal within 60 Days of OWNER approval of 30% Design Submittal
 - c. 90% Design Submittal within 60 Days of OWNER approval of 60% Design Submittal
 - d. 100% Design Submittal within 30 Days of OWNER approval of 90% Design Submittal

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in OWNER or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

ARTICLE V

RESPONSIBILITIES OF OWNER: OWNER shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Owner recognizes and expects that certain Change Orders may be required. Unless noted otherwise, the Owner shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any responsibility of Engineer for the costs of Covered Changed Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that Owner would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the Owner.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.

- B. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- F. Provide Freese and Nichols with access to any environmental records or other information possessed by the Client regarding the subject property, including but not limited to permits, confirmation sampling results, hazardous substance inventories, disposal records, records of spills or complaints, etc.
- G. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- H. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- J. OWNER shall determine, prior to receipt of construction bid, if FNI is to furnish Resident Project Representative service so the Bidders can be informed.

- K. If OWNER designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this AGREEMENT before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase services as defined in Attachment SC, Article I, C, together with such adjustment of compensation as appropriate.
- L. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- M. Give prompt written notice to FNI whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- N. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- O. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and OWNER designate the following representatives:

Owner's Designated Representative: Mr. Phillip Curtis, 1999 Jefferson, Lancaster, Texas 75134, Phone: 214-218-2326; email: pcurtis@lancaster-tx.com

FNI's Project Manager: James Baddaker, P.E., 1701 N Market Street, Suite 500 LB 51, Dallas, Texas 75202-2001; Phone: 214-217-2232; Fax: 214-217-2201; email: jb@freese.com

FNI's Accounting Representative: Matt Shafer, 1701 N Market Street, Suite 500 LB 51, Dallas, Texas 75202-2001; Phone: 214-217-2238; Fax: 214-217-2201; email: mcs@freese.com

COMPENSATION

- A. **Basic Services:** Compensation to FNI for the Basic Services for the Elevated Storage Tank in Attachment SC shall be the lump sum of one hundred ninety seven dollars (\$197,000). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding.
- B. **Special Services:** The total fee for Special Services for the Water Line and the Elevated Storage Tank in Attachment SC shall be computed on the basis of the attached Schedule of Charges but shall not exceed one hundred fifty eight thousand dollars (\$163,000). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional services shall be computed based on the attached Schedule of Charges. Not to exceed compensation for the Special Services tasks in Attachment SC shall be as follows:

Elevated Tank Special Services	
Phase 1 Site Assessment-	\$6,500
Tank Survey and Platting-	\$13,350
Tank Geotechnical Study-	\$23,000
Tank Construction Inspection-	\$40,250
Tank Paint Analysis	\$5,400
Tank Site Acquisition	\$10,500
<hr/>	
<i>EST Special Services Subtotal</i>	<i>\$99,000</i>

Waterline Special Services	
Design	\$50,800
Survey	\$9,750
Easements - 5@\$690ea	\$3,450
<hr/>	
<i>Waterline Special Services Subtotal</i>	<i>\$64,000</i>

TOTAL SPECIAL SERVICES **\$163,000**

C. **Schedule of Charges for Additional Services:**

Compensation to FNI for Additional Services shall be computed on the basis of the attached Schedule of Charges.

See next page for Schedule of Charges

Schedule of Charges:

<u>Position</u>	<u>Min</u>	<u>Max</u>	<u>Position</u>	<u>Min</u>	<u>Max</u>
PRINCIPAL	171.89	404.95	3D VISUALIZATION COORDINATOR	133.22	172.40
GROUP MANAGER	173.25	292.20	ENVIRONMENTAL SCIENTIST VII	166.57	228.00
ENGINEER VIII	211.94	269.12	ENVIRONMENTAL SCIENTIST VI	142.03	183.80
ENGINEER VII	184.60	238.89	ENVIRONMENTAL SCIENTIST V	126.56	163.78
ENGINEER VI	161.72	227.34	ENVIRONMENTAL SCIENTIST IV	102.38	152.84
ENGINEER V	132.60	190.29	ENVIRONMENTAL SCIENTIST III	92.17	125.61
ENGINEER IV	116.28	166.22	ENVIRONMENTAL SCIENTIST II	66.40	85.55
ENGINEER III	97.52	149.46	ENVIRONMENTAL SCIENTIST I	57.39	78.57
ENGINEER II	88.80	119.11	ARCHITECT VI	137.56	184.49
ENGINEER I	84.40	114.99	ARCHITECT V	122.23	158.18
ELECTRICAL ENGINEER VI	168.98	208.74	ARCHITECT IV	106.89	134.80
ELECTRICAL ENGINEER V	133.22	168.13	ARCHITECT III	104.30	134.98
ELECTRICAL ENGINEER IV	116.14	150.30	ARCHITECT II	82.32	106.53
ELECTRICAL ENGINEER III	102.28	132.36	ARCHITECT I	69.38	89.78
ELECTRICAL ENGINEER II	99.37	128.59	LANDSCAPE ARCHITECT V	119.68	154.89
ELECTRICAL ENGINEER I	88.62	114.69	LANDSCAPE ARCHITECT INTERN II	76.48	98.98
MECHANICAL ENGINEER VI	161.04	208.40	LANDSCAPE ARCHITECT INTERN I	74.26	96.10
MECHANICAL ENGINEER V	143.75	186.03	PLANNER VI	150.67	214.03
MECHANICAL ENGINEER IV	126.47	163.54	PLANNER V	124.48	161.10
MECHANICAL ENGINEER III	100.45	129.99	PLANNER IV	98.29	127.20
MECHANICAL ENGINEER II	91.47	118.37	PLANNER III	81.96	103.38
MECHANICAL ENGINEER I	84.37	109.19	PLANNER II	72.41	93.71
PROGRAM MANAGER II	166.50	214.95	PLANNER I	69.08	89.40
PROGRAM MANAGER I	116.28	152.92	HYDROLOGIST VI	142.12	183.91
CONSTRUCTION CONTRACT ADMIN III	113.75	187.94	HYDROLOGIST V	122.90	159.04
CONSTRUCTION CONTRACT ADMIN II	98.07	159.05	HYDROLOGIST IV	103.68	134.54
CONSTRUCTION CONTRACT ADMIN I	71.51	116.72	HYDROLOGIST III	89.73	116.12
CONSTRUCTION DOCUMENT COORDINATOR	81.37	105.30	HYDROLOGIST II	80.75	104.50
DOCUMENT CONTROL CLERK	58.45	103.71	SENIOR GEOLOGIST	108.47	140.37
SR DESIGNER	146.24	185.84	GEOTECHNICAL ENGINEER VI	175.97	227.73
DESIGNER II	121.07	160.97	RIGHT OF WAY AGENT	83.66	108.26
DESIGNER I	106.09	137.29	PUBLIC INVOLVEMENT COORDINATOR	77.50	119.77
SR CADD DESIGNER	118.52	153.38	WORD PROCESSING/SECRETARIAL	51.45	84.12
CADD DESIGNER	114.09	158.39	OPERATIONS ANALYST	108.89	150.75
TECHNICIAN IV	89.31	120.17	CONTRACT ADMINISTRATOR	67.01	84.27
TECHNICIAN III	74.48	107.27	PROJECT CONTROL SPECIALIST	63.81	82.58
TECHNICIAN II	60.20	90.70	INFORMATION SERVICES SUPERVISOR	65.72	85.05
TECHNICIAN I	54.93	71.09	INFORMATION SERVICES CLERK III	48.37	62.60
GIS ANALYST V	104.41	133.51	INFORMATION SERVICES CLERK II	37.49	48.51
GIS ANALYST IV	100.14	132.30	INFORMATION SERVICES CLERK I	37.45	43.11
GIS ANALYST III	77.14	107.02	CO-OP	38.50	87.47
GIS ANALYST II	62.30	79.42			
GIS ANALYST I	50.58	65.45			

The ranges and individual salaries will be adjusted annually.

RATES FOR INHOUSE SERVICES

<u>Computer and CAD</u>	<u>Catcomp Plotter</u>	<u>Print Shop</u>
PC CAD Stations	Bond	Color Copies & Printing
\$10.00 per hr.	Other	\$0.50 per single side cop
	Color	\$1.00 per double side cop
		Black & White Copies & Printing
		\$0.10 per single side cop
		\$0.20 per double side cop
<u>Testing Apparatus</u>		Binding
Density Meter		\$5.75 per book
Gas Detection		
\$700.00 per month		
\$20.00 per test		

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

TERMS AND CONDITIONS OF AGREEMENT

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

Commercial General Liability		Workers' Compensation	
General Aggregate	\$2,000	Each Accident	\$500
 Automobile Liability (Any Auto)		 Professional Liability	
CSL	\$1,000	\$3,000 Annual Aggregate	
7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the AGREEMENT shall create any contractual relation between any subcontractor and Owner.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this AGREEMENT shall be the property of the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Owner shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this AGREEMENT in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

FNI SAC
OWNER _____

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

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

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

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

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

Table E-1
City of Lancaster
Water System Improvements Year 2007 to 2011
Opinions Of Probable Project Cost

Project Number	Project Description	Construction Items	Quantity	Units	Unit Price	Costs
1	Expand Ames Road Pump Station	Pump Station - Expans 7 MGD	1	LS	\$1,350,000	\$1,350,000
					Subtotal	\$1,350,000
					Contingency @ 20%	\$270,000
					Total Construction Cost	\$1,620,000
					Engineering, Surveying & Geotech @ 15%	\$243,000
					Total Project Cost	\$1,863,000
2	New 2.0 MG Elevated Tank on Pleasant Run Rd in UPP; abandon 1.0 MG Ames Rd elevated tank	2.0 MG Elevated Tank	1	LS	\$2,500,000	\$2,500,000
		Tank Demolition	1	LS	\$50,000	\$50,000
					Subtotal	\$2,550,000
					Contingency @ 20%	\$510,000
					Total Construction Cost	\$3,060,000
					Engineering, Surveying & Geotech @ 15%	\$459,000
			Total Project Cost	\$3,519,000		
3	30" water line from Ames Road Pump Station to Pleasant Run Road Elevated; 24" water line along Pleasant Run Rd from Houston School Rd to new elevated tank	30" WL & Appurtenances	9,300	LF	\$165	\$1,534,500
		24" WL & Appurtenances	3,400	LF	\$132	\$448,800
		40" Boring and Casing	400	LF	\$480	\$192,000
					Subtotal	\$2,175,300
					Contingency @ 20%	\$435,060
					Total Construction Cost	\$2,610,360
			Engineering, Surveying & Geotech @ 15%	\$391,554		
			Total Project Cost	\$3,001,914		
4	Expand Bonnie View Road Pump Station to LPP	Pump Station - Expans 12 MGD	1	LS	\$1,500,000	\$1,500,000
					Subtotal	\$1,500,000
					Contingency @ 20%	\$300,000
					Total Construction Cost	\$1,800,000
					Engineering, Surveying & Geotech @ 15%	\$270,000
					Total Project Cost	\$2,070,000
5	30"/24" water line along Jefferson Rd/Pleasant Run Rd from Park Place Dr to midpoint between Lancaster Hutchins Rd and Cornell Rd	30" WL & Appurtenances	2,800	LF	\$165	\$462,000
		24" WL & Appurtenances	2,400	LF	\$132	\$316,800
		48" Boring and Casing	500	LF	\$576	\$288,000
					Subtotal	\$1,066,800
					Contingency @ 20%	\$213,360
					Total Construction Cost	\$1,280,160
			Engineering, Surveying & Geotech @ 15%	\$192,024		
			Total Project Cost	\$1,472,184		
6	16" water line along Pleasant Run Rd from Houston School to I-35E and along I-35E from Pleasant Run Rd to Beltline Rd; 12" water line along Beltline Road east of I-35E	16" WL & Appurtenances	12,400	LF	\$88	\$1,091,200
		12" WL & Appurtenances	2,800	LF	\$66	\$184,800
		30" Boring and Casing	200	LF	\$360	\$72,000
					Subtotal	\$1,348,000
					Contingency @ 20%	\$269,600
					Total Construction Cost	\$1,617,600
			Engineering, Surveying & Geotech @ 15%	\$242,640		
			Total Project Cost	\$1,860,240		
7	24" water line along Houston School Rd from Main St to Parkerville Rd	24" WL & Appurtenances	6,400	LF	\$132	\$844,800
		40" Boring and Casing	500	LF	\$480	\$240,000
					Subtotal	\$1,084,800
					Contingency @ 20%	\$216,960
					Total Construction Cost	\$1,301,760
					Engineering, Surveying & Geotech @ 15%	\$195,264
			Total Project Cost	\$1,497,024		



PRELIM OPINION OF PROBABLE CONSTRUCTION COST

Proposed Water System Improvements

SUMMARY

City of Lancaster

Elevated Tank Construction	\$	4,021,200
Elevated Tank Engineering	\$	286,000
Subtotal	\$	4,307,200
Waterline Construction	\$	466,000
Waterline Engineering	\$	63,500
Subtotal	\$	529,500
Total	\$	4,836,700
20% Contingency (excluding engineering)	\$	897,440
TOTAL PROJECT COST	\$	5,734,140



PRELIM OPINION OF PROBABLE CONSTRUCTION COST

Proposed Water System Improvements
North Elevated Storage Tank
City of Lancaster

ACCOUNT NO	ESTIMATOR	CHECKED BY	DATE
			March 7, 2011

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	1 Acre Land Purchase	1	Ac	\$60,000	\$60,000.00
2	2 MG Composite Elevated Tank	1	EA	\$3,600,000	\$ 3,600,000
3	Mobilization	1	LS	\$150,000	\$ 150,000
4	Storm Water Pollution Prevention Plan	1	LS	\$10,000	\$ 10,000
5	Site Preparation and Grading	1	LS	\$25,000	\$ 25,000
6	8' Tall Fence	835	LF	\$20	\$ 16,700
7	24" Ductile Iron Pipe (Site Only)	250	LF	\$300	\$ 75,000
8	Trench Safety	250	LF	\$2	\$ 500
9	Hydromulch	4,840	SY	\$1	\$ 4,800
10	Tank and Site Electrical	1	LS	\$100,000	\$ 100,000
11	SCADA	1	LS	\$20,000	\$ 20,000
12	6" Concrete Access Drive	270	SY	\$65	\$ 17,600
13	Concrete Sidewalk and Mow Strip	160	SF	\$10	\$ 1,600
SUBTOTAL					\$ 4,021,200
CONTINGENCY 20%					\$ 804,200

CONSTRUCTION TOTAL	\$ 4,825,000
ENGINEERING	\$ 286,000
TOTAL PROJECT COST WITHOUT WATER LINES	\$ 5,111,000



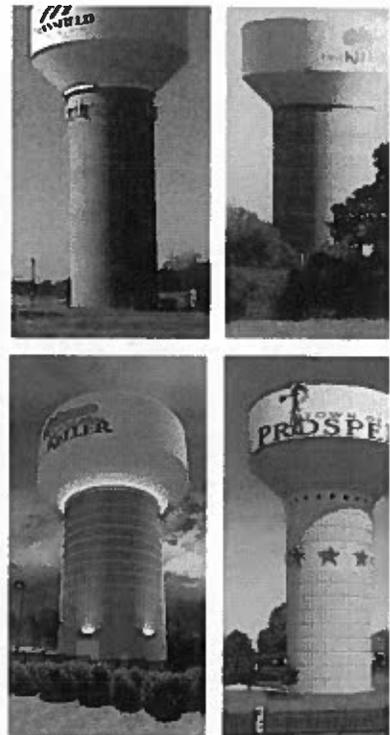
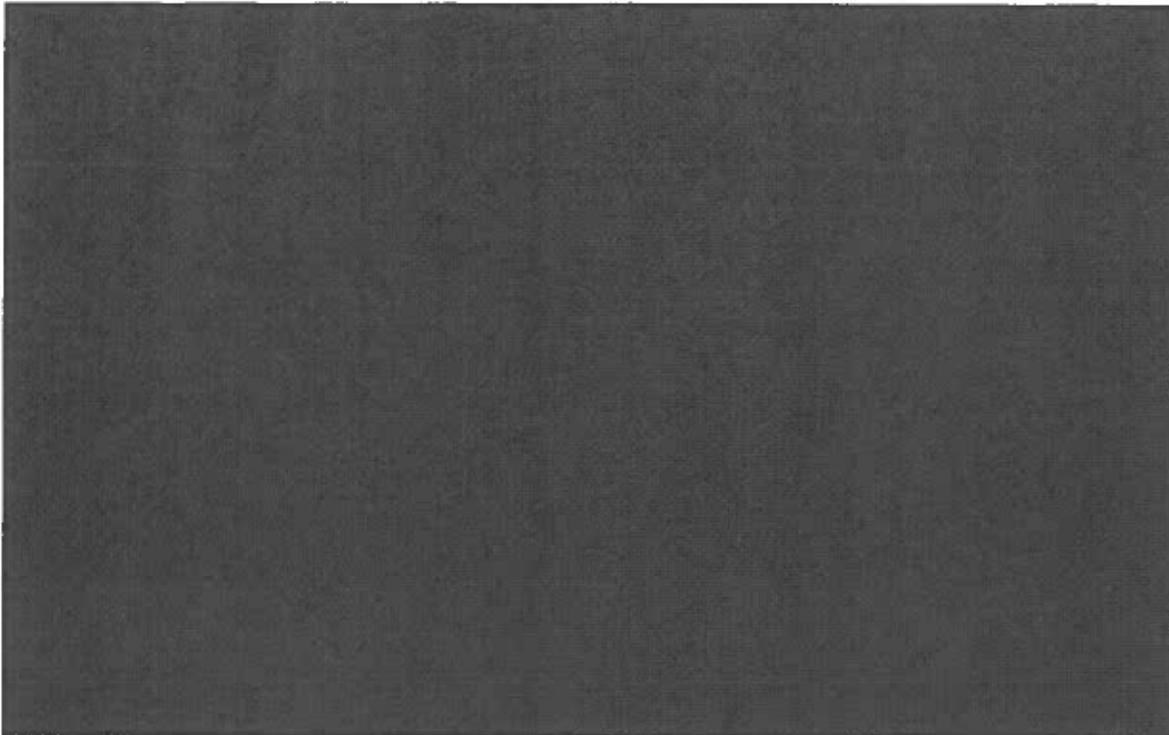
PRELIM OPINION OF PROBABLE CONSTRUCTION COST

Proposed Water System Improvements
 24" Waterline
 City of Lancaster

ACCOUNT NO.	ESTIMATOR	CHECKED BY	DATE
OFF09041			March 7, 2011

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	24" PVC Pipe	2,500	LF	\$120	\$ 300,000
2	24" Butterfly Valves	2	EA	\$10,000	\$ 20,000
2	Mobilization	1	LS	\$25,000	\$ 25,000
3	ROW Clearing	1	AC	\$5,000	\$ 5,000
4	36" Steel Casing by Bore	50	LF	\$500	\$ 25,000
5	Air Valve	1	EA	\$8,000	\$ 8,000
6	Trench Safety	2,500	LF	\$2	\$ 5,000
SUBTOTAL					\$ 388,000
CONTINGENCY					20% \$ 77,600

CONSTRUCTION TOTAL	\$	466,000
ENGINEERING/SURVEYING/EASEMENT PREPARATION	\$	63,500
WATERLINE PROJECT COSTS	\$	529,500



STATEMENT OF QUALIFICATIONS

City of Lancaster
New 2.0-MG Elevated Storage Tank
October 11, 2011

Submitted to:
Ms. Clovia English
Director of Public Works
City of Lancaster
1999 Jefferson Road
Lancaster, Texas 75134

Submitted by:
Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, Texas 76109

Contact:
Robert McGee, P.E.
817-735-7260 office
rhm@freese.com

Project Approach

Freese and Nichols is the elevated storage tank design engineer of choice for a number of municipalities in Texas (see list at right). We have a thorough understanding of the hydraulic operational requirements, design requirements and construction phase needs of such facilities. We also recognize the impact that elevated storage tanks have on neighboring property owners and the surrounding environment.

Freese and Nichols is sensitive to these concerns and has experience working with municipalities to address all appropriate technical issues.

Project Management and Communications

Freese and Nichols recognizes the importance of regular communication among clients, the project team and key stakeholders in keeping projects on-time – often on an accelerated schedule – and on-budget. Key processes/tools we employ are:

Face-to-Face Meetings – Freese and Nichols has an excellent reputation for responsive client service. We meet face-to-face with each client at the beginning of each project to clarify the project scope and fully understand the client’s goals. We also will have regularly scheduled team meetings at the City’s offices throughout the course of the project to address key schedule, budget and design issues.

One-Page Reports – In order to help keep your project on schedule, Project Manager Jim Baddaker will produce and distribute a standard Freese and Nichols One-Page Report on a regular basis. This reporting method will provide the City of Lancaster’s staff with a quick, “at-a-glance” update on the project’s progress and needed actions.

The reports include: activities undertaken since the last report, upcoming deadlines and anticipated activities for the next month, deadlines for upcoming project deliverables, and outstanding project issues that may need to be resolved.

FN Manager Pro – FN Manager Pro is a Web-based project management tool that allows limited password access for project team members and clients. It is built on a product called ProjectDox, and can help manage all project documentation and collaboration from pre-design activities through the end of the construction stage.

Freese and Nichols Elevated Storage Tanks During the Last Five Years		
Client	Capacity	Complete
Aledo	0.75 MG	Ongoing
DFW Int’l. Airport	2.5 MG	Ongoing
Addison	1.5 MG	In constr.
Terrell	1.5 MG	In constr.
Princeton	1.0 MG	In constr.
Palestine	1.0 MG	In constr.
Taylor	1.0 MG	2010
Taylor	0.75 MG	2010
Alamo Heights*	0.6 MG	2010
SAWS Foster (rehab.)	2.0 MG	2010
Pearland Kirby	1.0 MG	2009
Central Texas College	0.2 MG	2008
Prosper	2.0 MG	2008
SAWS Highland Hills**	1.5 MG	2008
Greenville (on-site rep.)	0.5 MG	2008
San Angelo	2.0 MG	2007
Burleson	0.75 MG	2006
Mansfield	2.0 MG	2006
Brownwood – Southeast	0.75 MG	2006
Brownwood – Walnut	0.75 MG	2006
Little Elm	1.0 MG	2006
*program manager		
**rehab. (subconsultant)		

FN Manager Pro can also facilitate online mark-ups, incoming and outgoing e-mail, and multiple concurrent uploads and downloads. The system has a very powerful and customizable electronic form and workflow processing unit which is capable of handling virtually any paperwork or process electronically.

Quality Control/Quality Assurance

Freese and Nichols is very serious about Quality, and we take tremendous pride in the quality of our technical work. Principal-in-Charge Brian Coltharp will manage the QC/QA process for this project.

Quality Control – Senior-level Technical Leaders conduct QC reviews for all client deliverables: plans, specifications, cost estimates, etc. The QC goal is to verify that sound technical principles were used and that accuracy was maintained. Reviews are held at 10-, 50- and 90-percent completion stages on all projects. QA reviews confirm that:

- project schedules are in accordance with professional services agreements;
- adequate resources and staff are available and utilized;
- deliverables are clearly identified and defined;
- client reviews are scheduled, client feedback received, and client comments incorporated into contract documents;
- unique or critical aspects of the project are identified;
- required permits, regulatory reviews and funding applications are addressed;
- alternate design concepts are considered; and
- the overall quality of the work meets your expectations.

Quality Assurance – Corporate-level leadership completes QA Reviews, looking at the project from a wider perspective. Their review addresses project schedule, availability and application of adequate resources and staffing, and the overall quality of the work and services.

QC/QA Plan – Freese and Nichols also understands that no two projects are exactly alike, so QC and QA are not “cookie-cutter” activities. Because all projects are different, we believe they require QC/QA plans specifically tailored for the specific project. Therefore, rather than developing a “one-size-fits-all” plan, Freese and Nichols has developed an extensive library of QC/QA procedures, from which we develop QC/QA plans specific to our projects. This allows every project component/deliverable to get the appropriate scrutiny at the appropriate level of effort. It also prevents the waste of time and budget that results from running procedures are not relevant to the project (or at inappropriate levels of effort) because they are in the generic plan.

Experience with Similar Projects

As mentioned at the beginning of this document, Freese and Nichols is the elevated storage tank design engineer of choice for a number of Texas municipalities. We have a thorough understanding of the technical requirements of both design and construction, and recognize the impact elevated storage tanks have on surrounding communities. Freese and Nichols has worked with many municipalities to address all appropriate technical and other issues; our experience includes the complete range of public involvement activities.

Following are descriptions of some recent Freese and Nichols projects which are relevant to the City of Lancaster project.

1.0-MG Elevated Storage Tank, Princeton, TX – Freese and Nichols is currently in the construction phase for a new municipal 1.5-MG elevated storage tank and approximately 8,000 linear feet of 16-inch and 20-inch connecting water line. The project will raise the maximum water level in the City's elevated storage, allowing them to bring the City back on to one pressure plane from the current two planes. A tank site analysis was conducted to find the most advantageous site for the new tank based on hydraulic and public constraints.

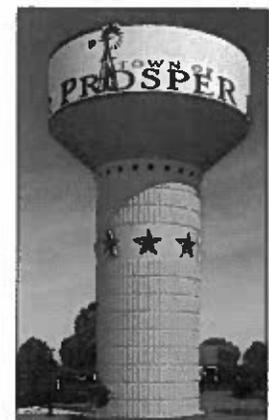
Reference: Lesia Thornhill, Assistant City Administrator, 972-736-2416

1.5/2.0-MG Elevated Storage Tank, Prosper, TX – Freese and Nichols provided design and construction services for a 1.5-MG composite elevated storage tank and approximately 8,500 linear feet of 20-inch water pipeline. The project connects the new tank to the Town's distribution system and upgrades water lines previously identified as undersized. The project also included providing a number of architectural options on the tank pedestal and a 2.0-MG alternate design. The Town elected to construct the 2.0-MG tank.

Reference: Hulon Webb, P.E.; Director of Development Services, 972-346-3502

Broad Street Elevated Storage Tank, Mansfield, TX – Freese and Nichols designed this 2.0-MG tank to accommodate the City's fast growth neighborhoods and to mesh with the City's adjacent fire station. The firm was the construction manager for the fire station during the tank's preliminary design stage, and leveraged the opportunity to combine construction elements and reduce costs. The composite tank is located at the rear of the fire station site. Driveway access to the tank and the 24-inch connector line was located to avoid disruption of fire station operations and emergency response, especially during tank construction. Freese and Nichols also incorporated a series of channels and berms into the design to relieve nearby flood-plagued neighborhoods of any further drainage issues. The tank was positioned on the site to minimize impacts on nearby homes and maximize the remaining land for commercial development. In addition, Freese and Nichols evaluated the tank for possible use as a rappelling tower for firefighter training; however, the City chose not to pursue this design option.

Reference: Bart VanAmburgh, City Engineer, 817-276-4233



Turkey Peak 0.75-MG Elevated Storage Tank, Burleson, TX – As part of the future improvements listed in the City’s water master plan, this composite tank provides additional water supply and stabilizes pressure to the upper pressure plane in the City. The new tank is the major component for consolidating pressure planes and easing pressure problems in areas north and west of Burleson. Additional yard piping and valves are designed to accommodate pressure plane connections. All control valves are housed inside the tank pedestal to provide security and protection from weather. In addition to design, Freese and Nichols also provided inspection services and general construction representation.

Reference: Todd House, P.E.; Deputy City Engineer, 817-447-5400

1.0-MG Elevated Storage Tank – Palestine, TX – Freese and Nichols provided design and construction phase services for a 1.0-MG composite elevated storage tank, pump station and 12-inch water line. The project will increase capacity in the South Pressure Plane by replacing the existing pump station/hydropneumatic tank system. The project will serve future economic development in the southern pressure plane. A portion of the project was funded by an Economic Development Agency grant.

Reference: Robert Sedgwick, Director of Utilities, 903-731-8494

The Freese and Nichols Team

Freese and Nichols, Inc. has been the trusted advisor for municipal wastewater and water engineering solutions since 1894, when our founder, John Hawley, became one of Texas’ first independent water and sewer engineers. In the past 117 years, the firm has grown to provide a broad range of engineering, environmental, construction, planning and architectural services to both public and private sector clients.

Freese and Nichols has built its practice on a strong foundation of client service and an ongoing commitment to project excellence. Because of our reputation for service and excellence, many Texas municipalities – including Fort Worth and a number of surrounding cities – recognize Freese and Nichols as the expert in water and wastewater systems, and rely on our expertise and client focus to provide them with innovative, cost-efficient solutions for system planning, design and renovations.

The U.S. Department of Commerce awarded FNI its 2010 Malcolm Baldrige National Quality Award for excellence in organization performance. FNI is the first engineering and architectural firm ever to receive this award, one of seven businesses to be recognized in 2010, and one of three recognized in the small business category.



Freese and Nichols currently has a staff of approximately 450 people in 13 offices throughout Texas. Therefore, if additional resources are needed to complete this project, our total staff pool will be available to supplement the proposed project staff. This redundancy of staff will allow Freese and Nichols to complete this project within the approved schedule.

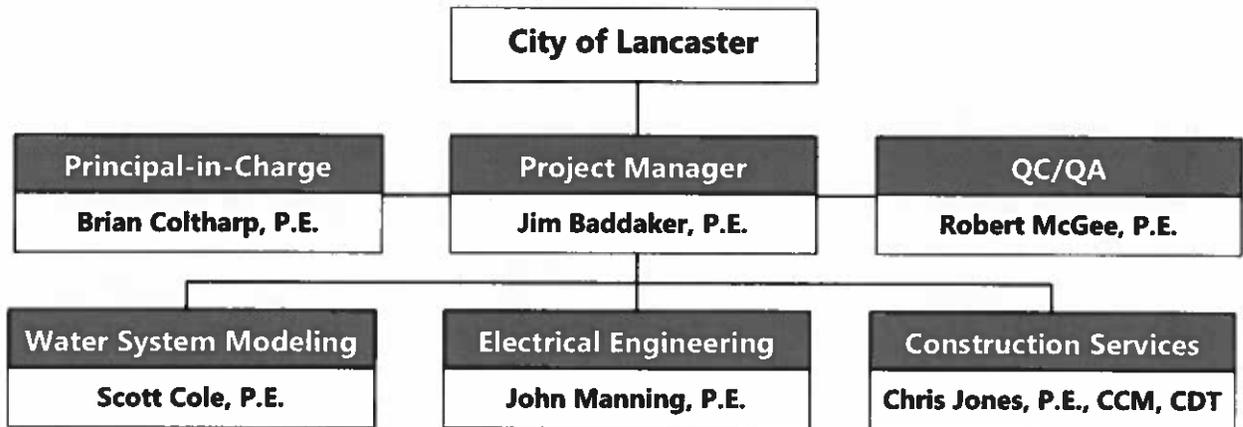
From the impressive expertise of our Team members, we have created a project team with strong credentials in the technical areas to which they are assigned. The table below provides a brief overview of proposed project staff, showing their project role, education, registration and relevant project experience. An organization chart showing specific individual assignments of these key staff members and the lines of authority is presented following the staff table.

Name and Project Role	Years Exp.	Highest Degree	Registration(s)
Jim Baddaker, P.E. Project Manager	40	B.S., Mechanical Engineering, University of Denver	Professional Engineer, TX #40497
<p>Jim Baddaker is one of FNI's most experienced water/wastewater utility Project Managers, especially related to implementing cost-effective, less disruptive construction techniques. Prior to joining FNI, he served as Public Works Director/City Engineer for the City of Grapevine. His project experience includes:</p> <ul style="list-style-type: none"> • 1.5-MG South Elevated Storage Tank – Terrell, TX – Project Engineer – Site selection and design services for a new south 1.5 MG composite elevated storage tank. ▪ 1.0 MG Elevated Storage Tank – Palestine, TX – Project Manager - Design of new 1.0 MG elevated storage tank, new pump station, and 12-inch water line. ▪ Flameleaf 8-MG Ground Storage Tank – Cedar Hill, TX – Project Engineer – Design of a new 8-MG ground storage tank, pump station expansion and 42-inch water supply line. 			
Brian Coltharp, P.E. Principal-in-Charge	19	B.S., Civil Engineering, University of Texas at Arlington	Professional Engineer, TX #81907
<p>Brian Coltharp is one of FNI's most experienced Project Managers with a proven reputation for maximizing clients' budgets and managing large-scale pump/lift station and pipeline design and construction projects on tight schedules. He is a firm Vice President / Principal and FNI's Water/Wastewater Transmission and Utilities Group Manager. His project experience includes:</p> <ul style="list-style-type: none"> • Elevated Tank and Connecting Waterline – Prosper, TX – Principal-in-Charge – Design of 2.0-MG elevated storage tank and 8,500 linear feet of 20-inch water pipeline. • Elevated Tank and Connecting Waterline – Princeton, TX – Principal-in-Charge – Design of 1.0-MG elevated storage tank and related water pipeline. • Elevated Tank and Connecting Waterline – Terrell, TX – Principal-in-Charge – Site selection, design and construction phase services for a 1.5-MG composite elevated tank and 6,500 LF of 20-inch water line. 			
Robert McGee QC/QA Leader	24	BS, Petroleum Engineering	Professional Engineer, TX #88948, 2000; OK #16902
<p>Robert McGee is a senior project manager and water/wastewater utilities manager in the firm's Fort Worth office. He has broad experience in water distribution and sewer collection system design. His water utilities experience includes design of elevated and ground storage facilities, water lines and pump stations. His project experience includes:</p> <ul style="list-style-type: none"> ▪ Elevated Storage Tank – Aledo, TX – Project Manager – 0.75-MG elevated storage tank. Part of a larger project to convert City to surface water from ground water. ▪ Meadowview Elevated Storage Tank – Corinth, TX – Project Manager – Recoating and refurbishing of a 0.5-MG elevated storage tank, and updating appurtenances to meet current TCEQ rules. ▪ Elevated Storage Tank – Keller, TX – Quality Control – Provided quality control review for a new 1.0-MG elevated storage tank. 			

Scott Cole, P.E. Water System Modeling	11	M.S., Engineering Management, University of Kansas at Rolla; B.S., Civil Engineering, University of Kansas at Rolla	Professional Engineer, TX#98813
<p>Scott Cole is a firm Vice President / Principal and FNI's Water and Wastewater Master Planning Manager. Mr. Cole has served as Project Manager for more than 30 water and wastewater master plans, Capital Improvement Plans (CIP) and impact fee studies in Texas; and he specializes in hydraulic evaluation of water and wastewater systems and water quality assessment of water distribution systems. His projects include:</p> <ul style="list-style-type: none"> ▪ Water System Master Plan – Lancaster, TX – Project Manager – Development of a water distribution system model from GIS for 5-year, 10-year, and build-out conditions. ▪ Elevated Storage Tank – Addison, TX – Hydraulic Modeling – Preliminary study for a new elevated storage tank. ▪ Pump Station Expansion – Lancaster, TX – Hydraulic Modeling – Design and construction services for the Ames Pump Station Expansion, which includes two 3.8-MGD vertical turbine VFD pumps with additional cans for four future 3.8-MGD pumps. 			
John Manning Electrical Engineering	12	B.S., Civil Engineering, Texas Tech University	Professional Engineer, TX #95784
<p>Mr. Manning has extensive experience in providing electrical engineering services for municipal water and wastewater systems, including elevated and ground storage tanks; pump, lift and meter stations; and control systems. His experience includes:</p> <ul style="list-style-type: none"> ▪ Upper Pressure Plane Improvements, Burleson, TX – Electrical design for improvements to pump station, elevated storage tank and valve vault. ▪ Design of 1.5-MG Elevated Storage Tank, Grapevine, TX – Electrical design for a storage tank, as well as a design to use the pedestal of the tank as a document storage facility, including an elevator. ▪ Miscellaneous Improvements to Water System – San Angelo, TX – Electrical design for improvements including two pump stations, an elevated storage tank, a SCADA upgrade and meter vaults around the plant. 			
Chris Jones, P.E., CCM, CDT Construction Services	15	B.S., Civil Engineering, Texas Tech University	Professional Engineer, TX #88535; Certified Construction Manager No. A1307; Construction Document Technologist
<p>Mr. Jones serves as a Construction Manager, overseeing the construction contract administration for utility and plant projects. His experience includes construction contract administration on elevated and ground water storage tanks, lift stations, water and wastewater mains, pump stations, wastewater treatment plants and detention facilities. He also has experience in design and project management for wastewater interceptors, sewers and lift stations, ground water storage tanks, water mains, detention facilities, drainage systems, sanitary sewer evaluation studies and site design. His experience includes:</p> <ul style="list-style-type: none"> ▪ Elevated and Ground Water Storage – Keller, TX – Construction Contract Administrator for construction of a 1.0-MG elevated water storage tank and a 3.0-MG ground water storage tank. ▪ Water System Miscellaneous Improvements – San Angelo, TX – General Representative for the construction of a 1.0-MG elevated water storage tank and improvements to the Southwest and Abilene pumps stations. 			

Organization Chart

A simple, straightforward organization is most likely to result in a project completed on time, on budget, and exceeding the client's performance expectations. This chart presents our proposed organization for your project.



Mission

Innovative approaches

Practical results

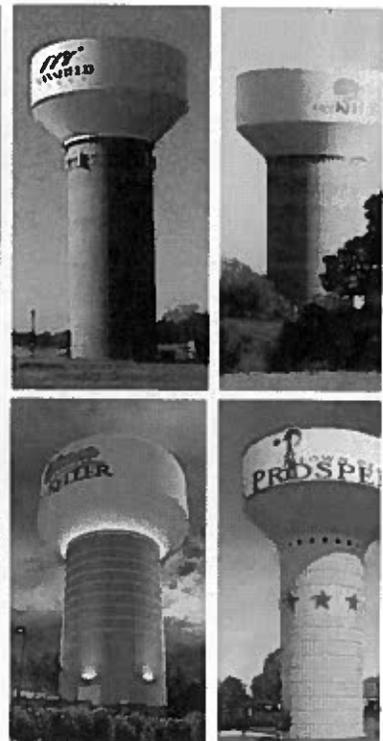
Outstanding service

Vision

Be the firm of choice for
clients and employees

Freese and Nichols, Inc.
4055 International Plaza #200
Fort Worth, TX 76109

www.freese.com



LANCASTER CITY COUNCIL
Agenda Communication for
October 24, 2011

10
AG11-010

Receive and discuss reports on items of interest from the annual Texas Municipal League Conference held October 12-14, 2011 from councilmembers who attended the conference.

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

**Goals: Financially Sound City Government
 Healthy, Safe and Vibrant Neighborhoods
 Civic Engagement
 Sound Infrastructure
 Quality Development
 Professional & Committed Workforce**

Background

Councilmember Weaver requested that those councilmembers attending the recent annual Texas Municipal League Conference in Houston have an opportunity to share with other councilmembers items of interest from the conference.

Mayor Knight, Mayor Pro Tem Hairston and Councilmember Jaglowski will give a brief summary of items of interest from the Texas Municipal League annual conference.

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

Date: October 14, 2011