



**NOTICE OF REGULAR MEETING AGENDA**  
**LANCASTER CITY COUNCIL**  
**MUNICIPAL CENTER CITY COUNCIL CHAMBERS**  
**211 N. HENRY STREET, LANCASTER, TEXAS**  
**Monday, March 14, 2011 – 7:00 P.M.**



**CALL TO ORDER**

**INVOCATION: MINISTERIAL ALLIANCE**

**PLEDGE OF ALLEGIANCE: COUNCILMEMBER MARCO MEJIA**

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

**ACTION**

1. Consider confirmation of John Thomas Griffith as Fire Chief of the Lancaster Fire Department; and administer the Oath of Office.

**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.)

- 2C. Consider approval of minutes from the City Council Regular Meeting held February 28, 2011.
- 3C. Consider Resolution 2011-03-18 of the City Council of the City of Lancaster, Texas, approving Amendment No. 1 to the Airport Restaurant Lease and Operating Agreement by and between A La Carte Catering & Cakes, Inc. and the City of Lancaster at the Lancaster Regional Airport to amend certain hours of operation; authorizing the City Manager to execute said amendment; providing a repealing clause; providing a severability clause; and providing an effective date.
- 4C. Consider Resolution 2011-03-19 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 Grand Prairie, Texas, and the City of Lancaster, Texas, for the cooperative purchase of goods and services; repealing Resolution No. 2010-09-80 in its entirety; authorizing the City Manager to execute said amendment; designating the City's Purchasing Agent as the official representative; providing a repealing clause; providing a severability clause; and providing an effective date.

- 5C. Consider Resolution 2011-03-20 of the City Council of the City of Lancaster, Texas, amending Resolution No. 2011-02-11 ordering a general election to be held on Saturday, May 14, 2011, for the election of one councilmember for District 2, one councilmember for District 4, and one councilmember for District 6; to provide for revised branch early voting polling locations; and providing an effective date.

*2011-03-20 considerar una resolución del Consejo Municipal de la ciudad de Lancaster, Texas, se modifica la Resolución No. 2011-02-11 solicitando a las elecciones generales que se llevara a cabo el sabado, 14 de Mayo 2011, para la eleccion de un concejo de Distrito 2, un concejo de Distrito 4, y un concejo de Distrito 6; prestacion para poder votar temprano revisando lugares de votacion, y proporcorcionar una fecha de vigencia.*

- 6C. Consider an ordinance of the City of Lancaster, Texas, amending the Lancaster Code of Ordinances, Chapter 3, by repealing Article 3.800, "Fence Regulations", in its entirety and replacing with a new Article 3.800, "Fence Regulations"; providing for Definitions; providing a Permit Requirement, Application and Fee; providing for the Encroachment of Public Property; providing for Construction within Easements; providing for Height Limitations - Rear and Side Yards; providing for Fences on Reverse Frontage Lots; providing for the use of barbed wire or electronically charged Fences; providing for Fence construction and materials; providing for gates; providing for inspection; providing for Maintenance and Standard of Fence; providing for the Appeal of Specific Requirements; providing for the Appeal Process; and by amending Chapter 14, Lancaster Development Code, by repealing Article 14.500, Section 14.501, Subsection (h), "Fences", in its entirety and reserving the same for future use; providing for severability; providing a savings clause; providing a repealing clause; providing for a penalty clause; and providing an effective date.

## **ACTION**

7. Discuss and consider Resolution 2011-03-21 of the City Council of the City of Lancaster, Texas, approving the name "Smokler Moo Meadows" for the designated park property located along Ten Mile Creek adjacent to Lancaster Regional Airport; providing a repealing clause; providing a severability clause; and providing an effective date.

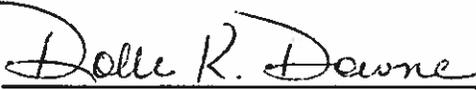
## **ADJOURNMENT**

**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 March 10, 2011 @ 5:00 p.m. and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



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Dolle K. Downe, TRMC  
City Secretary

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**1**

AG11-001

**Consider confirmation of John Thomas Griffith as Fire Chief of the Lancaster Fire Department; and administer the Oath of Office.**

**This request supports the City Council 2010-2011 Policy Agenda.**

**Goal 4: Professional & Committed Workforce**

**Background**

Section 143.03 of the Texas Local Government Code requires the appointment of a person as head of the fire department to be confirmed by the municipality's governing body.

John Thomas Griffith has been appointed to serve as Fire Chief for the Lancaster Fire Department.

Chief Griffith has served the City of Lancaster for 25 years and is a certified master fire fighter, investigator, and instructor. His promotion follows six years of service as Assistant Fire Chief with the City.

**Recommendation**

The City Manager respectfully requests the confirmation of John Thomas Griffith as Fire Chief for the Lancaster Fire Department.

Following confirmation by the City Council, the City Secretary will administer the Oath of Office.

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

**Date:** March 2, 2011

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**2**

AG11-002

**Consider approval of minutes from the City Council Regular Meeting held February 28, 2011.**

**Background**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held February 28, 2011

**Prepared and submitted by:**

Dolle K. Downe, City Secretary  
March 4, 2011

## **MINUTES**

### **LANCASTER CITY COUNCIL MEETING OF FEBRUARY 28, 2011**

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on February 28, 2011 at 7:00 p.m. with a quorum present to-wit:

#### **Councilmembers Present:**

Walter Weaver  
Marco Mejia  
Mayor Pro Tem James Daniels  
Clyde Hairston  
*Council District 2 vacant*

#### **Councilmembers Absent**

Mayor Marcus E. Knight  
Deputy Mayor Pro Tem Nina Morris

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

Opal Mauldin Robertson, City Manager  
Alicia Oyedele, Assistant to the City Manager  
Thomas Griffith, Assistant Fire Chief  
Dee Dee Hillary, Fire Captain  
Robert E. Hager, City Attorney  
Dolle Downe, City Secretary

#### **Call to Order:**

Mayor Pro Tem Daniels called the meeting to order at 7:00 p.m. on February 28, 2011.

#### **Invocation:**

Pastor John Richardson gave the invocation.

#### **Pledge of Allegiance:**

Councilmember Walter Weaver led the Pledge of Allegiance.

#### **Citizens Comments:**

There were no citizen comments.

#### **Consent Agenda:**

City Secretary Downe read the consent agenda.

- 1C. Consider approval of minutes from the City Council Regular Meeting held February 14, 2011.
- 2C. Consider Resolution 2011-02-11 of the City Council of the City of Lancaster, Texas, ordering a general election to be held on Saturday, May 14, 2011, for the election of one councilmember for District 2, one councilmember for District 4, and one councilmember for District 6; providing for the publication and posting of notice; providing for early voting dates, times and locations; and providing an effective date.

***2011-02-11 considerar una resolución del Consejo Municipal de la Ciudad de Lancaster, Texas, ordenar una elección general que se celebrará el Sábado, 14 de mayo 2011, para la elección de un concejal para el Distrito 2, un concejal del distrito 4 de y un concejal para el Distrito 6, que contempla la publicación y publicar el del aviso, la prestación para las fechas de votación temprana, horarios y ubicaciones, y proporcionar una fecha efectiva.***

- 3C. Consider Resolution 2011-02-12 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a Joint Election Agreement and Election Services Contract with Dallas County Elections to conduct a general municipal election for Council Districts 2, 4 and 6 to be held on Saturday, May 14, 2011; authorizing the City Manager to execute said contract; and providing an effective date.**

***2011-02-12 considerar una resolución del Consejo Municipal de la Ciudad de Lancaster, Texas, aprueba los términos y condiciones de un acuerdo electoral común y elección del contrato de servicios con las elecciones del condado de Dallas para llevar a cabo una elección municipal del Consejo General de los distritos 2, 4 y 6 que se celebrará el Sábado, 14 de mayo 2011, se autoriza al Administrador de la Ciudad para ejecutar dicho contrato, y proporcionar una fecha de vigencia.***

- 4C. Consider Resolution 2011-02-13 of the City Council of the City of Lancaster, Texas, awarding the Request for Proposal (RFP 2011-21) to Bickerstaff Heath Delgado Acosta LLP for Council redistricting services and approving the terms and conditions of an agreement by and between the City of Lancaster and Bickerstaff Heath Delgado Acosta LLP for said services in an amount not to exceed \$32,600; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**

- 5C. Consider Resolution 2011-02-14 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 Dallas and the City of Lancaster for services related to the BioTel System; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**

- 6C. Consider Resolution 2011-02-15 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of an Agreement for Mutual Aid by and among the City of Lancaster and other participating local governments of the State of Texas for the purpose of providing mutual aid in the event of an emergency, disaster and/or civil emergency as provided in the agreement; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**

- 7C. Consider Resolution 2011-02-16 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of an Ambulance Service Agreement by and between the City of Lancaster and the County of Dallas to provide ambulance service response to contiguous unincorporated areas in Dallas County; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**
- 8C. Consider Resolution 2011-02-17 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a Fire Protection Agreement by and between the City of Lancaster and the County of Dallas to provide fire protection and fire fighting service response to certain unincorporated areas in Dallas County; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**

**MOTION:** Councilmember Hairston made a motion, seconded by Councilmember Mejia, to approve consent items 1C - 8C. The vote was cast 4 for, 0 against [Knight, Morris absent].

- 9. Second reading of caption and consideration of an ordinance of the City of Lancaster, Texas, granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to construct, maintain, and operate pipelines and equipment in the City of Lancaster, Dallas County, Texas, for the transportation, delivery, sale, and distribution of gas in, out of, and through said City for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-way; and providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; and repealing all previous gas franchise ordinances.**

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Hairston, to approve an ordinance granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to construct, maintain, and operate pipelines and equipment in the City of Lancaster, Dallas County, Texas, for the transportation, delivery, sale, and distribution of gas in, out of, and through said City for all purposes; providing for the payment of a fee or charge for the use of the public rights-of-way; and providing that such fee shall be in lieu of other fees and charges, excepting ad valorem taxes; and repealing all previous gas franchise ordinances. The vote was cast 4 for, 0 against [Knight, Morris absent].

- 10. Discuss and consider appointments to the Lancaster Planning and Zoning Commission.**

City Secretary Downe stated that there are two Planning and Zoning Commission vacancies for consideration, both with terms that expire July 2011.

Councilmember Mejia nominated Vic Buchanan. Councilmember Hairston nominated Carol Burk. Councilmember Weaver nominated Valerie Perkins.

A roll call vote for Mr. Buchanan was cast 4 for, 0 against [Knight, Morris absent]. Mr. Buchanan is appointed to the Planning and Zoning Commission to a term expiring July 2011.

A roll call vote for Ms. Burk was cast 2 for [Daniels, Hairston], 2 against [Weaver, Mejia]. [Knight, Morris absent] Nomination fails due to a tie vote.

A roll call vote for Dr. Perkins was cast 4 for, 0 against [Knight, Morris absent]. Dr. Perkins is appointed to the Planning and Zoning Commission to a term expiring July 2011.

**MOTION:** Councilmember Hairston made a motion, seconded by Councilmember Mejia, to adjourn. The vote was cast 4 for, 0 against [Knight, Morris absent].

The meeting was adjourned at 7:14 p.m.

**ATTEST:**

**APPROVED:**

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

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

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**3**

AG11-003

**Consider a resolution of the City Council of the City of Lancaster, Texas, approving Amendment No. 1 to the Airport Restaurant Lease and Operating Agreement by and between A La Carte Catering & Cakes, Inc. and the City of Lancaster at the Lancaster Regional Airport to amend certain hours of operation; authorizing the City Manager to execute said amendment; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.**

**This request supports the City Council 2010-2011 Policy Agenda.**

**Goal 5: Sound Infrastructure**

**Background**

The Runway Café, operated by A La Carte Catering & Cakes, Inc. has been open for business since December 1, 2010. Upon review of their books, they concluded that operating from 7 am to 3 pm on Sundays is not profitable, as this is their slowest day. The Runway Café would like to change their hours of operation to 10 am - 3 pm on Sundays to realize increased profits with less overhead. Currently the lease agreement states they must be open from 7 am - 3 pm Tuesday – Sunday. They may be closed on Mondays, but are choosing to be open on Mondays because they find this day to be profitable.

**Considerations**

- **Operational** – In order to lower overhead expenses the Café needs to reduce operating hours on Sundays.
- **Legal** – The City Attorney has reviewed the contract amendment and resolution and approved as to form.
- **Financial** – There is no financial burden to the City for this change in operating hours. Beginning June 2011 pursuant to the lease agreement, lessee will begin paying the City 5% of net receipts. An increase in profit margin for the business is a potential increase in revenue to the City.

**Options/Alternatives**

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

**Recommendation**

Staff recommends adoption of the resolution. At the March 7, 2011 Airport Advisory Board meeting, the board voted unanimously to approve the amendments. Staff recommends adoption of the resolution amending the hours of operation. This will assist the Runway Café with their profit margin.

**Attachments**

- Resolution
- Amendment
- Current Lease agreement

**Prepared and submitted by:**  
Mark Divita, Airport Manager

**Date:** March 8, 2011

**RESOLUTION NO. 2011-03-18**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING AMENDMENT NO. 1 TO THE AIRPORT RESTAURANT LEASE AND OPERATING AGREEMENT BY AND BETWEEN A LA CARTE CATERING & CAKES, INC. AND THE CITY OF LANCASTER AT THE LANCASTER REGIONAL AIRPORT TO AMEND CERTAIN HOURS OF OPERATION; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council approved an Airport Restaurant Lease and Operating Agreement with A La Carte Catering & Cakes, Inc., hereinafter the "Agreement" on October 25, 2010; and

**WHEREAS**, operators of the Runway Café desire to make changes to the operating hours in the agreement; and

**WHEREAS**, the Airport Advisory Board, voted unanimously on 7 March 2011 to approve the amendment to the Runway Café Lease; and

**WHEREAS**, the City of Lancaster desires to make changes to the operating hours of the Runway Café at Lancaster Regional Airport;

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

**SECTION 1.** Amendment No. 1 to the Agreement, which is attached hereto and incorporated herein by reference as Exhibit "A", having been reviewed by the City Council of the City of Lancaster, Texas, and found to be acceptable and in the best interest of the City and its citizens is hereby, in all things approved.

**SECTION 2.** The City Manager is hereby authorized to execute said amendment.

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

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

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 14<sup>th</sup> day of March 2011.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

**AMENDMENT NO. 1**

**CAFÉ AIRPORT RESTAURANT LEASE AND OPERATING AGREEMENT**

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

This amendment is entered into by and between the City of Lancaster, a home rule city hereinafter referred to as *CITY*, and A La Carte Catering & Cakes, Inc. hereinafter referred to as *LESSEE*.

**AGREEMENT**

This Amendment modifies Article VI: Lessee's Operations, Section 6.3 Hours of Operation as follows:

- 1. Amending the hours on Sunday from 7:00 AM to 3:00 PM Central Time to:  
Sunday from 10:00 AM to 3:00 PM Central Time**
- 2. Amending the operating days to permit the Lessee to close the café on Sundays during the winter months from December 1 through Mid-March (first Sunday following the 15<sup>th</sup> of March shall open on Sundays at the amended hours stated above).**

**AMENDMENT**

This Agreement may only be amended by the written mutual agreement of both parties.

By signing below, you agree to the amendment of your original contract with the above terms. All original terms and conditions remain the same.

Executed this 14<sup>th</sup> day of March, 2011.

CITY OF LANCASTER, TEXAS

A LA CARTE CATERING & CAKES, INC.

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

\_\_\_\_\_  
Michelle McDonald, CEO

STATE OF TEXAS  
COUNTY OF DALLAS

§  
§  
§

**AIRPORT RESTAURANT LEASE  
AND OPERATING AGREEMENT**

**THIS AIRPORT RESTAURANT LEASE AND OPERATING AGREEMENT ("Agreement"),** made and entered into this 25<sup>th</sup> day of October, 2010, by and between the **CITY OF LANCASTER**, a Texas Home-rule Municipal Corporation ("City" or "Lessor") and **A La Carte Catering and Cakes, Inc.** ("Lessee").

**WITNESSETH:**

**WHEREAS**, City is the owner and operator of the Lancaster Regional Airport ("Airport") which is located in the City of Lancaster , Dallas County, State of Texas; and

**WHEREAS**, Lessee desires to lease, develop, and use the Leased Premises (defined below) for the operation of a restaurant and catering service for Airport customers and associated uses as authorized herein; and

**WHEREAS**, in accordance with the provisions contained within this Agreement, City desires to allow Lessee to use the Property for the foregoing purpose;

**NOW, THEREFORE**, In consideration of the rental payments, covenants, promises, and agreements contained herein, and for other good and valuable consideration, City and Lessee agree as follows:

**ARTICLE 1: DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

**Additional Rent** means five percent (5%) of Monthly Net Receipts less the Base Rent, payable as set forth herein.

**Airport** means the Lancaster Regional Airport, located at 730 Ferris Road, Suite 102, Lancaster, Texas 75146.

**Base Rent** means ONE HUNDRED SEVENTY-FIVE AND NO/100 (\$175.00) per month.

**Catering** means the provision of food and/or drinks (whether prepared on the Leased Premises or pre-packaged) pursuant to a limited pre-arranged menu for a specific event and served either inside or outside the Leased Premises.

**City Equipment** shall mean the personal property constituting restaurant equipment owned by City and described in Exhibit "B," attached hereto and incorporated herein by reference.

**Hazardous Materials** is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

**Leased Premises** means an approximately 720 square foot space located within the Airport Terminal Building owned by City and located at 730 Ferris Road, Lancaster, Texas, said space being more

commonly known as "Suite 101," and generally depicted as set forth in Exhibit "A," attached hereto and incorporated herein by reference. The Leased Premises shall also include:

- A. Small storage closet located within Terminal lobby area to be identified by Airport Manager;
- B. An area of the floor space in the hangar attached to the Terminal Building to be designated by the Airport Manager;
- C. Upon completion of construction, the patio area on the exterior of the Terminal Building to be designated by the Airport Manager.

**Monthly Net Receipts** means all payments, whether by coin or currency, on account, by check, credit card, or debit card, collected or uncollected, received by Lessee during each calendar month of this Agreement, in connection with, food or drink sold, prepared in, or delivered from the Leased Premises, or goods sold on the Leased Premises, regardless of where or by whom the payment is made or where the food and/or drink is consumed or where the goods are used, less:

- A. Sales and/or use taxes collected by Lessee in accordance with applicable provisions of the Texas Tax Code which are separately stated payable to the Texas Comptroller of Public Accounts;
- B. The value of any merchandise and/or equipment exchanged or transferred from or to other business locations of Lessee, where such exchanges or transfers are not made for the purpose of avoiding a sale or service fee by Lessee that would otherwise be made from or at the Lancaster Regional Airport;
- C. Receipts with respect to any refunds made to Lessee's customers, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit, providing the refund and reason therefore is documented along with the name and address of the person receiving the refund; and
- D. Documented discounts and rebates to customers.

**Rent** means, collectively, Base Rent and Additional Rent.

## **ARTICLE 2: PREMISES LEASED**

**2.1 Lease Created:** City hereby leases to Lessee, and Lessee hereby leases the Leased Premises from City, in accordance with the terms and conditions of this Agreement.

**2.2 Acceptance of Leased Premises Conditions:** By acceptance of this Agreement Lessee warrants and represents that:

- A has carefully and completely examined and inspected the entire Leased Premises and is fully informed of the condition of the Leased Premises; and
- B. is completely satisfied as to the suitability of the Leased Premises for all of the activities contemplated by this Agreement.

Lessee accepts possession of the Leased Premises as is, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by the ordinances of the City of Lancaster.

### ARTICLE 3: USE OF LEASED PREMISES

- 3.1 **Permitted Use:** Subject to the provisions of this Agreement, Lessee is granted the right to use and occupy the Leased Premises for the operation of a restaurant or catering services for Airport customers, on or off airport, or incidental uses as approved from time to time by the Airport Manager in accordance ("the Permitted Use"). Lessee agrees not to engage in any other activity on the Leased Premises other than the Permitted Use and agrees not to use, develop, or occupy the Leased Premises in any manner contrary to the Lancaster Regional Airport Layout Plan or Airport Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.
- 3.2 **Ingress and Egress:** Lessee, its employees, customer, guests, patrons, suppliers, vendors, and invitees shall have the right of ingress and egress to and from the Leased Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Leased Premises for the Permitted Uses.
- 3.3 **Quiet Enjoyment:** Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Leased Premises and privileges granted for the term of this Agreement free from hindrance or interruption by City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Leased Premises, provided same do not materially adversely affect Lessee's ability to access and use the Leased Premises.

### ARTICLE 4: TERM

- 4.1 **Initial Term:** The initial term of this Agreement shall be three (3) years commencing on December 1, 2010, and ending on November 30, 2013, unless sooner terminated in accordance with the provisions hereof.
- 4.2 **Optional Extension of Term by City:** City shall have the right to extend the term of this Agreement for a two year period beginning December 1, 2013, and ending November 30, 2015, upon City delivering written notice to Lessee of City's affirmative decision to exercise the option, which notice must be delivered by City not later than May 31, 2013.
- 4.3. **Right of First Refusal:** If prior to end of the Term of this Agreement, City receives a solicited or unsolicited proposal from a third-party for the lease of the Leased Premises for the Permitted Use that City finds desirable and acceptable; City agrees to provide a copy of such proposal to Lessee. Not later than ten (10) days after delivery of such proposal to Lessee, Lessee shall notify City that it will enter into an agreement with the City on substantially the same terms as contained in the third-party proposal ("the Right of First Refusal"). Lessee's failure to enter such agreement within twenty (20) days after notifying City of its desire to enter such agreement shall terminate Lessee's right to enter such agreement as provided in this Section 4.3. Notwithstanding the above provisions, the Right of First Refusal granted in this Section 4.3 shall not be effective if:
- A. Lessee is in default of this Agreement at the time of receipt of the third-party proposal; or

- B. During the term of this Agreement, Lessee has been declared by City to be in default of this Agreement three or more times and has provided a notice of default to Lessee, notwithstanding that Lessee may have cured said defaults to avoid termination of this Agreement; or
- C. Lessee has been delinquent on the payment of Rent more than three (3) or more times during the term of this Agreement.

4.4 **Holdover:** In the event that Lessee should hold over and remain in possession of the Leased Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy-at-will which may be terminated at any time by the Airport Manager or Lessee by providing one (1) days written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

#### **ARTICLE 5: RENT**

5.1 **Amount of Rent:** For the use and occupancy of the Leased Premises, Lessee agrees to pay Rent to the City as follows:

- A. For the period of December 1, 2010, until May 31, 2011, Lessee will pay Base Rent.
- B. For the period beginning June 1, 2011, and thereafter during the term of this Agreement, Lessee shall pay Rent in an amount equal to the Base Rent plus the Additional Rent.

5.2 **Payment of Rent:** The Base Rent and Additional Rent shall be payable as follows:

- A. Base Rent shall be due on the first (1<sup>st</sup>) day of each calendar month during the Term of this Agreement, with the first payment of Base Rent being due on December 1, 2010, and a payment of Base Rent being due on the first (1<sup>st</sup>) day of each month thereafter.
- B. Payment of Additional Rent shall be due on the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) calendar month following the month in which the Monthly Net Receipts are received by Lessee, with the first payment of Additional Rent being due on June 1, 2011, and a payment of Additional Rent being due on the first (1<sup>st</sup>) day of each month thereafter. For purposes of clarification, the amount of Additional Rent due on June 1, 2011, shall be calculated by using the Monthly Net Receipts for the month of April 2011, the amount of Additional Rent due on June 1, 2011, shall be calculated by using the Monthly Net Receipts for the month of April 2011, and so on.

5.3 **No Setoffs:** Payment of Rent shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind.

5.4 **Effect of Negative Amount of Additional Rent:** If in calculating the amount of Additional Rent due the amount is less than \$0.00, no Additional Rent shall be due for that month. Furthermore, such negative amount calculation shall not be deducted from the Base Rent, it being intended and agreed that in no case shall the Base Rent be reduced during the term of this Agreement.

5.5 **Late Charges:** A late charge of Five Percent (5%) per month shall be automatically added to any installment of Rent not received by City by the close of business of the 20<sup>th</sup> day of the

month in which it is due. The late charge shall become part of the Rent due and owing to City. Additional late charges of Five Percent (5%) shall be automatically added to any installment of Rent not received by City by the close of business of the 30<sup>th</sup> day of the month in which it is due and thereafter imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the Rent which is due and owing to City.

**5.6 Payment Location:** All payments of Rent or other amounts due under this Agreement, if any, shall be made to City of Lancaster and sent to the attention of the Finance Department at P.O. Box 940, Lancaster, Texas 75146 or to such other place as City may in writing direct Lessee from time to time. The failure to make any payment of any amount due under this Agreement when due may result in a termination of the Agreement as provided in Article 12.

**5.7 Books and Records:** Lessee shall maintain complete financial records of its activities on the Leased Premises or at another mutually acceptable location in the State of Texas for the longer of:

- A. two (2) years after the termination of this Agreement; or
- B. the completion of any pending audit or litigation action between the parties relating to or arising from this Agreement.

All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to City. Any information, records and reports provided to or obtained by City pursuant to this Section 5.7 or to which City otherwise comes into possession of pursuant to this Agreement, may be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

**5.8 Audit:** City and/or its authorized representatives shall, at any time during the Term of this Agreement and for a period of two years after the Termination of this Agreement, have the right to access, audit, examine, or reproduce any and all records of Lessee related to Lessee's performance under this Agreement. If an audit reveals that Lessee has underpaid Additional Rent or any other amount due City, Lessee shall pay such unpaid Additional Rent, plus interest and penalties, not later than ten (10) days after delivery of written notice and demand by City. Interest will be calculated at one and one-half percent (1 ½%) per month for each month after the day the additional amount should have originally been paid. The penalty will be twenty percent (20%) of the total of the Additional Rent due (not including interest). If the audit reveals that Lessee has overpaid the Additional Rent, such overpayment shall be credited to the Rent due for the following calendar month(s) until such credit is exhausted, or refunded by City to Lessee if this Agreement is terminated and all other obligations of Lessee have been satisfied. If the audit reveals an underpayment of more than five percent (5%), the cost of the audit shall be borne by Lessee.

**5.9 Misdirection of Business:** In addition to the interest and penalty payments set forth in Section 5.8, above, a determination by City that Lessee has deliberately attempted to misrepresent its Monthly Net Receipt or attempted to divert airport earned revenue to an off-airport site will be cause for default of this Agreement.

## ARTICLE VI: LESSEE'S OPERATIONS

- 6.1 Generally:** Lessee understands, acknowledges, and agrees that as substantial motivation and consideration for the grant of the leasehold interest described in this Agreement is Lessee's agreement to operate the Leased Premises for the Permitted Use. In furtherance of that understanding and agreement, Lessee agrees that it will conduct the Permitted Use in accordance with the operational procedures and standards set forth in this Agreement. In particular, Lessee agrees that in conducting the Permitted Use, it will provide professional, prompt and efficient food and beverage service from the Leased Premises adequate to meet all reasonable demands for restaurant service at the Airport, such service to be provided on a fair and reasonable basis, and subject to prices for such services established in accordance with generally acceptable practices in the restaurant industry.
- 6.2 Staffing:** At all times during the term of this Agreement, Lessee shall hire and keep employed a sufficient number of employees to allow Lessee to provide prompt and efficient food and beverage service in the Leased Premises.
- 6.3 Hours of Operation:** During the term of this Agreement, Lessee's restaurant operations in the Leased Premises shall be open to the public, and food and beverage service provided to customers, at least each Tuesday through Sunday, inclusive, opening not later than 7:00 a.m. Central Time and closing not earlier than 3:00 p.m., Central Time; provided, however, Lessee shall not be required to be open for business on Thanksgiving Day, Christmas Day, and New Year's Day, or, such other official City holidays or events as may be approved by the Airport Manager. Lessee shall post its hours of operations in a prominent location of the Leased Premises visible to the public. Nothing herein shall be construed as prohibiting Lessee from being open to the public during days and hours in addition to the times and dates described in this Section 6.3.
- 6.4 Conduct:** Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, agents, and invitees, while in the Leased Premises and ensure their compliance with all applicable federal, state, and local laws, ordinances, and regulations related to Lessee's use of the Leased Premises. Lessee will further conduct itself, and cause its employees, agents and invitees to conduct themselves, with full regard for the rights, convenience and welfare of all other tenants in the Terminal Building and on the Airport. All employees having contact with the public shall be courteous, clean, appropriately attired, and neat in appearance. Lessee agrees that it shall not permit any loud, abusive or obscene language or offensive acts or conduct on the Leased Premises by its employees. Should any employee or agent of Lessee fail to conduct themselves in accordance with the provisions of this Section 6.4, Lessee shall, upon written notice from City, take immediate corrective action with respect to such employee and otherwise take all reasonable steps necessary to resolve or remove the cause of the complaint.
- 6.5 Relation to Others:** Lessee, for itself and its agents, and employees agree to maintain a friendly and cooperative, though competitive, relationship with other companies engaged in similar or like business or with other tenants on Airport property. Lessee shall not engage in open public disputes, disagreements, denigration or conflicts regarding activities at the Airport which would tend to deteriorate the quality of the service of Lessee or its competitors or other tenants or which would be incompatible with the best interest of the public at the Airport.
- 6.6 Complaints Regarding Service Quality:** City, through the City Manager, Airport Manager or other designated representative, shall have the right to raise reasonable objections to the

appearance or condition of the Leased Premises, the quality or quantity of food and beverage service, the character of the service, the hours of operation, the appearance and performance of service personnel and other employees, and to require any such conditions or objectionable practices to be remedied by Lessee.

**6.7 Prohibited Activities:** Lessee shall not:

- A. install or operate, or otherwise cause or authorize the installation or operation, of amusement machines, video or audio equipment (other than video or audio equipment related to any security or anti-theft system installed in the Leased Premises), automated teller machines, or vending machines in or upon the Leased Premises without the written approval of City;
- B. sell or serve, or authorize the sale or service, of alcoholic beverages, on the Leased Premises;
- C. sell, rent, or deliver, or authorize the sale, rental, or delivery, books, magazines or other printed matter, or photographs, films, motion pictures or video cassettes which depict or describe sexual activities, or contain nudity or humans in a state of nudity, as those terms are defined in Lancaster Code of Ordinances §4.601, as amended.

**6.8 Customer Transactions; Method of Payment:** In addition to payments by cash, for transactions of \$5.00 or more for the sale of goods and services provided by Lessee on the Leased Premises and for Catering Services, Lessee shall accept as payment traveler's checks and at least three major, nationally recognized credit or debit cards, at least two of which must be American Express, VISA or Master Card. Lessee shall install, establish and maintain the necessary equipment and processes for credit card services. Lessee shall provide receipts to customers for all purchases that state, at a minimum, the date of the sales transaction, the Lessee's business name and telephone number, and all detailed sales transaction information, including sales taxes collected by Lessee as part of the transaction.

**6.9 Use of City Equipment:** City agrees to make available for Lessee's use the City Equipment. City makes no warranty as to the condition of the City Equipment. Inspection, care and maintenance of the City Equipment shall be the sole responsibility of Lessee. Upon termination of this Agreement, the City Equipment shall be returned to the City in as good condition as at the time of execution of this lease, reasonable wear and tear accepted.

**6.10 Health Compliance:** Lessee, its officers, employees, contractors, and vendors, shall at all times comply with applicable Federal, State, and local laws and regulations regarding the preparation, transportation, sale, and/or service of food and beverage to the public. Lessee shall maintain all required permits and licenses necessary to lawfully conduct a business relating to the sale and service of food and beverages.

## **ARTICLE 7: LESSEE MAINTENANCE OF LEASED PREMISES**

**7.1 Installation of Fixtures, Equipment, etc:** Lessee shall not in the Leased Premises:

- A. install in or upon the Leased Premises any fixtures, machines, tools, equipment, or other items of personal property; or
- B. drill or make any holes in any brick or plaster; or
- C. permanently affix to any door or wall any placard or decorative material; or

- D. commit any waste; or
- E. make any material structural alterations or additions to the Leased Premises without the prior written consent of City. Any personal property belonging to Lessee located on the Leased Premises located thereon shall be there at the sole risk of Lessee. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee or any customer of Lessee unless due to the willful misconduct of City.
- 7.2 Removal on Termination of Lease:** Lessee shall remove all equipment, fixtures, and systems owned by Lessee and installed in or upon the Leased Premises not later than five (5) days after termination or expiration of this Agreement; provided, however, any such equipment, fixtures, or systems installed by Lessee that cannot be removed without permanently damaging the Leased Premises shall remain and become the sole property of City. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Leased Premises within five (5) days of termination or expiration of this Agreement, then City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.
- 7.3 Signs:** Lessee may, at its own expense and upon written approval by the Airport Manager (which shall not be unreasonably withheld), install signs in the Terminal Building at locations to be determined by the Airport Manager indicating the name, location, and hours of operation of Lessee's business in the Leases Premises. Such signs shall be consistent with the size, color, location, copy and manner of display of other signs throughout the Terminal Building. Lessee agrees to reimburse City for any damage or injury to the Leased Premises resulting from the installation, maintenance or removal of any such signs.
- 7.4 Hazardous Materials:** Lessee shall not:
- A. cause or allow any Hazardous Material, as defined in applicable federal or state laws or regulations, to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Leased Premises; or
- B. do, or allow to be done, any act, nor store any material, which will in any manner conflict with any term or provision of any policy of insurance insuring the Terminal Building or its contents.
- 7.5 Utilities:** Lessee shall directly procure and promptly pay for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Leased Premises during the Term of this Agreement.
- 7.6 General Maintenance:** Lessee shall, at all times and at its expense, keep and maintain the Leased Premises, including all structural and other improvements installed in the Leased Premises, together with all of its fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean and orderly condition and appearance. Lessee shall keep the areas immediately adjacent to the exits and entrances to the Leased Premises clean and orderly and free of obstructions.
- 7.7 Preventive Maintenance:** Lessee shall maintain and repair all interior areas and surfaces of the Leased Premises, including sweeping, washing, servicing, repairing, replacing, cleaning

and interior painting that may be required to properly maintain the Leased Premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. Lessee shall establish an adequate preventive maintenance program and the provisions of which shall be subject to periodic review by City, and which shall include, without limitation, the cleaning and repair of all floors, interior walls, ceilings, lighting, decor and equipment. Regardless of Lessee's compliance with its preventive maintenance program, Lessee shall clean such surfaces and equipment immediately upon being instructed to do so by City or by other governmental agencies having such authority.

**7.8 Plumbing System:** Lessee shall be responsible for the following with respect to plumbing within the Leased Premises:

- A. The repair and maintenance of all sanitary sewer lines from the Leased Premises to the point that the line connects to the Airport's main sewer line; and
- B. The repair and maintenance of all domestic hot and cold water lines from the point of connection of the Airport's water meter throughout the Leased Premises.

If Lessee fails to maintain the plumbing system or places liquid, grease, debris, etc. that results in stoppage or damage to City's plumbing system for the Terminal Building such that City is required to conduct a clean-up or make repairs thereto, Lessee will be billed by City for the cost of such clean-up or repairs, plus fifteen (15%) percent of said cost for administrative overhead related to managing/coordinating such services. Such amounts shall be paid by Lessee to City on demand and shall become Additional Rent due hereunder.

**7.9 Exhaust Vents; Fire Suppression System:** Lessee shall at Lessee's cost clean and/or repair all exhaust vents as required to properly maintain the sanitary and operational requirements of the ventilation system installed in the Leased Premises. Lessee shall further maintain and keep in good repair the fire suppression system installed to service the Leased Premises. If Lessee fails to perform such cleaning or maintenance as recommended by City, City may, at its sole discretion, perform such cleaning, maintenance, or repairs as it may deem necessary, and, in such event, Lessee will be billed by City for the cost of such cleaning, maintenance or repair, plus fifteen (15%) percent of said cost for administrative overhead related to managing/coordinating such services. Such amounts shall be paid by Lessee to City on demand and shall become Additional Rent due hereunder.

**7.10 Grease Trap Maintenance:** Lessee is liable and responsible for all material that is deposited into the plumbing system from the Leased Premises and for cleaning the grease traps to which the Leased Premises' sanitary sewer system is connected as required by City Ordinances and Dallas County Health requirements.

**7.11 Pest Control:** Lessee understands and acknowledges that City desires and intends to maintain a pest free environment within the entire Terminal Building. Lessee shall be solely responsible for a pest free environment within its Leased Premises by maintaining its own pest control services, in accordance with the most modern and effective control procedures applicable to the Permitted Use. All materials used in pest control shall conform to Federal, State, and City laws, regulations and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals and pets. Whenever City deems that pest control services must be provided to a building or area that includes the Leased Premises, Lessee shall pay for the costs of services provided for the Leased Premises.

- 7.12 Review of Maintenance Records:** City reserves the right to review all records, including, but not limited to, maintenance contracts, billing invoices, payment documents, and inspection reports related to Lessee's maintenance obligations set forth in this Agreement.
- 7.13 System Components Exterior to Leased Premises:** City and Lessee acknowledge that components of certain systems to be maintained or repaired by Lessee pursuant to this Agreement may be located exterior to the Leased Premises. Access to these areas will be coordinated with the designated the Airport Manager or representative of the City.
- 7.14 Quality of Work:** Lessee covenants and agrees to make all repairs necessary or advisable to keep the Leased Premises from deteriorating in value or condition and to restore and maintain the Leased Premises, with the exception of normal wear and tear and aging consistent with normal office usage and time. City shall have the right and privilege, through its agents and officials, to make inspections of the Leased Premises and thereafter to make recommendations to Lessee of any repairs that in City's opinion are necessary to be performed by Lessee in the Leased Premises in accordance with the provisions of this Agreement.
- 7.15 Refuse Disposal:** Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its use of the Leased Premises, so that the Leased Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles of all garbage, trash and other refuse at the Leased Premises provided on the exterior of the Terminal Building. Lessee shall not use any trash receptacles located on the interior of the Terminal Building but exterior to the Leased Premises for depositing trash and other refuse. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Leased Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. In the event City discontinues providing garbage removal services as it is currently providing, Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of the operations and activities occurring on the Leased Premises, whether by Lessee or a third party occupying the Leased Premises. With respect to recyclable products, Lessee agrees to participate in the City's recycling program by depositing all recyclable products in the appropriate recycling container in lieu of the other trash receptacles.

## **ARTICLE 8: CITY MAINTENANCE OF AIRPORT**

- 8.1 City Authority:** While the Airport Manager has the authority to manage the Airport (including the authority to interpret, administer, and enforce agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport property), Lessee understands and acknowledges that the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- 8.2 Terminal Building Maintenance:** City agrees, at City's sole expense, to maintain and repair the structural parts of the Terminal Building and other improvements exterior to the Leased Premises (including, without limitation, the roof, foundation and bearing and exterior walls, windows, window glass, plate glass, doors, pest control and extermination) and the parking lot, drives, sidewalks and common areas.

- 8.3 Airport Development:** City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as City determines in its sole discretion. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that except in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Leased Premises by Lessee for the Permitted Use. City shall provide advance notice of any closures of the Airport to the extent possible.
- 8.4 War, National Emergency, Riot, or Natural Disaster:** During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- 8.5 Access to the Leased Premises:** City and/or its representatives shall have the right to enter the Leased Premises at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice. Nothing herein shall be construed as restricting City and or its employees or agents from entering any part of the Leased Premises for purposes of carrying out any inspection related to the enforcement of City's ordinances and regulations.
- 8.6 Performance of Acts:** All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by a representative or delegate of City.
- 8.7 Exercising Rights:** No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee nor shall such exercise be grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.
- 8.8 Rights in Addition to Others:** The rights and reservations set forth in Sections 8.1 though 8.7, inclusive, are in addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances.

## **ARTICLE 9: ADDITIONAL LESSEE OBLIGATIONS**

- 9.1 Taxes, Assessments, and Fees:** Lessee shall pay and discharge all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Leased Premises and/or the Permitted Use conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee

which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination.

**9.2 Costs, Expenses, and Other Charges:** Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Leased Premises and/or the Permitted Use, which may arise or become due during the term of this Agreement.

**9.3 Non-Discrimination:** Lessee, in the conduct of its authorized use of the Leased Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchases, or classes of purchasers. Lessee further agrees as follows:

A. Lessee, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(1) no person on the grounds of race, color, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

(2) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and

(3) Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said regulations may be amended. In the event of breach of any of the preceding nondiscrimination covenants, Lessee agrees that City has the right to take such action against Lessee as the Federal government may direct to enforce this covenant, including termination of this Agreement.

B. In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

**9.4 Insurance:** Prior to the Effective Date of this Agreement, without limiting any of the other obligations or liabilities of Lessee during the term of this Agreement, Lessee shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to City. Certificates of each policy shall be delivered to City before any Effective Date of this Agreement, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without thirty (30) days advance written notice being given to City, except when the policy is being canceled for nonpayment of premium, in which case ten (10) days

advance written notice is required. Prior to the effective date of cancellation, Lessee must deliver to City a replacement certificate of insurance or proof of reinstatement.

**A. The types and minimum amounts of coverage shall be as follows:**

(1) Commercial General Liability Insurance, including independent contractor's liability and contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, fully insuring Lessee's liability for injury to or death of City's employees and any third parties, extended to include personal injury liability coverage, with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$500,000
Products-Components Operations Aggregate	\$500,000
Each Occurrence	\$500,000
Medical Expense (any one person)	\$5,000

(2) Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$500,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident), and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

(3) Workers Compensation - Statutory

**B. Each insurance policy to be furnished by Lessee shall include the following conditions by endorsement to the policy:**

(1) Name the City as an additional insured as to all applicable coverage (except Workers Compensation);

(2) The term "City" shall include all authorities, boards, commissions, divisions, departments and offices of City and Individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of City;

(3) The policy phrase "other insurance" shall not apply to City where City is an additional insured on the policy; and

(4) All provisions of this Agreement concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

**C. Insurance furnished by Lessee shall be in accordance with the following requirements:**

(1) Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Lessee. City's decision thereon shall be final;

(2) All liability policies required herein shall be written with an "occurrence" basis coverage trigger.

**D. Lessee hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against City, it being the intention that the insurance policies shall protect all parties to the Agreement and be primary coverage for all losses covered by the policies.**

- E. Companies issuing the insurance policies and Lessee shall have no recourse against City for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Lessee.
- F. Approval, disapproval or failure to act by Lessee regarding any insurance supplied by Lessee shall not relieve Lessee of full responsibility or liability for damages and accidents as set forth in this Agreement. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Lessee from liability.
- G. No special payments shall be made for any insurance that Lessee is required to carry; all are included in the agreement price and the agreement unit prices.
- H. Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

#### **ARTICLE 10: INDEMNIFICATION**

**LESSEE AGREES TO INDEMNIFY, PROTECT, DEFEND, SAVE AND COMPLETELY HOLD HARMLESS CITY AND ITS CITY COUNCIL (INDIVIDUALLY AND COLLECTIVELY), REPRESENTATIVES, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS ARTICLE AS "CITY") FROM ANY AND ALL LIENS, CLAIMS, CHARGES, ENCUMBRANCES, DEMANDS, DAMAGES, FINES, OBLIGATIONS, SUITS, JUDGMENTS, PENALTIES, CAUSES OF ACTION, LOSSES, LIABILITIES, ADMINISTRATIVE PROCEEDINGS, ARBITRATION, OR COSTS OF ANY NATURE WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, AT ANY TIME RECEIVED, INCURRED, OR ACCRUED BY CITY RELATING TO THIS AGREEMENT OR ARISING FROM DAMAGE OR INJURY OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM LESSEE'S POSSESSION, USE, OCCUPANCY, MANAGEMENT, MAINTENANCE, OR CONTROL OF THE LEASED PREMISES AND/OR THE CONDUCT OF LESSEE'S ACTIVITIES AT THE AIRPORT OR ARISING OUT OF LESSEE'S ACTIONS OR INACTIONS, REGARDLESS OF ANY SOLE OR CONCURRENT NEGLIGENCE OF THE CITY.**

#### **ARTICLE 11: DEFAULTS AND REMEDIES**

- 11.1 Lessee Default:** The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.
- A. The filing by Lessee of a voluntary petition in bankruptcy;
  - B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors;
  - C. A court making or entering any decree or order:
    - (1) adjudging Lessee to be bankrupt or insolvent;
    - (2) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
    - (3) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property; and

(4) directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.

- D. The filing of any non-consensual lien against the Leased Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien;
- E. The voluntary abandonment by Lessee of the Leased Premises or its failure to maintain an on-going business at the Leased Premises for a period of thirty (30) days or more, coupled with the failure to pay rent as provided in Article 5;
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law;
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of thirty (30) days after the time such payments become due;
- H. Intentional falsification by Lessee of any record which results in the deprivation of any Rent, fee or other charge from the City granted under this Agreement;
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of twenty (20) days after written notice from City; and
- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."

**11.2 Failure to Cure Default:** In the event of any default by Lessee that is not cured within twenty (20) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City as described by Section 11.1G, however, no written or other notice of default shall be required, and the City may, in addition to any other remedies available to City, terminate this Agreement on the thirty-first (31<sup>st</sup>) day after such time as payments became due. If this Agreement is terminated, any payments made to City shall be forfeited to City and Lessee shall have no rights to recover the payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.

**11.3 Force Majeure:** Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.

**11.4 Additional Remedies:** In addition to the termination and forfeiture rights described in the preceding paragraphs, City shall have the following rights and remedies upon default by Lessee:

- A. The recovery of any unpaid Rent, fees and other payments due and owing at the time of termination, plus any unpaid Rent and fees that would have been earned and other payments that would have been made in the Agreement had not been breached by Lessee.
  - B. The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, including reasonable attorneys' fees and expenses.
  - C. The removal of all persons from the Leased Premises and the removal and storage at Lessee's expense of all of Lessee's property on the Leased Premises, in accordance with the law.
  - D. Any other right or remedy, legal or equitable, including specific performance, that City is entitled to under applicable law, whether stated in this Agreement or not.
- 11.5 Lessee Continuing Obligations:** No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue.
- 11.6 Re-entry on Termination:** In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Leased Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up the Leased Premises, including any facilities, fixtures and equipment, and the City Equipment, to City in the same condition as when received, reasonable and ordinary wear and tear accepted.
- 11.7 Cost of Re-Entry:** Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Leased Premises, restoring the Leased Premises and Improvements to the condition by this Agreement, and protecting the Leased Premises.

## **ARTICLE 12: TERMINATION**

This Agreement shall terminate upon any of the following events:

- A. Mutual written Agreement of the parties;
- B. Upon the end of the Lease Term, including any extensions thereof, as set forth in Article 2, above;
- C. Lessee providing written notice to City not later than thirty (30) days prior to the date of termination; provided, however, Lessee's termination of this Agreement pursuant to this Article 12 shall not relieve Lessee of any obligations to pay Rent or other fees to City that accrued prior to the date of termination, which obligations shall survive the termination of this Agreement; and
- D. Upon Lessee's failure to cure any default of this Agreement following the notice provided in this Agreement, including, but not limited to, any one or more of the events described in Article 11, above.

## **ARTICLE 13: NO WAIVER**

No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

#### **ARTICLE 14: DAMAGE TO LEASED PREMISES**

If at any time during the Term of this Agreement any part of the Leased Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Leased Premises. This Agreement shall terminate and Lessee shall be obligated to pay Rent only through the date the event causing the damage occurred if the damage is to such extent that Lessee is unable to use the Leased Premises for the Permitted Use and City elects to not make such repairs. If City does make repairs to Leased Premises and Lessee is unable to operate while repairs are being completed, the Base Rent due from Lessee shall be calculated on a pro rata basis, reduced according to the number of days the Lessee was not able to operate on the Leased Premises due to completion of the repairs.

#### **ARTICLE 15: MISCELLANEOUS**

- 15.1 Assignment:** No portion of this Agreement may be assigned without the prior express written consent of City. In the event this Agreement is assigned, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default.
- 15.2 No Subleasing:** Lessee shall not sublease the Leased Premises (or any part of the Leased Premises) or subcontract any operation or service it performs or is permitted to perform, without the prior express written consent of the City, which consent may be withheld at the sole discretion of City. A sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in a written consent, a sublease is subject to all of the terms and conditions of the Agreement. In addition, the Lessee shall at all times assume total responsibility for the acts and omissions of a sublessee and/or subcontractor.
- 15.3 Encumbrances:** Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the Leased Premises or its leasehold interest created by this Agreement. Lessee shall further not allow the Leased Premises to be or become subject to any non-consensual lien (including mechanic's liens), charge or encumbrance whatsoever. Lessee acknowledges and understands that the Leased Premises are owned by City, a Texas governmental entity, and as such, as a matter of law, no lien may attach to the Leased Premises and is void.
- 15.4 Landlord's Lien:** Lessee hereby grants a lien to City upon all personal property owned by Lessee in or on the Leased Premises as a possessory pledge to secure the timely performance by Lessee of all its obligations hereunder. In the event of default of this Agreement by Lessee, City is authorized to seize and hold all of the personal property belonging to Lessee on the Leased Premises to secure such performance, to sell same at public or private sale and to apply the proceeds thereof first to pay the expenses of the sale,

and to pay all amounts due to City hereunder, holding the balance remaining subject to Lessee's order. A copy of this Agreement shall be the only warrant required.

- 15.5 Non Partnership or Joint Venture:** Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between City and Lessee or as constituting either party as the agent, representative, or employee of the other party for any purpose or in any manner whatsoever, or of creating any joint enterprise of the parties.
- 15.6 Binding Effect:** This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.
- 15.7 Subordination:** This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.
- 15.8 Governing Law; Venue:** This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.
- 15.9 Headings:** All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience in reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.
- 15.10 Severability:** In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.
- 15.11 Counterparts:** This Agreement has been executed in several counterparts, each of which shall be deemed an original.
- 15.12 Amendments:** Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.
- 15.13 Notices:** Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

If to City:

Airport Manager  
LANCASTER REGIONAL AIRPORT  
P.O. Box 940  
Lancaster, Texas 75146

If to Lessee:

With Copy to:

Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith  
500 N Akard, Suite 1800  
Dallas, Texas 75201

With Copy to:

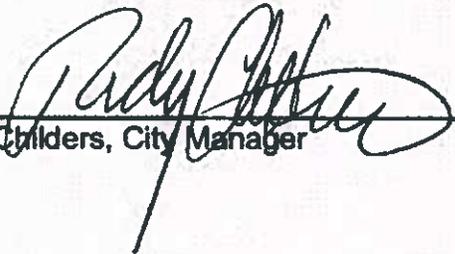
The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

**15.14 Entire Agreement:** This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this 25<sup>th</sup> day of October, 2010.

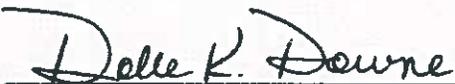
**CITY OF LANCASTER, TEXAS**

**LESSEE:**

  
\_\_\_\_\_  
Rickey Childers, City Manager

  
\_\_\_\_\_  
Michelle McDonald  
Printed Name  
C.E.O.  
\_\_\_\_\_  
Title

**ATTEST:**

  
\_\_\_\_\_  
Dolie Downe, City Secretary

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**4**

AG11-004

**Consider a resolution 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 Grand Prairie, Texas, and the City of Lancaster, Texas, for the cooperative purchase of goods and services; repealing Resolution No. 2010-09-80 in its entirety; authorizing the City Manager to execute said agreement; designating the City's Purchasing Agent as the official representative; repealing all resolutions in conflict; providing a severability clause; and providing an effective date.**

**This request supports the City Council 2010-2011 Policy Agenda.**

**Goal 1: Financially Sound City Government**

**Background**

On September 27, 2010, City Council approved Resolution No. 2010-09-80 authorizing an Interlocal Agreement for the City to utilize the City of Grand Prairie's purchasing contracts. Upon receipt by Grand Prairie, it was determined that they would like to have a similar agreement to use our contracts.

Their purchasing staff did not process our agreement and instead presented an Interlocal Agreement to their Council that authorized both cities to use each others contracts.

Staff is requesting the Council to repeal the original resolution and approve the revised Interlocal Agreement with the City of Grand Prairie for the purpose of purchasing items in a cost effective and expeditious manner through Grand Prairie's cooperative contract.

**Considerations**

- **Operational** – Use of an Interlocal Agreement with the City of Grand Prairie allows staff to utilize Grand Prairie's contracts as well as their use of Lancaster contracts. Formal bids as required by the State of Texas statutes were conducted by the City of Grand Prairie. All requirements have been met including advertising, M/WBE participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirement.

All legal requirements are verified by the Purchasing Agent prior to recommendation or use of a contract.

Use of cooperative contracts is a way of saving time associated with issuing bids or in obtaining quotes. Additionally, savings is achieved through aggregate volumes either through joint bidding opportunities or by addressing the cooperative language within the specifications to the vendors.

- **Legal** – The use of a cooperative agreement is in accordance with Section 791.001 of the Texas Government Code and 271.101 of the Texas Local Government Code. The City Attorney has approved the Interlocal Agreement and resolution as to form.
- **Financial** – The use of cooperative bids through Interlocal Agreements provides a savings to the City, both in funding and in time, by allowing staff to use contracts that have already been bid by another entity.
- **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.

#### **Recommendation**

Staff recommends repealing Resolution No. 2010-09-80 in its entirety and approving the resolution as presented.

#### **Attachments**

- Resolution
- Interlocal Agreement

**Prepared and submitted by:**  
Dawn Berry, Purchasing Agent

**Date:** March 2, 2011

**RESOLUTION NO. 2011-03-19**

**A RESOLUTION 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 GRAND PRAIRIE AND THE CITY OF LANCASTER FOR THE COOPERATIVE PURCHASE OF GOODS AND SERVICES; REPEALING RESOLUTION NO. 2010-09-80 IN ITS ENTIRETY; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID INTERLOCAL AGREEMENT; DESIGNATING THE CITY'S PURCHASING AGENT AS OFFICIAL REPRESENTATIVE; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster, Texas, pursuant to the authority granted under Section 791.001 of the Texas Government Code and Section 271.101 of the Texas Local Government Code, desires to participate in the cooperative forum;

**WHEREAS**, the City Council of the City of Lancaster, Texas, is of the opinion that participation in the agreement will be highly beneficial to the taxpayers through the efficiencies and potential savings to be realized; and

**WHEREAS**, the City Council has determined that it would be in the best interest of the City and its citizens to enter into a mutual agreement;

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

**SECTION 1.** That the terms and conditions of the Interlocal Agreement, attached hereto and incorporated herein by reference as Exhibit "A", having been reviewed by the City Council of the City of Lancaster and found to be acceptable and in the best interests of the City of Lancaster and its citizens is hereby in all things approved.

**SECTION 2.** That the City Council of the City of Lancaster, Texas, hereby repeals Resolution No. 2010-09-80 in its entirety.

**SECTION 3.** That the City Council of the City of Lancaster, Texas, hereby authorizes the City Manager to enter into and execute said Interlocal Agreement.

**SECTION 4.** That the City Council of the City of Lancaster, Texas, hereby designates the Purchasing Agent to act as the official representative.

**SECTION 5.** That any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

**SECTION 6.** 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 7.** 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 14<sup>th</sup> day of March 2011.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT  
BETWEEN THE CITY OF GRAND PRAIRIE  
AND CITY OF LANCASTER**

THIS AGREEMENT is made and entered into by and between the CITY OF GRAND PRAIRIE, a home-rule municipal corporation located in Dallas County, Texas (hereinafter referred to as "Grand Prairie"), and the CITY OF LANCASTER, a home-rule municipal corporation located in Dallas County, Texas (hereinafter referred to as "Lancaster").

**WHEREAS**, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

**WHEREAS**, The City of Grand Prairie and the City of Lancaster desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs and services;

**WHEREAS**, The City of Grand Prairie and the City of Lancaster represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

**WHEREAS**, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

**WHEREAS**, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

**WHEREAS**, each party has sufficient resources to perform the functions contemplated by this Agreement;

**NOW THEREFORE**, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

1. The City of Grand Prairie and the City of Lancaster are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
2. The City of Grand Prairie and the City of Lancaster agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the

goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the City of Grand Prairie nor the City of Lancaster warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should a dispute arise between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.

3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.
5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
8. **Termination.** This Agreement may be terminated at any time by the City of Grand Prairie or the City of Lancaster, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
9. **Hold Harmless.** To the extent allowed by law, the City of Grand Prairie and the City of Lancaster agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent

jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

11. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with successful send confirmation, or by certified mail to the last business address as listed herein.

**City of Grand Prairie:** Purchasing Division  
Attn: Purchasing Manager  
City of Grand Prairie  
318 W. Main St.  
Grand Prairie, TX 75050  
972/237-8269 ph ~ 972/237-8265 fax  
[purchasingfax@gptx.org](mailto:purchasingfax@gptx.org)

**City of Lancaster:** Purchasing Department  
Attn: Dawn Berry, Purchasing Agent  
City of Lancaster  
PO Box 940  
Lancaster, TX 75146  
972-218-1329 ph ~ main fax # fax  
[purchasing@lancaster-tx.com](mailto:purchasing@lancaster-tx.com)

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. **Place of Performance.** Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Dallas County, Texas, United States of America for the City of Lancaster and shall be Dallas County, Texas, United States of America for the City of Grand Prairie.

16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

**CITY OF GRAND PRAIRIE**

**THE CITY OF LANCASTER**

  
 \_\_\_\_\_  
 Tom Cox, Deputy City Manager

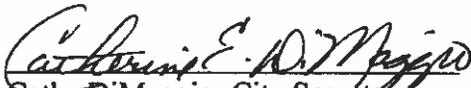
\_\_\_\_\_  
 Opal Mauldin Robertson, City Manager

DATE: 01-18-2011

DATE: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

  
 \_\_\_\_\_  
 Cathy DiMaggio, City Secretary

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

  
 \_\_\_\_\_  
 Donald R. Postell, City Attorney

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

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**5**

AG11-005

**Consider a resolution of the City Council of the City of Lancaster, Texas, amending Resolution No. 2011-02-11 ordering a general election to be held on Saturday, May 14, 2011, for the election of one councilmember for District 2, one councilmember for District 4, and one councilmember for District 6; to provide for revised branch early voting polling locations; and providing an effective date.**

**This request supports the City Council 2010-2011 Policy Agenda.**

**Goal 6: Civic Engagement**

**Background**

On February 28, 2011, City Council adopted Resolution No. 2011-02-11 ordering the municipal General Election for Districts 2, 4 and 6 on Saturday, May 14, 2011 in accordance with the Home Rule Charter and the Texas Election Code.

As noted in the February 28 agenda communication, state law requires each branch early voting polling location to be listed in the election order. Two early voting locations have been added, Fretz Park Library and Preston Royal Library (both in the city of Dallas). Grand Prairie ISD has added 4 mobile sites. These changes require a resolution amending the election order (Resolution No. 2011-02-11) to provide for the revised list of branch early voting polling locations.

The list of early voting polling locations remains subject to change. If entities scheduled to participate in the joint election withdraw from the joint election due to uncontested races, early voting polling locations may be revised again by Dallas County.

The resolution amending the early voting polling locations is provided in both English and Spanish.

**Considerations**

- **Operational** – There are no changes to the election order other than the early voting polling locations. The Lancaster Veterans Memorial Library remains a branch early voting polling location. All other information contained in the election order, including early voting dates and times, remains the same.

Agenda Communication

March 14, 2011

Page 2

- **Legal** – The City Attorney will review the resolution revising the branch early voting locations.
- **Financial** – The estimated cost for the election remains at \$9,653.78. The City's actual cost will depend on the number of entities contracting with Dallas County for election services.
- **Public Information** – All requirements for the posting and publishing of the election order and amending resolution will be completed as outlined in the election order.

**Recommendation**

Staff recommends approval of the resolution as presented.

**Attachments**

- Resolution - English and Spanish

**Prepared and submitted by:**

Dolle K. Downe, City Secretary

**Date:** March 9, 2011

**RESOLUTION NO. 2011-03-20**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AMENDING RESOLUTION NO. 2011-02-11 ORDERING A GENERAL ELECTION TO BE HELD ON SATURDAY, MAY 14, 2011, FOR THE ELECTION OF ONE COUNCILMEMBER FOR DISTRICT 2, ONE COUNCILMEMBER FOR DISTRICT 4, AND ONE COUNCILMEMBER FOR DISTRICT 6; TO PROVIDE FOR REVISED BRANCH EARLY VOTING POLLING LOCATIONS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with the City Charter and under the TEXAS ELECTION CODE, City Council adopted Resolution No. 2011-02-11 on February 28, 2011, ordering a General Election for the purpose of electing one councilmember for District 2, one councilmember for District 4 and one councilmember for District 6 to be held on Saturday, May 14, 2011; and

**WHEREAS**, Dallas County Elections has made revisions to the branch early voting polling locations for the joint election to be held on May 14, 2011; and

**WHEREAS**, all other information contained in the election order (Resolution No. 2011-02-11) remains unchanged, including early voting dates and times;

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

**SECTION 1.** Branch early voting polling locations contained in Resolution No. 2011-02-11 are hereby amended, and branch early voting for the joint election to be held on May 14, 2011 will be conducted at the branch early voting polling locations as outlined in Exhibit "A", attached hereto and incorporated herein for all purposes.

**SECTION 2.** All other orders contained in Resolution No. 2011-02-11 remain the same and in full force and effect, except as amended herein.

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

**DULY ORDERED** by the City Council of the City of Lancaster, Texas on this the 14<sup>th</sup> day of March 2011.

**APPROVED:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**DATES AND TIMES OF EARLY VOTING FOR THE JOINT  
ELECTION TO BE HELD ON SATURDAY, MAY 14, 2011**  
**Fechas y horarios de votación adelantada para la elección  
conjunta que se celebrará el sábado, 14 de mayo 2011**

01	ADDISON FIRE STATION #1	4798 AIRPORT PKWY	ADDISON	75001
02	AUDELIA ROAD LIBRARY	10045 AUDELIA ROAD	DALLAS	75238
03	BALCH SPRINGS CITY HALL	3117 HICKORY TREE	BALCH SPRINGS	75180
04	CARROLLTON/FR BR ISD ADM	1445 N PERRY ROAD	CARROLLTON	75006
05	CEDAR HILL GOVERNMENT CTR	285 UPTOWN BLVD	CEDAR HILL	75104
06	COCKRELL HILL CITY HALL	4125 W CLARENDON	DALLAS	75211
07	COPPELL TOWN CENTER	255 PARKWAY BLVD	COPPELL	75019
08	CROSSWINDS HIGH SCHOOL	1100 N CARRIER PKWY	GRAND PRAIRIE	75050
09	DALLAS CITY HALL	1500 MARILLA STREET	DALLAS	75201
10	DISD ADMINISTRATION BLDG	3700 ROSS AVE	DALLAS	75204
11	DESOTO TOWN CENTER LIBRARY	211 E PLEASANT RUN	DESOTO	75115
12	DUNCANVILLE LIBRARY	201 JAMES COLLINS	DUNCANVILLE	75116
13	FARMERS BRANCH CITY HALL	13000 WILLIAM DODSON	FARMERS BR	75234
14	FRANKFORD TOWNHOMES	18110 MARSH LANE	DALLAS	75287
15	FRETZ PARK LIBRARY	6990 BELT LINE RD	DALLAS	75254
16	GARLAND CITY HALL	200 N FIFTH	GARLAND	75040
17	GARLAND ISD STUDENT SVCS CTR.	720 STADIUM DRIVE	GARLAND	75040
18	GARNER ELEMENTARY	145 POLO ROAD	GRAND PRAIRIE	75052
19	GRAUWYLER PARK REC CTR	7780 HARRY HINES BLVD	DALLAS	75235
20	HARRY STONE REC CTR	2403 MILLMAER DRIVE	DALLAS	75228
21	HEBRON & JOSEY LIBRARY	4220 N JOSEY LANE	CARROLLTON	75010
22	HIGHLAND HILLS LIBRARY	3624 SIMPSON STUART	DALLAS	75241
23	HUTCHINS CITY HALL	321 N. MAIN ST	HUTCHINS	75141
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**TUESDAY, MAY 10, 2011 – 11:00AM TO 7:00PM**

**GRAND PRAIRIE HIGH SCHOOL 101 HIGH SCHOOL DR GRAND PRAIRIE 75050**

## **RESOLUCIÓN NO. 2011-03-20**

**RESOLUCIÓN DEL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS, SE MODIFICA LA RESOLUCIÓN NO. 2011-02-11 SOLICITANDO A LAS ELECCIONES GENERALES QUE SE LLEVARA A CABO EL SABADO, 14 DE MAYO 2011, PARA LA ELECCIÓN DE UN CONCEJO DE DISTRITO 2, UN CONCEJO DE DISTRITO 4, Y UN CONCEJO DE DISTRITO 6; PRESTACIÓN PARA PODER VOTAR TEMPRANO REVISANDO LUGARES DE VOTACIÓN, Y PROPORCIONAR UNA FECHA DE VIGENCIA.**

**CONSIDERANDO**, que, de conformidad con la Constitución de la Ciudad y el Código Electoral de Texas, el Concejo Municipal aprobó la Resolución No. 2011-02-11 el 28 de febrero de 2011, solicitando una elección general con el fin de elegir a un concejal del Distrito 2, un miembro del concejo de Distrito 4 y un concejal del Distrito 6 que se llevara a cabo el Sábado, 14 de mayo 2011, y

**CONSIDERANDO**, que, las Elecciones del Condado de Dallas ha hecho revisiones a la rama temprana de lugares de votación, para la elección conjunta que se llevara a cabo el 14 de mayo 2011, y

**CONSIDERANDO**, que, toda la demás información que figura en el orden electoral (Resolución No. 2011-02-11) no ha variado, incluyendo las fechas de votación anticipada y los tiempos;

**AHORA, POR LO TANTO, SE A RESUELTO POR EL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS QUE:**

**SECCIÓN 1.** Sucursal temprana de lugares de votación contenidas en la Resolución No. 2011-02-11, queda modificado, y la rama de votación anticipada para la elección conjunta que se celebrará el 14 de mayo 2011 se llevará a cabo en la sucursal primeros lugares de votación como se indica en la figura a, que se adjunto y fue incorporado al mismo a todos los efectos.

**SECCIÓN 2.** Todas las demás ordenes contenidas en la Resolución No. 2011-02-11 siguen siendo los mismos y en pleno vigor y efecto, excepto en su versión modificada en el mismo.

**SECCIÓN 3.** Esta resolución entrará en vigencia inmediatamente y después de su aprobación, ya que la ley y la Constitución de la Ciudad en estos casos puede proveer.

**DEBIDAMENTE** ordenado por el Consejo Municipal de la Ciudad de Lancaster, Texas en este día el 14 de marzo de 2011.

**APROBADO:**

\_\_\_\_\_  
Marcus E. Knight, el Alcalde

**DOY FE:**

\_\_\_\_\_  
Dolle K. Downe, Secretaria de la Ciudad

**APROBADA EN FORMA:**

\_\_\_\_\_  
Robert E. Hager, Abogado de la Ciudad

**DATES AND TIMES OF EARLY VOTING FOR THE JOINT  
ELECTION TO BE HELD ON SATURDAY, MAY 14, 2011**

**Fechas y horarios de votación adelantada para la elección  
conjunta que se celebrará el sábado, 14 de mayo 2011**

01	ADDISON FIRE STATION #1	4798 AIRPORT PKWY	ADDISON	75001
02	AUDELIA ROAD LIBRARY	10045 AUDELIA ROAD	DALLAS	75238
03	BALCH SPRINGS CITY HALL	3117 HICKORY TREE	BALCH SPRINGS	75180
04	CARROLLTON/FR BR ISD ADM	1445 N PERRY ROAD	CARROLLTON	75006
05	CEDAR HILL GOVERNMENT CTR	285 UPTOWN BLVD	CEDAR HILL	75104
06	COCKRELL HILL CITY HALL	4125 W CLARENDON	DALLAS	75211
07	COPPELL TOWN CENTER	255 PARKWAY BLVD	COPPELL	75019
08	CROSSWINDS HIGH SCHOOL	1100 N CARRIER PKWY	GRAND PRAIRIE	75050
09	DALLAS CITY HALL	1500 MARILLA STREET	DALLAS	75201
10	DISD ADMINISTRATION BLDG	3700 ROSS AVE	DALLAS	75204
11	DESOTO TOWN CENTER LIBRARY	211 E PLEASANT RUN	DESOTO	75115
12	DUNCANVILLE LIBRARY	201 JAMES COLLINS	DUNCANVILLE	75116
13	FARMERS BRANCH CITY HALL	13000 WILLIAM DODSON	FARMERS BR	75234
14	FRANKFORD TOWNHOMES	18110 MARSH LANE	DALLAS	75287
15	FRETZ PARK LIBRARY	6990 BELT LINE RD	DALLAS	75254
16	GARLAND CITY HALL	200 N FIFTH	GARLAND	75040
17	GARLAND ISD STUDENT SVCS CTR.	720 STADIUM DRIVE	GARLAND	75040
18	GARNER ELEMENTARY	145 POLO ROAD	GRAND PRAIRIE	75052
19	GRAUWYLER PARK REC CTR	7780 HARRY HINES BLVD	DALLAS	75235
20	HARRY STONE REC CTR	2403 MILLMAER DRIVE	DALLAS	75228
21	HEBRON & JOSEY LIBRARY	4220 N JOSEY LANE	CARROLLTON	75010
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**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**6**

AG11-006

**Consider an ordinance of the City of Lancaster, Texas, amending the Lancaster Code of Ordinances, Chapter 3, by repealing Article 3.800, "Fence Regulations", in its entirety and replacing with a new Article 3.800, "Fence Regulations"; providing for Definitions; providing a Permit Requirement, Application and Fee; providing for the Encroachment of Public Property; providing for Construction within Easements; providing for Height Limitations - Rear and Side Yards; providing for Fences on Reverse Frontage Lots; providing for the use of barbed wire or electronically charged Fences; providing for Fence construction and materials; providing for gates; providing for inspection; providing for Maintenance and Standards of Fence; providing for the Appeal of specific requirements; providing for the Appeal Process; and by amending Chapter 14, Lancaster Development Code, by repealing Article 14.500, Section 14.501, Subsection (h), "Fences", in its entirety and reserving the same for future use; providing for severability; providing a savings clause; providing a repealing clause; providing for a penalty clause; and providing an effective date.**

**This request supports the City Council 2010-2011 Policy Agenda.**

**Goal 2: Quality Development**

**Background**

During the City Council Work Session on February 21, 2011, Council was presented a draft fence ordinance and presentation that proposed new regulations on fence construction for both residential and commercial properties. Currently Section 3.800 of the Code of Ordinances as adopted in 1994 and the Lancaster Development Code (LDC), as adopted in 2006 are in conflict with each other in a number of areas related to fence construction requirements. Over the past few years, the conflict has presented difficulties to both residents and business owners wishing to erect a fence on their property for privacy, security and/or increased curb appeal.

The purpose of this amendment is to merge the best of both ordinances back into the Code of Ordinances by removing fence regulations in its entirety from the LDC, and providing a fence ordinance in the City's Code of Ordinance that is free of conflict. This will better serve the needs of our citizens with regard to fencing their properties.

### **Considerations**

- **Operational** – Currently, the Building Inspection Division is responsible for the applications for a fence permit in the City of Lancaster. After reviewing the current regulations, receiving input from citizens, and researching our survey cities, the attached ordinance has been drafted. The proposed ordinance will repeal the current Code of Ordinances Article 3.800 and provide a new Article 3.800 to resolve conflicts while allowing the residents and the business community additional options that better serve their needs. The amendments will not impact staffing in any way.

Specific amendments include:

- Repeal Article 14.500, Section 14.501 (h) (1), (2) and (3) all private fence restrictions from the Lancaster Development Code.
  - Section 3.807 Height Limitation – Rear and Side Yards-Increasing the maximum fence height to eight (8) feet.
  - Restrict construction of chain link fences in the front yard unless there is an existing chain link fence. Any existing chain link fence in the front yard may be repaired or replaced to only the height when originally constructed.
  - Inclusion of a permit fee penalty when fences are erected without a permit.
  - Restrict fences, guy wires, and braces to be constructed in public rights-of-way that interfere with drainage.
  - Restriction of fences on reverse frontage lots to be built closer than ten feet (10') from a side property line.
  - Allow the use of barbed wire or electric fences to only those uses associated with agricultural, farming, and ranching activities.
  - Add additional fencing material such as wire, metal fabric material (chain link), decorative and ornamental iron, wood, brick, stone, masonry, vinyl, or other material as approved by the Code Official.
  - Establishing the Zoning Board of Adjustment as the appeal authority.
- **Legal** – The attached ordinance has been prepared by the City Attorney.

- **Financial** – There are no adverse financial implications to the City as a result of this ordinance. Amendments to the ordinance provide clarification and will better serve the community.
- **Public Information** - There is no public information requirements.

**Options/Alternatives**

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

**Recommendation**

Staff recommends approval of the ordinance as presented.

**Attachments**

- Ordinance

**Prepared and submitted by:**

Larry King, C.B.O. Assistant Building Official

**Date:** March 1, 2011

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

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE LANCASTER CODE OF ORDINANCES, CHAPTER 3, BY REPEALING ARTICLE 3.800, "FENCE REGULATIONS", IN ITS ENTIRETY AND REPLACING WITH A NEW ARTICLE 3.800, "FENCE REGULATIONS"; PROVIDING FOR DEFINITIONS; PROVIDING A PERMIT REQUIREMENT, APPLICATION AND FEE; PROVIDING FOR THE ENCROACHMENT OF PUBLIC PROPERTY; PROVIDING FOR CONSTRUCTION WITHIN EASEMENTS; PROVIDING FOR HEIGHT LIMITATIONS - REAR AND SIDE YARDS; PROVIDING FOR FENCES ON REVERSE FRONTAGE LOTS; PROVIDING FOR THE USE OF BARBED WIRE OR ELECTRONICALLY CHARGED FENCES; PROVIDING FOR FENCE CONSTRUCTION AND MATERIALS; PROVIDING FOR GATES; PROVIDING FOR INSPECTION; PROVIDING FOR MAINTENANCE AND STANDARD OF FENCE; PROVIDING FOR THE APPEAL OF SPECIFIC REQUIREMENTS; PROVIDING FOR THE APPEAL PROCESS; AND BY AMENDING CHAPTER 14, LANCASTER DEVELOPMENT CODE, BY REPEALING ARTICLE 14.500, SECTION 14.501, SUBSECTION (h), "FENCES", IN ITS ENTIRETY AND RESERVING THE SAME FOR FUTURE USE; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING FOR A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. That the Lancaster Code of Ordinances be, and the same is, hereby amended by Chapter 3, by repealing Article 3.800, "Fence Regulations", in its entirety and replacing with a new Article 3.800, "Fence Regulations", which shall read as follows:

**"ARTICLE 3.800 FENCE REGULATIONS**

**Sec. 3.801 Definitions**

For the purpose of this article, the following terms, phrases and words shall have meanings respectively ascribed to them by this section:

Code Official. The administrative official or the designated representative charged with the responsibility of enforcement of this article.

Approved. Approved by the code official or the city council of Lancaster, Texas.

Corner Lot. A lot situated at the intersection of two (2) streets, the interior angle of such intersection not to exceed one hundred thirty-five 135 degrees.

Fence. Any wall, berm or structure more than two and one-half (2 ½) feet in height erected or maintained for the purpose of enclosing, screening, restricting access to or decorating the surrounding lot, parcel, building or structure; located entirely on private property.

Front Yard. An open, unoccupied space on a lot facing a street and extending from the building or the required building line across the front of a lot.

Height (of fence). Measured from ground level at the base of fence to the uppermost part of the fence.

Interior Lot. A lot other than a corner lot.

Interior Lot Line. The side yard lot line that is adjacent to a corner lot or an interior lot's side yard line.

Rear Yard. A yard extending across the rear of a lot between the side lot lines and being the minimum horizontal distance between the rear lot line and the rear of the principal buildings.

Reverse Frontage Corner Lot. A corner lot where the rear lot line is adjacent to a side lot line of an adjoining lot or across an alley from such side lot line.

Side Yard. An open unoccupied space on the same lot with the building, extending from the building or the required building line and the same lot line.

Street. For the purpose of this article, street shall refer to public and private streets.

Through Lot (Double Frontage Lot). A building lot not a corner lot, where both the front and rear lot lines adjoin street lines. For the purpose of this section, both street lines shall be deemed front lot lines.

Vision Triangle. Vision triangle is that imaginary area created by measuring along two (2) intersecting property lines a distance as indicated below, then drawing a line diagonally. Fence or fences in these vision triangles shall not exceed two and one-half (2 ½) feet in height.

- 1) Street-Street Intersections. The vision is determined by measuring back from the intersecting point of the two (2) property lines parallel to the intersecting streets a distance of twenty-five (25) feet, and drawing an imaginary line across these two (2) points.

- 2) Alley Intersections. The vision triangle is determined by measuring back from the intersecting point of the two (2) property lines parallel to the intersecting alley a distance of ten (10) feet, and drawing an imaginary line across the two (2) points. (See Figure #5 at the end of this ordinance.)

**Sec. 3.802 Permit to Erect Required**

It shall be unlawful for any person, firm or corporation to erect or have erected, or to make substantial repairs, suffer or permit a fence or any part of a fence of permanent construction without first obtaining a fence permit from the office of the code official.

**Sec. 3.803 Application for Permit**

Any person making application for a fence permit shall sign an application which shall contain the following information:

- 1) Applicants name, address and if the applicant represents a corporation, the name and address of the registered agent of the corporation, and if the applicant represents an association, the name and address of the higher manager or agent of the association.
- 2) Name of the owner of the property.
- 3) Address where the fence is proposed to be erected.
- 4) Type of fence construction and buildings to be utilized.
- 5) Height of fence.
- 6) Site plan showing proposed location of the fence and listing relevant dimensions between the fence and other structures on the lot and the location of property lines, easements and public rights-of-way.

**Sec. 3.804 Permit Fee**

Upon approval of application and at the time of issuance of permit, the applicant shall pay a fee as set forth in the Master Fee Schedule. Any fence constructed without first being issued the required building permit the permit fee may be doubled.

**Sec. 3.805 Encroachment of Public Property**

No fence, guy wires, braces or any post of such fence constructed pursuant to this Article shall be constructed upon or caused to extend or otherwise encroach over public property that the city or the general public has dominion and control, owns or has a right of access over, under, around or through, except upon utility easements which are permitted to be fenced.

**Sec. 3.806 Construction Within Easements**

- a) Permission to build a fence upon a utility easement does not remove the obligation of the owner of said fence to remove the fence upon demand of the utility company. Removal of any fence and any rebuilding of any fence shall be the responsibility of the owner of said fence and at the owner's expense.
- b) Fences shall be designed, constructed and maintained so as not to interfere with utility lines.
- c) Fences shall be designed, constructed and maintained so as not to interfere with normal drainage.

**Sec. 3.807 Height Limitation-Rear and Side Yards**

It shall be unlawful to erect, maintain, suffer or permit a fence at a height exceeding (8) feet in any rear yard or along any rear yard lot line, or in any side yard or along any side yard line, except by appeal to the Zoning Board of Adjustment Board and by favorable vote from same.

**Sec. 3.808 Height Limitation-Front Yards**

- a) Front Yard Fences shall be constructed within the required front yard according to the following:
  - 1) The fence is forty-eight (48) inches or less in height, and the fence is fifty (50) percent visibility open (no solid fences). (See Figure #1.)
  - 2) In the case of a corner lot, the fence is forty-eight (48) inches or less in height, and the fence is fifty (50) percent visibility open (no solid fences). (See Figure #2.)
  - 3) Metal fabric material (chain link) fence materials are not allowed within the required front yard except for the repair or replacement of existing chain link fences to its original height.

**Sec. 3.809 Fences on Reverse Frontage Lots**

- a) On all reverse frontage lots located on property zoned for residential use, or used for residential use, it shall be unlawful to construct, maintain, suffer or permit a fence within the required side yard area that is adjacent to a front yard area at a distance closer than ten (10) feet of the side property line.
- b) It shall be an affirmation of defense to subsection (a) above that:
  - 1) The fence is four (4) feet or less in height and the fence allows at least fifty (50) percent through vision. (See Figure #3.)

**Sec 3.810 Use of Barbed Wire or Electrically Charged Fences**

- a) Only fences as part of an agricultural or farming or ranching related activities erected, maintained or permitted shall be electrically charged in any manner or form. The exclusion includes but is not limited to fences electrically charged by battery or those tied in with the regular electrical outlet.
- b) No fence erected, maintained or permitted shall be made with barbed wire unless as part of an agricultural or farming or ranching related activities.
- c) No fence erected, maintained or permitted shall be made with concertina wire, razor wire or anything capable of causing significant harm to the general public.
- d) Any barbed wire portion of a fence for a commercial application must be on that portion of the fence over six (6) feet in height. The barbed arms shall not extend over public rights-of-way or easements or over private property of another person. When adjoining property is zoned or used for residential purposes or public rights-of-way, barbed arms shall extend inward. (See Figure #4.)

**Sec. 3.811 Fence Construction and Materials**

- a) All fences, unless prohibited elsewhere in this Article, shall be constructed or maintained with wire or metal fabric material (chain link), wood, brick, stone, concrete, vinyl, ornamental iron or other approved materials as approved by the code official. Fence posts shall be constructed or made of metal, brick, stone, concrete, fiberglass or other material approved by the code official. All fence posts must be placed at a depth of at least twenty-four (24) inches into the ground filled and anchored with concrete footers or encasement.
- b) The Zoning Board of Adjustments of the City of Lancaster is hereby designated the appeal body to hear any appeals to decisions rendered from the strict application of this section. Any material proposed not outlined in the above ordinance is considered prohibited for use as fence construction materials.
- c) Fencing in Commercial and Industrial districts behind the front building line shall be constructed of the primary masonry materials of the building, wrought iron, chain link, living plant material or other material as approved by the code official.

**Sec. 3.812 Gates**

It shall be unlawful for any person to erect, construct or maintain any fence without providing a gate or other means of entrance and exit into and out of the area which the fence encloses; and it shall further be unlawful for any person to erect, construct or maintain any fence along or near a rear property line which adjoins an alley or easement without providing a reasonable means of access to such alley or easement. Gates must swing inward toward private property and are not allowed to swing outward across property lines into public rights-of-way.

### **Sec. 3.813 Inspection**

Upon completion of the installation of a fence, the building inspection department shall be called upon for inspection. An acceptance tag will then be issued or a rejection tag indicating the defects in the same not in compliance with approved plans of city ordinances.

### **Sec. 3.814 Maintenance and Standard of Fence**

All fences shall be maintained by the owners of the property so as to comply with the requirements of this article and shall also be maintained in good condition, such condition shall not deviate from the maintenance standards as follows:

- 1) The fence shall not be out of vertical alignment more than twenty (20) degrees.
- 2) Any and all broken damaged, removed or missing parts of said fence shall be replaced within ten (10) days of receiving notification by regular mail, or notice delivered in person by the code official or his authorized representative. The code official may, upon written notice from the owner that unusual circumstances prevent the timely repair of a fence, extend the replacement time as necessary. Replacement materials to be the same material, size, shape and quality of original fence to which the repair is being made except when a post is damaged, removed or missing. Replacement materials of fence posts shall conform to the standards established by Section 3.811 above. Such post shall be replaced with metal or steel (095 or schedule 40) or other material approved by the code official. Except in cases where a fence or fences are ordered to be constructed on property as a result of a specific order of the city council or through operation of the zoning ordinances of the city, the above requirements shall not be construed so as to not allow a fence or fences to be removed.

### **Sec. 3.815 Appeal of Specific Requirements**

Upon denial of a fence permit application by the code official, an applicant may appeal in writing to Zoning Board of Adjustment Board for consideration of variances. Whenever the applicant can show that a strict application of the terms of this article will impose upon him unusual or practical difficulties, the Zoning Board of Adjustment may consider such variances when the board is satisfied that granting of such variation will not merely serve as a convenience but will alleviate some demonstrable and unusual hardship or difficulty to warrant a variance and at the same time, the surrounding property will be properly protected.

Areas that warrant a hearing before the Zoning Board of Adjustments would be fence materials, fence setbacks and overall height of the fence. These are the only areas that may be considered for considering a variance by the Zoning Board of Adjustments.

**Sec. 3.816 Process of Appeal**

- a) After denial of a fence permit, the applicant may file an application for appeal for a variance hearing with the Planning Department to be considered or scheduled for a hearing before the Zoning Board of Adjustments.
- b) An appeal fee as provided for in the Master Fee Schedule shall accompany such application.
- c) Site plan drawings and elevations of proposed fence shall accompany application.
- d) The Zoning Board of Adjustment shall hear the appeal from the applicant and render a decision.”

**SECTION 2.** That the Lancaster Development Code be, and the same is, hereby amended by repealing Article 14.500, Section 14.501, Subsection (h), “Fences”, in its entirety and reserving the same for future use, which shall read as follows:

**“ARTICLE 14.500. DISTRICT DEVELOPMENT REGULATIONS  
AND STANDARDS**

.....

**Sec. 14.501 General**

.....

- (h) Reserved for future use
- (i) Chart of District Standards. .....”

**SECTION 3.** That all provisions of the Code of Ordinances and Lancaster Development Code in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Code of Ordinances and Lancaster Development Code not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4.** That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Code of Ordinances or Lancaster Development Code, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances or Lancaster Development Code, as amended hereby, which shall remain in full force and effect.

**SECTION 5.** An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Ordinances of the City of Lancaster, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

**SECTION 6.** That any person, firm, or corporation violating any provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the City of Lancaster, as heretofore amended and upon conviction shall be punished by a fine not exceeding \$500.00. The penalty imposed for a violation of this ordinance shall not exceed or be less than the penalty prescribed by state law, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 7.** That this ordinance shall take effect immediately from and after its passage as the law and charter in such cases provide.

**PASSED AND APPROVED ON THIS THE 14<sup>th</sup> DAY OF MARCH 2011.**

**APPROVED:**

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

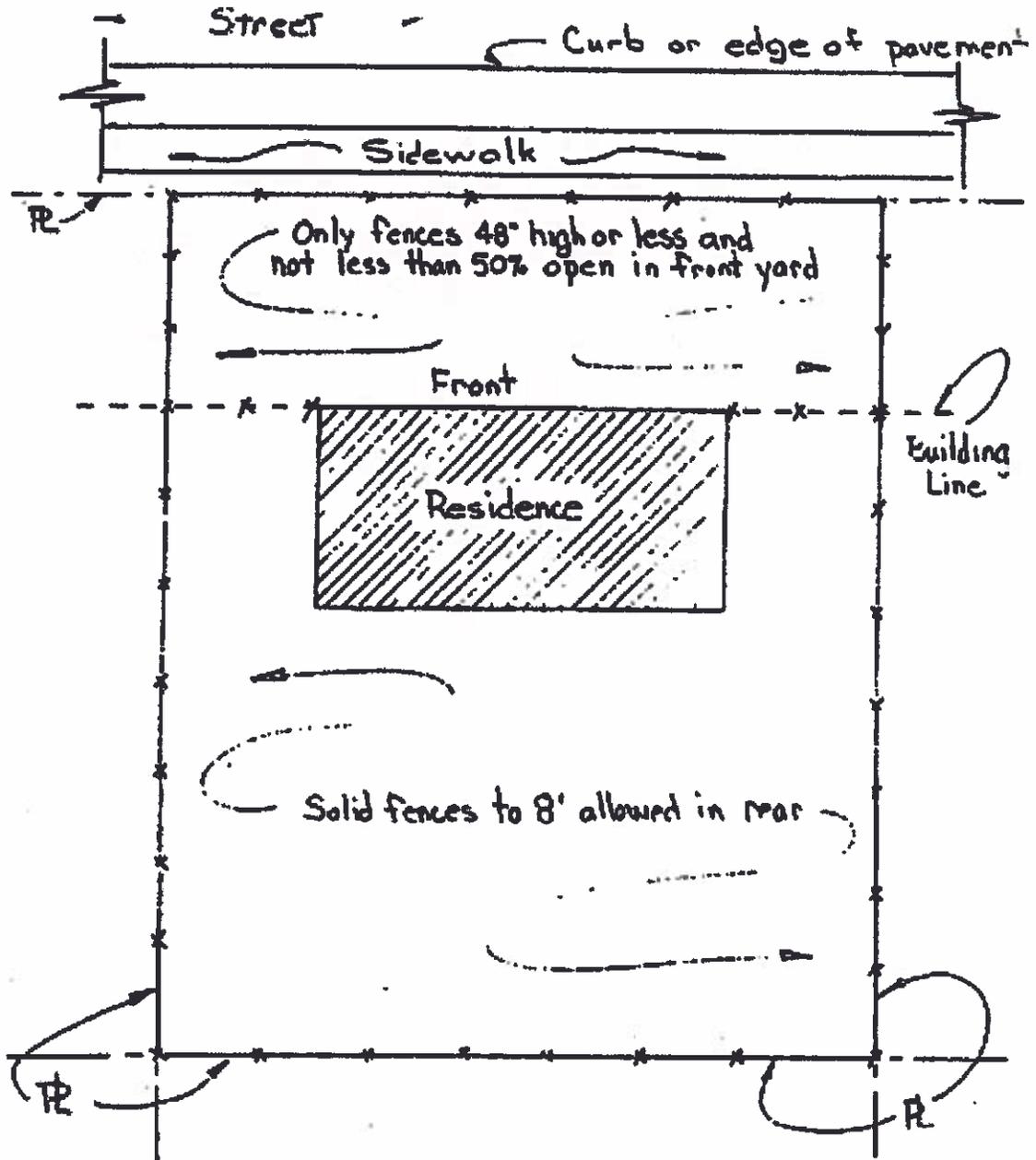
**ATTEST:**

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DOLLE K. DOWNE, CITY SECRETARY

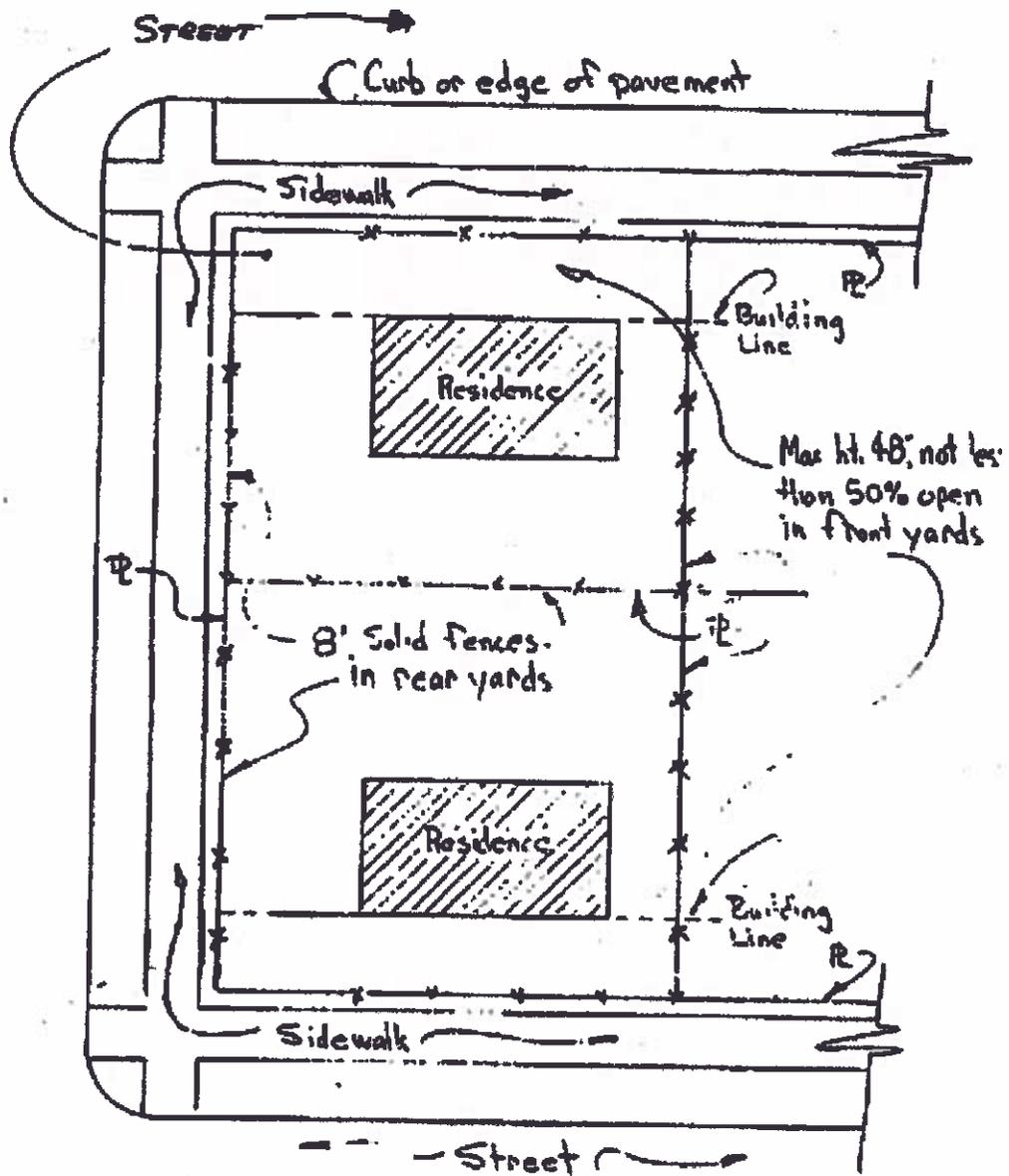
**APPROVED AS TO FORM AND LEGALITY:**

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

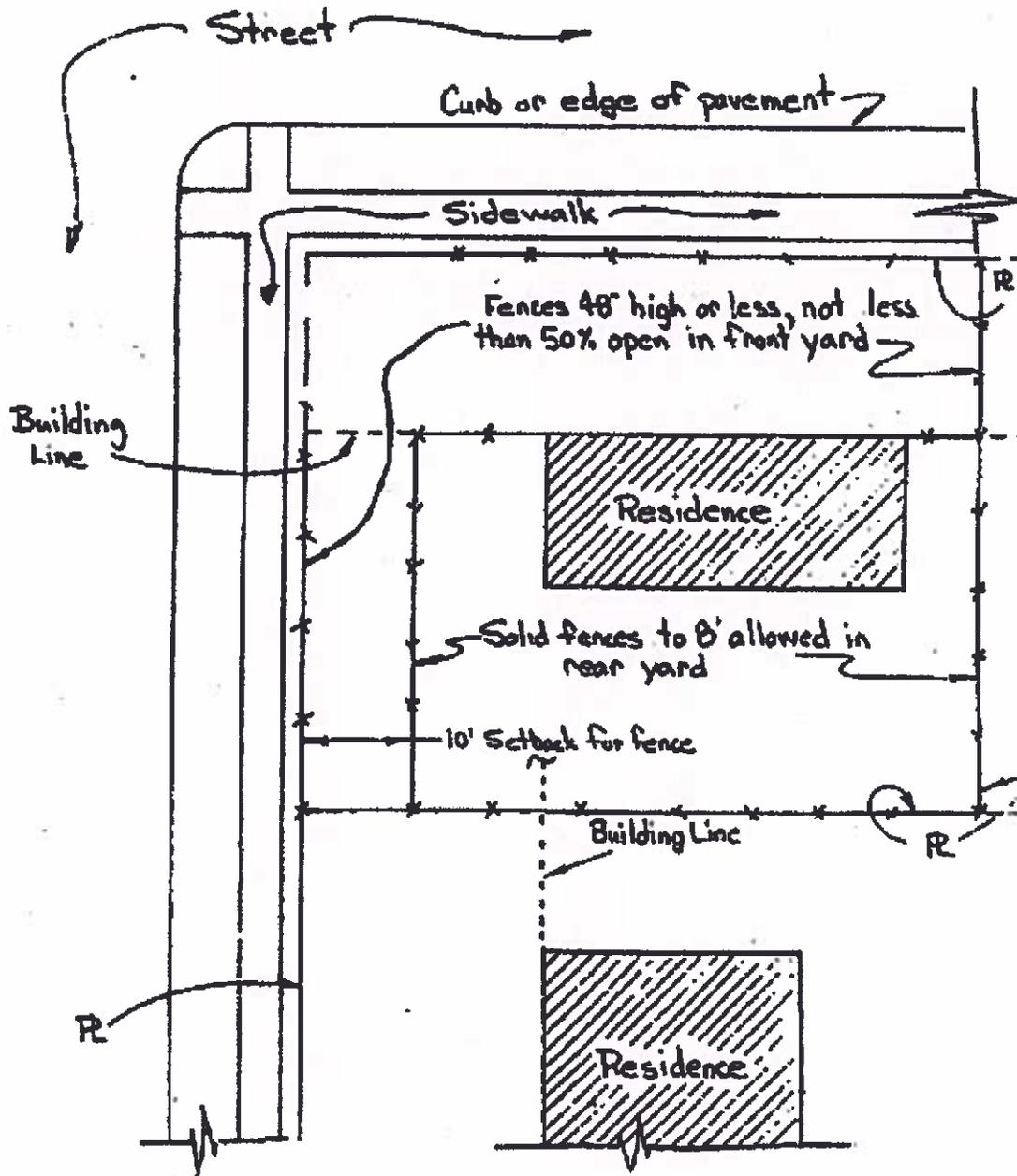
ILLUSTRATIONS



Interior Lot Figure #1



Corner Lot Figure #2



Reverse Frontage Lot Figure #3

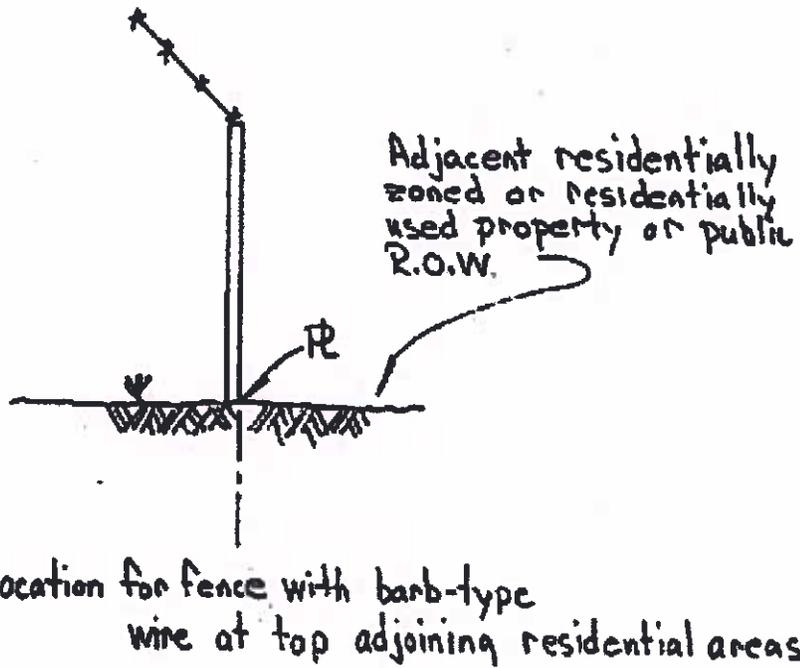
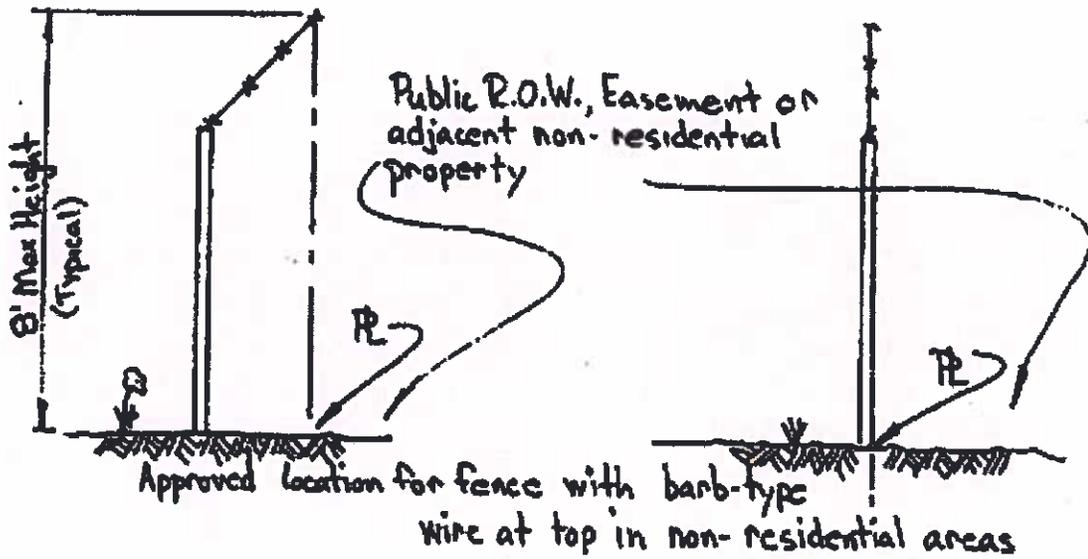
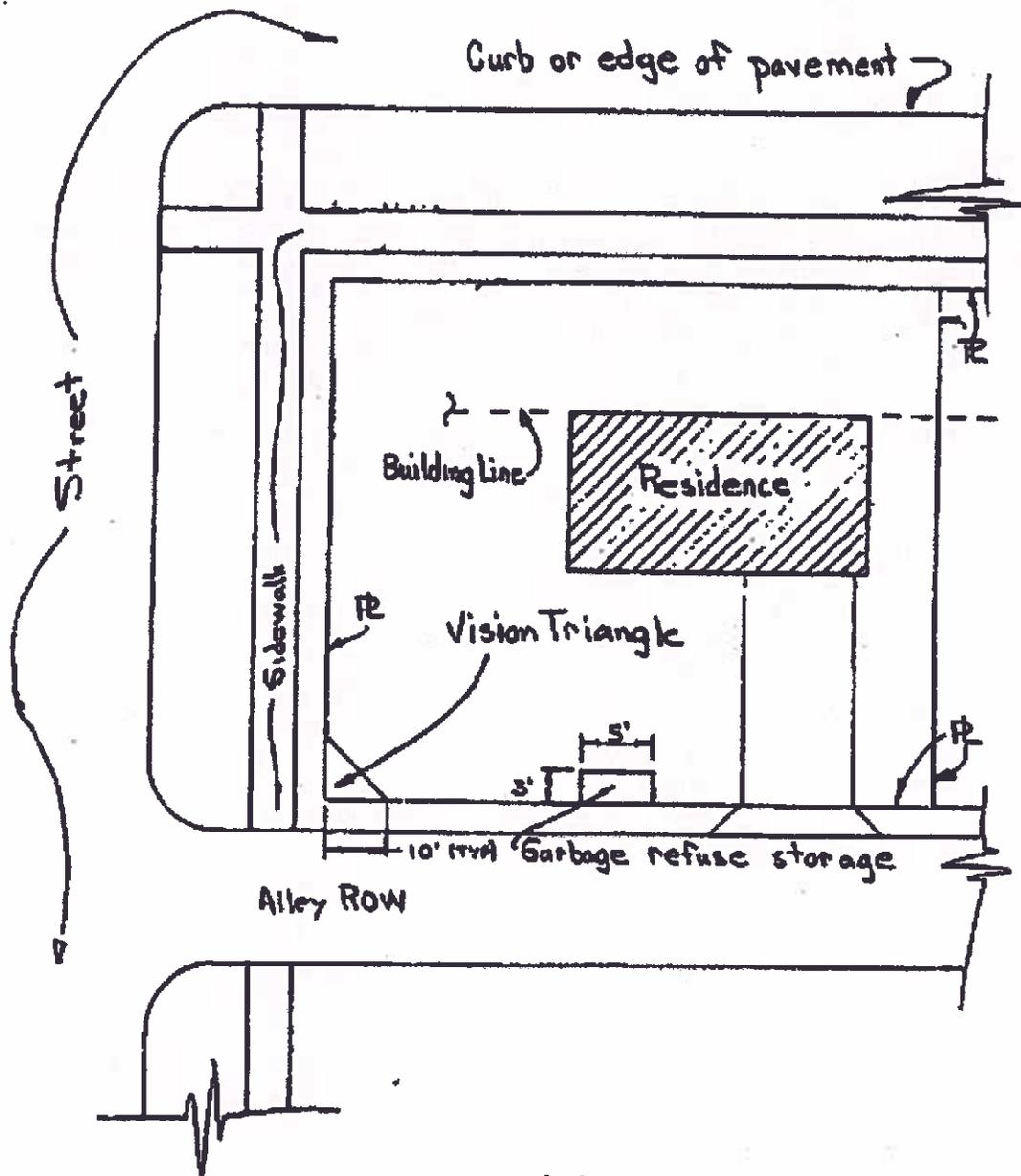


Figure #4



1) Vision Triangle - Alley Int

2) Garbage Receptacle Detail

Figure #5

**LANCASTER CITY COUNCIL**  
Agenda Communication for  
March 14, 2011

**7**

AG11-007

**Discuss and consider a resolution of the City Council of the City of Lancaster, Texas, approving the name “Smokler Moo Meadows” for the designated park property located along Ten Mile Creek adjacent to Lancaster Regional Airport; providing a repealing clause; providing a severability clause; and providing an effective date.**

**This request supports the City Council 2010-2011 Policy Agenda.**

**Goal 5: Sound Infrastructure**

**Background**

In 2009 the City of Lancaster had plans to extend Runway 13/31 by 1,500 feet to the south in accordance with the Airport Master Plan and the federally funded airport capital improvement program. The project impacted the former Smokler property within FAA defined protection areas, specifically a Runway Protection Zone (RPZ). A RPZ is required at both ends of a runway per federal aviation regulations.

Due to the plan to extend the runway to the south, the RPZ would be pushed onto private property south of Ferris Road. The FAA and TXDOT require the airport to own the land identified in the RPZ. Therefore, negotiations began and the City purchased the Smokler property, signed and agreed on April 29, 2010.

The flood plain area (100.6 acres) adjacent to Ten Mile Creek owned by the Smokler family was not desired or purchased. The Smoklers donated this property to the City contingent upon having naming rights (Article 2, Section 2.2 of Contract of Purchase and Sale in Lieu of Eminent Domain).

On February 21, 2011, Park and Recreation Advisory Board members were presented with the recommended name per the Contract of Purchase and Sale. The Park and Recreation Advisory Board approved the name with majority vote and recommends City Council consideration.

**Considerations**

- **Operational** - There are no plans to develop this area due to FAA Runway Protection Zone requirements. This area will be classified as an open space (natural area). Annual maintenance will take place on an “as needed” basis. Currently, pursuant to a separate lease agreement approved by City Council, Jim Tom Roddy has an agricultural lease for the purpose of grazing of livestock and production of crops and grasses.
- **Legal** – The City Attorney has approved the resolution as to form.
- **Financial** – There is no financial impact to the City in naming the park property.
- **Public Information** - There are no public information requirements.

**Recommendation**

Staff recommends approval of the resolution naming the park property as presented.

**Attachments**

- Resolution
- Exhibit A - Aerial photo of purchased and donated land
- Smokler written request for naming of park property
- Contract of Purchase and Sale in Lieu of Eminent Domain
- Draft Parks and Recreation Advisory Board Meeting Minutes – February 21, 2011  
(reference agenda item #4)

**Prepared and submitted by:**  
Sean D. Johnson, Director of Parks and Recreation

**Date:** March 2, 2011

**RESOLUTION NO. 2011-03-21**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE NAME “SMOKLER MOO MEADOWS” FOR THE DESIGNATED PARK PROPERTY LOCATED ALONG TEN MILE CREEK ADJACENT TO LANCASTER REGIONAL AIRPORT AS DEPICTED IN EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster desires to provide park property and facilities for the enjoyment, health and welfare of the citizens of Lancaster; and

**WHEREAS**, the Smokler family, in accordance with the terms and conditions of the Contract of Purchase and Sale in Lieu of Eminent Domain dated April 29, 2010, desires to donate 100.6 acres in the flood plain area along Ten Mile Creek adjacent to the Lancaster Regional Airport to the City of Lancaster, contingent upon naming rights; and

**WHEREAS**, the Smokler family has made a written request to name the donated park property “Smokler Moo Meadows”; and

**WHEREAS**, the City of Lancaster has appointed a Parks and Recreation Advisory Board for the purposes of advising the City Council on matters related to the provision of Parks and Recreation facilities; and

**WHEREAS**, the City of Lancaster Parks and Recreation Advisory Board has reviewed and recommends the name of “Smokler Moo Meadows” for said park property;

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

**SECTION 1.** That the City Council hereby approves the name of “Smokler Moo Meadows” for said donated land of 100.6 acres in the flood plain along Ten Mile Creek adjacent to the Lancaster Regional Airport, as depicted in Exhibit A, attached hereto and incorporated herein by reference for all purposes.

**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 APPROVED** by the City Council of the City of Lancaster, Texas, on this the 14<sup>th</sup> day of March 2011.

**APPROVED:**

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MARCUS E. KNIGHT, MAYOR

**ATTEST:**

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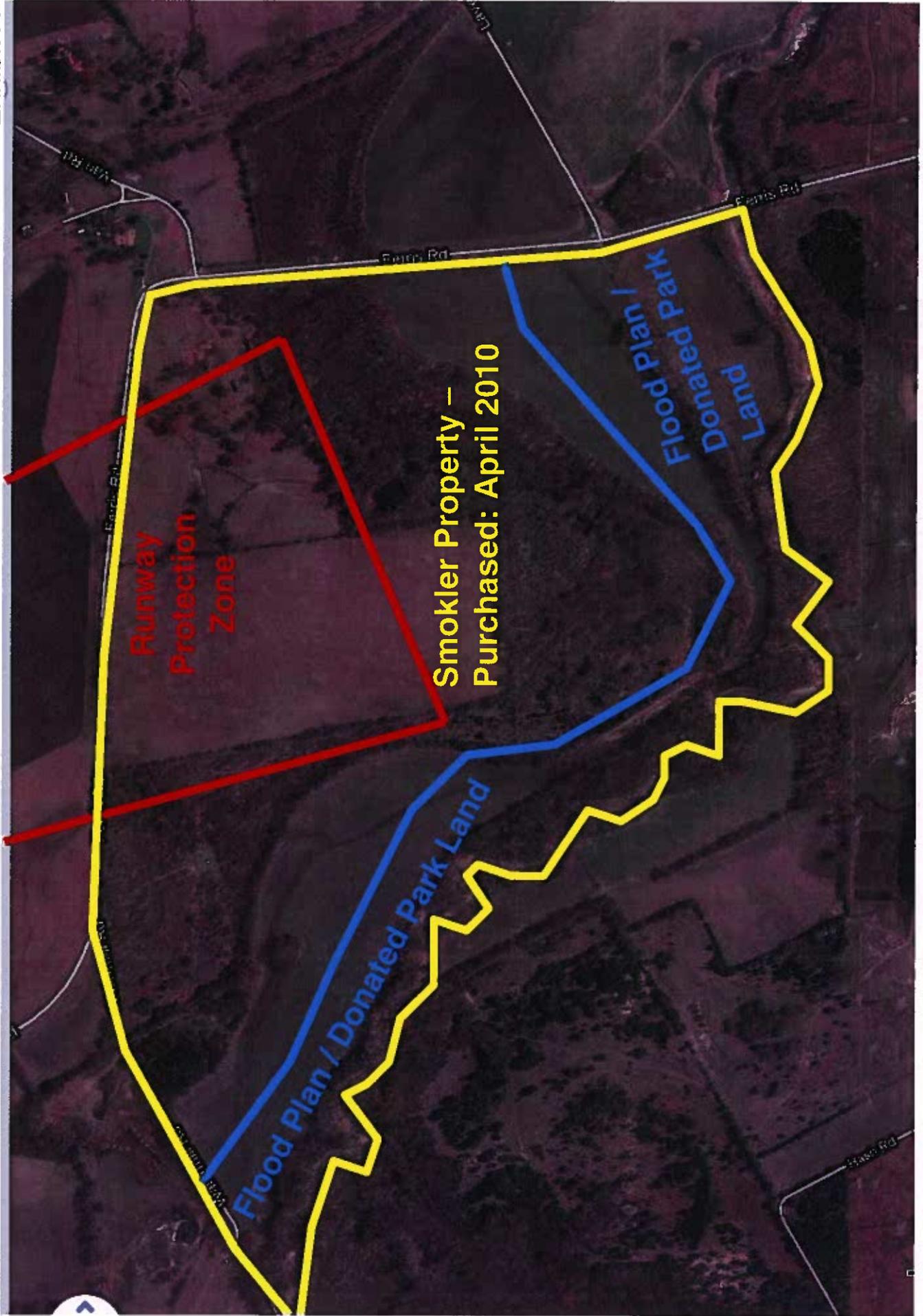
DOLLE K. DOWNE, CITY SECRETARY

**APPROVED AS TO FORM:**

---

ROBERT E. HAGER, CITY ATTORNEY

Exhibit A



**"Smokler Moo Meadows"**

100.6 acres—Located adjacent to the Lancaster Airport and Ten Mile Creek

This land is being donated by a family representing 5 generations of Gage and Smokler's in the Lancaster area. These families were involved in more than 90 years of breeding Registered Holstein dairy cattle. The herd was known worldwide as Holtex Farm. Mooing still echoes in the rolling meadows!

We hope this park offers generations to come much enjoyment.

A handwritten signature in black ink, reading "David G. Smokler". The signature is written in a cursive style and is positioned above a horizontal line.

David G. Smokler and Family

February 25, 2011

**CONTRACT OF PURCHASE AND SALE  
IN LIEU OF EMINENT DOMAIN**

THIS CONTRACT OF PURCHASE AND SALE IN LIEU OF EMINENT DOMAIN (“**Contract**”) is made and entered into as of the (the “**Effective Date**”), by and between RSS Enterprises, L.L.C., general partner of HTX Farms, L.P., David Smokler, and Rosemary Smokler (collectively “**Seller**”), and the City of Lancaster, a Texas Home-Rule Municipality (“**Buyer**”).

**RECITALS:**

A. Seller owns certain real property (the “**Property**”) located along Ferris Road, Lancaster, Dallas County, Texas, containing 185 acres, more or less, in the aggregate, more particularly described in Section 1.1 of this Agreement.

B. The City of Lancaster desires to purchase the Property for expansion of the Lancaster Municipal Airport’s infrastructure and attendant uses and for park and recreation development.

C. Seller desires to donate approximately 100.6 acres of the 185 +/- acres of property to the City for public use and has agreed to sell the remaining portion of the Property to Buyer.

D. Buyer desires to accept the donation of approximately 100.6 acres and has agreed to purchase the remaining 85 +/- acres of Property on the terms and conditions hereinafter set forth.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer covenant and agree as follows.

**ARTICLE 1.**

**GIFT AND AGREEMENT OF PURCHASE AND SALE**

1.1. Agreement to Accept Gift and Purchase Remaining Property. Subject to the terms and provisions of this Contract, Seller agrees to donate 100.6 (+/-) acres of land and to sell 85 (+/-) acres of land for a total conveyance to Buyer of a 185.062 (+/-) acre tract of land (referred to hereafter as the “**Property**”) more particularly described on Exhibit “A,” and Buyer agrees to accept the donation and purchase 85 (+/-) acres to acquire the Land from Seller, as well as all of Seller’s right, title and interest in and to any rights, benefits, privileges, easements, tenements, hereditaments, appendages and appurtenances thereon or in any way appertaining thereto, and any right, title, and interest of Seller in and to adjacent streets, alleys, and rights-of-way.

1.2. Reservation of Oil, Gas, and Other Minerals. The gift and sale of the Property shall not include the conveyance to Buyer of any interest in the oil, gas, and other minerals

beneath the Property, it being the intent to reserve to and for the Seller, its successors and assigns forever all oil, gas, and other minerals in and/or under the Property, including without limitation, all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature lying in and/or under the surface of the Property, and all production and other benefit that may arise from the Property; provided however, Seller on behalf of itself, and its successors and assigns, agrees to waive any and all rights of access to enter upon the surface of the Property to test, drill, develop, produce or market the oil, gas and other minerals underlying the surface of the Property; but the Seller, for itself and its successors and assigns, retains (a) the right to access the subsurface of the Property by directional or horizontal drilling and other mining processes which do not affect the surface of the Property or any piping, equipment, structures or improvements located thereon, and (b) the right to pool or unitize the Property with other tracts for the production of oil, gas or other minerals, provided no surface activities are conducted on the surface of the Property.

**ARTICLE 2.**  
**PURCHASE PRICE**  
**AND INDEPENDENT CONTRACT CONSIDERATION**

2.1. Purchase Price. The Purchase Price (so called in this Contract) to be paid by Buyer to Seller for the Property at Closing (defined in Section 7.1) is the amount of:

ONE MILLION, TWO HUNDRED SEVENTY-ONE THOUSAND, SIX HUNDRED TWENTY FIVE AND NO/100 DOLLARS (\$1,271,625.00), payable to RSS Enterprises, LLC; and

THREE THOUSAND, THREE HUNDRED SEVENTY FIVE AND NO/100 DOLLARS (\$3,375.00), payable to David Smokler and Rosemary Smokler

2.2 Naming of Area for Park Dedication. Buyer agrees to permit David Smokler, and his wife, Rosemary Smokler, to name the area dedicated for park and recreation purposes after a family member, which designation shall be made in writing and delivered to Buyer not later than one (1) year following the Closing Date. This Section 2.2 shall survive the Closing; however, in the event the Smoklers fail to make such naming designation within the time required, Buyer's obligation pursuant to this Section 2.2 shall terminate.

**ARTICLE 3.**  
**TITLE AND SURVEY**

3.1. Title. Seller shall deliver unencumbered title to Buyer at Closing, subject to any permitted exceptions set forth in the Special Warranty Deed. Seller shall be liable for any existing encumbrances or any encumbrances arising after Closing as a result of the actions of the Seller. Buyer acknowledges and represents that it has previously obtained a survey and a title commitment relating to the Property, has reviewed the survey and title commitment, and has no objections with respect to the survey or state of title. The terms of this Section 3.1 shall survive the Closing.

**ARTICLE 4.**  
**REPRESENTATIONS, WARRANTIES, COVENANTS, AND**  
**AGREEMENTS OF SELLER**

4.1. Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer as of the Effective Date and as of the Closing Date (defined in Section 6.1):

(a) Seller, at the Closing Date, shall have the full right, power, and authority to sell and convey the Property to Buyer as provided in this Contract and to carry out its obligations hereunder, and all required action necessary to authorize Seller to enter into this Contract and to carry out its obligations hereunder will have been taken.

(b) Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing Seller's inability to pay its debts as they come due, or (vi) made an offer of settlement, extension, or composition to its creditors generally.

(c) Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

4.2. Survival. The representations and warranties of Seller in this Contract shall survive the Closing.

4.3. DISCLAIMER. BUYER AND SELLER ACKNOWLEDGE THAT THEY ARE SOPHISTICATED PARTIES EXPERIENCED IN THE PURCHASE AND SALE OF REAL ESTATE. EXCEPT FOR THE SPECIAL WARRANTY OF TITLE TO BE CONTAINED IN SELLER'S DEED AND THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE 4, THE PROPERTY WILL BE CONVEYED AND TRANSFERRED TO BUYER "AS IS, WHERE IS, AND WITH ALL FAULTS." SELLER DOES NOT WARRANT OR MAKE ANY REPRESENTATION, EXPRESS OR IMPLIED, AS TO ITS FITNESS FOR A PARTICULAR PURPOSE, MARKETABILITY, DESIGN, QUANTITY, QUALITY, LAYOUT, FOOTAGE, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS; OR THE FITNESS OF THE PROPERTY FOR BUYER'S PLANNED USE. EXCEPT FOR LIABILITY ARISING OUT OF THE INACCURACY OF THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS CONTRACT, SELLER SHALL BE DEEMED TO BE AUTOMATICALLY RELEASED BY BUYER AND ITS SUCCESSORS AND ASSIGNS OF AND FROM ALL LIABILITIES, OBLIGATIONS AND CLAIMS, KNOWN OR UNKNOWN, THAT BUYER MAY HAVE AGAINST SELLER, OR THAT ARISE IN THE FUTURE BASED IN WHOLE OR IN PART UPON THE PRESENCE OF HAZARDOUS MATERIALS OR OTHER ENVIRONMENTAL CONTAMINATION ON, WITHIN, OR MIGRATING FROM THE LAND (INCLUDING, WITHOUT LIMITATION, CLAIMS ASSERTED UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE SOLID WASTE DISPOSAL ACT, THE CLEAN WATER ACT, THE CLEAN AIR ACT, THE TOXIC SUBSTANCES CONTROL ACT, THE SAFE DRINKING WATER

ACT, THE TEXAS HEALTH AND SAFETY AND WATER CODES, OR IN THE REGULATIONS PROMULGATED PURSUANT THERETO, OR IN ANY OTHER FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW, ORDINANCE, RULE OR REGULATION). THE PROVISIONS OF THIS SECTION 4.3 SHALL SURVIVE THE CLOSING.

4.4. Conditions to Buyer's Obligations. Buyer's obligations to close the purchase and sale of the Property under this Contract are conditioned upon the representations and warranties set out in Section 4.1 being true and correct in all material respects on the date of the Closing.

**ARTICLE 5.**  
**REPRESENTATIONS, WARRANTIES,**  
**COVENANTS, AND AGREEMENTS OF BUYER**

5.1 Representations and Warranties of Buyer. Buyer representation and warrants to Seller as of the Effective Date and as of the Closing Date that Buyer has the full right, power, and authority to purchase the Property and Property from Seller as provided in this Contract and to carry out its obligations hereunder, and all required action necessary to authorize Buyer to enter into this Contract and to carry out its obligations hereunder has been taken or will be taken by the Closing Date.

5.2 Conditions to Seller's Obligations. Seller's obligations to close the purchase and sale of the Property under this Contract are conditioned upon the representations and warranties set out in Section 5.1 being true and correct in all material respects on the date of the Closing. If through no fault of Seller, the Seller is unable to acquire title to the Property, then Seller shall notify Buyer and this Contract shall automatically terminate and the parties shall have no further liabilities one to the other hereunder, except as they may mutually agree by amendment of this Agreement.

**ARTICLE 6.**  
**CLOSING**

6.1. Date and Place of the Closing. The closing of the purchase and sale contemplated by this Contract (the "Closing") shall occur on or before April 30, 2010, at a time mutually agreed to by Seller and Buyer in the offices of Stewart Title Company, 428 West Pleasant Run Road, Lancaster, TX 75146-1568 ("Title Company"), or at such other location as the parties may mutually agree in writing. The date upon which the Closing actually takes place is also referred to herein as the "Closing Date."

6.2. Items to be Delivered at the Closing.

(a) By Seller. At each Closing, Seller shall deliver to Buyer each of the following items with respect to the Property:

(i) At Closing, a special warranty deed, in the form substantially as set forth in Exhibit "B" attached hereto and made a part hereof, duly executed and acknowledged by Seller, and in form for recording, conveying good and indefeasible title to the applicable portion

of the Property to Buyer ("**Special Warranty Deed**"). The Special Warranty Deed shall be recorded at Closing in the Official Public Records of Dallas County, Texas;

- (ii) A non-foreign status certificate;
- (iii) Such documents as may reasonably be requested by the Title Company in order to effect the transactions contemplated under this Contract; and
- (iv) All additional documents and instruments which Buyer's counsel and Seller's counsel may mutually and reasonably determine are necessary to the proper consummation of this transaction.

(b) By Buyer. At Closing, Buyer shall deliver to Seller each of the following items with respect to the Property:

- (i) The Purchase Price, in immediately available funds, as set forth in Section 2.1.
- (ii) Such documents as may reasonably be requested by the Title Company in order to effect the transactions contemplated under this Contract.
- (iii) All additional documents and instruments which Buyer's counsel and Seller's counsel may mutually and reasonably determine are necessary to the proper consummation of this transaction.

(c) Title Policy. At the Closing, the Title Company shall issue a TLTA Standard Form of Owner's Policy of Title Insurance (the "**Title Policy**"), or mark up the Title Commitment (as hereinafter defined) to the Closing Date, in the amount of the Purchase Price plus the value of the donation, insuring Buyer's fee title to the portion of the Property conveyed, subject only to non-delinquent property taxes, those matters shown as exceptions to title in the Title Commitment to be delivered by the Title Company.

6.3. Adjustments at the Closing. Notwithstanding anything to the contrary contained herein, the provisions of this Section shall survive the Closing. The following items shall be adjusted or prorated between Seller and Buyer at the Closing:

(a) Ad valorem taxes relating to the Property for the calendar year in which the Closing Date occurs shall be prorated between Seller and Buyer as of the Closing Date, based upon the best available estimates of the amount of taxes that will be due and payable on the Property during such calendar year. As soon as the amount of taxes and assessments on the Property for such year is known, Seller and Buyer shall readjust the amount of taxes to be paid by each party, with the result that Seller shall pay for those taxes attributable to the period of time prior to the Closing Date. The Special Warranty Deed to Buyer shall recite that Seller will assume all taxes for the year of Closing.

(b) All other assessments relating to the Property for the calendar year in which the Closing Date occurs shall be paid by Seller.

(c) Buyer shall be responsible for payment of roll-back taxes and interest, if any, allocable to the Property for any period prior to Closing assessed by reason of transfer or change of use of the Property, and such taxes and interest shall be paid as assessed. This provision shall survive the Closing.

6.4. Possession and Closing. Possession of the Property being conveyed shall be delivered to Buyer by Seller at Closing.

6.5. Costs of Closing.

(a) Seller's Costs. Seller shall pay any of Seller's attorneys' fees or other expenses incurred in connection with this gift and purchase and sale and all costs related to the release of any deed of trust liens, if any, existing on the Property and to be released at Closing.

(b) Buyer's Costs. Buyer shall pay the following (collectively, "Buyer's Closing Expenses"): (i) the cost of the basic premium for the Title Policy, as well as any modifications of or endorsements thereto; (ii) recording fees for the Deed; and (iii) all escrow charges of the Title Company.

#### **ARTICLE 7. DEFAULTS AND REMEDIES**

In the event a party to this Contract is in default of a material provision of this Contract, and that party has failed to cure said default on or before the tenth (10<sup>th</sup>) day following receipt of written notice of default by the non-defaulting party, the sole remedy of the non-defaulting party is to terminate this Contract; provided, however, in no case shall the termination of this Contract pursuant to this provision be construed as a bar to Buyer exercising the power of eminent domain to acquire the Property.

#### **ARTICLE 8. BROKERAGE COMMISSIONS**

Seller hereby represents and warrants to Buyer that it has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, and that it has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any party with respect to the transaction contemplated hereby. Buyer hereby represents and warrants to Seller that Buyer has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction, and that it has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any party with respect to the transaction contemplated hereby. Buyer and Seller both acknowledge that any agreement with any real estate broker, agent, finder or any other party in connection with this transaction, or any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any party with respect to this transaction shall result in damages to the other party and that party shall have all available legal remedies, including pursuing a suit for recovery of damages.

**ARTICLE 9.  
MISCELLANEOUS**

9.1. References. All references to Article, Articles, Section, or Sections contained herein are, unless specifically indicated otherwise, references to Articles and Sections of this Contract.

9.2. Captions. The captions, headings, and arrangements used in this Contract are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

9.3. Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

9.4. Notices. Any notice, consent, approval, request, demand, or payment required or permitted to be given or made between the parties to this Contract (collectively called "Notices") must be in writing to be effective. Any Notice that is addressed to the party for whom it is intended at its address specified for the receipt of Notices (which is currently the address set forth below) will be deemed to have been given or made upon actual receipt after it is deposited in the United States mail, postage prepaid, certified, return receipt requested. Any party may change its address for the receipt of Notices by Notice in accordance with this Section. Notices given otherwise than in accordance with this Section, such as by facsimile or by overnight delivery, will be effective upon receipt. The current addresses of the parties for Notices are as follows:

If to Buyer:

City of Lancaster  
211 North Henry Street  
P.O. Box  
Lancaster, Texas 75146  
Attention: Opal Mauldin-Robertson  
Telephone: 972-218-1300  
Facsimile: 972-218-1399

With a copy to:

Robert E. Hager  
NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.  
1800 Lincoln Plaza  
500 N. Akard  
Dallas, Texas 75201  
Telephone: 214-965-9900  
Facsimile: 214-965-0010

If to Seller:

David Smoklen  
2623 Van Road  
Lancaster, Texas 75146  
Telephone: \_\_\_\_\_ 6117  
Facsimile: \_\_\_\_\_

With a copy to:

Steven H. Phelps, PLLC  
10,000 N Central Expressway, Suite 850  
Dallas, Texas 75231  
Telephone: 214-373-0880  
Facsimile: 214-373-3239

9.5. Governing Law; Venue. This Contract is being executed and delivered, and is intended to be performed, in the State of Texas, and the laws of such State shall govern the validity, construction, enforcement, and interpretation of this Contract, unless otherwise specified herein. The parties agree that exclusive venue for any action brought for breach of this Contract shall lie in Dallas County, Texas.

9.6. Multiple Counterparts. This Contract may be executed in any number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart.

9.7. Parties Bound. This Contract shall be binding upon, and inure to the benefit of, Seller and Buyer, and their respective heirs, personal representatives, successors, and assigns.

9.8. Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by Seller and Buyer, Seller and Buyer agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Closing or after the Closing any and all such further acts, deeds, and assurances as may be necessary to consummate the transactions contemplated hereby.

9.9. Time of the Essence. It is expressly agreed by the parties hereto that time is of the essence with respect to this Contract.

9.10. Dates. Each date upon which an event is to occur or a period of time is to expire in accordance with the terms of this Contract will automatically be postponed and extended to the next Business Day if it falls on a Non-Business Day, and any time periods that are defined terms in this Contract will be automatically extended, and their definitions will include such extensions, in accordance with this Section. A "Business Day" is a day upon which national banks in Dallas, Texas, are open for banking business, and a "Non-Business Day" is a day upon which national banks in Dallas, Texas, are not open for banking business.

9.11. Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Contract or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees incurred in such suit.

9.12. Entire Agreement, Amendment. This Contract, together with all exhibits hereto and documents referred to herein, if any, constitutes the entire arrangements and understandings among the parties hereto. This Contract may not be amended, modified, changed or supplemented, nor may any obligations hereunder be waived except by a writing signed by the party to be charged or by its agent duly authorized in writing or as otherwise permitted herein.

9.13. Severability. Whenever possible, each provision of this Contract and every related document shall be interpreted in such manner as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Contract.

9.14. Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Contract shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party. However, the party for whose unilateral benefit a condition is herein inserted shall have the right to waive such condition.

9.15. Assignment. Except as expressly permitted by this Section, neither party may assign this Contract without the prior written consent of the other party, which may be given or withheld in the non-assigning party's sole and absolute discretion. Any such prohibited assignment shall be void. Notwithstanding the foregoing prohibition, either party may assign this Contract without the other party's consent to an Affiliate of the assigning party. Subject to the foregoing, this Contract shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. For the purposes of this Section, the term Affiliate means (a) an entity that directly or indirectly controls, is controlled by or is under common control with a party or (b) an entity at least a majority of whose economic interest is owned by a party or which owns a party; and the term control means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

9.16. Disclaimer of Third Party Benefit. This Contract is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

9.17. List of Exhibits. All references to Exhibits contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes. The following is a list of exhibits for convenience only:

Exhibit "A"	Legal Description
Exhibit "B"	Form of Special Warranty Deed

9.18 Effective Date. This Contract shall be effective on the date it bears the signatures of the authorized representatives of the parties hereto ("the Effective Date").

**(Signatures on the Following Page)**

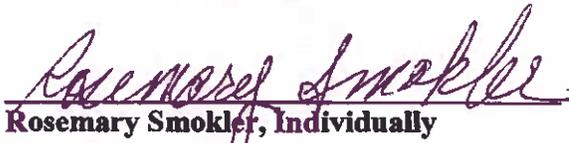
SIGNED AND AGREED this 29<sup>th</sup> date of April, 2010.

**SELLERS:**

**RSS Enterprises, LLC, a Texas limited liability company and general partner of HTX Farms, L.P.**

By:   
**David G. Smokler, President**

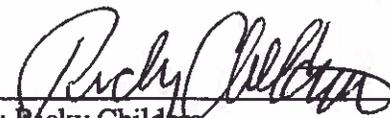
  
**David Smokler, Individually**

  
**Rosemary Smokler, Individually**

SIGNED AND AGREED this 29<sup>th</sup> date of April, 2010.

**BUYER:**

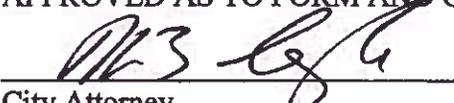
**CITY OF LANCASTER  
A TEXAS MUNICIPAL CORPORATION**

By:   
Name: Ricky Childers  
Title: City Manager

**ATTEST:**

  
City Secretary

**APPROVED AS TO FORM AND CONTENT:**

  
City Attorney

The undersigned acknowledges receipt of this Contract, fully executed by Buyer and Sellers with all additions and changes initialed, if any, by Buyer and Sellers. The Escrow Agent further acknowledges and agrees to accept and be bound by the role described for it in this Contract.

STEWART TITLE NORTH  
TEXAS DIVISION

By: Ray Fields  
Name: RAY FIELDS  
Title: ESCROW OFFICER  
Date: APRIL 29, 2010

## EXHIBIT "A"

### DESCRIPTION OF THE PROPERTY

**TRACT I:** BEING A 4.771 ACRE (207,834 SQUARE FEET) TRACT OF LAND SITUATED IN THE DAVID GARNER SURVEY, ABSTRACT NUMBER 530, DALLAS COUNTY, TEXAS; AND BEING OUT OF THE REMAINDER OF A CALLED 261.305 ACRE TRACT OF LAND CONVEYED TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, L.P. AND RECORDED IN VOLUME 96179, PAGE 02857, DEED RECORDS DALLAS COUNTY, TEXAS, (D.R.D.C.); SAID 4.771 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point (from which a found 1/2 inch iron rod bears South 59° 11' West, 0.25 feet) on the northerly right of way line of Lancaster Ferris Road (60 feet wide conveyed to County of Dallas, recorded in Volume 2157, Page 111, D.R.D.C. ), in the westerly line of said 261.305 acre tract, and the herein described tract, being the southwest corner of a tract of land conveyed to the City of Lancaster, recorded in Dallas County Clerk's File Number 931748, Volume 89015, Page 3426, D.R.D.C. and Volume 86228, Page 1434 D.R.D.C.;

- 1.) THENCE, North 59° 11' 07" East, along the common line of City of Lancaster tract, and said 261.305 acre tract, a distance 267.45 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an external ell corner of said 261,305 acre tract, and the herein described tract;
- 2.) THENCE, South 40° 41' 59" East, continuing along the common line of City of Lancaster tract, and said 261.305 acre tract, a distance of 162.80 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an internal corner of said 261.305 acre tract of land and the herein described tract;
- 3.) THENCE, North 49° 18' 01" East, continuing along the common line of City of Lancaster tract, and said 261.305 acre tract, a distance of 145.83 feet to a 3/8 inch iron rod with a Landtech Consultants cap set in the southwesterly line of the proposed Runway Protection Zone (RPZ) for the north corner of the herein described tract;
- 4.) THENCE, South 32° 08' 00" East, along the southwesterly line of said proposed RPZ, a distance of 576.88 feet to a 3/8 inch iron rod with a Landtech Consultants cap set on the north right of way line of said Lancaster Ferris Road for the east corner of the herein described tract;
- 5.) THENCE, South 89° 18' 58" West, along the north right of way line of said Lancaster Ferris Road, a distance of 123.68 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the point of curvature of a curve to the right;

- 6.) THENCE, in a northwesterly direction along north right of way line of said Lancaster Ferris Road, on said curve to the right with a radius of 692.66 feet, a central angle  $59^{\circ} 26' 16''$ , an arc length of 718.56 feet, a chord bearing of North  $60^{\circ} 57' 55''$  West and a distance of 686.77 feet, to a 3/8 inch iron rod with a Landtech Consultants cap set for the point of tangency;
- 7.) THENCE, North  $31^{\circ} 14' 47''$  West, along the north right of way line of said Lancaster Ferris Road, a distance of 56.13 feet to the POINT OF BEGINNING containing 4.771 acres (207,834 square feet) of land.

**TRACT II:** BEING A 180.066 ACRE (7,843,676 SQUARE FEET) TRACT OF LAND SITUATED IN THE DAVID GARNER SURVEY, ABSTRACT NUMBER 530 AND THE JAMES COCHRAN SURVEY, ABSTRACT NUMBER 354, DALLAS COUNTY, TEXAS, AND BEING OUT OF A REMAINDER OF A CALLED 261.305 ACRE TRACT OF LAND CONVEYED TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, L.P. AND RECORDED IN VOLUME 96179, PAGE 02857, OF THE DEED RECORDS DALLAS COUNTY, TEXAS (D.R.D.C.), AND ALL OF A CALLED 38,178 ACRE TRACT OF LAND CONVEYED FROM HELEN HENRY HASH TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, AND RECORDED IN VOLUME 96223, PAGE 686, D.R.D.C.; SAID 180.066 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a found railroad spike in Watermill Road (now abandoned) and being the southwest corner of a tract of land conveyed to Jim Tom Roddy and recorded in Clerk File No. 200600392156 of the Official Public Records, Dallas County, Texas, (O.P.R.D.C.), same being the southeast corner of the Evelyn G. Roddy tract as recorded in Probate 91-0396-P2 of the Probate Court Number 2 of Dallas County, Texas;

1. THENCE, North  $59^{\circ} 09' 28''$  East, along the south line of said Jim Tom Roddy tract, a distance of 24.88 feet to a 1/2 inch iron rod found for an angle point;
2. THENCE, North  $79^{\circ} 27' 42''$  East, along the center line of said Watermill Road, and the south line of said Jim Tom Roddy tract, a distance of 521.40 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for corner on the south right of way line of Lancaster Ferris Road (60 feet wide recorded in Volume 2157, Page 111, D.R.D.C.), and being a non-tangent curve with a radius of 752.66 feet;
3. THENCE, in a easterly direction along said south right of way line of Lancaster Ferris Road, being a curve to the left having a radius of 752.66 feet, a central angle of  $11^{\circ} 52' 44''$ , an arc length of 156.05 feet, and a chord bearing of South  $84^{\circ} 44' 41''$  East, a distance of 155.77 feet, to a 3/8 inch iron rod with a Landtech Consultants cap set for the end of curve;
4. THENCE, North  $89^{\circ} 18' 58''$  East, along the south right of way line of said Lancaster Ferris Road, a distance of 160.38 feet to a 3/8 inch iron rod with a

Landtech Consultants cap set in the southwesterly line of the proposed Runway Protection Zone (RPZ) for an angle corner;

5. THENCE, South 32° 08' 00" East, along the southwesterly line of said proposed RPZ, a distance of 1,039.82 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle corner;
6. THENCE, North 49° 20' 10" East, a distance of 1,299.34 feet to a 3/8 inch iron rod with a Landtech Consultants cap set on the south right of way line of said Lancaster Ferris Road for an angle corner;
7. THENCE, South 85° 01' 52" East, along the south right of way line of said Lancaster Ferris Road, at 355.84 feet passing a 3/8-inch iron rod with Landtech Consultants cap in the northeast line of said proposed RPZ, in all a distance of 786.94 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for beginning of a curve to the right;
8. THENCE, in a southerly direction along the west, right of way line of said Lancaster Ferris Road, being a curve to the right having a radius of 157.10 feet, a central angle of 78° 30' 00", an arc length of 215.24 feet, and a chord bearing of South 45° 47' 31" East a distance of 198.80 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the end of curve;
9. THENCE, South 06° 32' 31" East, along the west right of way line of said Lancaster Ferris Road, a distance of 531.70 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
10. THENCE, South 00° 49' 19" East, along the west right of way line of said Lancaster Ferris Road, a distance of 201.00 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
11. THENCE, South 06° 32' 31" East, along the west right of way line of said Lancaster Ferris Road, a distance of 899.40 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the beginning of a curve to the left;
12. THENCE, in a southerly direction along the west right of way line of said Lancaster Ferris Road, being a curve to the left having a radius of 2,914.90 feet, a central angle of 04° 12' 42", an arc length of 214.26 feet, and a chord which bears South 08° 38' 51" East, 214.21 feet, to a 3/8 inch iron rod with a Landtech Consultants cap set for the southeast corner of the herein described tract, and in the north line of a tract of land conveyed to Dallas Power & Light Company, recorded in Volume 71124, Page 2669, of the D.R.D.C.;
13. THENCE, South 58° 59' 05" West, along the north line of said Dallas Power & Light Company tract, a distance of 1,896.76 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an ell corner;

14. THENCE, South 31° 59' 16" East, along the west line of said Dallas Power & Light Company tract of land, a distance of 50.59 feet to a 3/8 inch iron rod with a Landtech Consultants cap, set in the north line of a tract of land conveyed to Dallas Power & Light Company, recorded in Volume 72048, Page 2216, and Volume 71082, Page 1126 D.R.D.C.;
15. THENCE, South 58° 44' 17" West, along the north line of said Dallas Power & Light Company tract, a distance of 50.00 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
16. THENCE, South 74° 30' 55" West, continuing along the north line of said Dallas Power and Light Company tract, a distance of 282.84 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
17. THENCE, South 88° 52' 25" West, continuing along the north line of said Dallas Power and Light Company tract, a distance of 70.40 feet (called 67.09 feet) to a 3/8 inch iron rod with a Landtech Consultants cap set for the southeast corner of a tract of land conveyed to 944 South Lamar Associates, and recorded in Volume 84110, Page 6751 of the D.R.D.C., being the south corner of the herein described tract;
18. THENCE, North 28° 24' 03" West, along the east line of said 944 South Lamar Associates tract, a distance of 1,441.34 feet to a point in the center of Ten Mile Creek and being on the east line of a tract of land conveyed to Helen Henry Hash recorded in Volume 1062, Page 470, D.R.D.C.;
19. THENCE, following the meanders of the center of Ten Mile Creek and the east line of said Helen Henry Hash tract:

North 67° 19' 07" West, for a distance of 6.01 feet;  
 North 17° 42' 17" West, for a distance of 93.06 feet;  
 North 15° 47' 35" East, for a distance of 176.06 feet;  
 North 10° 46' 44" West, for a distance of 90.40 feet;  
 South 81° 59' 53" West, for a distance of 160.06 feet;  
 North 56° 26' 46" West, for a distance of 50.20 feet;  
 North 15° 09' 41" West, for a distance of 176.77 feet;  
 North 89° 20' 08" West, for a distance of 297.20 feet;  
 North 38° 43' 50" West, for a distance of 170.69 feet;  
 North 83° 25' 25" West, for a distance of 219.11 feet;  
 North 34° 41' 34" West, for a distance of 247.38 feet;  
 South 63° 49' 16" West, for a distance of 270.74 feet;  
 North 15° 01' 07" West, for a distance of 191.76 feet;  
 North 70° 01' 18" West, for a distance of 371.04 feet;  
 South 87° 07' 11" West, for a distance of 251.34 feet;  
 North 81° 26' 45" West, for a distance of 56.40 feet;

North 62° 25' 18" West, for a distance of 77.63 feet a point in center of an old road and the center of Ten Mile Creek;

North 25° 43' 44" West along the center of Ten Mile Creek a distance of 6.24 feet to a point in the south line of said Evelyn G. Roddy tract, same being the most westerly corner of herein described tract;

20. THENCE, North 58° 59' 47" East, along the south line of said Roddy Tract and the north line of herein described tract and the center of an old abandoned road a distance of 1,386.98 feet to the POINT OF BEGINNING and containing 180.066 acres (7,843,676 square feet) of land

**TRACT III:** BEING A 0.225 OF AN ACRE (9,813 SQUARE FEET) TRACT OF LAND SITUATED IN THE DAVID GARNER SURVEY, ABSTRACT NUMBER 530, DALLAS COUNTY, TEXAS, AND BEING OUT OF THE REMAINDER OF A CALLED 261.305 ACRE TRACT OF LAND CONVEYED TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, L.P. AND RECORDED IN VOLUME 96179, PAGE 02857, DEED RECORDS, DALLAS COUNTY, TEXAS, (D.R.D.C.), AND A 15 ACRE TRACT OF LAND CONVEYED TO DAVID SMOKLER AND WIFE, ROSEMARY SMOKLER, RECORDED IN VOLUME 96179, PAGE 02857, D.R.D.C. SAID 0.225 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a point on the northerly right of way line of Lancaster Ferris Road (60 feet wide recorded in Volume 2157, Page 111, D.R.D.C.), from which a found 1/2 inch iron rod bears South 59° 11' West, 0.25 feet in the westerly line of said 261.305 acre tract, being the southwest corner of a tract of land conveyed to the City of Lancaster, recorded in Dallas County Clerk's File Number 931748, Volume 89015, Page 3426, D.R.D.C. and Volume 86228, Page 1434 D.R.D.C.;

THENCE, North 59° 11' 07" East, along the common line said City of Lancaster tract, and said 261.305 acre tract, a distance 267.45 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an external ell corner of said 261.305 acre tract;

THENCE, South 40° 41' 59" East, continuing along the common line said City of Lancaster tract, and said 261.305 acre tract, a distance of 162.80 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an internal corner of said 261.305 acre tract of land;

THENCE, North 49° 18' 01" East, continuing along the common line said City of Lancaster tract, and said 261.305 acre tract, at a distance of 145.83 feet passing a 3/8 inch iron rod with a Landtech Consultants cap set in the southwest line of a proposed Runway Protection Zone (RPZ), in all distance of 934.30 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;

THENCE, North 59° 11' 06" East, continuing along the common line said City of Lancaster tract, and said 261.305 acre tract, a distance of 230.25 feet to a 3/8 inch iron rod with a Landtech Consultants cap set in the northeast line of said proposed RPZ for an angle point;

THENCE, South 49° 11' 41" East, along the northeast line of said proposed RPZ, a distance of 1,647.70 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the POINT OF BEGINNING and the north corner of the herein described tract;

1. THENCE, South 49° 11' 41" East, continuing along the northeast line of said RPZ, a distance of 155.91 feet to a 3/8 inch iron rod with a Landtech Consultants cap set on the north right of way line of said Lancaster Ferris Road for the east corner of the herein described tract;
2. THENCE, North 84° 57' 18" West, along the north right of way line of said Lancaster Ferris Road, a distance of 215.40 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for west corner of the herein described tract;
3. THENCE, North 49° 20' 10" East, a distance of 127.29 feet to the POINT OF BEGINNING containing 0,225 of an acre (9,813 square feet) of land.

All bearings are referenced to the Texas Coordinate System, North Central Zone (NAD 83).

**EXHIBIT B**  
**FORM OF SPECIAL WARRANTY DEED**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

**Date:** \_\_\_\_\_, 2010

**Grantors:** RSS Enterprises, LLC, General Partner of HTX Farms, L.P.; David Smokler, individually, and Rosemary Smokler, individually

**Grantors' Mailing Address:** Attn: David Smokler, 2623 Van Road, Lancaster, Texas 75146

**Grantee:** City of Lancaster, Texas, a Texas home-rule municipality

**Grantee's Mailing Address (including county):** City of Lancaster, Texas, 211 N. Henry Street, Lancaster, Texas 75146

**Consideration:** TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration.

**Property (including any improvements):**

**TRACT I:** A tract of land in the David Garner Survey, Abstract Number 530, Dallas County, Texas, and being 4.771 acres out of a remainder of a called 261.305 acre tract conveyed to RSS Enterprises, LLC, General Partner of HTX Farms, L.P., recorded in Volume 96179, Page 02857 of the Deed Records of Dallas County, Texas, said 4.771 acre tract being more particularly described in Exhibit "A," attached hereto and incorporated herein.

**TRACT II:** A tract of land in the David Garner Survey, Abstract Number 530, and the James Cochran Survey, Abstract Number 354, Dallas County, Texas, and being 180.066 acres of a called 261.305 acre tract conveyed to RSS Enterprises, LLC, General Partner of HTX Farms, L.P., recorded in Volume 96179, Page 02857 of the Deed Records of Dallas County, Texas, and of a called 38.178 acre tract of land conveyed from Helen Henry Hash to RSS Enterprises, LLC, General Partner of HTX Farms, L.P., and recorded in Volume 96233, Page 686 of the Deed Records of Dallas County, Texas, said 180.066 acre tract being more particularly described in Exhibit "A," attached hereto and incorporated herein.

**TRACT III:** A tract of land in the David Garner Survey, Abstract Number 530, Dallas County, Texas, and being a 0.225 of an acre of a called 261.305 acre tract conveyed to RSS Enterprises, LLC, General Partner of HTX Farms, L.P., recorded in Volume 96179, Page 02857 of the Deed

Records of Dallas County, Texas, and of a called 15 acre tract of land conveyed to David Smokler and Wife Rosemary Smokler recorded in Volume 96179, Page 02857 of the Deed Records of Dallas County, Texas, said 0.225 acre tract being more particularly described in Exhibit "A," attached hereto and incorporated herein.

**Reservations from Conveyance:**

THERE IS HEREIN RESERVED for Grantors and Grantors' heirs, successors, administrators, and assigns, as their interests may appear, all oil, gas and other minerals owned by Grantors, located in and under and that may be produced from the Property. Provided, however, Grantors for themselves, their heirs, personal representatives, successors, and assigns, hereby waive all surface rights and other rights of ingress and egress in and to the Property, and agree that in conducting operations with respect to the exploration for and production, processing, transporting and marketing of oil, gas and other minerals from the Property, that no portion of the surface of the Property will be used, occupied or damaged and that fixtures, equipment, buildings or structures used in connection with the exploitation of the reserved mineral, oil and gas rights, shall not be placed on the surface of the Property. Nothing herein, however, restricts or prohibits the pooling or unitization of the portion of the mineral estate owned by Grantors with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but enter or bottom under the Property, provided that these operations in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property.

**Exceptions to Conveyance and Warranty:** Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, GRANTS, SELLS, and CONVEYS to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

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**RSS ENTERPRISES, LLC,**  
General Partner of HTX Farms, L.P.  
By: David Smokler, President

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**David Smokler, Individually**

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**Rosemary Smokler, Individually**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_, 2010, by David Smokler, individually and as President of RSS Enterprises, LLC, a Texas limited liability company and General Partner of HTX Farms, L.P., a Texas limited partnership, for and on behalf of said company and partnership.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Rosemary Smokler.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

After Recording, Return to:

Kevin B. Laughlin  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
1800 Lincoln Plaza  
500 N. Akard  
Dallas, Texas 75201

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

**TRACT I:** BEING A 4.771 ACRE (207,834 SQUARE FEET) TRACT OF LAND SITUATED IN THE DAVID GARNER SURVEY, ABSTRACT NUMBER 530, DALLAS COUNTY, TEXAS; AND BEING OUT OF THE REMAINDER OF A CALLED 261.305 ACRE TRACT OF LAND CONVEYED TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, L.P. AND RECORDED IN VOLUME 96179, PAGE 02857, DEED RECORDS DALLAS COUNTY, TEXAS, (D.R.D.C.); SAID 4.771 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point (from which a found 1/2 inch iron rod bears South 59° 11' West, 0.25 feet) on the northerly right of way line of Lancaster Ferris Road (60 feet wide conveyed to County of Dallas, recorded in Volume 2157, Page 111, D.R.D.C. ), in the westerly line of said 261.305 acre tract, and the herein described tract, being the southwest corner of a tract of land conveyed to the City of Lancaster, recorded in Dallas County Clerk's File Number 931748, Volume 89015, Page 3426, D.R.D.C. and Volume 86228, Page 1434 D.R.D.C.;

- 1.) THENCE, North 59° 11' 07" East, along the common line of City of Lancaster tract, and said 261.305 acre tract, a distance 267.45 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an external ell corner of said 261,305 acre tract, and the herein described tract;
- 2.) THENCE, South 40° 41' 59" East, continuing along the common line of City of Lancaster tract, and said 261.305 acre tract, a distance of 162.80 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an internal corner of said 261.305 acre tract of land and the herein described tract;
- 3.) THENCE, North 49° 18' 01" East, continuing along the common line of City of Lancaster tract, and said 261.305 acre tract, a distance of 145.83 feet to a 3/8 inch iron rod with a Landtech Consultants cap set in the southwesterly line of the proposed Runway Protection Zone (RPZ) for the north corner of the herein described tract;
- 4.) THENCE, South 32° 08' 00" East, along the southwesterly line of said proposed RPZ, a distance of 576.88 feet to a 3/8 inch iron rod with a Landtech Consultants cap set on the north right of way line of said Lancaster Ferris Road for the east corner of the herein described tract;
- 5.) THENCE, South 89° 18' 58" West, along the north right of way line of said Lancaster Ferris Road, a distance of 123.68 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the point of curvature of a curve to the right;

- 6.) THENCE, in a northwesterly direction along north right of way line of said Lancaster Ferris Road, on said curve to the right with a radius of 692.66 feet, a central angle 59° 26' 16", an arc length of 718.56 feet, a chord bearing of North 60° 57' 55" West and a distance of 686.77 feet, to a 3/8 inch iron rod with a Landtech Consultants cap set for the point of tangency;
- 7.) THENCE, North 31° 14' 47" West, along the north right of way line of said Lancaster Ferris Road, a distance of 56.13 feet to the POINT OF BEGINNING containing 4.771 acres (207,834 square feet) of land.

**TRACT II:** BEING A 180.066 ACRE (7,843,676 SQUARE FEET) TRACT OF LAND SITUATED IN THE DAVID GARNER SURVEY, ABSTRACT NUMBER 530 AND THE JAMES COCHRAN SURVEY, ABSTRACT NUMBER 354, DALLAS COUNTY, TEXAS, AND BEING OUT OF A REMAINDER OF A CALLED 261.305 ACRE TRACT OF LAND CONVEYED TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, L.P. AND RECORDED IN VOLUME 96179, PAGE 02857, OF THE DEED RECORDS DALLAS COUNTY, TEXAS (D.R.D.C.), AND ALL OF A CALLED 38,178 ACRE TRACT OF LAND CONVEYED FROM HELEN HENRY HASH TO RSS ENTERPRISES, LLC, GENERAL PARTNER OF HTX FARMS, AND RECORDED IN VOLUME 96223, PAGE 686, D.R.D.C.; SAID 180.066 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a found railroad spike in Watermill Road (now abandoned) and being the southwest corner of a tract of land conveyed to Jim Tom Roddy and recorded in Clerk File No. 200600392156 of the Official Public Records, Dallas County, Texas, (O.P.R.D.C.), same being the southeast corner of the Evelyn G. Roddy tract as recorded in Probate 91-0396-P2 of the Probate Court Number 2 of Dallas County, Texas;

1. THENCE, North 59° 09' 28" East, along the south line of said Jim Tom Roddy tract, a distance of 24.88 feet to a 1/2 inch iron rod found for an angle point;
2. THENCE, North 79° 27' 42" East, along the center line of said Watermill Road, and the south line of said Jim Tom Roddy tract, a distance of 521.40 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for corner on the south right of way line of Lancaster Ferris Road (60 feet wide recorded in Volume 2157, Page 111, D.R.D.C.), and being a non-tangent curve with a radius of 752.66 feet;
3. THENCE, in a easterly direction along said south right of way line of Lancaster Ferris Road, being a curve to the left having a radius of 752.66 feet, a central angle of 11°52'44", an arc length of 156.05 feet, and a chord bearing of South 84° 44' 41" East, a distance of 155.77 feet, to a 3/8 inch iron rod with a Landtech Consultants cap set for the end of curve;

4. THENCE, North 89° 18' 58" East, along the south right of way line of said Lancaster Ferris Road, a distance of 160.38 feet to a 3/8 inch iron rod with a Landtech Consultants cap set in the southwesterly line of the proposed Runway Protection Zone (RPZ) for an angle corner;
5. THENCE, South 32° 08' 00" East, along the southwesterly line of said proposed RPZ, a distance of 1,039.82 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle corner;
6. THENCE, North 49° 20' 10" East, a distance of 1,299.34 feet to a 3/8 inch iron rod with a Landtech Consultants cap set on the south right of way line of said Lancaster Ferris Road for an angle corner;
7. THENCE, South 85° 01' 52" East, along the south right of way line of said Lancaster Ferris Road, at 355.84 feet passing a 3/8-inch iron rod with Landtech Consultants cap in the northeast line of said proposed RPZ, in all a distance of 786.94 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for beginning of a curve to the right;
8. THENCE, in a southerly direction along the west, right of way line of said Lancaster Ferris Road, being a curve to the right having a radius of 157.10 feet, a central angle of 78° 30' 00", an arc length of 215.24 feet, and a chord bearing of South 45° 47' 31" East a distance of 198.80 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the end of curve;
9. THENCE, South 06° 32' 31" East, along the west right of way line of said Lancaster Ferris Road, a distance of 531.70 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
10. THENCE, South 00° 49' 19" East, along the west right of way line of said Lancaster Ferris Road, a distance of 201.00 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
11. THENCE, South 06° 32' 31" East, along the west right of way line of said Lancaster Ferris Road, a distance of 899.40 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the beginning of a curve to the left;
12. THENCE, in a southerly direction along the west right of way line of said Lancaster Ferris Road, being a curve to the left having a radius of 2,914.90 feet, a central angle of 04° 12' 42", an arc length of 214.26 feet, and a chord which bears South 08° 38' 51" East, 214.21 feet, to a 3/8 inch iron rod with a Landtech Consultants cap set for the southeast corner of the herein described tract, and in the north line of a tract of land conveyed to Dallas Power & Light Company, recorded in Volume 71124, Page 2669, of the D.R.D.C.;

13. THENCE, South 58° 59' 05" West, along the north line of said Dallas Power & Light Company tract, a distance of 1,896.76 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an ell corner;
14. THENCE, South 31° 59' 16" East, along the west line of said Dallas Power & Light Company tract of land, a distance of 50.59 feet to a 3/8 inch iron rod with a Landtech Consultants cap, set in the north line of a tract of land conveyed to Dallas Power & Light Company, recorded in Volume 72048, Page 2216, and Volume 71082, Page 1126 D.R.D.C.;
15. THENCE, South 58° 44' 17" West, along the north line of said Dallas Power & Light Company tract, a distance of 50.00 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
16. THENCE, South 74° 30' 55" West, continuing along the north line of said Dallas Power and Light Company tract, a distance of 282.84 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle point;
17. THENCE, South 88° 52' 25" West, continuing along the north line of said Dallas Power and Light Company tract, a distance of 70.40 feet (called 67.09 feet) to a 3/8 inch iron rod with a Landtech Consultants cap set for the southeast corner of a tract of land conveyed to 944 South Lamar Associates, and recorded in Volume 84110, Page 6751 of the D.R.D.C., being the south corner of the herein described tract;
18. THENCE, North 28° 24' 03" West, along the east line of said 944 South Lamar Associates tract, a distance of 1,441.34 feet to a point in the center of Ten Mile Creek and being on the east line of a tract of land conveyed to Helen Henry Hash recorded in Volume 1062, Page 470, D.R.D.C.;
19. THENCE, following the meanders of the center of Ten Mile Creek and the east line of said Helen Henry Hash tract:

North 67° 19' 07" West, for a distance of 6,01 feet;  
 North 17° 42' 17" West, for a distance of 93.06 feet;  
 North 15° 47' 35" East, for a distance of 176.06 feet;  
 North 10° 46' 44" West, for a distance of 90.40 feet;  
 South 81° 59' 53" West, for a distance of 160.06 feet;  
 North 56° 26' 46" West, for a distance of 50.20 feet;  
 North 15° 09' 41" West, for a distance of 176.77 feet;  
 North 89° 20' 08" West, for a distance of 297.20 feet;  
 North 38° 43' 50" West, for a distance of 170.69 feet;  
 North 83° 25' 25" West, for a distance of 219.11 feet;  
 North 34° 41' 34" West, for a distance of 247.38 feet;  
 South 63° 49' 16" West, for a distance of 270.74 feet;  
 North 15° 01' 07" West, for a distance of 191.76 feet;  
 North 70° 01' 18" West, for a distance of 371.04 feet;

South 87° 07' 11" West, for a distance of 251.34 feet;  
North 81° 26' 45" West, for a distance of 56.40 feet;  
North 62° 25' 18" West, for a distance of 77.63 feet a point in center of an old road  
and the center of Ten Mile Creek;  
North 25° 43' 44" West along the center of Ten Mile Creek a distance of 6.24  
feet to a point in the south line of said Evelyn G. Roddy tract, same being the  
most westerly corner of herein described tract;

20. THENCE, North 58° 59' 47" East, along the south line of said Roddy Tract and the  
north line of herein described tract and the center of an old abandoned road a  
distance of 1,386.98 feet to the POINT OF BEGINNING and containing 180.066  
acres (7,843,676 square feet) of land

**TRACT III:** BEING A 0.225 OF AN ACRE (9,813 SQUARE FEET) TRACT OF  
LAND SITUATED IN THE DAVID GARNER SURVEY, ABSTRACT NUMBER 530,  
DALLAS COUNTY, TEXAS, AND BEING OUT OF THE REMAINDER OF A CALLED  
261.305 ACRE TRACT OF LAND CONVEYED TO RSS ENTERPRISES, LLC, GENERAL  
PARTNER OF HTX FARMS, L.P. AND RECORDED IN VOLUME 96179, PAGE 02857, DEED  
RECORDS, DALLAS COUNTY, TEXAS, (D.R.D.C.), AND A 15 ACRE TRACT OF LAND  
CONVEYED TO DAVID SMOKLER AND WIFE, ROSEMARY SMOKLER, RECORDED  
IN VOLUME 96179, PAGE 02857, D.R.D.C. SAID 0.225 ACRE TRACT BEING MORE  
PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a point on the northerly right of way line of Lancaster Ferris Road (60 feet  
wide recorded in Volume 2157, Page 111, D.R.D.C.), from which a found 1/2 inch iron rod bears  
South 59° 11' West, 0.25 feet in the westerly line of said 261.305 acre tract, being the southwest  
corner of a tract of land conveyed to the City of Lancaster, recorded in Dallas County Clerk's File  
Number 931748, Volume 89015, Page 3426, D.R.D.C. and Volume 86228, Page 1434 D.R.D.C.;

THENCE, North 59° 11' 07" East, along the common line said City of Lancaster tract, and said  
261.305 acre tract, a distance 267.45 feet to a 3/8 inch iron rod with a Landtech Consultants cap set  
for an external ell corner of said 261.305 acre tract;

THENCE, South 40° 41' 59" East, continuing along the common line said City of Lancaster  
tract, and said 261.305 acre tract, a distance of 162.80 feet to a 3/8 inch iron rod with a Landtech  
Consultants cap set for an internal corner of said 261.305 acre tract of land;

THENCE, North 49° 18' 01" East, continuing along the common line said City of Lancaster  
tract, and said 261.305 acre tract, at a distance of 145.83 feet passing a 3/8 inch iron rod with a  
Landtech Consultants cap set in the southwest line of a proposed Runway Protection Zone (RPZ), in  
all distance of 934.30 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for an angle  
point;

THENCE, North 59° 11' 06" East, continuing along the common line said City of Lancaster  
tract, and said 261.305 acre tract, a distance of 230.25 feet to a 3/8 inch iron rod with a Landtech  
Consultants cap set in the northeast line of said proposed RPZ for an angle point;

**THENCE, South 49° 11' 41" East, along the northeast line of said proposed RPZ, a distance of 1,647.70 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for the POINT OF BEGINNING and the north corner of the herein described tract;**

1. **THENCE, South 49° 11' 41" East, continuing along the northeast line of said RPZ, a distance of 155.91 feet to a 3/8 inch iron rod with a Landtech Consultants cap set on the north right of way line of said Lancaster Ferris Road for the east corner of the herein described tract;**
2. **THENCE, North 84° 57' 18" West, along the north right of way line of said Lancaster Ferris Road, a distance of 215.40 feet to a 3/8 inch iron rod with a Landtech Consultants cap set for west corner of the herein described tract;**
3. **THENCE, North 49° 20' 10" East, a distance of 127.29 feet to the POINT OF BEGINNING containing 0,225 of an acre (9,813 square feet) of land.**

**All bearings are referenced to the Texas Coordinate System, North Central Zone (NAD 83).**



**MINUTES OF MEETING  
LANCASTER PARKS AND RECREATION ADVISORY BOARD**



Lancaster Recreation Center (Banquet Hall – Heritage Room)  
1700 Veterans Memorial Parkway  
Lancaster, TX 75134  
Monday, February 21, 2011  
6:30 pm

**Board Members/Alternate Present:**

Abe Cooper  
LaShonjia Harris  
Spencer Hervey  
Coy Poitier  
Cecelia Rutherford  
Mary Sykes  
Willene Watson

**Staff & Guest Present:**

Sean Johnson, Director  
Vernon Pellum, Recreation Superintendent  
Jodi Griggs, Park Superintendent  
Cynthia D. Williams, Board Secretary  
Mark Divita, Airport Manager

**Board Members Absent:**

Darwin Isham

**Call to Order**

Ms. Watson, Chairperson, called the meeting to order at 6:48 pm. A quorum was present.

**Agenda Item #2 Consider Approval of Minutes (January 31, 2011)**

Ms. Watson opened the floor for discussion of the January 31, 2011 minutes. There was no discussion or comments.

Ms. Watson opened the floor for motions of approval of the January 31, 2011 Minutes. Mrs. Sykes moved to accept the minutes as written. Mr. Hervey seconded motion. Motion carried unanimously.

**Agenda Item #3 Smokler Property Presentations: Mark Divita, Airport Manager**

Mr. Divita gave a brief presentation on the Smokler property. The Smokler's were ranchers. The family donated the flood plain area around Ten Mile Creek upon the City purchasing property to extend the runway. The property is a very heavily wooded area. This property will not see a heavy amount of public use.

He reported that the runway protection zone shifted south. The City had to acquire the flight restriction zone acquiring in order to extend the runway and be within FAA guidelines. As described in the purchase well agreement executed on April 29, 2010 section 2.2, the buyer agrees to permit David Smokler and his wife Rosemary, to name the area dedicated for park land...when 1 year following the closing date. The Smokler's advised staff via email (1/28/11) that they did not desire a ceremony for the park naming.

Mr. Hervey stated that City Council put an ordinance in place regarding the naming of dedicated parkland be "Park Board" approved and recommended for Council approval prior to approving naming. Mr. Hervey also stated that the ordinance states that a committee be formed, research performed, study, and background checks on as to how the Smokler's chose the name they chose to name the property. Mr. Hervey also inquired if the name "Smokler Moo Meadows" was requested in writing. Mr. Divita answered in the affirmative. In addition, he noted that in the Contract distributed to the Board, Exhibit B has no signature. Mrs. Sykes gave a personal historical recollection of the Smokler's settling in Lancaster and where they moved here from. Mr. Divita will follow-up on comments and questions raised.

No further questions/discussion

**Agenda Item #4 Consider Approval of Naming of Parkland "Smokler Moo Meadows," Located at 2623 Van Road, Lancaster, TX 75146**

Ms. Watson opened the floor for discussion of the approval of naming of the Smokler Property. There was no discussion or comments.

Ms. Watson opened the floor for motions. Mrs. Sykes moved to accept the naming of the Smokler property to "Smokler Moo Meadows." Mr. Poitier seconded motion.

Mr. Hervey opposed. The majority ruled.

**Agenda Item #5 Briefing: Youth Advisory Council Summit (YAC) Trip to Austin, TX (February 25 – 26, 2011) (Vernon Pellum, Recreation Superintendent)**

On February 25, 2011, four members of the Lancaster Youth Advisory Council will travel to Austin to attend the Youth Summit. The members will be chaperoned by Chanita Carson, Recreation Leader for the City of Lancaster, and one parent, Mrs. Tamika Whitfield (Mother of Dominique Whitfield a YAC member). The group will depart from the Lancaster Recreation Center at 5pm on Thursday, February 24, 2011. The group will register at the Summit Conference at 8am; afterwards, check into the Ramada Inn & Suites Central, Austin (located at 919 E. Koenig Lane, Austin, TX 78751, 512-454-1144). The YAC members will participate in the Summit and gather valuable information to assist the Lancaster members in

developing the committee and serving the community and the youth of Lancaster. The members will depart Austin on Saturday at 11am and arrive in Dallas at 1:30 pm. Lancaster High School has agreed that the students that are attending will have an excused absence for Friday, February 25, 2011. Each attendee will receive \$18 for three meals on Friday and \$6 for one meal on Saturday. The distribution of permission slips and/or transportation waivers will take place this week to each parent of the attending YAC members.

**Agenda Item #6      Update on Spring Break Camp (March 14 – 19, 2011) (Vernon Pellum, Recreation Superintendent)**

Mr. Pellum reported that this year, we would charge \$45.00 to our current after school participants and \$75.00 for the other participants. The camp will include field trips, snacks, and activities. We hope to get 40 – 60 kids in the Camp this year. The time for the Camp will be 9:00 am – 4:00 pm.

This year we will offer early pick up and drop off for an additional \$15.00 fee per child. Early pickup will be from 7:30 am – 9:00 am and drop off will be from 4:00 pm – 5:00 pm.

**Agenda Item #7      Update: Programming and Hours of Operation of Bear Creek Nature Preserve (Jodi Griggs, Parks Superintendent)**

Mrs. Griggs reported that currently the Park is open from 9:00 am – 5:00 pm, Tuesday – Saturday. Staff opens and closes the gate at these times. The Naturalist trailer is no longer their. Staff is working to get makers placed throughout the Park.

Staff would like to propose that the gate stay open 24/7. Staff feels we are not letting people use the Park to its fullest potential.

There were further questions/discussions.

**Agenda Item #8      Provide Current Standards of Care (Sean Johnson, Director)**

Mr. Johnson reported that Staff must receive approval of the Standards of Care from the Board and then adopted by City Council once a year. He instructed the Board to take their distributed copy home and review. We will get feedback at a future meeting.

**Agenda Item #9      Subcommittee Update: Partnership/Sponsorships**

Ms. Harris reported. She would like Staff to check City policy and procedure regarding scholarships and sponsorships. She has already completed some research. She has some corporations that are interested. She will follow-up with Mr. Johnson on the City Policy/Procedures on integrating with corporations. Her focus would first go to making sure that all the parks

receive the same care and treatment.

The members of the subcommittee include Mrs. Rutherford, Ms. Watson, and Ms. Harris (Chairperson). They will communicate via email and bring all formal updates to the Board.

**Agenda Item #10 Subcommittee Update: Lancaster Sports Association and Council**

Mr. Hervey reported that the subcommittee met last week. The subcommittee includes, Mr. Isham, Mr. Hervey, Brandon Harrison (Recreation Supervisor), and Mr. Pellum. This was a very good meeting.

They discussed the parameters of forming such a subcommittee. The name of the subcommittee is The Lancaster Sports Council. The subcommittee will write the Bylaws. The Council will include sports such as basketball, baseball, adult softball, volleyball, football, and soccer. Each sport will have a commissioner and they will represent that sport on the council. They will assist staff in the planning for their perspective sports. The council approves new sports or associations moving forward. This subcommittee will concern it selves with recreation. They already have a set date of the next meeting, March 17, 2011. We have several individuals identified to participate on the council referees. They will develop a Mission Statement and a timeline to give the council direction over the next 4 to 6 months.

**Agenda Item #11 Set Agenda for Next Meeting**

- Final on PTA Sports (Update)
  - Is it possible for Mr. Sanders to sponsor some of the Lancaster kids?
- Discuss/Consider Renewal of Standards of Care
- Update: Programming and Hours of Operation of Bear Creek Nature Preserve
- Subcommittee Update: Partnership/Sponsorships
- Subcommittee Update: The Lancaster Sports Council

**Agenda Item #12 Adjournments**

Mr. Hervey moved to adjourn. Ms. Harris seconded motion. Motion carried unanimously. Meeting adjourned at 7:46 p.m.

**ATTEST:**

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**Cynthia D. Williams, Administrative Secretary**

**APPROVED:**

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**Willene Watson, Chairperson (Parks and Recreation Advisory Board)**

DRAFT