



NOTICE OF CANVASS AND REGULAR MEETING AGENDA

LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS



211 N. HENRY STREET, LANCASTER, TEXAS

Monday, June 27, 2011 – 7:00 P.M.

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

CALL TO ORDER

INVOCATION: MINISTERIAL ALLIANCE

PLEDGE OF ALLEGIANCE: COUNCILMEMBER 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 Resolution 2011-06-49 of the City Council of the City of Lancaster, Texas, canvassing the returns and declaring the results of the Run-off Election for Councilmember, District 2 held on June 18, 2011.

2011-06-49 una resolucio del consejo municipal de la ciudad de Lancaster, Texas, escrutinio de la rentabilidad y la declaracion de los resultados de la eleccion de desempate de la oficina del concejal, Distrito 2, celebrada el 18 junio de 2011.

2. Administer Oath of Office; present Certificate of Election; seat newly elected District 2 councilmember.

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

- 3C. Consider approval of minutes from the City Council Regular Meeting held June 13, 2011.
- 4C. Consider Resolution 2011-06-50 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a professional services agreement with Freese and Nichols, Inc. to perform services in connection with the project known as the City of Lancaster 2011 Water and Wastewater Master Plans and Impact Fees Update for an amount not to exceed \$132,000; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

- 5C. Consider Resolution 2011-06-51 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a professional services agreement with Kimley-Horn and Associates, Inc. to perform services in connection with the project known as the City of Lancaster 2011 Roadway Impact Fee Update for an amount not to exceed \$46,000; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.
- 6C. Consider Resolution 2011-06-52 of the City Council of the City of Lancaster, Texas, authorizing continued participation with the Steering Committee of Cities served by Oncor; authorizing the payment of \$0.10 (ten cents) per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company, LLC; and providing an effective date.

PUBLIC HEARING:

7. Conduct a public hearing and consider Resolution 2011-06-53 of the City Council of the City of Lancaster, Texas, authorizing the submission of an application to Dallas County for funding under the Fiscal Year 2011 Community Development Block Grant program for reconstruction of an existing asphalt road [Stanford Drive from Arcady Lane to Arlington Lane]; designating a representative for all matters related to the project(s); providing a repealing clause; providing a severability clause; and providing an effective date.
8. Conduct a public hearing and consider an ordinance of the City of Lancaster, Texas, amending the Comprehensive Zoning Ordinance and map of the city of Lancaster, Texas, as heretofore amended, by granting a change in zoning from Light Industrial (LI) to Planned Development – Medium Industrial (PD-MI) to allow for a Trucking company use on property located at 2931 Daniieldale Road; providing for special conditions; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; and providing an effective date.

ACTION

9. Discuss and consider an ordinance of the City of Lancaster, Texas, amending the Code of Ordinances by amending Chapter 8, Offenses and Nuisances, by adding Article 8.1400, Littering, to prohibit littering within the City; providing definitions; providing for unlawful littering; providing a duty to keep property free of litter; providing for container closure and maintenance; providing for pedestrian litter container use restrictions; providing a severability clause; providing that this ordinance shall be cumulative of all ordinances; providing for a penalty for violations hereof; providing a savings clause; and providing an effective date.

10. Discuss and consider Resolution 2011-06-54 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a License and Use Agreement by and between the City of Lancaster and PTA Sports Management, Inc. for the implementation and restructuring of the Youth Sports programs; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.
11. Discuss and consider Resolution 2011-06-55 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a Development Agreement by and between the City of Lancaster and PTA Sports Management, Inc. for the construction, development, operation and maintenance of a football facility at Lancaster Community Park; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.
12. Consider election of a Mayor Pro Tempore.
13. Consider election of a Deputy Mayor Pro Tempore.

EXECUTIVE SESSION

14. The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney to seek legal advice concerning the application of the Lancaster Municipal Utility District No. 1 for annexation of land before the Texas Commission on Environmental Quality (TCEQ), Docket No. 2010-1851-DIS and the proposed Strategic Partnership Agreement.
15. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

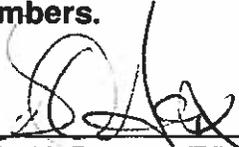
ADJOURNMENT

EXECUTIVE SESSION: The Council reserves the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the TEXAS GOVERNMENT CODE to seek legal advice concerning such subject.

ACCESSIBILITY STATEMENT: The Municipal Center is wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on June 23, 2011 @ 6:00pm and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



For Dolle Downe

Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

1

AG11-001

Consider Resolution 2011-06-49 of the City Council of the City of Lancaster, Texas, canvassing the returns and declaring the results of the Run-off Election for Councilmember, District 2 held on June 18, 2011.

Background

At a time posted in accordance with the Open Meetings Act and as required by the Texas Election Code § 67.004(a), the canvass of the returns is read and results declared. The Mayor asks for a motion and vote from the City Council approving the canvass and results of the run-off election held June 18, 2011. Only two members of the authority constitute a quorum for the purpose of canvassing an election. Election results must be canvassed not later than the 11th day (June 29) following the election.

Considerations

Due to deadlines to receive overseas ballots and count any provisional ballots cast, a copy of the canvass from Dallas County Elections will not be available until Monday, June 27. I will provide a copy as soon as it becomes available.

The City has no military/overseas or provisional ballots pending.

Attachments

- Draft Resolution of Canvass in English and Spanish

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

Date: June 20, 2011

RESOLUTION NO. 2011-06-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE RUN-OFF ELECTION FOR THE OFFICE OF COUNCILMEMBER, DISTRICT 2 HELD ON JUNE 18, 2011.

RUN-OFF ELECTION

Lancaster, Texas

June 18, 2011

CANVASS OF RETURNS AND DECLARATION OF RESULTS OF ELECTION

BE IT REMEMBERED THAT on this the 27th day of June 2011, at a meeting of the City Council of the City of Lancaster, Texas, a quorum being present, the meeting was called to order and the following business was transacted.

Upon motion it was unanimously ordered that the City Council consider the official returns of a Run-off Election held in the City on June 18, 2011, for the election of a Councilmember for District 2 for a three-year term.

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

CANVASS OF RETURNS AND DECLARATION OF RESULTS

WHEREAS, heretofore, the City Council of the City of Lancaster, Texas, called a Run-off Election to be held in the City on June 18, 2011, to elect a Councilmember for District 2 for a three-year term; and

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

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

That the following number of votes were cast for the following named candidates for the office of Councilmember, District 2, to-wit:

	EARLY VOTING	ELECTION DAY	BY MAIL	PROVISIONAL VOTING	TOTAL VOTES	%
Stanley Jaglowski	85	30	0	0	115	88.46%
Gary Citizen	14	1	0	0	15	11.54%

It appearing that Stanley Jaglowski received a majority of all votes cast for the office of Councilmember, District 2, Stanley Jaglowski is hereby declared to be elected to the office of Councilmember, District 2, to serve a three-year term after qualifying.

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

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

DULY PASSED by the City Council of the City of Lancaster, Texas, on this the 27th day of June 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

RESOLUCIÓN NO. 2011-06-49

UNA RESOLUCIÓN DEL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS, ESCRUTINIO DE LA RENTABILIDAD Y LA DECLARACIÓN DE LOS RESULTADOS DE LA ELECCIÓN DE DESEMPATE DE LA OFICINA DEL CONCEJAL, DISTRITO 2, CELEBRADA EL 18 DE JUNIO DE 2011.

ELECCIÓN DE DESEMPATE

Lancaster, Texas

18 de junio de 2011

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

SE RECUERDA QUE en este día 27 de junio de 2011, en una reunión del Consejo Municipal de la Ciudad de Lancaster, Texas, el quórum está presente, la reunión fue llamada al orden y el negocio de las siguientes transacciones fue.

Al movimiento se ordenó por unanimidad que el Municipio considere los datos oficiales de una elección de desempate celebrada en la Ciudad el 18 de junio de 2011, para la elección de un concejal por el Distrito 2 por un período de tres años.

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

ESCRUTINIO DE RESULTADOS Y DECLARACIÓN DE LOS RESULTADOS

CONSIDERANDO que, hasta ahora, el Consejo Municipal de la Ciudad de Lancaster, Texas, llamado una elección de desempate que se celebrará en la ciudad el 18 de junio de 2011, para elegir a un concejal por el Distrito 2 por un período de tres años, y

CONSIDERANDO que, inmediatamente después de dicha elección, el Juez Presidente y otros funcionarios de la celebración de dicha elección hizo sus declaraciones de los resultados a eso el Concejo Municipal de la siguiente manera, y dijo que devuelve están realizando de acuerdo a la ley, y debidamente legalizada, y se muestra es que la notificación escrita de dicha elección fue publicada por el tiempo y en la forma prevista por la ley, y todos los otros procedimientos relativos a dicha elección que se ha demostrado que se han realizado y se realiza en y dentro de la forma prevista por la ley, y además todos los papeles relativos de haber sido devueltos y presentado ante el Ayuntamiento y la protesta u objeción no se realizan para o acerca de cualquier cuestión relacionada con dicha elección.

AHORA, POR LO TANTO, se resuelve por el Consejo Municipal de la Ciudad de Lancaster, Texas, después de examinar dichas declaraciones y la apertura y el escrutinio de los votos de dicha elección, que los resultados de dicha elección son los siguientes:
Que el número siguiente de los votos fueron emitidos a favor de los siguientes candidatos nombrado para el cargo de concejal del Distrito 2, a saber:

	Votacion Temprana	Dia de Eleccion	Por Correo	Votacion Provisional	Total de Votos	%
Stanley Jaglowski	85	30	0	0	115	88.46%
Gary Citizen	14	1	0	0	15	11.54%

Lo que aparece que Stanley Jaglowski recibió la mayoría de los votos emitidos para el cargo de Concejal, Distrito 2, Stanley Jaglowski se declara a ser elegido para el cargo de Concejal, Distrito 2, para un mandato de tres años después de la calificación.

ADEMÁS SE ORDENA que el escrutinio y declaración de los resultados de dicha elección se consignará en el acta del Consejo de la Ciudad.

Esta Resolución, declarando los resultados de las elecciones generales, entrará en vigencia inmediatamente después de su pasaje.

Debidamente aprobada por el Consejo Municipal de la Ciudad de Lancaster, Texas, el día 27 de junio 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

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

2

AG11-002

**Administer oaths of office, present Certificate of Election, and
seat newly elected councilmember.**

Background

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

After the City Council has approved the Canvass of the June 18, 2011 Run-off Election, the newly elected councilmember for District 2 will be given the Oath of Office and presented with a Certificate of Election.

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

Date: June 20, 2011

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

3

AG11-003

Consider approval of minutes from the City Council Regular Meeting held June 13, 2011.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held June 13, 2011

Prepared and submitted by:

Dolle K. Downe, City Secretary
June 17, 2011

MINUTES

LANCASTER CITY COUNCIL MEETING OF JUNE 13, 2011

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on June 13, 2011 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Walter Weaver
Marco Mejia
Mayor Pro Tem James Daniels
Clyde Hairston
Deputy Mayor Pro Tem Nina Morris
Council District 2 vacant

City Staff Present:

Opal Mauldin Robertson, City Manager
Alicia Oyedele, Assistant to the City Manager
Sean Johnson, Director Parks and Recreation
Ed Brady, Economic Development Director
Rona Stringfellow Govan, Development Services Director
Nathaniel Barnett, Senior Planner
Mark Divita, Airport Manager
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on June 13, 2011.

Invocation:

Pastor Charles Dixon with First Baptist Church gave the invocation.

Pledge of Allegiance:

Councilmember Walter Weaver led the Pledge of Allegiance.

Citizens Comments:

There were no speakers for citizens comments.

Consent Agenda:

City Secretary Downe read the consent agenda.

- 1C. Consider approval of minutes from the City Council Regular Meeting held May 23, 2011.**
- 2C. Consider Resolution 2011-06-47 of the City Council of the City of Lancaster, Texas, approving the terms and conditions of an amendment to the Agricultural License Agreement at the Lancaster Regional Airport with Jim Tom Roddy; authorizing the City Manager to execute said amendment; providing a repealing clause; providing a severability clause; and providing an effective date.**

- 3C. Consider Resolution 2011-06-48 of the City Council of the City of Lancaster, Texas, ratifying the actions of the Board of Directors of the Lancaster Economic Development Corporation, approving a six month extension for an incentive grant for the installation of a self service aviation fuel pump to the City of Lancaster acting on behalf of the Lancaster Regional Airport; authorizing the Lancaster Economic Development Corporation to enter into a formal extension agreement; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.**

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Mejia, to approve consent items 1C - 3C. The vote was cast 6 for, 0 against.

- 4. Conduct a public hearing and consider an ordinance of the City of Lancaster, Texas, amending the Comprehensive Zoning Ordinance and map of the City of Lancaster, Texas, as heretofore amended, by granting a change in zoning from Retail-Historic District (R-HD) to Retail-Historic District-Specific Use Permit (R-HD-SUP) to allow a Specific Use Permit for Single-Family Residential use on property located at 147 Historic Town Square/238 East First Street; providing for special conditions; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; and providing an effective date.**

Councilmember Weaver recused himself from discussion and action on item 4. An Affidavit of Conflict of Interest was filed with the City Secretary's office prior to the start of the meeting. Councilmember Weaver left the Council Chambers.

Senior Planner Barnett made a brief presentation outlining the Specific Use Permit (SUP) request to change the use of two units on the Town Square from Office/Retail to Office/Residential/Retail, noting that both units are less than 500 square feet and have been inspected by the Building Official and deemed appropriate for living quarters. The Planning and Zoning Commission recommended approval of the SUP request to add residential as a permitted use for the two units and staff concurs.

Mayor Knight opened the public hearing.

Suzi Weaver, 411 S. Centre, applicant, stated that the request to zone the units for residential use is an economic decision and not a preference, noting problems leasing the spaces in these difficult economic times.

There were no other speakers regarding the zoning request.

Councilmember Mejia commented that the request was submitted for economic reasons and the applicant has tried to rent the units as commercial property, but with the recession, many businesses are struggling. Councilmember Mejia urged Council support of this business.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Councilmember Hairston, to close the public hearing. The vote was cast 5 for, 0 against [Weaver recused].

MOTION: Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Hairston, to approve an ordinance amending the Comprehensive Zoning Ordinance and map of the City of Lancaster, Texas, by granting a change in zoning from Retail-Historic District (R-HD) to Retail-Historic District-Specific Use Permit (R-HD-SUP) to allow a Specific Use Permit for Single-Family Residential use on property located at 147 Historic Town Square/238 East First Street. The vote was cast 5 for, 0 against [Weaver recused].

Following the vote, Councilmember Weaver returned to his seat in the Council Chambers.

5. **Conduct a public hearing and consider an ordinance of the City of Lancaster, Texas, amending the Comprehensive Zoning Ordinance and map of the City of Lancaster, Texas, as heretofore amended, by granting a change in zoning from Single Family-Historic District (SF6-HD) to Single Family-Historic District-Specific Use Permit (SF6-HD-SUP) to allow a Specific Use Permit for a Charter School use on property generally located on the northeast corner of East Fourth Street and North State Street, and more commonly known as 305 East Third Street, Lancaster, Texas; providing for special conditions; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000) for each offense; and providing an effective date.**

Senior Planner Barnett outlined the request by First Baptist Church to use their Educational Building as a Charter School, noting that the use is compatible with the surrounding area and is in the Historic District. The Planning and Zoning Commission recommended approval of the SUP to allow a charter school and staff concurs.

Mayor Knight opened the public hearing.

Senior Pastor Charles Dixon, First Baptist Church, applicant, spoke in favor of the request. Pastor Dixon stated that First Baptist Church is the fifth oldest Baptist Church in Dallas County and enjoys a great relationship with the City and the school district. He commented that Vista Academy on Wintergreen is the Charter School and introduced various Charter School staff. Pastor Dixon stated that the 14,000 square foot educational building on the First Baptist campus is not used most week days and approval of this request will provide an opportunity for use and bring more people to the Historic District area.

Mayor Pro Tem Daniels asked when the educational building is used by the church. Pastor Dixon said it is used on Sunday mornings and on Wednesday evenings. Approval of this request will place the building into use Monday through Friday, during day time hours.

Councilmember Mejia commented that the Carter School offers another educational option.

Councilmember Weaver commented that this is a good and wise use of the facility.

There were no other speakers regarding the zoning request.

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

MOTION: Councilmember Hairston made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve an ordinance amending the Comprehensive Zoning Ordinance and map of the City of Lancaster, Texas, by granting a change in zoning from Single Family-Historic District (SF6-HD) to Single Family-Historic District-Specific Use Permit (SF6-HD-SUP) to allow a Specific Use Permit for a Charter School use on property generally located on the northeast corner of East Fourth Street and North State Street, and more commonly known as 305 East Third Street. The vote was cast 6 for, 0 against.

6. **Discuss and consider an ordinance of the City of Lancaster, Texas, approving a negotiated resolution between the Steering Committee of Cities served by Oncor (“Steering Committee”) and Oncor Electric Delivery Company LLC (“Oncor” or “Company”) regarding the Company’s application to increase electric rates in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; requiring the Company to reimburse cities’ reasonable ratemaking expenses; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; approving Oncor’s proof of revenues; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; declaring an effective date; and requiring delivery of the ordinance to the Company and the Steering Committee’s legal counsel.**

City Manager Mauldin Robertson noted that Lancaster is a member of the Steering Committee of Cities served by Oncor. Following Oncor’s rate increase request, the Steering Committee negotiated a reduced rate and tariffs. City Manager Mauldin Robertson noted that the monthly bill impact for the average residential customer will be a \$2.35 increase, as opposed to the proposed \$5.00 per bill increase in Oncor’s original filing.

MOTION: Mayor Pro Tem Daniels made a motion, seconded by Deputy Mayor Pro Tem Morris, to approve the negotiated settlement with Oncor Electric Delivery Company reflected in the ordinance. The vote was cast 6 for, 0 against.

7. **Discuss and consider designation of the City’s voting representative to the North Central Texas Council of Governments (NCTCOG).**

Mayor Knight suggested Deputy Mayor Pro Tem Morris be considered as the City’s voting representative.

MOTION: Councilmember Weaver made a motion, seconded by Mayor Pro Tem Daniels, to nominate Deputy Mayor Pro Tem Morris as the city's voting representative to the North Central Texas Council of Governments. The vote was cast 6 for, 0 against.

MOTION: Councilmember Weaver made a motion, seconded by Councilmember Hairston, to adjourn. The vote was cast 6 for, 0 against.

The meeting was adjourned at 7:30 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

4

AG11-004

Consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a professional services agreement with Freese and Nichols, Inc. (FNI) to perform services in connection with the project known as the City of Lancaster 2011 Water and Wastewater Master Plans and Impact Fees Update for an amount not to exceed \$132,000; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

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

Goal 5: Sound Infrastructure

Background

In September 2004, the City Council approved an ordinance adopting Water and Wastewater Impact Fees. In 2006, the Wastewater Master Plan was updated and in 2007 the Water Master Plan was also updated because the land use assumptions had changed significantly from those identified in the previous impact fee study of 2004. Four (4) major new developments were being planned during that time that included the Campus District, The Preserve, The Dallas Logistics Hub, and the Gateway Development and staff wanted to make sure that impact fees were reexamined in light of these four new developments to ensure that the City had adequate capital to help fund these projects. With the updates completed for the Water and Wastewater Master Plans, the City Council approved an ordinance amending the Water and Wastewater Impact Fees in November 2007.

Impact fees are authorized and adopted according to Chapter 395 of the Texas Local Government Code. An Impact Fee is an assessment imposed against new development in order to generate revenue to assist the city in funding or recouping the costs of capital improvements necessitated by the new development. Impact fees may only be used to pay for construction, acquisition, or expansion of city capital improvements. Because by law the assessment of impact fees may not exceed 50% of the total projected cost of a capital improvements program, the fees collected only provide partial funding for needed improvements. The remaining balance for improvements has to come from other city revenue sources. Though the fees only provide a partial amount of the total funds

needed for improvements, it lessens the amount that must be paid by the taxpayers and ratepayers.

As required every 5 years by Chapter 395 of the Texas Local Government Code, the City must update the Water and Wastewater Impact Fee Ordinance. Staff is seeking Council approval of this professional services agreement for FNI to perform these services. To update, the Land Use Assumptions, the Water Master Plan, and the Wastewater Master Plan will be reviewed and updated as they provide the basis for adoption of the Water and Wastewater Impact Fees. Based on the results of the update, the Water and Wastewater Master Plans Capital Improvement Programs (CIP) will also be reviewed and updated.

During the last update, the Water and Wastewater Impact Fee Updates were completed separately at a total cost of \$191,642 (\$79,000 for the Wastewater Study and \$112,642 for the Water Study). By combining the studies, there are many efficiencies that can be gained in terms of eliminating duplicate meetings, preparing a single report as opposed to two separate reports, and using the same set of data (land use assumptions, etc.). Additionally, the land use assumptions serve as the basis for the capital improvements plan (CIP) and estimated growth in service unit equivalents (SUEs) that comprise the impact fee calculation. It is good practice to base the analysis on the same set of land use assumptions for consistency and the equitable assessment of impact fees. The proposed fee for the combined Water and Wastewater Impact Fee Update Study is \$132,000, resulting in a total cost savings of almost \$60,000.

In accordance with Chapter 395 of the Local Government Code, the update process will require a series of public hearings over the next few months in order to adopt a new updated Water and Wastewater Impact Fee Ordinance. Prior to conducting these public hearings, FNI and City staff will present to Council and Planning and Zoning (P&Z) an overview of the impact fee adoption process. Additionally, during the update process, P&Z will be asked to serve as a Capital Improvements Advisory Committee (CIAC), which is an oversight committee required by Chapter 395 of the Texas Local Government Code.

Freese and Nichols, Inc. (FNI) has been providing water and wastewater master planning and impact fee services since the early 1990s and are well qualified to update the City's Water and Wastewater Impact Fee Study.

- FNI prepared the 2006 Wastewater Master Plan update, the 2007 Water Master Plan Update, and the November 2007 amended Water and Wastewater Impact Fees Ordinance. It is more efficient and effective to use the same firm that already has intimate knowledge of the city's existing and future water and wastewater infrastructure needs.

Considerations

- **Operational** - The update of the Water Master Plan, the Wastewater Master Plan and the corresponding Capital Improvement Programs (CIP) will enable staff to

identify, review and update needed projects and coordinate their scheduling with the city's funding capability.

Collection of the Water and Wastewater Impact Fees will assist in funding costs for approved projects.

- **Legal** - The update of the Water and Wastewater Impact Fee Program will allow the City to legally continue using the program to charge impact fees.

The City Attorney has reviewed and approved as to form the proposed resolution and FNI Agreement for professional services.

- **Financial** - The fee for FNI Total Project Scope of Services to update the Water and Wastewater Master Plans and Impact Fee Program is a lump sum of \$132,000. Doing a combined water and wastewater impact fee update provides a \$60,000 savings over the last update period.

Chapter 395 of the Texas Local Government Code allows for the fee to be paid from funds previously collected by the Water and Wastewater Impact Fee Program.

- **Public Information** - In accordance with Chapter 395 of the Local Government Code, a series of public hearings will be required over the next few months to adopt the new Water and Wastewater Impact Fee Ordinance.

There are no public information requirements with approval of this resolution.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented. Impact fees allows the city to collect needed revenue to assist in funding needed capital improvements to the water and wastewater system as a result of new development.

Attachments

- Resolution
- FNI Professional Services Agreement

Prepared and submitted by:

Clovia English, Director of Public Works

Date: June 9, 2011

RESOLUTION NO. 2011-06-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. (FNI) TO PERFORM SERVICES IN CONNECTION WITH THE PROJECT KNOWN AS THE CITY OF LANCASTER 2011 WATER AND WASTEWATER MASTER PLANS AND IMPACT FEES UPDATE FOR AN AMOUNT NOT TO EXCEED \$132,000; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Freese and Nichols, Inc. (FNI) will provide professional services to the City of Lancaster in connection with the Water and Wastewater Impact Fee Program Update; and

WHEREAS, to update the Water and Wastewater Impact Fee Program will also involve a review and possible update of the City of Lancaster's Land Use Assumptions and Water and Wastewater Master Plans; and

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

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

SECTION 1. That the professional services agreement for a total amount not to exceed one hundred thirty-two thousand dollars (\$132,000) by and between the City of Lancaster and Freese and Nichols, Inc., which is attached hereto and incorporated herein by reference as Exhibit "A", having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

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

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

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

SECTION 5. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 27th day of June 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF TARRANT §

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

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this AGREEMENT: OWNER agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; OWNER agrees to pay to FNI compensation. The Project is described as follows: Water and Wastewater Impact Fee Update
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC - Scope of Services and Responsibilities of OWNER which is attached to and made a part of this AGREEMENT.
- III. **COMPENSATION:** OWNER agrees to pay FNI for all professional services rendered under this AGREEMENT in accordance with Attachment CO - Compensation which is attached hereto and made a part of this AGREEMENT. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of \$132,000. Details concerning the fee are included in Attachment CO.

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

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

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

This contract is executed in two counterparts.

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

ATTEST:

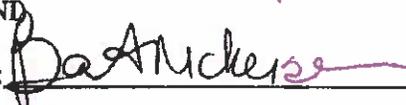
City of Lancaster, Texas
(OWNER)

By: _____

Print or Type Name and Title

ATTEST:

Freese and Nichols, Inc.
(FNI)

By:  _____

Barbara A. Nickerson, Principal

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER**ARTICLE I****A. Data Collection and Water and Wastewater Model Update**

- A1. **Project Kick-Off Meeting:** Freese and Nichols, Inc. (FNI) will meet with the City to review scope, project team and schedule of the project, and present a data request memorandum.
- A2. **Data Collection:** FNI will compile information from the City including GIS files, pump/lift station layouts, pump curves, storage tank facility layouts, recently completed system improvements, water production data, utility billing data, and wastewater flow data.
- A3. **Update Water System Model:** FNI will update the water model in H2OMAP Water software using the updated GIS and as-built drawings of pumping, storage and control valve facilities. The model will consist of all lines that are currently in the GIS plus recently constructed lines that may not appear in the GIS.
- A4. **Update Wastewater System Model:** FNI will update the wastewater model in H2OMAP Sewer software using the updated GIS and as-built drawings of lift stations, siphons, and other facilities. The model will consist of all lines that are currently in the GIS plus recently constructed lines that may not appear in the GIS.
- A5. **Validate Water and Wastewater Models:** FNI will conduct steady-state model verification runs for the water and wastewater system models to ensure the models represent real-world operational conditions.

B. Land Use Assumptions and Water & Wastewater Load Projections

- B1. **Develop Land Use Assumptions:** FNI will utilize NCTCOG population and employment projections to develop 5-year, 10-year, and Buildout land use assumptions. CCN, ETJ, and proposed annexation boundaries will be evaluated to define future water and wastewater service areas.
- B2. **Review Historical Water Demands and Wastewater Flows:** FNI will obtain and evaluate historical water usage and wastewater flow data to develop trends and calculate peaking factors. This data will be used to determine expected per-capita loads for future projections.
- B3. **Develop and Distribute Water Demand Projections:** FNI will develop water demand projections for 5-year, 10-year, and Buildout conditions using the future land use assumptions and selected design criteria. Demands will be calculated by pressure plane. FNI will distribute water demands throughout the service area based on the existing and future NCTCOG population and employment distribution.
- B4. **Develop and Distribute Wastewater Flow Projections:** FNI will develop wastewater flow projections for 5-year, 10-year, and Buildout conditions using the future land use assumptions and selected design criteria. Flows will be calculated by sub-basin. FNI will distribute wastewater flows throughout the service area based on the existing and future NCTCOG population and employment distribution.

- B5. Progress Meeting – Land Use Assumptions and Projections: FNI will meet with the City to discuss population, land use assumptions, and load projections. FNI will address comments from City staff and make revisions as necessary.

C. Water and Wastewater System Hydraulic Analysis and CIP Update

- C1. Evaluate Pumping and Storage Capacity: FNI will evaluate existing and future pumping capacity with regards to TCEQ requirements and general industry recommendations. Ground and elevated storage will also be evaluated.
- C2. Conduct Water and Wastewater System Modeling: FNI will conduct hydraulic modeling for existing, 5-year, 10-year, and Buildout conditions. Water system modeling will consist of average day, maximum day, peak hour, and fire flow demand conditions. Wastewater system modeling will consist of average daily flow and peak wet weather flow conditions.
- C3. Identify Water System Improvements: FNI will utilize modeling results to identify water system improvements required to support growth for the 5-year, 10-year, and Buildout conditions.
- C4. Identify Wastewater System Improvements: FNI will utilize modeling results to identify wastewater system improvements required to support growth for the 5-year, 10-year, and Buildout conditions.
- C5. Develop Capital Improvements Plan (CIP): FNI will develop prioritization and costs for each proposed project in Year 2011 dollars including engineering and contingencies. Large scale citywide maps will be produced showing proposed projects, costs, and recommended in-service dates.
- C6. Progress Meeting – Modeling Results and Water and Wastewater CIP: FNI will meet with the City to discuss the results of the water and wastewater system modeling and CIP development.

D. Water and Wastewater Impact Fee Analysis and Public Hearings

- D1. Present Land Use Assumptions to Citizen Advisory Committee: FNI will present Land Use Assumptions to Citizen Advisory Committee. FNI will prepare exhibits and a presentation for the Citizen Advisory Committee Presentation on Land Use Assumptions.
- D2. Identify Existing Projects Eligible for Impact Fee Cost Recovery: FNI will review recently completed water and wastewater improvements over the last 5 years and determine which projects are eligible for future cost recovery from growth.
- D3. Conduct Water and Wastewater Impact Fee Capacity Analysis for Existing Projects: FNI will utilize water and wastewater models to analyze recently completed projects for remaining capacity for impact fee cost recovery for 10-year projected growth.
- D4. Develop Water and Wastewater Impact Fee CIP: FNI will develop an impact fee CIP based on the improvements recommended as part of the Master Plan. Impact fee eligible improvements are intended to serve growth within the next 10 years. Maps will be prepared showing the proposed water and wastewater capital improvement plan projects included in the impact fee calculation.
- D5. Conduct Water and Wastewater Impact Fee Capacity Analysis for Proposed Projects: FNI will utilize water and wastewater models to analyze proposed water and wastewater improvements for eligible capacity for impact fee cost recovery for 10-year projected growth.

- D6. Calculate Project Costs Eligible for Impact Fee Cost Recovery: FNI will utilize the capacity analysis and capital project costs to calculate percentage of project cost eligible for impact fee cost recovery.
- D7. Develop Service Unit Equivalents (SUEs) for Water and Wastewater Systems: FNI will utilize equivalent capacity of water meters to establish the service unit equivalents (SUEs) required in Chapter 395 of the Local Government Code for both existing and 10-year growth conditions.
- D8. Calculate Maximum Allowable Impact Fees: FNI will develop maximum allowable water and wastewater impact fees using the 50% credit method based on the existing and proposed capital improvement costs to support 10-year growth based on projected increase in SUEs.
- D9. Develop Draft CIP Update and Impact Fee Report and Meet with City: FNI will prepare a Draft Water and Wastewater CIP Update and Impact Fee Report showing land use assumptions, water and wastewater impact fee eligible capital improvement costs, and maximum allowable water and wastewater impact fees. Three copies of the draft report will be delivered to City. FNI will meet with the City to discuss the draft report.
- D10. Present Capital Improvements Plan and Impact Fee Analysis Results to Citizen Advisory Committee: Following review by City Staff, FNI will present results of the water and wastewater impact fee analysis and recommendations to Citizen Advisory Committee. FNI will prepare exhibits for the Citizen Advisory Committee Presentation on Impact Fees.
- D11. Finalize CIP Update and Impact Fee Report: FNI will prepare a final Water and Wastewater CIP Update and Impact Fee Report and deliver 10 copies to the City.
- D12. Attend City Council Public Hearing: Attend one (1) Public Hearing to present and address questions about the land use assumptions, capital improvements plan, and impact fee calculations.

ARTICLE II

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

- A. GIS mapping services or assistance with these services.
- B. Providing renderings, model, and mock-ups requested by the OWNER.
- C. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- D. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- E. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- F. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.

- G. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- H. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- I. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the OWNER.
- J. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

ARTICLE III

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

Tasks A through D to be completed within 12 months of Notice to Proceed.

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

ARTICLE IV

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

- A. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.

- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- G. Give prompt written notice to FNI whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- H. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- I. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and OWNER designate the following representatives:

Owner's Designated Representative – Clovia English, Director of Public Works, 1425 N. Dallas Ave., Lancaster, Texas 75134; Phone 972-275-1703; Fax 972-275-1803; email cenglish@lancaster-tx.com

Owner's Accounting Representative –

FNI's Project Manager – Scott Cole, P.E., 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; phone 817-735-7255; fax 817-735-7492; email sac@freese.com.

FNI's Accounting Representative – Jana Collier, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109; phone 817-735-7354; fax 817-735-7496; email jvc@freese.com

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

- A. **Basic Services:** Compensation to FNI for the Basic Services in Attachment SC shall be the lump sum of One Hundred Thirty Two Thousand Dollars (\$132,000). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

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

Staff Member

Salary Cost Times Multiplier of 2.145

Resident Representative

Salary Cost Times Multiplier of 2.0

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

Other Direct Expenses

Actual Cost Times Multiplier of 1.10

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

Rates for In-house Services

Computer

\$10.00 per hour

Printing

Black and White

\$0.10 per copy

Plotter

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

Color

\$0.50 per copy

Binding

\$5.75 per book

Testing Apparatus

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

3-10-04

TERMS AND CONDITIONS OF AGREEMENT

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

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

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

FNI FNI
 OWNER

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

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

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

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

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

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

5

AG11-005

Consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a professional services agreement with Kimley-Horn and Associates, Inc. (KHA) to perform services in connection with the project known as the City of Lancaster 2011 Roadway Impact Fee Update for a total amount not to exceed \$46,000; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

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

Goal 5: Sound Infrastructure

Background

On December 8, 2003, City Council adopted Proposed Land Use Assumptions, a Thoroughfare Impact Fee Improvement Program (TIFIP), and a Roadway Impact Fee Ordinance, which implemented the Roadway Impact Fee Program. On March 27, 2006, City Council approved an amending ordinance that amended the Land Use Assumptions, Thoroughfare Impact Fee Improvement Program (TIFIP), and Roadway Impact Fee Ordinance to capture additional Master Thoroughfare Plan changes and to include additional projects in the TIFIP. Thus, an amended Roadway Impact Fee Program continued.

Impact fees are authorized and adopted according to Chapter 395 of the Texas Local Government Code. An Impact Fee is an assessment imposed against new development in order to generate revenue to assist the city in funding or recouping the costs of capital improvements necessitated by the new development. Impact fees may only be used to pay for construction, acquisition, or expansion of city capital improvements. Because by law the assessment of impact fees may not exceed 50% of the total projected cost of a capital improvements program, the fees collected only provide partial funding for needed improvements. The remaining balance for improvements has to come from other city revenue sources. Though the fees only provide a partial amount of the total funds needed for improvements, it still lessens the amount that must be paid by the taxpayers and ratepayers.

As required every 5 years by Chapter 395 of the Texas Local Government Code, the Roadway Impact Fee Ordinance must be updated. Staff is seeking Council approval for KHA to perform these services. To do so, the Land Use Assumptions and the Master Thoroughfare Plan will be reviewed and updated as they provide the basis for adoption of Roadway Impact Fees. Additionally, based on the update study findings, the TIFIP will also be reviewed and updated.

In accordance with Chapter 395 of the Local Government Code, the update process will require a series of public hearings over the next few months in order to adopt a new updated Roadway Impact Fee Ordinance. Prior to conducting these public hearings, KHA and City staff will present to Council and the Planning and Zoning Commission (P&Z) an overview of the impact fee adoption process. Additionally, during the update process, P&Z will be asked to serve as a Capital Improvements Advisory Committee (CIAC), which is an oversight committee required by Chapter 395 of the Texas Local Government Code.

Kimley-Horn and Associates (KHA) has been working on impact fees since the Impact Fee statute was adopted in 1987 and are well qualified to update the City's Roadway Impact Fee Study and provide assistance to the City Attorney in updating the Ordinance.

- KHA prepared the 2003 Roadway Impact Fee Ordinance and the 2006 amended Roadway Impact Fee Ordinance. It is more efficient and effective to use the same firm that already has intimate knowledge of the city's existing and future roadway infrastructure needs.

Considerations

- **Operational** - The update of the Master Thoroughfare Plan and the corresponding Thoroughfare Impact Fee Improvement Program (TIFIP) will enable staff to identify needed projects and coordinate their scheduling with the city's funding capability.

Collection of the Roadway Impact Fees will assist in funding costs for approved projects.

- **Legal** - The update of the Roadway Impact Fee Program will allow the City to continue using the program to charge impact fees.

The City Attorney has reviewed and approved as to form the proposed resolution and KHA Letter of Agreement to perform the described services.

- **Financial** - The fee for KHA's Total Project Scope of Services to update the Master Thoroughfare Plan which is used as the basis for updating and adopting the City's Roadway Impact Fee program is a lump sum of \$46,000.

Chapter 395 of the Texas Local Government Code allows for this fee to be paid from funds previously collected by the City's existing Roadway Impact Fee Program.

- **Public Information** - In accordance with Chapter 395 of the Local Government Code, a series of public hearings will be required over the next few months in order to adopt the new Roadway Impact Fee Ordinance. There are no public information requirements with approval of this resolution.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented. Impact fees allows the city to collect needed revenues to assist in funding needed capital improvement projects to our roadway systems.

Attachments

- Resolution
- KHA Letter Agreement

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

Date: June 9, 2011

RESOLUTION NO. 2011-06-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. (KHA) TO PERFORM SERVICES IN CONNECTION WITH THE PROJECT KNOWN AS THE CITY OF LANCASTER 2011 ROADWAY IMPACT FEE UPDATE FOR A TOTAL AMOUNT NOT TO EXCEED \$46,000; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Kimley-Horn and Associates (KHA) will provide professional services to the City of Lancaster in connection with the Roadway Impact Fee Program Update; and

WHEREAS, to update the Roadway Impact Fee Program will also involve a review and possible update of the City of Lancaster's Land Use Assumptions and Master Thoroughfare Plan; and

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

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

SECTION 1. That the professional services agreement for a total amount not to exceed forty-six thousand dollars (\$46,000) by and between the City of Lancaster and Kimley-Horn and Associates, Inc., which is attached hereto and incorporated herein by reference as Exhibit "A", having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

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

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

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

SECTION 5. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 27th day of June 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



Kimley-Horn
and Associates, Inc.

March 25, 2011

Ms. Clovia English
Director of Public Works
City of Lancaster
1425 N. Dallas Avenue
Lancaster, TX 75134

■
Suite 950
801 Cherry Street, Unit 11
Fort Worth, Texas
76102

Re: 2011 Roadway Impact Fee Update
Lancaster, Texas
Proposal for Professional Engineering Services

Dear Ms. English:

Kimley-Horn and Associates, Inc. (KHA) is pleased to submit this Letter Agreement to the City of Lancaster (Client or City) to provide professional services to update the City's roadway impact fees. Our project understanding, scope of services, schedule, and fee are below.

Project Understanding

This project consists of providing professional services associated with an update of the City of Lancaster Land Use Assumptions and Roadway Impact Fees in accordance with Chapter 395 of the Texas Local Government Code. This project is anticipated to include the following components:

1. Land Use Assumptions
2. Master Thoroughfare Plan Review
3. Roadway Impact Fee Update
4. Public Hearings and Approval

Scope of Services

If services beyond those defined in this scope are to be required, KHA will confer with the Client to receive further authorization before such additional services are performed.



Task 1 – Land Use Assumptions

KHA will assist the City in developing the land use assumptions in conformance with Chapter 395 of the Local Government Code and shall include:

- 1.1. Data Collection. KHA will coordinate with the City to obtain the following data:
 - 1.1.1 City Contacts – The City will provide the organization structure and contact information for the applicable City staff involved with the land use assumptions.
 - 1.1.2 Comprehensive Master Plans – The City will identify and provide the City’s most recent comprehensive master plans.
 - 1.1.3 Currently adopted Land Use Assumptions.
 - 1.1.4 Available demographic projections from the North Central Texas Council of Governments (NCTCOG).
 - 1.1.5 Maps – The City will provide KHA with available GIS shapefiles, associated databases, and layer files in ESRI ArcGIS 8.x format. All data will be projected in NAD 83 State Plane, North Central Texas Zone coordinates. Data should include:
 - Current Zoning Map;
 - Future Land Use Plan Map;
 - City Limits and ETJ Map; and
 - Most recent digital orthophotograph (DOQ) of the City.
- 1.2. Service Area Boundaries. KHA will meet with the City to review current service areas for roadway impact fees. KHA will work with City staff to revise the service area boundaries (if necessary).
- 1.3. Land Use Assumptions. KHA will provide City staff with an overview of the information required as part of the Land Use Assumptions for Impact Fees. This task will require KHA to work with the City and the corresponding NCTCOG demographic projections to develop the following for use in the Impact Fee calculations:
 - 1.3.1 Existing population and employment information by service area for the Year 2011;
 - 1.3.2 Build-out population and employment projections by service area; and
 - 1.3.3 Ten Year population and employment projections by service area for the Year 2021.

All population information shall be reported by number of persons and number of dwelling units; while all employment data shall be classified as number of square feet of floor area for Basic, Service, and Retail employment.



- 1.4. Documentation. KHA will incorporate the service area boundaries and Land Use Assumptions information into the Impact Fee report. No additional documentation will be produced by KHA summarizing the land use assumptions.
- 1.5. Meetings. KHA will prepare for and attend up to two (2) meetings with the City staff to discuss and review the proposed Service Area boundaries and Land Use Assumptions.

Task 2 – Master Thoroughfare Plan Update

KHA will assist in updating the Master Thoroughfare Plan:

- 2.1. Master Thoroughfare Plan Review. KHA will review the currently adopted roadway Master Thoroughfare Plan (MTP) to verify if modifications are needed prior to formulating the Roadway Capital Improvement Plan. Modification will be provided with the recommendations from City staff. The City staff will perform the necessary tasks to have the revised MTP adopted by City Council (if necessary).
- 2.2. Meeting. KHA will prepare for and attend up to one (1) meeting with the City staff to discuss and review any proposed changes to the Master Thoroughfare Plan.

Task 3 – Roadway Impact Fee Update

KHA will prepare the roadway impact fee update in conformance with Chapter 395 of the Local Government Code and shall include:

- 3.1. Data Collection. KHA will collect the following data:
 - 3.1.1 Thoroughfare Plan – KHA will utilize the most recent thoroughfare plan. Available GIS shapefiles, databases, and layering information shall be provided by the City.
 - 3.1.2 Traffic Counts – The City shall provide available data (current and historical) for all roadway segments on the current MTP. KHA will collect traffic count information available from TxDOT for state highway facilities. KHA will collect new PM peak hour traffic count data at up to ten (10) locations within the City for use in the roadway impact fee analysis.
 - 3.1.3 Historical Project Costing Information – The Client shall provide KHA with available data on the actual City costs for previously completed arterial roadway improvement projects to assist in the development of planning level project costs for future projects and



to include any project costs for previously completed projects with excess capacity available to serve future growth.

3.2. 10-Year Growth Projections and Capacity Analysis.

- 3.2.1 KHA will use the service area boundaries established as part of Task 1 (Land Use Assumptions). In consultation with City staff, KHA will determine land use categories to be included in the land use vehicle-mile equivalency table.
- 3.2.2 KHA will identify the service units for new development and the average trip length. Using the most current edition of the Institute of Transportation Engineer's (ITE) Trip Generation Manual, KHA will develop updated trip generation and pass-by trip rates.
- 3.2.3 KHA will perform an analysis of existing conditions. This will include a determination of roadway capacities, volumes, vehicle-miles of supply, vehicle-miles of demand, existing excess capacity, and existing deficiencies.
- 3.2.4 KHA will project traffic conditions for the ten-year planning period, the target year for the impact fee growth projections. This will include growth and new demand by service area. KHA will determine the capacity available for new growth.

3.3. Roadway Impact Fee Capital Improvements Plan.

- 3.3.1 KHA will assist the City to develop a Roadway Impact Fee Capital Improvements Plan, which will include cost projections for anticipated projects to be included in the study. The Roadway Impact Fee Capital Improvements Plan will include existing oversized facilities and proposed facilities designed to serve future development. The Roadway Impact Fee Capital Improvements Plan shall include a general description of the project and a project cost projection. Planning level cost projections for future projects will be prepared based on previous experience with Roadway construction costs. The City shall provide KHA with actual City cost information for previously completed projects with excess capacity and any cost contribution to County, Developer, or State projects.
- 3.3.2 KHA will identify the portion of project improvements required to serve existing demand and the portion of project improvements required to serve new development within the 10-year planning period.



- 3.4. Pre-Credit Maximum Assessable Roadway Impact Fee Calculation. Using the newly developed 10-year growth projections, roadway impact fee capital improvements plan, and capacity available for new growth, KHA will determine the cost of roadway improvements by service area, the maximum costs per service unit, and the resulting maximum assessable roadway impact fees by service area.
- 3.5. Financial Analysis. A financial analysis for the credit calculation will not be performed as part of this scope, instead a 50% of the pre-credit maximum assessable roadway impact fee calculated in Task 3.4 will be utilized to determine the maximum assessable roadway impact fee.
- 3.6. Roadway Report. KHA will provide both a draft and final Roadway Impact Fee Report. The report will include:
 - 3.6.1 Roadway service areas
 - 3.6.2 Land Use Assumptions
 - 3.6.3 Narrative of the impact fee update methodology
 - 3.6.4 Roadway Impact Fee CIP
 - 3.6.5 Impact fee calculations
 - 3.6.6 Exhibits

KHA will provide an electronic (.pdf) and fifteen (15) 8.5" x 11" hard copies of the Draft Roadway Impact Fee Report (eight (8) copies for Capital Improvements Advisory Committee (CIAC) and Staff prior to the first CIAC meeting and seven (7) for City Council).

- 3.7. Meetings. KHA will prepare for and attend the following meetings:
 - 3.7.1 Two (2) meetings with the City staff to review the Roadway Impact Fee CIP
 - 3.7.2 One (1) meeting with the City staff to review the proposed Maximum Assessable Roadway Impact Fees
- 3.8. Deliverables.
 - 3.8.1 Electronic (.pdf) copy of the Draft Roadway Impact Fee Report
 - 3.8.2 Fifteen (15) 8.5" x 11" hard copies of the Draft Roadway Impact Fee Report

Task 4 – Public Hearings and Approval

KHA will collect information on actual roadway impact fees collected for up to six (6) benchmark DFW area cities for up to three (3) different land uses (likely residential, commercial, and industrial land uses). This information will be



provided to the City in electronic (.xls) tabular format for use in the development of comparison tables.

It is anticipated that a representative from KHA will prepare for and attend up to four (4) meetings during the public hearing and approval process. These anticipated meetings are as follows:

- 4.1. Prepare for and attend one (1) Capital Improvements Advisory Committee (CIAC) and/or Council workshop to present fundamentals of Impact Fees and Land Use Assumptions.
- 4.2. Prepare for and attend one (1) CIAC public hearing to present the Land Use Assumptions, CIP, and Maximum Assessable Roadway Impact Fees.
- 4.3. Prepare for and attend two (2) City Council public hearings to present the Impact Fee, including the Land Use Assumptions, Roadway Impact Fee CIP, and Maximum Assessable Roadway Impact Fees.
- 4.4. Upon final approval of the Impact Fee Update and new ordinance by the City Council, KHA will provide an electronic (.pdf) and ten (10) hard copy originals of the Final Roadway Impact Fee Update Report.

At the request of the City, KHA will review the proposed Impact Fee Ordinance as prepared by the City Attorney. It is anticipated the City Attorney will require exhibits from the Roadway Impact Fee Report to be included in the ordinance. KHA recommends the City coordinate with their Attorney to ensure they will be able to prepare the ordinance during Task 4.

Additional Services

Services not specifically identified in the Scope of Services above shall be considered additional and shall be performed on an individual basis upon authorization by the City. Compensation for additional services will be agreed to prior to their performance. Such services shall include, but are not limited to, the following:

- Additional assistance in developing the land use assumptions outside of that described in this agreement.
- Preparation for and attendance at additional public meetings not specifically identified in the Scope of Services.
- Furnish additional copies of review documents in excess of the number of the same identified in the Scope of Services.
- Reanalysis or recalculation to reflect project scope changes or policy changes requested by the City, addressing changes in direction previously approved by the City, or mandated by changing governmental laws.



Information Provided By Client

The master plan information used in the analysis shall be provided by the Client. KHA shall be entitled to rely on the completeness and accuracy of all information provided by the Client.

Schedule

Tasks 1 through 3 will be completed within five (5) months, exclusive of Client review time. Task 4 will be completed in a timely manner based upon CIAC and City Council schedules, along with the requirements of Chapter 395 of the Texas Local Government Code. Additional services, if desired, will be performed in a timely manner upon authorization by the Client.

Fee and Billing

KHA will perform the services described in the Scope of Services for a lump sum fee of **\$46,000**. All permitting, application, and similar project fees will be paid directly by the City.

Fees will be invoiced monthly based upon the percentage of services completed as of the invoice date. Payment will be due within 25 days of the date of the invoice.



Closure

In addition to the matters set forth herein, our Agreement shall include, and shall be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to Kimley-Horn and Associates, Inc., and the term "the Client" shall refer to the City of Lancaster, Texas.

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Jeff Whitacre, P.E.
Project Manager

Scott R. Arnold, P.E.
Contract Specialist

Attachment – Standard Provisions

Agreed to this ____ day of _____, 2011.
K:\FTW_Marketing\Lancaster\Impact_Fees\1-25-2011_Proposal_Lancaster_Impact_Fees_2.doc

THE CITY OF LANCASTER
A Municipality

By: _____

(Print or Type Name)

Title: _____

By: _____

_____, Witness
(Print or Type Name)

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) Consultant's Scope of Services and Additional Services. The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including in-house duplicating, local mileage, telephone calls, postage, and word processing. Other direct expenses will be billed at 1.15 times cost. Technical use of computers for design, analysis, GIS, and graphics, etc., will be billed at \$25.00 per hour.

(2) Client's Responsibilities. In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incidental to the responsibilities of the Client.

(3) Period of Services. Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) Method of Payment. Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per annum beginning on the 25th day. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including filing liens, to secure its right to payment under this Agreement.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) Use of Documents. All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be

used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** In performing its professional services, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section I, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

6

AG11-006

Consider a resolution of the City Council of the City of Lancaster, Texas, authorizing continued participation with the Steering Committee of Cities served by Oncor; and authorizing the payment of \$0.10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company, LLC; and providing an effective date.

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

Goal 1: Financially Sound City Government
Goal 3: Healthy, Safe, & Vibrant Neighborhoods

Background

The City of Lancaster is a member of a 148-member city coalition known as the Steering Committee of Cities Served by Oncor.

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

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

Considerations

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

- **Legal** - The resolution was prepared by Steering Committee counsel.
- **Financial** – The approval of this resolution will authorize the payment of a \$0.10 per capita assessment in the amount of \$3,660.00 (based on a population of 36,600) to the Steering Committee of Cities Served by Oncor.
- **Public Information** – There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution

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

Date: June 27, 2011

RESOLUTION NO. 2011-06-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING CONTINUED PARTICIPATION WITH THE STEERING COMMITTEE OF CITIES SERVED BY ONCOR; AUTHORIZING THE PAYMENT OF \$0.10 (TEN CENTS) PER CAPITA TO THE STEERING COMMITTEE TO FUND REGULATORY AND RELATED ACTIVITIES RELATED TO ONCOR ELECTRIC DELIVERY COMPANY LLC; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

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

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

SECTION 2. The City is further authorized to pay its assessment to the Steering Committee ten cents (\$0.10) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

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

SECTION 4. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PRESENTED AND PASSED by the City Council of the City of Lancaster, Texas, by a vote of _____ ayes and _____ nays at a regular meeting on this the 27th day of June 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

7

AG11-007

Conduct a Public Hearing and consider a resolution of the City Council of the City of Lancaster, Texas, authorizing the submission of an application to Dallas County for funding under the Fiscal Year 2011 Community Development Block Grant (CDBG) Program for reconstruction of an existing asphalt road [Stanford Drive from Arcady Lane to Arlington Lane]; designating a representative for all matters related to the project; providing a repealing clause; 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
Goal 5: Sound Infrastructure**

Background

The City of Lancaster is eligible to receive \$124,844 of Community Development Block Grant (CDBG) funds for fiscal year 2011. CDBG funds are administered through Dallas County and may only be used on projects that eliminate blight, eliminate a community threatening condition or primarily benefit low/moderate income residents. The primary objective of the program is to develop sustainable urban communities that meet the public service and housing needs of low and moderate income households. Federal rules allow each community to tailor its program to address specific local needs.

Historically, the City has used this funding for either demolition of substandard structures or residential roadway projects. For the last two years, staff has identified a residential roadway project, which Council has approved. In 2009 the roadway project was the reconstruction of Cheshier Road, from Beltline Road to its end. In 2010 the roadway project was the reconstruction of Henry Road from Wintergreen Road to Baskin Drive.

Given the significant need for roadway improvements in various areas of the City, staff has identified several qualifying roadway projects again this year. The streets listed below were identified as projects using the City's HVJ Pavement management scoring, estimated cost within the allocated dollar amount, and eligibility under the CDBG program. The streets are listed in priority order.

NAME	FROM STREET	TO STREET	COST	LENGTH
STANFORD DR	ARCADY LN	ARLINGTON LN	\$107,000	1429
COLGATE DR	DALLAS AVE	DEWBERRY BLVD	\$ 36,500	942

MARSALIS RD	PLEASANT RUN RD	GREEN DR	\$ 94,000	1401
PARK CIRCLE DR	GREEN DR	IDLEWILD LN	\$ 41,000	618
IDLEWILD CT	IDLEWILD LN	I-35E EAST SERVICE RD	\$ 35,000	525
GANT DR	BRADY DR	MARSALIS RD	\$ 6,000	901
BALOMEDE ST	WINTERGREEN RD	BELVEDERE RD	\$ 65,500	1090

Considerations

- **Operational** - If participating in the program, Council must adopt a resolution identifying the project(s) and submit the application by June 29, 2011. The 2011 CDBG funds will not be available for use until October 2011.
- **Legal** - As required by law, the City must conduct a public hearing to receive input from citizens regarding use of the CDBG funds. The notice of public hearing was published in the Dallas Morning News on June 3, 2011 as part of Dallas County's notice satisfying the notice requirements for the public hearing.
- **Financial** - The City is eligible to receive \$124,844 in CDBG funding for fiscal year 2011.
- **Public Information** – The City Council must conduct a public hearing. There are no other public information requirements.

Options/Alternatives

1. Council may adopt the resolution with the roadway reconstruction project as presented.
2. Council may modify the resolution.
3. Council may deny the resolution. If an application is not submitted, Lancaster's portion of the funds will be reallocated to other participating cities in the County's CDBG program.

Recommendation

Following citizen input from the public hearing, staff recommends approval of the resolution for submission of the application for the roadway reconstruction project of Stanford Drive from Arcady Lane to Arlington Lane for funding from the 2011 CDBG funds.

Attachments

- Resolution with Exhibit A – Location Map
- Map - City of Lancaster Low to Moderate Income Areas

Agenda Communication
June 27, 2011
Page 3

Prepared and submitted by:
Mike Rapp, Streets and Stormwater Superintendent
Dolle K. Downe, City Secretary

Date: June 21, 2011

RESOLUTION NO. 2011-06-53

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO DALLAS COUNTY FOR FUNDING UNDER THE FISCAL YEAR 2011 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR RECONSTRUCTION OF AN EXISTING ASPHALT ROAD [STANFORD DRIVE FROM ARCADY LANE TO ARLINGTON LANE]; DESIGNATING A REPRESENTATIVE FOR ALL MATTERS RELATED TO THE PROJECT(S); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Dallas County has determined, based on 2000 Census information, that the City of Lancaster is eligible to receive \$124,844 of Community Development Block Grant funds for fiscal year 2011; and

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

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

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

- Section 1.** The City Manager or his designee is hereby authorized to execute all necessary project application materials for the project of reconstruction of an existing asphalt roadway [Stanford Drive from Arcady Lane to Arlington Lane], as depicted on Exhibit A, which is attached hereto and incorporated herein by reference, to Dallas County for funding under the 2011 Community Development Block Grant Program.
- Section 2.** The City Manager or his designee shall act as the City's authorized representative in all matters related to the application and provide assurances that all requirements of the Community Development Block Grant Program are observed.
- Section 3.** Any prior resolutions of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.
- Section 4.** Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

Section 5. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 27th day of June 2011.

APPROVED:

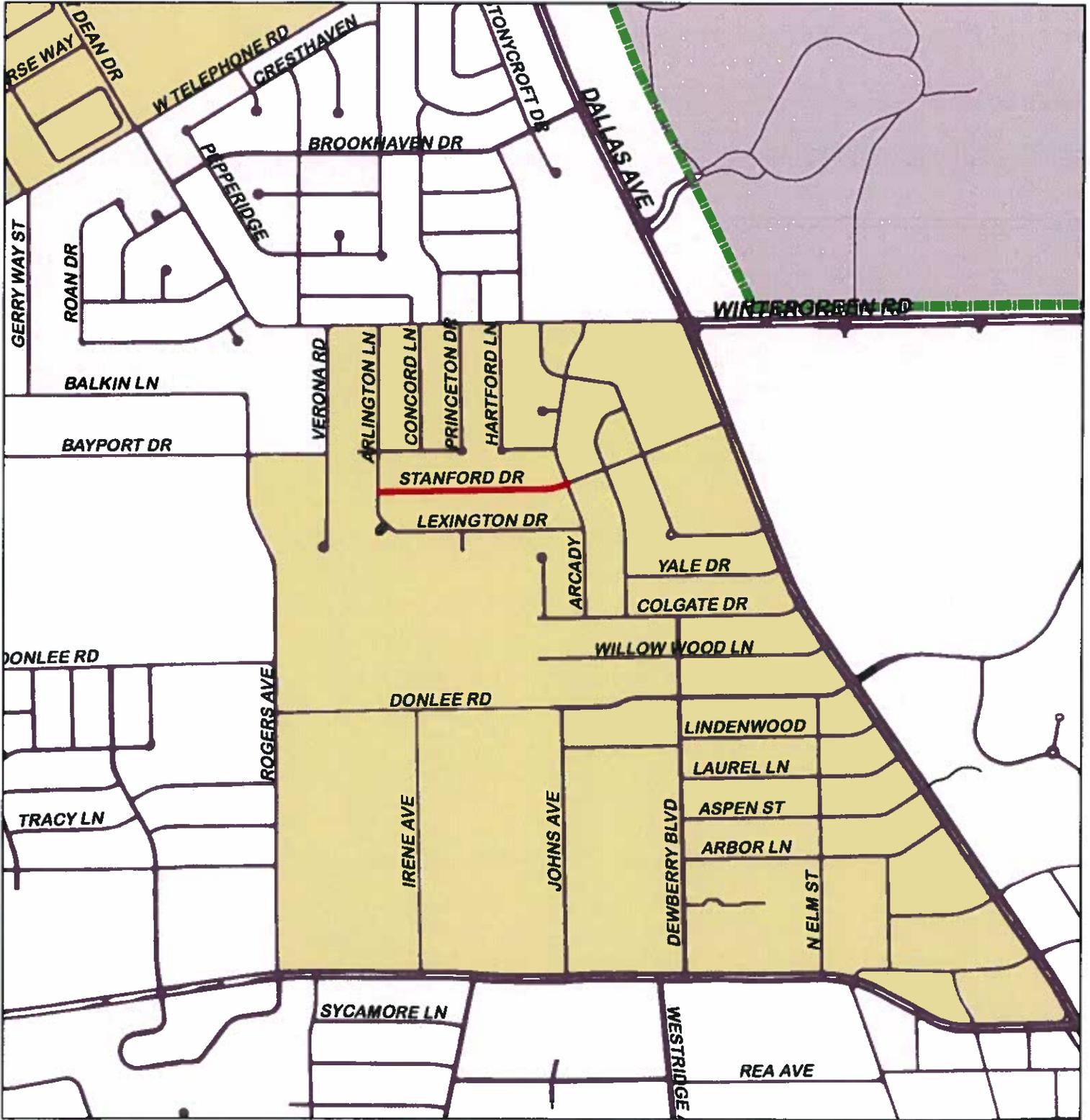
Marcus E. Knight, Mayor

ATTEST:

Doile K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



 2011 CDBG Repair Recommendation

 City Limits

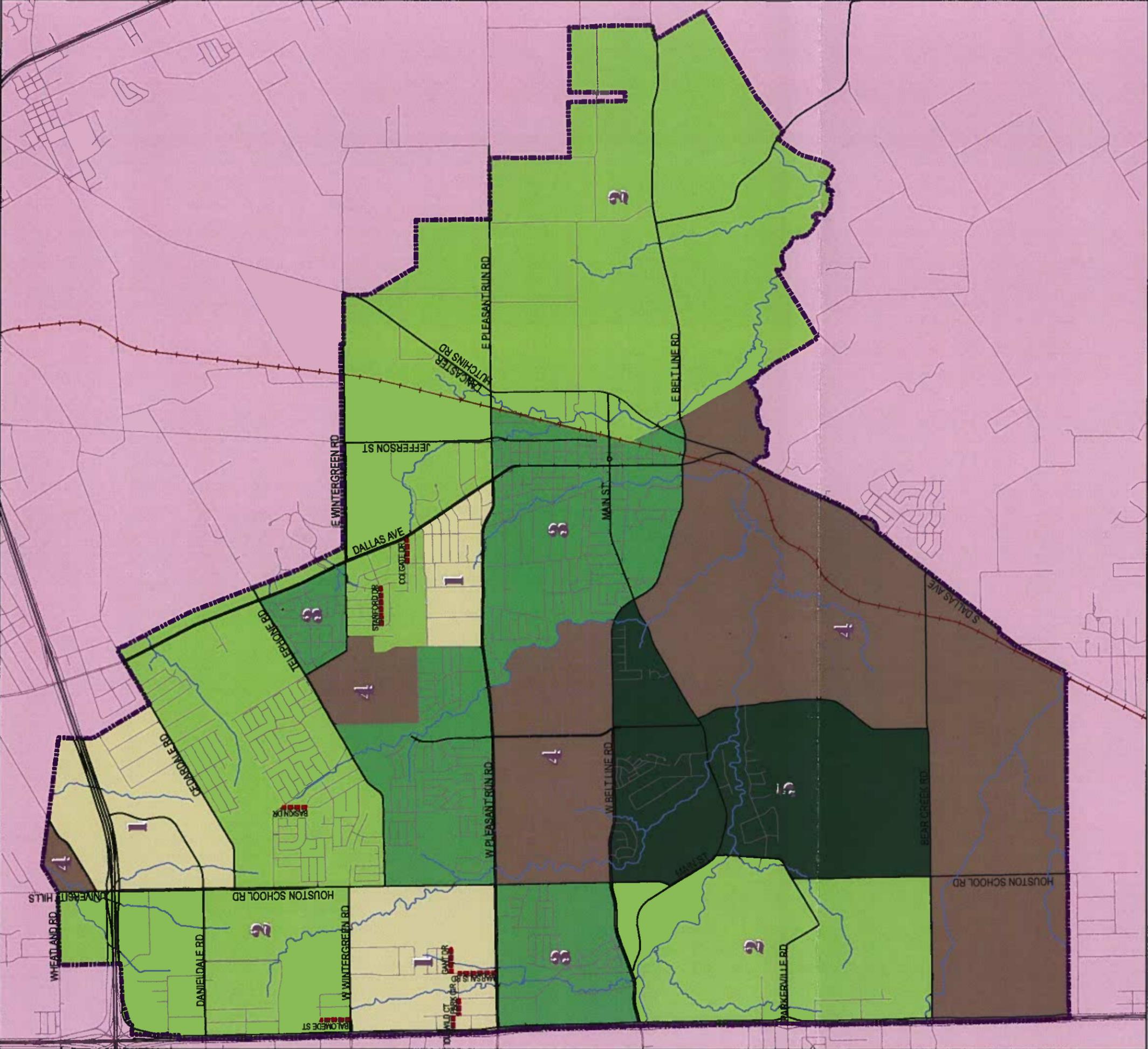
**Census Block Groups
Income %**

 >51%

 Feet
0 500 1,000 2,000

FY 2011 CDBG Street Reconstruction Projects





City of Lancaster Low to Moderate Income Areas



Legend

- Recommended Street Repairs
- Creeks
- Railroads
- Lancaster City Limits

Income Level

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

HUD Income Limits for FY 2000

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

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

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

8

AG11-008

Conduct a Public Hearing and consider an ordinance of the City of Lancaster, Texas, amending the Comprehensive Zoning Ordinance and map of the City of Lancaster, Texas, as heretofore amended, by granting a change in zoning from Light Industrial (LI) to Planned Development – Medium Industrial (PD – MI) to allow for a Trucking Company use on property located at 2931 Daniieldale Road; providing for special conditions; providing a savings clause; providing a severability clause; providing a penalty of fine not to exceed the sum of two thousand (\$2,000) dollars for each offense; and providing an effective date.

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

Goal 2: Quality Development

Background

- 1. Location and Size:** The property is generally located at 2931 Daniieldale Road. The property under consideration is approximately 59.041 acres of land.
- 2. Current Zoning:** The subject property is currently zoned LI, Light Industrial.
- 3. Adjacent Properties:**
North: Lancaster Campus District (LCD) – South I-20 Warehouse sub-district,
Lancaster Campus District - South Interstate 20 Warehouse sub-district
(Southpointe Corporate Center)
South: LI, Light Industrial (Swift Transportation Company)
East: LI, Light Industrial (undeveloped)
West: LI, Light Industrial (Conway Truckload, Inc.)
- 4. Comprehensive Plan Compatibility:** The Comprehensive Plan identifies this site as suitable for Motor Freight Terminals/Medium Industrial zoning. This proposal is compatible with the Comprehensive Plan.

5. **Public Notification:** The Public Hearing notice appeared in the Focus Daily Newspaper on May 27, 2011 and property owner notifications were mailed out. Zoning signs were placed on the subject property, satisfying the noticing requirement for this request.

6. **Case/Site History:**

Date	Body	Action
12/9/09	N/A	Request withdrawn
6/15/10	P&Z	Recommended denial; applicant withdrew prior to City Council
10/5/10	P&Z	Applicant requested postponement until November 2, 2010
11/2/10	P&Z	Postponed to notify all property owners surrounding the subject property
12/7/10	P&Z	Recommended denial; applicant withdrew prior to City Council
6/7/11	P&Z	Recommended denial with prejudice

Considerations

- **Operational** - By not allowing the following 10 uses, the proposed Planned Development would make the subject property more restrictive than its current zoning. These uses are: Blood plasma donor center; Prison/custodial institution; Rescue mission or shelter for the homeless; Social service provider, not rescue mission or shelter; Night club, discotheque, or dance hall; pawn shop; sexually oriented business; towing and impound yard; truck stop with fuel and accessory services; salvage or reclamation of products (outdoors).

This is a request to re-zone property from Light Industrial to a Planned Development District with an underlying zoning of Medium Industrial to allow for a trucking company use. Due to the number and types of uses allowed within Medium Industrial zoning, the applicant is pursuing a Planned Development District to reduce a number of the uses that would be allowed by right. The subject property consists of two parcels. The western parcel was developed with a trucking company in the 1980's while setting aside the eastern parcel for future expansion of the business. At some time after construction of the existing facility, the City of Lancaster rezoned the area to Light Industrial, making the company a legal non-conforming use. The applicant is attempting to re-establish this use as a conforming business within the City of Lancaster. There is currently no property within the city limits of Lancaster zoned Medium Industrial that would allow the current use to be a conforming entity. The subject property and areas surrounding it are the only areas designated on the Future Land Use Plan map as appropriate for Medium Industrial zoning. In addition, the section of Daniieldale Road that fronts the subject property is scheduled to be expanded and improved beginning in the Fall of 2012.

- **Legal** - The City Attorney has prepared an ordinance for the proposed development.
- **Financial** - There are no financial considerations for this case.

Options/Alternatives

1. Approve the zoning request, in accordance with staff recommendations.
2. Approve the zoning request with modifications and state those modifications.
3. Postpone consideration of this item.
4. Deny the zoning request, in accordance with P&Z recommendations.

Recommendation

P&Z

At the June 7, 2011 meeting, the Planning and Zoning Commission made a recommendation to deny the zoning change request with prejudice.

Approval of this item requires a super majority vote of the City Council.

STAFF

Staff recommends approval of the item with the applicant submitting a development plan and site plan prior to issuance of a building permit subject to review and approval by the Planning and Zoning Commission. The Comprehensive Plan identifies this site as suitable for Medium Industrial zoning and the Planned Development will render the property uses more restrictive than its current zoning.

Attachments

- Ordinance
- Planning and Zoning Commission Agenda Communication/with attachments (June 7, 2011)
- Unapproved Planning and Zoning Commission Meeting Minutes Excerpt (June 7, 2011)

Prepared and submitted by:
Nathaniel Barnett, Senior Planner

Date: June 19, 2011

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF LANCASTER, TEXAS, AS HERETOFORE AMENDED, BY GRANTING A CHANGE IN ZONING FROM LIGHT INDUSTRIAL (LI) TO PLANNED DEVELOPMENT WITH MEDIUM INDUSTRIAL BASE ZONING (PD-MI) AND SPECIAL DEVELOPMENT REGULATIONS TO ALLOW FOR THE DEVELOPMENT OF A TRUCKING TRANSPORT FACILITY ON 59.041 ACRES OF PROPERTY LOCATED ON THE NORTH SIDE OF DANIELDALE ROAD AND APPROXIMATELY 1,340 FEET WEST OF THE INTERSECTION OF HOUSTON SCHOOL ROAD AND DANIELDALE ROAD DESCRIBED IN THE LEGAL DESCRIPTION IN EXHIBIT "A"; PROVIDING FOR THE APPROVAL OF THE CONCEPT MASTER PLAN, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "B,"; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Planning and Zoning Commission and the governing body of the City of Lancaster, Texas, in compliance with the laws of the State of Texas and pursuant to the Comprehensive Zoning Ordinance of the City of Lancaster, have given requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally, and to all persons interested and situated in the affected area and in the vicinity thereof, the said governing body is of the opinion that Zoning Application No. Z11-05 should be approved, and in the exercise of legislative discretion have concluded that the Comprehensive Zoning Ordinance and Map should be amended.

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

SECTION 1. That the Comprehensive Zoning Ordinance and Map of the City of Lancaster, Texas, duly passed by the governing body of the City of Lancaster, Texas, as heretofore amended, be and the same is hereby amended by granting a change in zoning from Light Industrial (LI) to Planned Development with Medium Industrial Base Zoning (PD-

MI) with conditions (as set forth in Section 2 of this Ordinance) to allow for the development of a trucking transport facility on 59.041 acres of property located on the north side of Danieldale Road and approximately 1,340 feet west of the intersection of Houston School Road and Danieldale Road, and being more particularly described in the legal description found in Exhibit "A," (hereinafter, the "Property), attached hereto and incorporated herein.

SECTION 2. That the subject Property shall be developed and used only in accordance with the following special development regulations as set forth herein below:

1. The land uses permitted in the Lancaster Land Development Code for Medium Industrial zoning Districts shall be allowed on the subject Property, except the following uses shall be excluded as permitted uses on the subject Property, to wit:

- A. Blood plasma donor center;
- B. Prison/custodial institution;
- C. Rescue mission or shelter for the homeless;
- D. Social service provider, not rescue mission or shelter;
- E. Night club, discotheque, or dance hall;
- F. Pawn shop;
- G. Sexually oriented business;
- H. Towing and impound yard;
- I. Truck stop with fuel and accessory services; and,
- J. Salvage or reclamation of products (outdoors).

2. That prior to the submittal for any and all building permits for any and all building structures on subject Property, the owner/developer of said Property shall be required to submit a detailed development plan and site plan, subject to the review and approval of the Planning and Zoning Commission of the City of Lancaster.

SECTION 3. That the subject Property, now hereby zoned Planned Development-Number [PD number unassigned until approved] shall be developed and used in conformance with the special regulations set forth in Section 2 of this Ordinance, and in the manner and for the purposes provided for by the Medium Industrial (MI) zoning district regulations set forth in the Lancaster Land Development Code and the Comprehensive Zoning Ordinance of the City of Lancaster, as heretofore amended and as amended herein, and the detailed site plan, which shall be submitted.

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

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as

2. That prior to the submittal for any and all building permits for any and all building structures on subject Property, the owner/developer of said Property shall be required to submit a detailed development plan and site plan, subject to the review and approval of the Planning and Zoning Commission of the City of Lancaster.

SECTION 3. That the subject Property, now hereby zoned Planned Development-Number [PD number unassigned until approved] shall be developed and used in conformance with the special regulations set forth in Section 2 of this Ordinance, and in the manner and for the purposes provided for by the Medium Industrial (MI) zoning district regulations set forth in the Lancaster Land Development Code and the Comprehensive Zoning Ordinance of the City of Lancaster, as heretofore amended and as amended herein, and the detailed site plan, which shall be submitted.

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

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Comprehensive Zoning Ordinance, as

amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. That this ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law and charter in such cases provide.

DULY PASSED AND APPROVED by the City Council of the City of Lancaster, Texas, on the ____ day of _____, 2011.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

ROBERT E. HAGER, CITY ATTORNEY
(REH/JVP/49855)

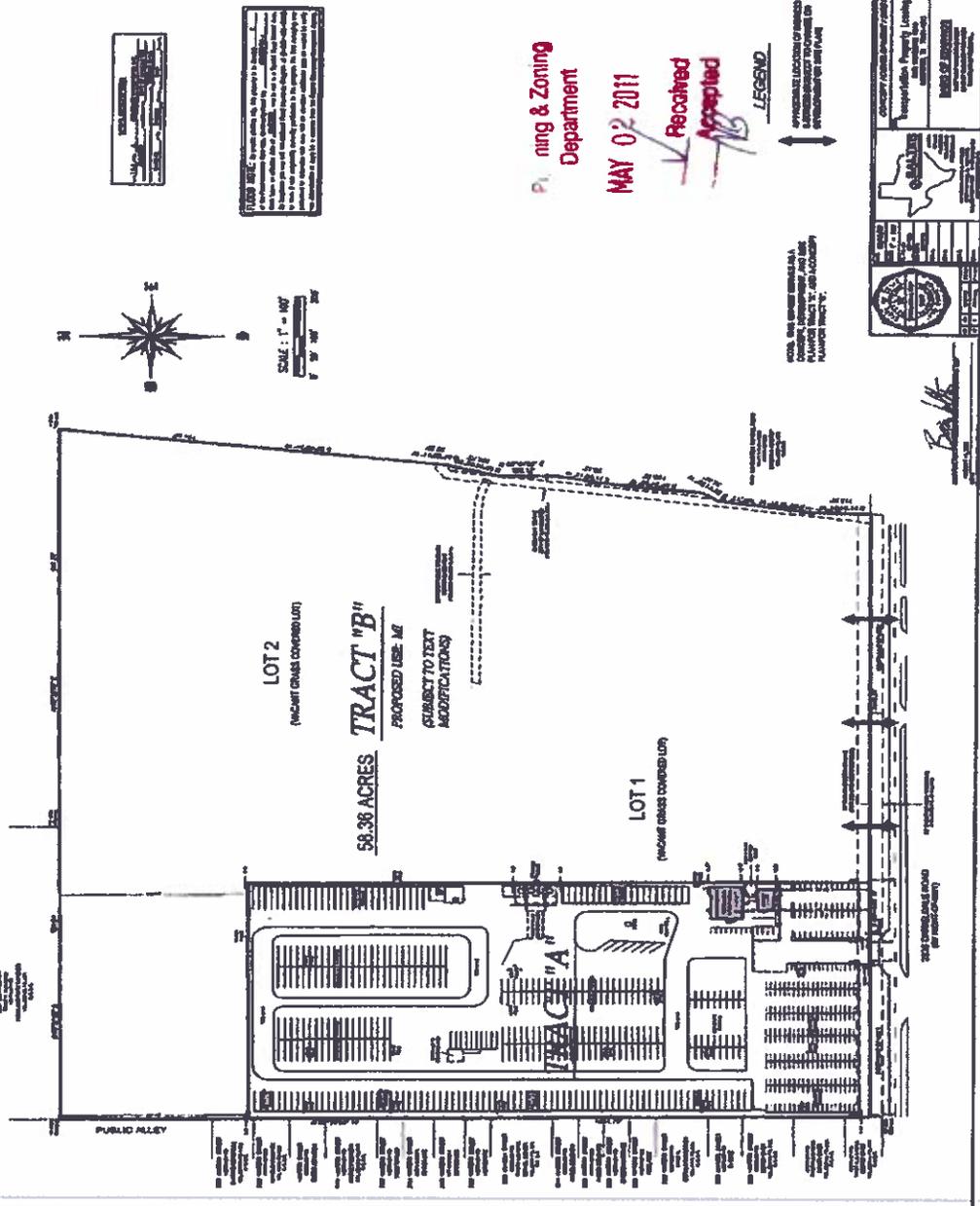
EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

59.041 acres of property located within the S.B. Runyon Survey, Abstract No. 1199, Recorded in Volume 99155, Page 60, Dallas County, Texas.

EXHIBIT "B"

CONCEPT / DEVELOPMENT / SITE PLAN



PLANNING & ZONING DEPARTMENT
 MAY 02 2011
 Received
 Accepted

LEGEND

APPROXIMATE LOCATIONS OF SETBACKS, EASEMENTS, AND UTILITIES AS SHOWN ON THIS PLAN.

PLANNING & ZONING DEPARTMENT
 1000 N. GARDNER STREET, SUITE 100
 OKLAHOMA CITY, OKLAHOMA 73102
 (405) 241-2200
 www.okcplanning.com

PLANNING & ZONING COMMISSION
Agenda Communication for
June 7, 2011

#4

Z11-05 Conduct a Public Hearing and Consider an Amendment to the City of Lancaster's Comprehensive Plan's Future Land Use Map and a Rezoning Request from LI – Light Industrial to PD MI – Planned Development for Medium Industrial with conditions to allow a trucking transport facility. The property is approximately 59.041 acres of land that is located on the north side of Daniieldale Road approximately 1,340± feet west of the intersection of Houston School Road and Daniieldale Road. The legal description of the property is within the S. B. Runyon Survey, Abstract no. 1199, Recorded in Volume 99155, Page 60, Dallas County, Texas.

Background

- 1. Location and Size:** The property is located on the north side of Daniieldale Road, approximately 1,340± feet west of the intersection of Houston School Road and Daniieldale Road. The property is approximately 59.041 acres in size.
- 2. Current Zoning:** The subject property is currently zoned LI, Light Industrial.
- 3. Adjacent Properties:**
North: LCD – South I-20 Warehouse sub-district, Lancaster Campus District – South Interstate 20 Warehouse sub-district (Southpointe Corporate Center)
South: LI, Light Industrial (Swift Transportation Company)
East: LI, Light Industrial (undeveloped)
West: LI, Light Industrial (Conway Truckload, Inc.)
- 4. Comprehensive Plan Compatibility:** The Comprehensive Plan identifies the subject property as suitable for existing Motor Freight Terminals (Medium Industrial). This proposal is compatible with the Comprehensive Plan because it supposes that the property is an existing Motor Freight Terminal within a Medium Industrial zoning district.
- 5. Public Notification:** On Friday, May 27, 2011, a notice for this public hearing appeared in the Focus Daily Newspaper; mailed notifications of this public hearing to all property owners that are within 200 feet of the subject site, and zoning signs were placed on the subject property. Of the thirty-two (32) property owner notifications mailed, none were returned in favor or opposition.

6. Case/Site History:

Date	Body	Action
12/9/09	N/A	Request withdrawn
6/15/10	P&Z	Recommended denial; applicant withdrew prior to City Council
10/5/10	P&Z	Applicant requested postponement until November 2, 2010
11/2/10	P&Z	Postponed to notify all property owners surrounding the subject property
12/7/10	P&Z	Recommended denial; applicant withdrew prior to City Council

Considerations

The purpose of this rezoning request is to secure the necessary land entitlements for the future development of the subject property which is under the ownership of Conway Truckload Incorporated. The subject property consists of two parcels. Conway Truckload developed the western parcel while setting aside the eastern parcel for future expansion of the business. At some time after construction of their existing facility, the City of Lancaster rezoned the area to Light Industrial, making the company a legal non-conforming use.

The applicant is attempting to re-establish this use as a conforming business within the City of Lancaster. There is currently no property within the city limits of Lancaster zoned Medium Industrial that would allow the current use to be a conforming entity. The subject property and areas surrounding it are the only areas designated on the Future Land Use Plan map as appropriate for Medium Industrial zoning. In addition, the section of Daniieldale Road that fronts the subject property is schedule to be expanded and improved beginning in the Fall of 2012.

This request was considered at the June 15, 2010 and December 7, 2010 Planning and Zoning Commission and was recommended for denial on both occasions. The applicant is requesting a Planned Development District (PD) primarily to allow the existing trucking company by right but eliminate other uses within the Medium Industrial category that could be considered inappropriate for the area. The eliminated land uses would be: Blood plasma donor center; Prison/custodial institution; Rescue mission or shelter for the homeless; Social service provider, not rescue mission or shelter; Night club, discotheque, or dance hall; Pawn shop; Sexually oriented business; Towing and impound yard; Truck stop with fuel and accessory services; Salvage or reclamation of products (outdoors). By not allowing these 10 uses, the proposed zoning change would make the subject property more restrictive in allowances than its current zoning.

Options/Alternatives

- 1) Recommend approval of the rezoning request
- 2) Recommend approval of the rezoning request with modifications and state those modifications for the record

- 3) Recommend denial of the rezoning request
- 4) Table the rezoning request

Recommendation

Staff recommends **approval** of the application with the following recommendations:

1. Prior to submittal of a building permit, the applicant shall be required to submit a development plan and site plan, subject to review and approval by the Planning and Zoning Commission.

Approval Process

Upon recommendation by the Planning and Zoning Commission, the City Council will conduct a public hearing and render a final decision for this item at their June 27, 2011, regular meeting.

Attachments

- Location Map
- Future Land Use Plan map
- Thoroughfare Plan map
- Concept/Development/Site Plan

Prepared By and Submitted By:

Nathaniel Barnett
Senior Planner, Development Services

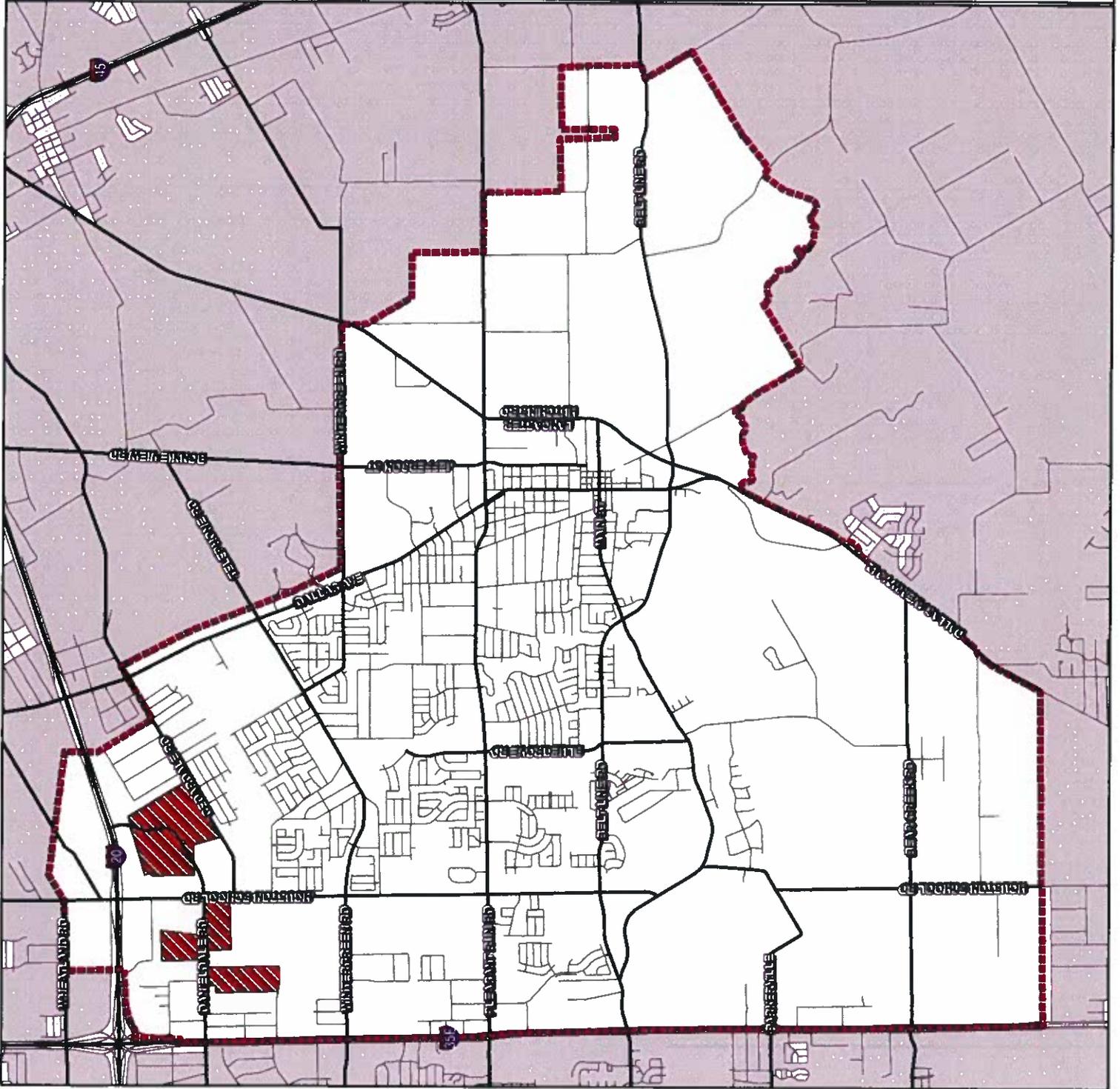
Date: June 2, 2011

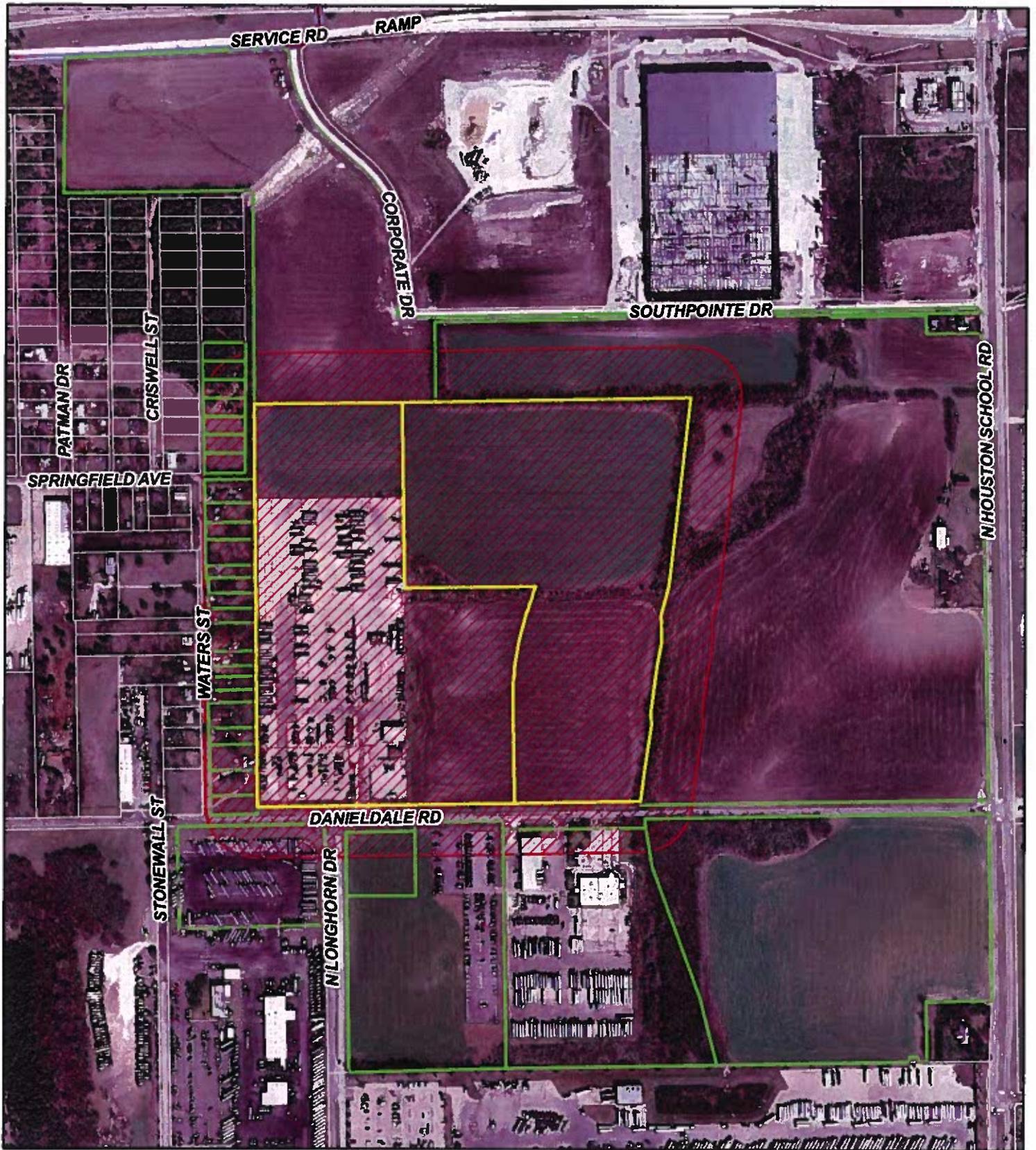
City of Lancaster Future Land Use



Legend

-  City Limits
-  Future Land Use Zoning
-  Motor Freight Terminals





- Parcels
- Subject Parcel
- Notification Parcels
- 200' Notification Area



City of Lancaster
2935 Daniieldale Rd
200' Notification Area

Unapproved Minutes from the Planning and Zoning Meeting, June 7, 2011

PUBLIC HEARING

1. **Z11-05** Conduct a Public Hearing and Consider an Amendment to the City of Lancaster's Comprehensive Plan's Future Land Use Map and a Rezoning Request from LI – Light Industrial to PD MI – Planned Development for Medium Industrial to allow a trucking transport facility. The property is approximately 59.041 acres of land that is located on the north side of Danieldale Road approximately 1,340± feet west of the intersection of Houston School Road and Danieldale Road. The legal description of the property is within the S. B. Runyon Survey, Abstract no. 1199, Recorded in Volume 99155, Page 60, Dallas County, Texas.

Senior Planner Nathaniel Barnett gave a presentation for the proposed zoning change. Senior Planner Barnett stated that the zoning change would reduce the number of uses allowed in Medium Industrial to lessen the intensity of the proposed zoning. He itemized the land uses that would be allowed by right and by Specific Use Permit in Light Industrial zoning that would not be allowed with the approval of the proposed Planned Development. He mentioned that the Future Land Use Plan shows the subject property as the most appropriate area to allow Medium Industrial.

Chair Colton asked if the development plan would need to be approved by Council also as opposed to just P&Z. Senior Planner Barnett stated that the recommendation was to have any future plans approved by P&Z but that it could be stipulated that they be approved by Council if that's what this body desired.

Commissioner Buchanan asked if anything had changed from the previous submittals. Senior Planner Barnett stated that it has been brought to P&Z three times. It changed the first time from not having a concept plan to having one. This time there were no changes. Commissioner Buchanan also asked if the existing business would be brought into conformity. Senior Planner Barnett stated that the request would bring that property into compliance. Commissioner Pointer stated that there were an abundance of trucking uses in the area now and this would add to it. Senior Planner Barnett stated that there are presently 3 trucking companies in the area. Commissioner Wright asked if there were any opposition expressed from surrounding property owners. Senior Planner Barnett stated one property owner did submit a letter in opposition. Commissioner Wright asked if how much additional traffic would be brought into the area. Senior Planner Barnett stated that nothing could be given definitively due to the nature of the design being conceptual at this time.

The applicant's representative, Bill Dahlstrom 901 of Main Street in Dallas, Texas, gave a brief presentation to the Commission. Accompanying Mr. Dahlstrom was Brad Vaughn of Conway Truckload. Mr. Dahlstrom gave an overview of the proposal and what the plans were for the future uses of the subject property. Mr. Dahlstrom acknowledged that the Staff had done a great job in pointing out that the property had been developed years ago with the intention to expand. At some time during the life of the company, the zoning had been changed to make it a legal non-conforming use. Thus the applicant has proposed this change to bring the existing use back into conformity. He also mentioned the compatibility of the other land uses in the area that would be adjacent to the subject property.

Commissioner Buchanon asked if there were any specific plans once if the zoning were approved. Mr. Dahlstrom stated that there were not at this time because the applicant would like to market the property once the zoning was approved. He also mentioned that the development plans would have to be approved by this body prior to moving forward. Commissioner Buchanon asked how much more traffic would be placed on Houston School Road and Daniieldale Road. Mr. Dahlstrom stated that they were not required to do one at this time. It would be done with a development plan.

Chair Colton opened the public hearing and asked for comments.

AGAINST:

Delores Beale, 2467 Mallory Lane, stated that she had a problem with the concept plan and the number of parking spaces. She expressed concerns about the trucks idling and causing pollution. She also expressed concerns about the traffic on Houston School Road.

Harold Beale, 2467 Mallory Lane, stated he was concerned with the City's budget and the deterioration of Houston School Road. He also wanted to know about the EPA standards for the area. And he wanted to know if the jobs would be for the citizens or for people outside of the city.

Nancy Moffett, 2105 N. Houston School Road, asked if the 59 acres included the existing development. She was informed that it did. She spoke of the wear and tear on the roads and the taxes that could potentially be collected by the applicant compared to other industries that would pay more taxes. She spoke of the cooperation that the community had received in working with Swift Trucking.

FAVOR:

None

COMMISSIONER BUCHANON MADE THE MOTION TO CLOSE THE PUBLIC HEARING, SECONDED BY COMMISSIONER POINTER.

AYES: COLTON, BUCHANON, PERKINS, POINTER, WRIGHT

NAYES:

THE MOTION CARRIED 5-0.

Discussion of the Zoning Change Request

Commissioner Pointer asked Staff if they were aware of the reason why the zoning changed to Light Industrial initially. Senior Planner Barnett stated that he could not answer that definitively since it was done years ago with no records to refer to in regards to why it was done.

Commissioner Buchanon asked if the funding was in place to upgrade Daniieldale Road. Senior Planner Barnett stated that the project is on the thoroughfare plan and the project is scheduled for 2012. Commissioner Buchanon stated that truck traffic has had some major detrimental effects in the past.

COMMISSIONER BUCHANON MADE THE MOTION TO RECOMMEND DENIAL WITH PREJUDICE FOR THE PROPOSED REZONING, SECONDED BY COMMISSIONER POINTER.

**AYES: COLTON, BUCHANON, PERKINS, POINTER, WRIGHT
NAYES:**

THE MOTION CARRIED 5-0.

DRAFT

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

9

AG11-009

Discuss and consider an ordinance of the City of Lancaster, Texas, amending the Code of Ordinances by amending Chapter 8, Offenses and Nuisances, by adding Article 8.1400, Littering, to prohibit littering within the City; providing definitions; providing for unlawful littering; providing a duty to keep property free of litter; providing for container closure and maintenance; providing for pedestrian litter container use restrictions; providing a severability clause; providing that this ordinance shall be cumulative of all ordinances; providing for a penalty for violations hereof; providing a savings clause; and providing an effective date.

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

Goal 3: Healthy, Safe, and Vibrant Neighborhoods

Background

At the May 23, 2011 regular City Council meeting, this item was tabled for additional review and discussion. As a result of this action, staff has provided additional background on the current local and state regulations governing solid waste, litter, and illegal dumping, governed by the State of Texas Health and Safety Code and the 2006 International Property Maintenance Code.

At the request of City Council, staff has sought effective ways to deter the accumulation of litter on public and private property above and beyond Property Maintenance Code compliance. This initiative led to the research of various means of litter control that could partner with the regulations currently in place locally and statewide to meet the goals set forth by the City Council.

From said research and collaboration, staff has drafted a litter ordinance which will allow for the enforcement of litter and debris offenses on both private and public property. This effort seeks to promote accountability for the health, safety and the appearance of our community and neighborhoods while working in conjunction with current code compliance initiatives already in place.

This ordinance asserts that an individual who intentionally or knowingly violates any section of this ordinance may be prosecuted and is subject to the penalty set forth by the ordinance. Any person, firm or corporation who violates, disobeys, omits, neglects or

refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than two thousand dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Considerations

- **Operational** – Currently litter violations can only be cited under the Property Maintenance Code when found on private property. The City currently utilizes Park Operations staff and contractors to remove debris and accumulated litter from the City's rights-of-way and public easements.

The adoption of this ordinance would formalize the enforcement of the Texas Health and Safety Code under Chapter 365 by the Lancaster Police Department allowing for citations to be written for offenses on both public and private property as outlined within the ordinance.

- **Legal** – The City Attorney has prepared the draft ordinance for placement in Chapter 8 of the City's Code of Ordinance.
- **Financial** – The enforcement of this ordinance may result in additional revenue generation as the result of fines assessed for violations. Minimal costs may be incurred for the purchase and installation of signage.
- **Public Information** – There are no public information requirements. Signage will be strategically placed throughout the community encouraging residents not to litter and providing ordinance enforcement information.

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
- 2006 Property Maintenance Code, Section 307
- Texas Health and Safety Code, Chapter 365

Prepared and submitted by:
Opal Mauldin Robertson, City Manager

Date: June 27, 2011

ORDINANCE NO. 2011

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 8, OFFENSES AND NUISANCES, BY ADDING ARTICLE 8.1400, LITTERING, TO PROHIBIT LITTERING WITHIN THE CITY; PROVIDING DEFINITIONS; PROVIDING FOR UNLAWFUL LITTERING; PROVIDING A DUTY TO KEEP PROPERTY FREE OF LITTER; PROVIDING FOR CONTAINER CLOSURE AND MAINTENANCE; PROVIDING FOR PEDESTRIAN LITTER CONTAINER USE RESTRICTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to promote a clean, healthy, safe, and attractive environment for the citizens of the City of Lancaster; and

WHEREAS, the City Council has determined that the accumulation of litter on public or private property tends to degrade the environment of the community, and can lead to health and safety hazards;

WHEREAS, the City Council finds that this ordinance is necessary to promote the health and safety of the citizens, and to enhance the city's appearance;

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 amending Chapter 8, Offenses and Nuisances, by adding Article 8.1400, Littering, which shall read as follows:

**“CHAPTER 8
OFFENSES AND NUISANCES**

.....

ARTICLE 8.1400 LITTERING

Sec. 8.1401 Definitions

For the purposes of this article, the following definitions shall apply:

Container means a City-approved receptacle used for the disposal of waste.

Litter means any wastepaper, used beverage or food container, rubbish, trash, or garbage not placed in a container.

Littering or to litter means the act of placing, throwing, depositing, disposing or dropping of litter.

Pedestrian litter container means a container provided on public or private property for the disposal of litter by pedestrians.

Person means a natural person, joint venture, joint stock company, partnership, association, club, company, lessee, agent, servant, officer or employee of any of them.

Private property means and includes, but is not limited to, yards, grounds, driveways, entrances, passageways, parking areas, working areas, storage areas, vacant lots, and recreation facilities owned by private individuals, firms, corporations, institutions and organizations.

Public property means and includes, but is not limited to, streets, medians, roads, road medians, catch basins, sidewalks, strips between streets and sidewalks, alleys, lanes, public rights-of-way, public parking lots, school grounds, parks, publicly-owned recreation facilities, and municipal bodies of water and waterways.

Sec. 8.1402 Littering Unlawful

A person commits an offense if said person causes, permits, suffers, or allows litter to be thrown or deposited on any public or private property, except in a container or a pedestrian litter container.

Sec. 8.1403 Duty to Keep Property Free of Litter

(a) It shall be the duty of the person who owns, occupies, or leases, or is engaged in construction on any private or public property to keep the exterior property free of litter.

(b) Persons who are owners, occupants or lessees of private property which abuts city sidewalks, streets, parkways, drainage ditches, or curb and gutter, shall keep those sidewalks, streets, parkways, curb and gutter, and drainage ditches free of litter by removing litter and placing it in a container.

Sec. 8.1404 Container Closure, Maintenance

(a) All residential and commercial containers may be open for ease of use, but shall be designed in such a way as to reasonably prevent their contents from becoming litter.

(b) All persons placing containers for collection and removing them after collection shall take the necessary precautions to prevent the contents thereof from becoming litter.

Sec. 8.1405 Pedestrian Litter Container Use Restrictions

A person commits an offense if the person causes, permits, suffers, or allows any household or commercial garbage, refuse, trash, debris, rubbish, solid waste or junk to be deposited in a pedestrian litter container.”

SECTION 2. This ordinance shall be cumulative of all provisions of ordinances of the City of Lancaster, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4. A person, firm, or corporation who intentionally or knowingly violates any section of this ordinance may be prosecuted under this section and is subject to the penalty set forth by this ordinance. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5. All rights and remedies of the City of Lancaster are expressly saved as to any other ordinances affecting nuisances which have accrued at the time of the effective date of

this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6. This ordinance shall be in full force and effect after its passage and publication as provided by law and it is so ordained.

DULY PASSED AND APPROVED by the City Council of the City of Lancaster, Texas, on the 27th day of June 2011.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney
(REH/JVP – revised only)

304.18 Building security. Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

304.18.1 Doors. Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort and shall have a lock throw of not less than 1 inch (25 mm). Such deadbolt locks shall be installed according to the manufacturer's specifications and maintained in good working order. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock.

304.18.2 Windows. Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking device.

304.18.3 Basement hatchways. Basement hatchways that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

SECTION 305 INTERIOR STRUCTURE

305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

305.2 Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

305.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

305.4 Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

305.5 Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

305.6 Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

SECTION 306 HANDRAILS AND GUARDRAILS

306.1 General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762 mm) high or more than 42 inches (1067 mm) high measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exception: Guards shall not be required where exempted by the adopted building code.

SECTION 307 RUBBISH AND GARBAGE

307.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

307.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

307.2.1 Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

307.2.2 Refrigerators. Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.

307.3 Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

307.3.1 Garbage facilities. The owner of every dwelling shall supply one of the following: an approved mechanical food waste grinder in each dwelling unit; an approved incinerator unit in the structure available to the occupants in each dwelling unit; or an approved leakproof, covered, outside garbage container.

307.3.2 Containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

SECTION 308 EXTERMINATION

308.1 Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 365. LITTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 365.001. SHORT TITLE. This chapter may be cited as the Texas Litter Abatement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE. The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of

those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 125, eff. Sept. 1, 1991.

SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. DEFINITIONS. In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

(4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

(6) "Litter" means:

(A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or

(B) nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

(9) "Solid waste" has the meaning assigned by Section 361.003.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.111, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.206, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 286, Sec. 1, eff. May 26, 1997.

Sec. 365.012. ILLEGAL DUMPING; CRIMINAL PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(b) A person commits an offense if the person receives litter

or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under this section is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(e) An offense under this section is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or

(2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:

(1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;

(2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or

(3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns; and

(4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of \$50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 828, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(28), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 286, Sec. 2, eff. May 26, 1997; Acts 2001, 77th Leg., ch. 995, Sec. 1, eff. Sept. 1, 2001.

Sec. 365.013. RULES AND STANDARDS; CRIMINAL PENALTY. (a) The Texas Natural Resource Conservation Commission shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.112, eff. Sept. 1, 1995.

Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS. (a) This subchapter does not apply to farmers:

(1) in handling anything necessary to grow, handle, and care for livestock; or

(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 3, eff. Sept. 1, 1993.

Sec. 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS. (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY.

(a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES. (a)

The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section

concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

Added by Acts 1993, 73rd Leg., ch. 828, Sec. 4, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 439, Sec. 1, eff. June 9, 1995.

SUBCHAPTER C. SPECIAL PROVISIONS

Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE. The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY. (a) The definitions provided by Section

365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.034. COUNTY REGULATION OF LITTER NEAR PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway

in the county;

(2) provide for the removal and disposition of litter accumulated near a public highway in violation of an order adopted under this section; and

(3) provide for the assessment against a person who owns the property from which litter is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the litter.

(b) Before the commissioners court takes any action to remove or dispose of litter under this section, the court shall send a notice by certified mail to the record owners of the property on which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the litter was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 126, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.162, eff. Sept. 1, 1991.

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

10

AG11-010

Discuss and consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a License and Use Agreement by and between the City of Lancaster and PTA Sports Management, Inc. for the implementation and restructuring of the Youth Sports programs; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda

Goal 3: Healthy, Safe & Vibrant Neighborhoods

Background

On March 22, 2010, City Council approved an agreement with PTA Sports Management, Inc. (PTA Sports) to restructure and improve the City of Lancaster's Youth Programs for the purpose of providing sports and confidence-building opportunities to the youth in the community. The term of this agreement was for a period of one (1) year and thereafter automatically renewed from year to year unless terminated sooner by either party.

In an effort to revise the contract to assure mutual benefit and more clearly defined expectations, the City of Lancaster staff terminated the existing agreement as previously executed, with an effective termination date of March 24, 2011.

The revised agreement is for a term of three (3) years and requires increased contributions by PTA Sports Management to the City of Lancaster.

Considerations

- **Operational** - The proposed agreement will permit PTA Sports to conduct a football league and the TRUTH Summer camp. The agreement will enhance recreation amenities and athletic program offerings through the following:

1. Implementation of The Truth Summer Camp and Football League

2. Coordination and implementation of three (3) athletic leagues annually on behalf of the City of Lancaster with City receiving net profits
 3. Assistance with securing funds to replace pre-existing amenities at Lancaster Community Park to include:
 - Sand Volleyball Court (year 1)
 - Outdoor Basketball Court (year 2)
 - Outdoor Pavilion (year 3)
 4. Five (5) appearances by Deion Sanders at City sponsored events
- **Legal** – The City Attorney has reviewed and approved as to form the attached resolution for the License and Use Agreement.
 - **Financial** – The City of Lancaster will provide PTA Sports Management with use of the banquet facilities, gyms, football, and soccer facilities at no charge.

At no charge, PTA Sports will provide Deion Sanders for five appearances at City sponsored events, estimated value at \$25,000 each appearance.

PTA Sports will pay a fee of \$10 per participant for summer camp.

PTA Sports will pay a fee of \$10 per participant for football league.

PTA will purchase a City of Lancaster recreation ID card for each participant.
(Ages 5-11= \$5 annually; Ages 12-17= \$10 annually)

PTA will allow City of Lancaster youth to participate in Summer Camp at a 50% reduced rate.

- **Public Information** – There are no public information requirements.

Options/Alternatives

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

Recommendation

The Park and Recreation Advisory Board reviewed deal points at its April 25, 2011 meeting and recommends approval as presented.

Staff recommends approval of the resolution and agreement as presented.

Attachments

- Resolution
- 2011 License Usage Agreement with PTA Sports Management, Inc.

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

Date: June 13, 2011

RESOLUTION NO. 2011-06-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LICENSE AND USE AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER AND PTA SPORTS MANAGEMENT, INC. FOR THE IMPLEMENTATION OF YOUTH SPORTS PROGRAMS; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, PTA Sports Management, Inc. will provide Youth Sports Programs for the City of Lancaster and develop a youth football program and Truth Summer Camp; and

WHEREAS, the City Council of the City of Lancaster, Texas, desires to contract with PTA Sports Management, Inc. for the above referenced services;

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

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

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

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

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

SECTION 5. 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 27th day of June 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS § LICENSE AND USE AGREEMENT BY AND BETWEEN
§ PTA SPORTS MANAGEMENT, INC. AND
COUNTY OF DALLAS § THE CITY OF LANCASTER, TEXAS

This License and Use Agreement (“Agreement”) is made and entered into on this the _____ day of June, 2011, by and between PTA Sports Management, Inc. (“PTA”) and the City of Lancaster, Texas (“City”).

RECITALS:

WHEREAS, the City of Lancaster, Texas owns and maintains City parks and sports facilities; and

WHEREAS, PTA Sports Management, Inc. implements and maintains customized youth programs; and

WHEREAS, the City desires to partner with PTA to restructure and improve the City of Lancaster’s Youth Programs for the purpose of providing sports and confidence-building opportunities to the youth in the community; and

WHEREAS, PTA desires to use the City parks and facilities set forth in Exhibit “A,” to implement and maintain a youth summer camp program, recreational and select youth football program, recreational and select youth baseball program, mentoring program, tutoring program, and parental involvement program; and

WHEREAS, the operation and maintenance of the youth programs, parks and facilities will require the cooperation of both City staff and PTA; and

WHEREAS, PTA agrees to make payments solely from current revenues for any costs associated with the operation of the youth programs and maintenance of parks and facilities; and

WHEREAS, PTA and the City agree that PTA’s use of the property and facilities identified in Exhibit “A” shall comply with the terms and conditions of this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises and obligations in this Agreement, PTA and the City hereby agree as follows:

I.
LICENSE GRANTED

1.01 City hereby grants PTA a license, pursuant to the terms of this Agreement, for the purpose of utilizing City athletic fields and facilities located within City parks identified in Exhibit “A” for the operation and maintenance of youth athletic and life instruction programs within the City of Lancaster, including: (1) The Truth Summer Camp (2012 – 2014); (2) Youth

Football Program with recreational and select leagues; (3) Youth Baseball Programs; (4) Parental Involvement Programs.

II. TERM

2.01 The term of this Agreement shall be for a period of three (3) years commencing on the date first written above, and shall thereafter be automatically renewed from year to year unless terminated sooner by either party in accordance with the terms herein.

III. CONDITIONS OF USE

3.01 In connection with its Youth Football & Baseball Programs, PTA shall provide user fees in the amount of ten dollars (\$10.00) per participant, per program, per season, and purchase a participant ID card for each participant registered, which are due and owed to the City prior to the first regularly scheduled game of such season. All registrations will be made through the PTA website. A roster of all registered participants will be provided to the CITY fourteen (14) days after the start of the season.

3.02 PTA further agrees, as a condition to the license granted herein, to provide a proposed facility use schedule (which specifically identifies activity rooms, complexes and fields needed for PTA youth programs, and dates and times of such use) to the City at least sixty (60) days before the commencement of each sports season or youth program term. PTA shall have reasonable access to the Lancaster Recreation Center during the summer. Within fifteen (15) days of the receipt of the proposed facility use schedule, the City shall provide PTA with an authorized schedule for park and facility use by PTA. PTA shall provide the City a game and practice master schedule ten (10) days before the commencement of each sports season, itemizing team use of each game field, including the days of the week and starting and ending time for games and practices.

3.03 PTA agrees to provide the City with a list of all staff members and persons who will work as volunteers, liaisons, coaches, or otherwise assist with any program offered by PTA at the City. PTA shall perform a national background check on any person who volunteers, liaisons, coaches, or otherwise assists with a PTA program within the City of Lancaster and, in accordance with City policy governing youth sports, shall only allow persons with a clear background to volunteer, liaison, coach, or otherwise assist with the PTA program.

3.04 Football season shall run August 1st through January 31st, and consist of all practices, league games, make-up games, and tournaments. The City shall allow use of game fields for try outs and/or coaches recruiting on dates mutually agreed to by PTA and the City.

3.05 Baseball season shall run March 1st through August 31st, and consist of all practices, league games, make-up games, and tournaments. The City shall allow use of game fields for try outs and/or coaches recruiting on dates mutually agreed to by PTA and the City.

3.06 Sports Camps and Clinics: In addition to the use provided in Sections 3.01 through 3.05 of this Agreement, PTA shall be allowed to conduct all sports camps or clinics on game fields based on availability. PTA shall provide fees in the amount of ten dollars (\$10) per participant per camp or clinic and purchase a City of Lancaster participant ID card, which are due and payable to the City fourteen (14) days after the start day of the scheduled camp or clinic. PTA shall allow City of Lancaster Youth to participate at a reduced rate of 50% of advertised fee for camp; nothing contained herein shall be construed to reduce the per camp attendee participant fee. In connection with any camp or clinic, PTA agrees to provide the following:

1. a roster of all participants indicating their residency;
2. a certified roster of all camp staff, paid and volunteer, indicating they have a clear national background check in accordance with City policy and standard of care governing youth sports;
3. dates and starting and ending times;
4. a copy of all camp and/or clinic advertising;
5. a list of facilities and game fields to be used.

3.07 PTA is granted the authority to reasonably use the City's buildings and indoor facilities identified in Exhibit "A" during the business operating hours established by the City for scheduled youth programs. PTA is granted the authority to use the City's parks and outdoor sports facilities identified in Exhibit "A" between the hours of 6:30 a.m. and 10:00 p.m., Sunday through Saturday, for its scheduled youth programs, including football and baseball seasons. The City and PTA agree that scheduling of additional games, practices, and activities on dates not contained in the authorized schedule shall not be permitted unless these additional times are mutually agreed to in writing by the City and PTA.

3.08 The usage of the facilities depicted in Exhibit "A" shall be limited to the sports games and activities scheduled by PTA for which the Parks and Recreation Department has received notice and approved as provided in this Agreement. **PTA shall provide one point of contact for all scheduling of City facilities and fields.** Weather days, rain days, or suspension of play may require rescheduling of events; notice of rescheduling of those events must be given to the Parks and Recreation Department at least **forty-eight (48) hours** prior to such use. PTA will ensure the facilities used for practice and games are cleaned up before they leave.

3.09 PTA further agrees to use such facilities in accordance with the following established conditions:

Athletic Facility Rainout Procedures: When applicable, daily field playability status will be on the Parks and Recreation Department rainout line 972-218-5559 by 3:00 p.m. weekdays, and by 7:00 a.m. Saturdays, Sundays, and Holidays. The emergency contact numbers for the Park Director or his/her designee(s) will be distributed to PTA designated league officials prior to season start. The City's Parks Department rainout

line will be updated as soon as field conditions change between playable or unplayable status. The Rainout/Closure form must be filled out for each incidence see Exhibit "E."

Severe Weather Field Closure Policy and Procedure: PTA shall cancel, delay or postpone any games, tournaments, practices, scrimmages, camps, or other outdoor activities if severe weather conditions are present. The CITY, in its sole discretion shall determine the condition or playability of all athletic fields.

Authority to Close Field: The City, at its sole discretion, retains the right to close any City owned facilities subject to this agreement upon reasonable notice to PTA. The Park's Director or his/her designee, at their sole discretion, may close the City facilities and suspend play at any time if it is determined that participants risk of injury, damage to the facilities or the general health, safety or welfare of the participants or members of the public are in jeopardy. In addition, fields may be closed for repair, remodeling, maintenance or over seeding, in which case the City will timely notify league officials of PTA to minimize the impact on schedules when possible.

Field Maintenance or Changes to Season Schedules: PTA through their President and/or his/her designee shall promptly notify the CITY of all field maintenance requests, additional services or unsafe facility conditions by providing notice to the Park's Director and/or his/her designee. PTA shall notify the City of any and all season schedule changes not depicted in the master schedule. PTA shall provide written notice to the Recreation Supervisor at least **forty-eight (48) hours** prior to any change request. The CITY reserves the right to grant or deny such schedule change.

3.10 Upon reasonable notice to PTA, the CITY reserves the right to close certain facilities even during the operational hours and may make alternative arrangements at a replacement premises or facilities.

3.11 PTA may not remove and/or relocate, in whole or in part, any improvement, facilities, or fixtures, including but not limited to bleachers, goals, markers or other structures without the expressed written permission of the City, and then only in the event that such removal or relocation will not subject such improvement, facilities, or fixtures to damage. Any such removal will be at the sole expense of PTA.

3.12 Athletic Equipment: The PTA may maintain related athletic equipment, installed and used by PTA, for the sports program in accordance with generally accepted maintenance standards, at its sole cost, within the parks and facilities identified in Exhibit "A." This shall include any labor, contractual repair as needed, parts or replacement as required. Prior to any alteration or installation of such equipment, written authorization must be provided by the Lancaster Parks and Recreation Department. The CITY shall not unreasonably withhold any requested authorization by PTA.

3.13 **PTA shall not post any signs or banners without the prior written approval of the Director of Parks and Recreation. Such signage shall be removed within twenty-four (24)**

hours after conclusion of the activity or event. The City, in its sole discretion, may prohibit any signage within any of the facilities covered by this license.

IV. MAINTENANCE

4.01 The City shall be responsible for all maintenance and costs, including water, sewer, electric, gas, and other utilities as associated with the subject parks and facilities identified in Exhibit "A" used by PTA for PTA's programs under the terms of this Agreement. Such maintenance and costs provided by the City include:

- (1) watering, mowing, fertilization, and other turf management of fields;
- (2) lining fields;
- (3) general maintenance of facilities; and
- (4) scoreboards, fences, and bleachers.

4.02 Any additional maintenance or improvements by PTA to the playing field surface or park facilities identified in Exhibit "A" shall require written authorization by the City, by and through the Director of Parks and Recreation or his designee, for such maintenance or improvements. The City shall not unreasonably withhold any requested permission by PTA.

4.03 The City shall have the sole duty and responsibility for any repairs of any permanent improvements owned by the City such as goal posts, backstops, dugouts, spectator stands, buildings, lighting facilities, scoreboards or other permanent structural improvements on the property identified in Exhibit "A."

4.04 The City, as the owner, shall be permitted and has the right to make, at its own expense, any alterations or additions to any of the premises listed in Exhibit "A," notwithstanding any provision of this Agreement.

V. PROMOTIONS

5.01 PTA agrees that it shall obtain City approval for any press release, media announcement, advertisement or other promotion of PTA programming within the City of Lancaster prior to its release to the public.

5.02 PTA further agrees to include the City's logo on any advertisement or promotional materials for PTA programming conducted on facilities covered under this Agreement.

5.03 PTA shall also secure, at its sole cost, the personal appearance of Deion Sanders at five (5) City of Lancaster programs and/or special events, which may include but are not limited to Friday Night HEAT, Youth Advisory Committee Meetings, Fourth of July Celebration, and other City-sponsored events. The requests for Deion Sanders appearances will only come from the City Manager or Parks and Recreation Director.

5.04 PTA further agrees to assist with fundraising campaigns to construct the following amenities at Lancaster Community Park:

- Year (1) Sand Volleyball Courts- Total area 96'x80'; two 60'x30' courts with 16' in between the courts
- Year (2) Basketball Courts – 84' L x 56' W with a 3' paved area around it
- Year (3) Pavilion – 78' in diameter, including 3 trash cans, 2 grills and 4 benches

5.05 PTA agrees conduct a minimum of three (3) athletic leagues annually for the City of Lancaster Park and Recreation Department with all revenues and expenses being collected and paid by the City with net profit earnings being applied to recreation revenues towards the general fund.

VI. CITY CONTACT INFORMATION

6.01 City of Lancaster Contact Information:

1. Injury, Accident or Unsafe Condition: All known injuries, accidents or unsafe conditions occurring on City property will be reported to the City within twenty-four (24) hours, utilizing the attached "Incident/Accident Form" (Exhibit B) or "Unsafe Condition Form" (Exhibit C). These completed forms shall be delivered by hand delivery, mail, or e-mail to the Park Director at the Lancaster Recreation Center located at 1700 Veterans Memorial Parkway, Lancaster, Texas, 75134.

2. Maintenance Concerns: All maintenance, irrigation, field preparation, repairs and lighting concerns are to be coordinated through the Park Superintendent at 972-218-2304.

3. Scheduling Questions: All scheduling of facilities for games, practices, tournaments, clinics and camps are to be coordinated through the Recreation Superintendent, at 972-218-3715.

VII. GENERAL REQUIREMENTS APPLICABLE TO PTA USE OF CITY PROPERTY

7.01 **IMMUNITY**: Nothing in this Agreement, or in any exhibit or attachment hereto, shall be construed to affect, alter, or modify the immunity of the City under the Texas Civil Practice and Remedies Code §§101.001 et seq. It is expressly understood and agreed that in the execution of this Agreement, neither City nor PTA waives, nor shall be deemed to waive, any immunity or

defense that would otherwise be available to each against claims arising in the exercise of governmental powers and functions.

7.02 INSURANCE: During the term of this Agreement, and any extensions thereof, PTA agrees to obtain and maintain, at its sole expense, general liability insurance with the minimum amounts of \$500,000 Bodily Injury Liability and \$500,000 Property Damage Liability, and naming the City of Lancaster as an additional insured, to protect against potential claims arising out of the PTA's use of the CITY'S property and facilities designated on Exhibit "A" attached hereto. The PTA shall furnish CITY with a copy of all certificates of insurance in accordance with this Paragraph within sixty (60) days from the date of execution of this Agreement. Nothing contained herein shall be construed to grant any third party rights or waive the governmental and/or public purpose of the operation or use of any of the facilities named in this Agreement under Exhibit "A."

7.03 THIRD PARTIES: This Agreement does not create any third-party beneficiaries. Nothing in this Agreement or in any exhibit or attachment hereto, shall be construed to create, expand or form a basis for liability to any third party under any theory of law against either the City or PTA unless such a basis exists independent of this Agreement under State or federal law.

7.04 NOTICE: Each notice or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered by e-mail or personally during the normal business hours of the party to whom such communication is directed, or upon receipt when sent by United States registered or certified mail, return receipt requested, postage prepaid, to the appropriate one of the following addresses as may be designated by the appropriate party; however, each party has a right to designate a different address by giving the other party fifteen (15) days prior written notice of such designation:

If to PTA:

DL Wallace
PTA Sports Management, Inc.

If to CITY:

Sean D. Johnson, Director
Director of Parks and Recreation
City of Lancaster
1700 Veterans Memorial Parkway
Lancaster, Texas 75134

With a copy to:

Opal Mauldin-Robertson, City Manager
City of Lancaster
211 N. Henry
Lancaster, Texas 75146

And

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

7.05 **CLAIMS AGAINST PARTIES:** Each party shall be responsible for defending and/or disposing of all causes arising against the respective party as a result of its use or occupation of the subject facilities and property. It is expressly understood and agreed that in the execution of this contract, neither City nor PTA waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of governmental powers and functions.

7.06 **CRIMINAL HISTORY PROVISIONS AND COACH CERTIFICATION:** PTA agrees to abide by the City's policy, as amended, concerning all adults acting as coach, instructor, teacher, official, or manager and all others in requirements of providing certification of criminal history clearance. An affidavit of certification (Exhibit "D") from PTA and a list of all persons, names and addresses who successfully pass the background check is to be turned into the CITY before PTA begins any league practice, games or team meetings with children. Further, it is highly recommended that PTA mandate that all coaches obtain a certification in coaching and sportsmanship.

7.07 **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties hereto, and no other oral or written commitments shall have any force or effect if not contained herein.

7.08 **SEVERABILITY:** In case any of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalidity, illegality or unenforceable provision had never been contained herein.

7.09 **AUTHORITY:** The undersigned officers and/or agents are authorized to execute this contract on behalf of the parties hereto, and each party hereto certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

7.10 PTA shall promptly report to CITY any defects or dangerous conditions it discovers on or concerning CITY property, and shall cease any such use of same until such defect or condition is repaired or cured by the CITY in accordance with Article VI

VIII. TERMINATION

8.01 Either party may terminate this Agreement with cause, by giving thirty (30) days prior written notice of the date of termination to the other party. Upon termination, all permanent

improvements shall remain the property of the City, and all personal property shall remain the property of the party paying for the same. Removal of personal property shall be subject to the terms contained herein; however, all personal property remaining on the subject real property ninety (90) days after the date of termination shall become the personal property of the City.

**IX.
REMEDIES**

9.01 No right or remedy granted or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

**X.
APPLICABLE LAW**

10.01 This Agreement is governed by the laws of the State of Texas; any venue for any action shall be in State District Court of Dallas County.

**XI.
SUCCESSORS AND ASSIGNS**

11.01 This Agreement is binding on and inures to the benefit of the successors, executors, administrators and assigns of the parties to this Agreement and affects the use of land and shall run with the land. PTA will not assign, sublet, subcontract or transfer the provisions of this agreement. This Agreement cannot be assigned without the expressed written authorization and approval of the CITY as required by law.

**XII.
RECITALS AND ATTACHMENTS**

12.01 The recitals and attachments to this Agreement are incorporated herein for all purposes as if set out herein verbatim.

**XIII.
EXECUTION**

13.01 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

(Intentionally left blank signature page to follow)

Executed between the parties on the date first written above.

PTA SPORTS MANAGEMENT, INC.

CITY OF LANCASTER, TEXAS

By: _____

(PRINTED NAME)

(TITLE)

By: _____
Opal Mauldin Robertson, City Manager

ATTEST:
CITY OF LANCASTER, TEXAS

By: _____
Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Attorney for PTA

By: _____
Robert E. Hager, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

PTA Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that he executed same for and as the act and deed of **PTA SPORTS MANAGEMENT, INC.**, and as the representative thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2011.

Notary Public In and For:
The State of Texas

My Commission Expires: _____

EXHIBIT "A"
(CITY PARKS & FACILITIES TO BE USED BY PTA)

LANCASTER RECREATION CENTER –

1700 Veterans Memorial Parkway

Hours of Operation – Monday – Thursday 6:00 a.m. – 9:00 p.m., Friday 6:00 a.m. – 5:00 p.m.,
Saturday 8:00 a.m. – 5:00 p.m., Closed Sundays

LANCASTER GRAND HALL –

1700 Veterans Memorial Parkway

Hours of Operation – Monday – Thursday 6:00 a.m. – 9:00 p.m., Friday 6:00 a.m. – 12:00 a.m.,
Saturday 8:00 a.m. – 12:00 a.m., Closed Sundays

LANCASTER COMMUNITY PARK FOOTBALL COMPLEX –

1749 North Jefferson

Hours of Operation – Monday – Sundays dawn to dusk

LANCASTER SOCCER COMPLEX –

315 Veterans Memorial Parkway

Hours of Operation – Monday – Sundays dawn to dusk

CEDARDALE SOFTBALL COMPLEX –

1901 Cedardale Road

Hours of Operation – Monday – Sunday as scheduled

ROYCE CLAYTON –

1800 Veterans Memorial Parkway

Hours of Operation – Monday – Sunday as scheduled

LANCASTER CITY PARK –

211 West Beltline Road

Hours of Operation – Monday – Sunday as scheduled

EXHIBIT "B"

**City of Lancaster
ACCIDENT/INCIDENT REPORT**

Name:	Date and Time Accident/Incident Occurred:
Address:	Date and Time Accident/incident Was Reported:
Telephone:	
Organization:	
Names of Witnesses:	Addresses and Telephone Numbers of Witnesses:
Description of Accident/Incident(What happened?) Person Received Medical Attention? Yes/No	
Cause of Accident/Incident:	

Have you addressed the "Five W's" and the "H" required for an accident/incident investigation? (Who, What, When, Where, Why, and How?)

EXHIBIT "C"

City of Lancaster
REPORT OF UNSAFE CONDITION FORM

COMPLETE SECTION BELOW AND GIVE TO PARKS DIRECTOR:

Organization: _____

Name: _____

Address: _____

Telephone: _____

Location: _____

Hazard or Problem: _____

Required Repairs: _____

PARK CREW LEADER COMPLETES SECTION BELOW AND GIVES TO PARKS DIRECTOR:

Park Crew Leader: _____

Date Received: _____

Action Taken: _____

Date Action Was Taken: _____

PARKS DIRECTOR REVIEW:

Date Received: _____ Type of Hazard: _____

Manager/Director Reviewing Condition: _____

Review Comments/Action to Correct: _____

Signature of Parks Director

EXHIBIT "D"

**STATE OF TEXAS § AFFIDAVIT OF COMPLIANCE FOR THE CITY
 § OF LANCASTER CRIMINAL BACKGROUND CHECK
COUNTY OF DALLAS § FOR ADULT VOLUNTEERS IN ORGANIZATIONS**

BEFORE ME, the undersigned, personally appeared _____, who is a member of the _____ (Organization) and after being by me duly sworn did depose:

1. "I have read and received a copy of the Policy for Criminal Background Checks for Adult Volunteers in Organizations in the City of Lancaster, as adopted by the City Council. I have never been convicted of a felony, I am over the age of eighteen and otherwise qualified and have personal knowledge of the facts set forth herein below:

2. That the above named Organization hereby currently utilizes the City of Lancaster athletic and recreational facilities. In connection therewith, the following named persons, who appear on the attached Exhibit "A", have either read and/or received a copy of the Policy for Criminal Background Checks for Adult Volunteers in Organizations in the City of Lancaster, as amended.

3. That in compliance with the foregoing policy, each and every person whose name appears on Exhibit "A" has had the results of a completed criminal history background check reviewed before any person was assigned to any duties or responsibilities at any City facility. The required criminal history background checks were conducted pursuant to the Criminal History Information Act adopted by the legislature as codified in § 411 of the TEXAS GOVERNMENT CODE et. seq. As a result of the said background check pursuant thereto, that none of the named individuals have been convicted of or had criminal charges against them in accordance with the City's criminal background policy for list of offenses set forth in said policy.

4. That this Organization assures if there is ever a change in status of any person listed, the City will be immediately notified.

5. That all statements and assurances made by this Organization in this affidavit are made under the penalty of perjury.

6. That this Affidavit and attached Exhibit "A" will expire and no longer comply with the foregoing policy twelve months and one day from the sworn date indicated below.

7. Further the affiant sayeth not."

,Affiant

SUSCRIBED AND SWORN TO BEFORE ME, on this _____ day of _____, 201__.

Notary Public, State of Texas

My commission Expires:_____

EXHIBIT "E"
CITY OF LANCASTER

ATHLETIC FACILITY RAINOUT /CLOSURE FORM

DATE AND TIME LISTD ON RAINOUT LINE:

SITE/FIELD:

WEATHER

SUNNY/CLOUDY: _____

RAIN: _____

TEMPATURE IN F: _____

WIND IN MPH: _____

FIELD CONDITIONS

INFIELD

WET/DRY: _____

SATURATION DEPTH: _____

OUTFIELD

WET/DRY: _____

APPROVALS AND DATES

PARKS: _____

RECREATION : _____

ADMINISTRATION: _____

EXHIBIT "F"
CITY OF LANCASTER
YOUTH PARTICIPANT ID CARD
FEE SCHEDULE

Participant ID cards are valid for 1 year from the date of purchase and are required to participate in any/ all City of Lancaster Recreation programs.

CATEGORY	AGES	ANNUAL FEE
Youth	5 – 11 years old	\$5
Teens	12 – 17 years old	\$10

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

11
AG11-011

Discuss and consider a resolution of the City Council of the City of Lancaster, Texas, approving the terms and conditions of a Development Agreement by and between the City of Lancaster and PTA Sports Management, Inc. for the construction, development, operation and maintenance of a football facility at Lancaster Community Park; authorizing the City Manager to execute said agreement; providing a repealing clause; providing a severability clause; and providing an effective date.

This request supports the City Council 2010-2011 Policy Agenda

Goal 3: Healthy, Safe & Vibrant Neighborhoods

Background

This is a companion item to the PTA Sports Management, Inc. (PTA Sports) License and Use Agreement for the development of an additional football field to accommodate more opportunities for football games to be played simultaneously.

The development agreement is for a term of three (3) years and requires PTA Sports Management to assume all funding obligations to construct, develop, operate and maintain a football facility.

Considerations

- **Operational** - The proposed agreement will permit PTA Sports to develop, construct, operate and maintain a football field at Lancaster Community Park. The agreement will enhance recreation amenities and athletic program offerings through the following:
 1. Adding an additional amenity to Lancaster Community Park to be competitive with other Best Southwest Cities to host football tournaments and events.
 2. Provide an opportunity to allow for games to played simultaneously with the addition of a football field.

3. The development plan, construction plans and specifications shall meet City building codes and standards, and must be approved in accordance with City development standards.

- **Legal** – The City Attorney has reviewed and approved as to form the attached resolution and the development agreement.
- **Financial** – PTA Sports Management covenants to design, develop, construct, operate and maintain a football facility on the premises as herein provided with all such costs solely the responsibility of PTA Sports Management. Upon termination of said agreement, all improvements shall remain the sole property of the City.
- **Public Information** – There are no public information requirements.

Options/Alternatives

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

Recommendation

The Park and Recreation Advisory Board reviewed deal points at its April 25, 2011 meeting and recommends approval as presented.

Staff recommends approval of the resolution and agreement as presented.

Attachments

- Resolution
- 2011 Development Agreement with PTA Sports Management, Inc.
- Community Park Map with detailed proposed area of field construction

Prepared and submitted by:

Sean Johnson, Director of Parks and Recreation

Date: June 13, 2011

RESOLUTION NO. 2011-06-55

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER AND PTA SPORTS MANAGEMENT, INC. FOR THE CONSTRUCTION, DEVELOPMENT, OPERATION AND MAINTENANCE OF A FOOTBALL FIELD AT LANCASTER COMMUNITY PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster, Texas, desires to contract with PTA Sports Management, Inc for the above referenced services;

WHEREAS, City desires to have PTA construct, develop, operate, and maintain the Premises for the use and enjoyment of all City youth, but with a particular emphasis on inner-city and economically disadvantaged youth; and

WHEREAS, City is owner of Community Park, located at 1700 Veterans Memorial Parkway, Lancaster, Texas, (hereinafter, the "Park") and desires to enhance its use as a municipal park by developing a new football facility, landscaping and all associated improvements ("Football Facility") within the Park limits; and

WHEREAS, the Football Facility is to be located on an area of land located within the Park, said area being more particularly described on Exhibit "B", which is attached hereto and incorporated herein by reference, (hereinafter, the "Premises"); and

WHEREAS, PTA is a Texas non-profit corporation established and existing under Texas law for the purpose of constructing, developing, operating, and maintaining the Football Facility at the Premises.

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

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

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

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

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

SECTION 5. 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 27th day of June 2011.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

THE STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

DEVELOPMENT AGREEMENT FOR
FOOTBALL FACILITY
AT COMMUNITY PARK

This Agreement ("Agreement") for the construction, development, operation, and maintenance of a football Facility at Community Park is entered into this _____ day of _____, 2011, between the City of Lancaster, Texas, a Texas municipal corporation ("City") and PTA Sport Management, Inc., a Texas non-profit organization ("PTA").

WHEREAS, City is owner of Community Park, located at 1700 Veterans Memorial Parkway, Lancaster, Texas, (hereinafter, the "Park") and desires to enhance its use as a municipal park by developing a new football facility, landscaping and all associated improvements ("Football Facility") within the Park limits; and

WHEREAS, the Football Facility is to be located on an area of land located within the Park, said area being more particularly described on Exhibit "A", which is attached hereto and incorporated herein by reference, (hereinafter, the "Premises"); and

WHEREAS, City desires to have PTA construct, develop, operate, and maintain the Premises for the use and enjoyment of all City youth, but with a particular emphasis on inner-city and economically disadvantaged youth; and

WHEREAS, PTA is a Texas non-profit corporation established and existing under Texas law for the purpose of constructing, developing, operating, and maintaining the Football Facility at the Premises.

NOW, THEREFORE, City and PTA, in consideration of the mutual covenants, terms and condition contained in this Agreement, and for other good and valuable consideration, do hereby agree as follows:

ARTICLE I
SCOPE; TERM

Section 1.1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow PTA to design, develop, construct, operate and maintain the Football Facility. PTA covenants to design, develop, construct, operate, and maintain the Football Facility in the Premises as herein provided. All such costs shall be the sole responsibility of PTA.

Section 1.2. Commencement and Initial Term. The Term of this Agreement shall commence on execution, and shall terminate three (3) years thereafter, unless terminated at an earlier date in accordance with the terms of this Agreement.

Section 1.3. Renewal Terms. Subject to City’s approval and consent and provided that PTA is not in default hereunder, PTA may renew on the same terms and conditions for two consecutive 3-year periods by providing written notice to City at least twelve (12) months, but not sooner than eighteen (18) months, prior to the termination of the initial Term or the termination of the first renewal period, whichever is applicable. If City elects to renew, City (through the Director of the Parks and Recreation Department, hereinafter the “Director”) shall inform PTA, in writing, no later than sixty (60) days after notice of desire of renewal by PTA.

Section 1.4. Uses. PTA shall use the Premises solely for the design, development, construction, maintenance, and operation of a first class Football Facility for the use and enjoyment of the youth of the City and the public in general, in accordance with all applicable laws governing a public park.

Section 1.5. Prohibited Use. Without in any way limiting the foregoing section, PTA shall not permit the Premises to be used in any manner that would render the insurance thereon void or the insurance risk more hazardous. PTA shall not use or occupy the Premises, or permit the Premises to be used or occupied, (a) contrary to any statute, rule, order, ordinance, requirement, or regulation available thereto or (b) in any manner which would (i) violate any certificates of occupancy or permit affecting same, (ii) cause structural injury to then existing improvements, (iii) cause the usefulness of the Premises or Park to diminish, (iv) constitutes a public or private nuisance or waste, or (v) be immoral or obscene or is a threat to the welfare of the general public.

ARTICLE II LICENSE

City hereby grants PTA a temporary and non-exclusive license during the term of this Agreement to use the Premises for the exclusive purpose of constructing, operating, and maintaining the Football Facility on the Premises in accordance with this Agreement.

ARTICLE III FOOTBALL FACILITY DEVELOPMENT AND PLANNING

Section 3.1. Development Plan. Upon entering into this Agreement, PTA, at its sole cost, shall undertake the development of a comprehensive Development Plan which upon approval as herein provided shall be attached to and incorporated in this Agreement for all purposes as Exhibit “B” (“Development Plan”) for the development and operation of the Football Facility at the Premises. PTA shall use its best efforts to provide to the City a realistic plan for (i) financing and funding sources for the construction, operation, and maintenance of the Football Facility, (ii) design and construction of the Football Facility and (iii) long-term operation and utilization of the Football Facility as set forth in this Agreement. The Development Plan shall more fully describe the construction schedule of the Football Facility on the Premises. Any such plans shall comply with all federal, state, and local laws and requirements, including the Americans with Disabilities Act, and all laws and regulations relating to historic structures, if applicable. The Development Plan shall be developed in consultation with the City through the City Manager or his or her designee and the designated representative of PTA. Final approval of the Development Plan will be by the Director and PTA. After approval of the Development Plan,

any material change to the Development Plan shall require prior written approval of both parties, which approval shall not be unreasonably withheld. The Development Plan shall be the official guide to all future development of the Premises under this Agreement and PTA and the City agree to adhere to same.

Section 3.2. Joint Cooperation; Access for Planning and Development. The parties agree to cooperate and coordinate with each other, and to assign appropriate qualified personnel to this project. PTA shall have and City does grant to PTA reasonable access to the Premises to facilitate planning and the preparation of plans and specification for the intended construction of the Football Facility.

Section 3.3. City Use Pending Construction. City shall have full control of the Premises until construction commences.

ARTICLE IV CONDITION OF THE PARK AND ITS PREMISES

PTA has previously inspected the Premises, has been given access to the records related to the Premises, and accepts the premises for PTA's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis and subject to the existing contracts (if there are any), matters of record and zoning. PTA acknowledges and agrees that City has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past present or future, as to, concerning or with respect to (a) the value, nature, quality or condition of the Premises, including without limitation, the title, soil and utilities, (b) the income to be derived from the Football Facility, (c) the suitability of the Premises for any and all activities and uses which PTA may conduct thereon, (d) the compliance of improvements located at the Premises or their operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises, (f) the manner or quality of the construction or materials, if any, incorporated into the premises, (g) the manner, quality, state of repair or lack of repair of the Premises, and (h) any other matter with respect to the Premises, and specifically, that City has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Premises of hazardous materials. PTA further acknowledges and agrees that, having been given the opportunity to inspect the Premises, PTA is relying solely on its own investigation of the Premises and not on any information provided or to be provided by City and agrees to accept the Premises for use and waive all objections or claims against City arising from or related to the Premises or to any hazardous materials on it. PTA further acknowledges and agrees that any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that City has not made any independent investigation or verification for such information and makes no representations as to the accuracy or completeness of such information. City is not liable for or bound in any manner by any verbal or written

statements, representations or information pertaining to the Premises, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. The term "hazardous materials" as used in this action shall mean any hazardous materials or hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Texas Hazardous Substances Spill Prevention and Control Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated there under.

ARTICLE V FUNDING OF THE FOOTBALL FACILITY

Section 5.1. Funding Account. PTA shall establish an account or accounts at a federally insured depository institution for fund-raising for the construction and operation of the Football Facility. Such account(s) shall be established in the name of PTA. City shall at all times have a right to audit such account(s).

Section 5.2. Obligation of PTA. All construction costs for the Football facility that PTA is responsible for must be underwritten through private sources, such as corporations, foundations, and individual contributions with no cost or obligation whatsoever to the City.

Section 5.3. Donor Refund. All donated funds must be held in the established account(s) and subject to full refund to donors until construction commences.

Section 5.4. Operating Reserve Fund. PTA shall maintain the Operating Reserve Fund and shall also use its best efforts to raise contributions from year to year in order to augment said fund. If at any time operational revenues are insufficient to maintain the Football Facility, then PTA shall supplement these funds from other sources. If PTA is unable to raise the additional funds from other sources, then City may terminate this Agreement. City acknowledges that PTA, during the Term of this Agreement, has full legal title to all reserve funds, and such funds shall be expended exclusively to satisfy PTA's obligation in this Agreement.

Section 5.5. Rental Payment to City. PTA shall pay no rent to the City during the Term of this Agreement.

ARTICLE VI DESIGN AND CONSTRUCTION

Section 6.1. Design and Construction of the Football Facility. PTA, at its sole cost and expense, shall undertake, and complete the design, development, and construction of the Football Facility subject to the terms of this Agreement. In this regard, PTA hereby agrees to enter into (in its own name) and perform all contracts necessary to fully complete the Football Facility pursuant to the Development Plan. All PTA contracts relating to the design, development, and construction of the Football Facility shall: (i) require the contractor to use good faith efforts to comply with the City's (BID) Business Inclusion and Development Plan, (ii) contain language subordinating and subjecting such contract to the terms of this Agreement and exculpating the City from any obligations and liability there under, (iii) if applicable, contain insurance

requirements for coverage's and limits not less than those which are customarily required by the City of its like contractors, naming the City and its officers and employees as additional insured's, (iv) indemnify the City and its officers, agents and employees against any claims, claims, costs or liabilities there under, and (v) if applicable, contain contractor qualification requirements sufficiently broad so as not to exclude minority contractors as a class, and general contract specifications sufficiently broad so as not to favor a single contractor. City shall have no liability for any claims that may arise out of design or construction of the Football Facility and PTA shall cause all of its contractors, consultants, and subcontractors to agree in writing that they will look solely to PTA, not to City, for payment of all costs and valid claims associated with the Football Facility. Furthermore, Director has a right to review and approve the selection of any design consultants, contractors, and subcontractors used by PTA to carry out the work pursuant to this Agreement, which approval shall not be unreasonably withheld. In addition to the Director and City of Lancaster building officials reviewing construction documents, PTA shall involve the Director and City of Lancaster building officials in the design planning process of the Football Facility. All design development documents shall be reviewed and approved by the Director and City of Lancaster building officials before the preparation of construction document plans and specifications commences. Furthermore, PTA must hire qualified, experienced design consultant, contractors, and subcontractors to perform the work. Within thirty (30) days after receipt of information relating to the contractors and subcontractors, Director and City of Lancaster building officials may, in writing, either approve or disapprove the selected contractor or subcontractor.

Section 6.2. Review of Construction Documents. All construction plans and specifications for the construction of the Football Facility must be reviewed and approved in writing by the City of Lancaster building officials and Director, prior to commencement of any work. All design and construction shall conform with all applicable City codes, ordinances, regulations, design criteria, building standards and specifications. All revisions to approved plans and specifications shall be submitted to the Director for prior written approval.

- a) City's review of any plans or specifications is solely for City's own purposes, and City does not make any representation or warranty concerning the appropriateness of any such plans or specifications for any purpose. City's approval of (or failure to disapprove) any such plans and specifications shall not render City liable for same, and PTA assumes and shall be responsible for any and all claims arising out of or from the use of such plans and specifications.
- b) Within thirty (30) days after receipt of plans and specifications for approval, Director and City of Lancaster building officials shall, in writing, either approve or disapprove the plans and specifications or inform PTA of the additional time required to complete the review thereof.
- c) Director's and City of Lancaster building officials review of any plans or specifications is solely for City's own purposes, and City does not make any representation or warranty concerning the appropriateness of any such plans or specifications for any purpose. Director's and City of Lancaster building officials approval of (or failure to disapprove) any such plans and specifications shall not render City liable for same, and PTA assumes

and shall be responsible for any and all claims arising out of or from the use of such plans and specifications.

Section 6.3. Construction Documents Provided to Director.

- a) PTA shall provide at least three (3) sets of construction documents to the Director on or before the date of distribution of the documents to potential contractors. The construction general conditions utilized by PTA to govern construction of the Football Facility shall be at a minimum equivalent to the City of Lancaster Park and Recreation Department's General Conditions. PTA shall provide the Director with a set of approved reproducible drawings prior to commencement of construction of the portion of the Premises covered thereby, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas, and approved by the construction manager. Any material changes to the final plans and specifications shall require prior written approval of the Director. PTA shall also furnish the Director with complete as-built drawings within sixty (60) days after construction is complete.
- b) The Drawings, Specifications and other documents prepared by PTA for this project are for use solely with respect to this project and City shall be deemed to retain ownership of these documents. PTA shall be permitted to retain copies, including reproducible copies, of the Drawings, Specifications and other documents for information and reference in connection with PTA's use and occupancy of the Football Facility.

Section 6.4. Permits and Other Approvals. PTA shall acquire, as required by applicable laws, ordinances, or regulations and at its sole cost and expense, all building permits, certificates of occupancy, and other permits, licenses, permissions, consents, and approvals required to be obtained from government agencies or third parties in connection with construction, occupancy and uses of any improvements, and any repairs, replacements or renovations to the Premises. PTA shall furnish Director evidence thereof. City will endeavor to waive its usual permit fees in connection with construction involving the football Facility when such waiver is allowed by its Development Code; provided, however, nothing herein shall obligate or bind future city councils to so act.

Section 6.5. City Required Bonds and Insurance during Construction. All construction contracts entered into between PTA and its contractor(s) (except for projects where the total expenditure will be \$25,000 or less) involving the Premises shall require performance and payment bonds and minimum insurance requirements (including All-Risk Builders Risk Insurance) in the form and amounts normally required by City for construction projects of this magnitude. Each performance and payment bond shall name PTA and City as joint obliges. The form of the bonds shall be as approved by the City Attorney for the City and be issued in accordance with Chapter 22.33 Texas Government Code, as amended by a corporate surety or sureties licensed to issue surety bonds in the State of Texas, authorized to do insurance business in the State of Texas listed on the United States Treasury List of Sureties Authorized to Issue Bonds for Feral jobs and otherwise acceptable to City. The bonds shall be maintained during the full term of the construction contract. For portions of the project where the total expenditure will

other parties as additional insured and as indemnities under the indemnification, defense and hold harmless provisions of the construction contracts, in a form approved by the City. The contractor(s) shall also be required to name City and PTA, their respective officers, agents and employees, as additional insured's on all liability insurance policies required for the Premises. Lastly, PTA agrees to require its construction contractor on any improvement project under this Section to provide, at a minimum, the insurance required as described in City of Lancaster Park and Recreation Department's General Conditions. PTA acknowledges receipt of a copy of the City of Lancaster Park and Recreation Department's General Conditions that are used for similar facilities.

Section 6.6. Conditions to Commencing Construction. Commencing construction by PTA is strictly conditioned upon the following:

- a) Approval of the Development Plan by the Building Officials, Engineering, and the Director;
- b) Approval of all plans and specifications for construction of the Football Facility by the Director;
- c) PTA obtaining all applicable building permits, zoning and other approvals required by the City or any other entity with jurisdiction for the construction of the Football Facility;
- d) PTA providing the Director with proof of the commitment of sufficient financing and financial resources to insure that upon commencement of the construction, the Football Facility and all related work shall be completed in accordance with the plans and specification within the time allotted. This obligation may be satisfied by PTA providing payment and performance bonds in a form acceptable to the Director and the City Attorney and in an amount not less than the approved construction budget;
- e) PTA providing City with copies of all construction contracts;
- f) PTA providing certificates, policies or other proof of the required insurance; and
- g) PTA providing lien waivers football general contractors.

Section 6.7. Project Construction. Subject to all laws and regulations, and in accordance with the approved Development Plan and plans and specifications, PTA shall be responsible for all material, labor, facilities, furniture fixtures and equipment, landscaping, signage, and any other activities necessary to begin and fully complete the construction of the Football Facility. All work shall be performed in a good and workmanlike manner. PTA shall be financially responsible for acquiring any new utility service or increased capacity of existing utility services that it may need.

Section 6.8. City Right to Observe and Inspect. City shall have the right (but not the obligation) to observe and inspect all work performed by any contractor(s). City inspection of the job site shall be coordinated with PTA's contractor(s), construction manager, and engineer. City shall perform such inspections in an expeditious manner calculated to minimize inconvenience and delay. During construction, PTA's construction manager or engineer shall be accessible to City at all times and shall provide sufficient on-site representatives, construction administrators and/or inspectors to assure that the project will be completed in accordance with the approved plans and specifications. The Director shall be entitled to receive notice of and attend all construction meetings, at which a representative of PTA shall be present, and shall be provided with copies of minutes by PTA's engineer or construction manager regardless of Director's presence.

Section 6.9. Access. PTA shall not interfere with public access to the other park amenities abutting the Premises at any time during PTA's construction activities.

Section 6.10. Vehicular and Pedestrian Access. PTA shall require its construction manager and contractors to be responsible for maintaining reasonable vehicular and pedestrian access to property and buildings on and abutting City's right-of-way at all times during PTA's construction activities.

Section 6.11. Staging Area. If necessary and requested by PTA, City shall provide to PTA or its contractors, to extent reasonably available, a staging area for use by PTA's contractors for storage of construction supplies and equipment at a location that shall be mutually acceptable to City and PTA. PTA agrees to maintain the staging area and agrees that upon completion of all construction activities, the staging area shall be returned to its original use in an equal or better condition than when originally entered onto. City shall not be required to incur any cost or expense in providing the staging area.

Section 6.12. Site Security and Securing Construction Materials. PTA and its construction manager, contractors and subcontractors shall be solely responsible for construction site security and securing all construction tools, equipment, supplies and materials when left on City property, including, but not limited to, any staging areas.

Section 6.13. City's Business Inclusion and Development Plan. PTA, and its engineers, construction manager, contractors and subcontractors shall adopt good faith efforts in compliance with the City's Business Inclusion and Development Plan in hiring and contracting with minority and women-owned local businesses certified by the City of Lancaster, or the North Central Texas Regional Certification Agency.

Section 6.14. Construction Facility Changes. All material Facility changes that affect the Premises or any City facilities shall be submitted for written approval in advance to the Director.

Section 6.15. Construction and Materials Testing. Any construction and materials testing, as agreed to by City and PTA, shall be performed by certified independent laboratories under contract to PTA or its construction manager. PTA shall furnish City with certified copies of the results of all tests. PTA shall have the right to submit to City a list of certified independent laboratories for advance approval by City, and City agrees to notify PTA promptly whether any laboratories on this list are not approved.

Section 6.16. Repair – Restoration of Properties. During construction, PTA shall be responsible for obtaining timely repair, replacement, or correction of all damage to any property or facilities of City or any other entity caused by the negligent acts or omissions or misconduct of PTA, its engineers, construction manager, contractors, and subcontractors, to City's reasonable satisfaction. All costs thereof shall be borne by PTA or its contractors, and shall not be a charge against the City. If PTA fails to make timely repair, replacement, or corrections of damage, City makes undertake same, but shall not be obligated to so act. The cost of repairs, replacements, or corrections made by the City on account of damage caused by the negligent acts or omissions or misconduct of PT, its engineers, construction manager, contractors, and subcontractors, shall be reimbursed to City by PTA.

Section 6.17. Nuisances. PTA and City recognize the authority of City under its charter and ordinances to exercise its police powers to protect the public health, safety, and welfare. Such powers extend to PTA or its contractor's construction activities on City property, and PTA recognizes City's authority to take appropriate enforcement action under its charter and ordinances to provide such protection. If City, acting through its appropriate departments and officials, determines that construction in progress should halt in order to protect the public health, safety and welfare, PTA shall halt the work in progress and, if the threat to the public health, safety, and welfare is the fault of PTA, PTA shall promptly resolve the situation. If the threat, to the public health, safety, and welfare is due to the fault of City, City shall promptly resolve the situation. If the threat to public health, safety and welfare is due to the fault of a third party, City may (but is not obligated to) take reasonable steps to resolve the situation or cause such third party to promptly resolve the situation, at the third party expense.

Section 6.18. City Inspection upon Substantial Completion.

- a) PTA shall perform the work contemplated by this Agreement or cause it to be performed by a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon substantial completion of construction, PTA shall furnish City with a certificate of substantial completion executed by PTA's construction manager or engineer for the project in a form and of a substance acceptable to the Director. PTA shall also furnish to City copies of Certificates of Occupancy or other similar document issued to certify completion of construction in compliance with applicable requirements.
- b) Notwithstanding the foregoing, the Director may require a walk-through inspection and equipment testing to confirm substantial completion of improvement and construction in conformity herewith and PTA, its construction manager, representatives, and

contractor(s) shall attend if requested. If the Football Facility is substantially complete but still has minor punch list items that need to be corrected, PTA shall cause its construction manager or contractor to promptly complete said items to the Director's satisfaction. Upon final completion and acceptance of the Football Facility, the construction shall become the property of the City.

Section 6.19. Mechanic's Liens. PTA agrees that PTA will not permit any claim of lien made by any mechanic, material man, laborer, or other similar liens to stand against the Premises, the Park, or any City Property in connection with any construction, improvements, maintenance, or repair thereof made by PTA and any contractor, agent or representative of PTA. PTA shall cause any such claim of lien to be fully discharged no later than ten (10) days after the date of filing thereof; provided, however, that in the event PTA, in good faith, disputes the validity or amount of any such claim of lien, and if PTA shall give to City such security as City may reasonably require to insure payment thereof and prevent any attempted sale, foreclosure, or forfeiture of the Premises or the Park or any portion thereof by reason of such nonpayment, PTA shall not be deemed to be in breach of this section so long as PTA is diligently pursuing a resolution of such dispute with continuity and upon entry of final judgment resolving the dispute, if litigation or arbitration results there from, immediately discharges said lien.

Section 6.20. Fee Simple Title to City. The parties acknowledge that fee simple title to the Premises and all improvements thereto, including without limitation, the Football Facility, shall automatically vest in City without any further action by either party hereto, free and clear of all items and other encumbrances arising by, through or under PTA, and PTA agrees to take no action before, during or after construction that would prejudice City's clear fee simple title.

Section 6.21. Fixtures, Equipment, and Personal Property.

- a) PTA may place or install in the Premises such personal property, removable fixtures and equipment, as PTA shall deem desirable for the operation of the Football Facility.
- b) The personal property, removable fixtures, and equipment used in the conduct of activities by PTA placed by PTA on or in the Premises (e.g. uniforms, computers), shall not become part of the real property, but shall retain their status as personal property ("personality"). Such personality may be removed by PTA at any time, so long as PTA is not in default under this Agreement and so long as any damage to the Premises occasioned by such removal is thereupon repaired. All fixtures, equipment, and improvements constructed, installed, or placed upon the Premises shall be deemed to become part of the real property (e.g., scoreboards, benches, goal post) and shall become the sole and exclusive property of City, free of any and all claims of PTA or any person or entity claiming by or through PTA. In the event PTA does not remove PTA's personality that it is permitted by this section to remove from the Premises within ten (10) days following the termination of the Agreement, City may treat said personality as abandoned and retain the personality and treat it as part of the Premises only at the personality removed and stored at PTA's expense. PTA shall promptly reimburse City for any damage caused to the Premises by the removal of personality whether removal is by PTA or City.

Section 6.22. Construction Warranties. PTA shall formally assign to City all warranties and warranty obligations of the contractor(s) and equipment manufacturers; provided, however, correction of defective work shall not by such assignment become the responsibility of City, but shall remain the responsibility of PTA and its contractor(s). PTA shall administer said warranties during the Term of this Agreement and any extension period thereof. PTA shall turn over to Director Copies of all building systems, training, and operation and maintenance manuals for the Premises and/or improvements constructed by PTA.

Section 6.23. Right of PTA to Make Changes. At any time and from time to time during the Term of this Agreement, PTA may make, at PTA's sole cost and expense, changes and additions to the Premises or any part thereof so long as such changes and additions are not "material." For purposes of this section, changes and additions to the Premises are "material" if said change or addition or any series or group of changes or additions (i) involve a cost in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) within any twelve (12)-month period, (ii) entail demolition or removal of part of the Football Facility or addition to the Football Facility not contemplated by the Development Plan, or (iii) changes the character of the Premises. Material changes and additions may be made only with the prior written consent of the Director and shall be subject to the Director's review and approval of the plans and specifications.

Section 6.24. Right of City to Make Repairs. City, its agent and employees, shall have the right, at any time and from time to time, to enter the Premises for the purpose of inspection or making any repairs or alterations to the Premises, or any improvements thereon, both interior and exterior, and of every kind of nature which are required of PTA under the Agreement but which PTA has failed to perform; and PTA shall not offer any obstruction, or hindrance to any such repairs or alterations; provided, however, that nothing contained in this paragraph shall be deemed to impose on City any obligation to actually make repairs or alterations.

Section 6.25. Public Purpose. The Parties understand that the construction of the Football Facility is for a public purpose, and is being built upon public property for the benefit of the citizens of Lancaster, specifically inner-city youth.

ARTICLE VII ADDITIONAL COVENANTS

PTA agrees that PTA shall, at its sole cost and expense;

- a) provide and maintain special facilities for handicapped patrons as required by law;
- b) fully comply with the City's (BID) Business Inclusion and Development Plan, as amended in its operation of the Football Facility.
- c) In the ordinary course of business, make prompt payment to its vendors, concessionaires, consultants, contractors, and similar parties, if nothing herein shall prevent PTA from contesting and litigating. In good faith, any payment alleged to be due to any such person; and

- d) maintain itself in good standing as a Texas non-profit corporation and exempt under the Internal Revenue Code and associated regulations.

**ARTICLE VIII
OPERATIONS OF THE FOOTBALL FACILITY**

Section 8.1. PTA Management and Operation of the Football facility. From and after the commencement of construction, PTA shall do all things and take all actions necessary and or appropriate for the operation, maintenance, and management of the Football Facility in accordance with this Agreement. Without limiting the generality of the foregoing, PTA shall;

- a) except as provided in Section 8.2 herein, pay all management, maintenance, repair, and operating expenses, and all other costs of the Premises;
- b) collect and account for all Premises revenue, using all reasonable efforts to obtain all fees, rents and other amounts due from users, vendors, advertiser, and sponsors and to achieve reasonable financial and operational success in light of the objectives of City and PTA for the Premises;
- c) commence, defend and settle in good faith such legal actions or proceedings concerning the management and operation of the Premises as are necessary or required in the opinion of PTA, without involving City and at no cost or liability to City;
- d) employ, pay, supervise, and discharge all personnel that PTA determines to be necessary for the management, operation, and maintenance of the Premises;
- e) maintain and make available to the public a schedule of basic rates, fees, and charges for rentals as approved by the City's Parks and Recreation Board (hereinafter, "Board") and the Director for the use of the Premises;
- f) purchase and maintain all materials, tools, machinery, equipment, and supplies necessary for the management, maintenance, and operation of the Premises;
- g) maintain the Premises, in a good, safe, efficient, attractive, and sanitary condition at all times, normal and ordinary wear and tear excepted; and repair consistent with the industry standards and practices;
- h) coordinate and administer a preventive maintenance and replacement program for the Premises and its machinery and equipment;
- i) Except as provided in Section 8.2 herein, pay for all utilities (electrical, sewer, and other related expenditures (e.g. installation of a water meter) for the improvements (and for any future improvements constructed by PTA). All such utilities will be arranged by the City and reimbursed to the City by PTA within thirty days after receipt of the utility bill from the City;

- j) maintain or cause to be maintained all necessary licenses, permits and authorizations for the operation of the Premises;
- k) payroll legally due taxes and assessments, if any, attributable to the Premises or its operation under this Agreement. In no event shall City be obligated to pay any tax or assessment or any portion thereof levied or created during the Term, irrespective of whether such tax or assessment or any portion thereof was specifically allocated to City's interest therein. All payments to PTA of taxes and/or assessments shall be made by PTA on or before thirty (30) days before the last day on which such payments may be made without penalty or interest. PTA shall furnish to City receipts or other appropriate evidence establishing the payment of such amounts;
- l) furnish to City such reports and other information concerning the Premises, and the management, maintenance, and operation thereof as may be reasonably required from time to time by the Director;
- m) provide an on-site manager for the Premises who will be responsible for the operation of the Football Facility;
- n) host tournaments, leagues, training sessions, and other football-related sports programs and activities for youth in the City of Lancaster;
- o) operate the Football Facility in a safe efficient and professional manner consistent with the highest industry standards and procedures and treat all patrons fairly;
- p) adhere to all City-mandated restrictions such as watering; and
- q) use reasonable marketing efforts to encourage, generate, and maintain high attendance levels at the Premises. Director must receive copies of all marketing materials.

Section 8.2. City Responsibility. City shall pay for the water expense in connection with normal irrigation purposes used for athletic reservation facilities during the Term of this Agreement and subject to annual appropriation by the City Council. Abnormally high water usage due to equipment failure or damage, inadequate supervision and control of irrigation activities, or other similar problems shall be at PTA's expense. In addition, City shall perform routine maintenance at the Park outside the boundaries of the Football Facility including mowing, trimming, litter pick up, irrigation system checks and minor repairs, athletic Facility markings, and general regular maintenance in accordance with the City of Lancaster Park and Recreation Department's current level maintenance standards.

Section 8.3. City Access. City reserves the right to enter and inspect the Premises during normal business hours, provided that it shall not unreasonably interfere with the operations of the Premises (unless such interference is necessary to preserve the health and safety of the public or made pursuant to its police powers).

Section 8.4. Use by City and Public. In addition to the rights of access reserved elsewhere herein, City may reserve the use of the Football Facility at times and locations that do not interfere with functions previously scheduled by PTA. PTA will have priority scheduling for its programming at the Premises but City and PTA will develop a cooperative structure to allow for and coordinate Park Department's use and programming. Director shall give PTA no less than thirty (30) calendar day written notice of its desire to use the Premises. The notice shall describe the location, time, and purpose for such use. City and PTA will cooperate in good faith in scheduling these uses. Furthermore, PTA will make every effort to accommodate reasonable, non-interfering recreational use by the public of the Premises.

Section. 8.5. Contracts Related to Management and Operation of the Football Facility; General Provisions.

- a) Subject to the terms of this Agreement, PTA, at no cost to the City, shall be the exclusive manager and operator of the Premises from the commencement of construction, with sole responsibility for, and full control and discretion in the operation, direction, management, and supervision of the Premises and its staff. All PTA contracts in connection with the operation and management of the Football Facility shall: (i) require the contractor to use good faith efforts to comply with the City's (BID) Business Inclusion and Development Plan, (ii) terminate upon termination of this Agreement unless City, at its sole option elects to assume the specific management contract, (iii) provide the right to City to assume the contract upon termination of this Agreement without liability for any obligation arising prior to said assumption (iv) if applicable, contain insurance requirements for coverage's and limits not less than those which are customarily required by City of its like contractors, naming City and its officers and employees as additional insured's, (v) indemnify City and its officers and employees against any costs or liabilities there under using language substantially similar to the PTA's indemnification of City found in Section 7.19, (vi) if applicable contain vendor qualification requirements sufficiently broad so as not to exclude minority vendors as a class and general contract specifications sufficiently broad so as not to favor a single vendors and (vii) contain the following provision (or substantially similar wording approved by the Director) in bold print, underlined and uppercase lettering:

“THIS AGREEMENT IS SUBJECT TO THE TERMS AND PROVISIONS OF THE MASTER AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE FOOTBALL FACILITY AT THE PARK BETWEEN THE CITY OF LANCASTER AND PTA (THE “MASTER AGREEMENT”), AND WILL TERMINATE, WITHOUT LIABILITY OR RECOURSE IN THE EVENT OF THE TERMINATION OF SAID MASTER AGREEMENT, UNLESS THIS AGREEMENT IS ASSUMED OR EXTENDED BY THE CITY. THE CITY OF LANCASTER SHALL HAVE NO LIABILITY, OBLIGATION, OR RESPONSIBILITY UNDER THIS AGREEMENT, AND THE PARTIES HERETO RELEASE THE CITY OF LANCASTER FROM LIABILITY FOR ANY CLAIMS, SUITS, OR JUDGMENTS IN CONNECTION WITH THIS AGREEMENT.”

- b) City shall be entitled to review the contracts for compliance with the requirements of this Section.
- c) All contracts as well as staff salaries, compensation, perquisites and benefits shall be commercially reasonable and consistent with good practice and industry standards for similar facilities.

Section 8.6. Operating Hours; Special Events; Bookings. The Premises and all operations and services provided through same shall remain open and accessible for public use subject to PTA's use of the Premises for its leagues and tournaments. The hours of open operation for public use, special events, bookings and the mix of the three shall be commercially reasonable and consistent with good practices and standards within the industry and subject to Director Approval. Football programs for all city youth, particularly inner-city youth, including leagues, tournaments, and clinics at the Premises, shall be a prime objective of the Football Facility and shall be pursued by PTA.

Section 8.7. Acknowledgements in Printed Materials. PTA agrees to acknowledge CITY for its support in all appropriate printed materials. CITY reserves the rights to approve, in whole or in part, the form of such acknowledgements with PTA proposes to include in any printed materials.

Section 8.8. Naming and Sponsorship. PTA shall have the right to contract for and grant sponsorships, advertising space, events, programs, and advertising panels involving the Premises, provided that the Board and the Director approve or reject, in writing the naming of all or any portion of the Premises; which approval shall not be unreasonably withheld. Any such arrangements shall (a) not exceed three (3) years unless the Director in writing waives this requirement, (b) be of a first class quality, tasteful, attractive, and suitable for facilities catering to families, children and youth patrons, (c) be on commercially reasonable terms and consistent with industry standards and good practice, and (d) comply with applicable provisions of the Park Naming Policy. Sponsorships, advertising and/or naming rights involving the Premises, or any part thereof, shall not promote, advertise or relate to alcohol or tobacco products or companies or be of a non-commercial or cause-oriented nature (e.g. promoting or criticizing a political party, public official or candidate; a political or social cause or movement; or a religion or religious establishment or movement).

Section 8.9. Fees, Charges, and Revenues. Subject to Board's approval, PTA may specify and control any and all fees, deposits, charges, other revenues, and consideration for goods, services, concessions, admissions, use, advertising, sponsorship, naming rights or any other designated purposes involving the Premises provided that they are commercially reasonable and consistent with industry standards and good industry practices. It is expressly understood and agreed that any and all revenues from such sources shall be applied by PTA toward the equipping, operation and maintenance of the Premises.

Section 8.10. City Revenue. City may generate revenues from using the Premises or from co-sponsorship activities. Said revenues shall be used by the Park and Recreation Department solely for the maintenance of the Park.

Section 8.11. Repairs.

- a) *City's repairs.* City is not required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the Term of this Agreement or any extension thereof.
- b) *PTA's repairs and operation.* At all times during the Term of this Agreement or any extension thereof, PTA shall neither cause nor permit any waste to the Premises. From the commencement of construction, PTA shall, at PTA's sole cost and expense, keep and maintain the Premises and all facilities appurtenant, thereto including without limitation landscaping, in good order and repair and, in a safe, clean, sanitary, and attractive condition. PTA shall make any and all additions to or alterations or repairs in and about the Premises that may be required by this Agreement in a good and workmanlike manner, and shall otherwise observe and comply with the Development Plan and all public laws, ordinances, and regulations that from time to time are applicable to the Premises.
- c) *Condition at end of Agreement.* Upon termination of this Agreement for whatever reason, PTA shall leave the Premises in the state of repair and cleanliness required to be maintained by during the Term of this Agreement and shall peaceably surrender the same to City. If the improvements are not in substantial conformity with this paragraph, City may, at its option and in addition to any other remedies under this Agreement, direct PTA to remove non-complying improvements constructed by on the Premises and return that portion of the Premises to its condition existing on the commencement date, and PTA shall be obligated to promptly comply at its sole cost and expense or alternatively, repair same in which event PTA shall immediately pay to City the cost of same.

Section 8.12. Budgets, Financial Records and Audits. PTA shall submit its annual operating budget in advance for the next fiscal year to the Director not less than sixty (60) days prior to the end of each fiscal year. PTA currently intends to adopt a fiscal year defined as the calendar year. PTA's annual operating budget shall include detailed information showing estimated income to be received from all sources and estimated operating expenses. PTA shall keep and maintain complete and accurate records for the Premises, separate and identifiable from its other records, for five years following the last day of the fiscal year during which the record was generated. City shall be entitled to inspect the records during the Term of this Agreement and for two years thereafter (at PTA's office upon not less than 24 hours notice and at all reasonable times). In addition, PTA shall furnish to the City within ninety (90) days after the close of each of PTA's fiscal years:

- a) Its balance sheet as of the close of such fiscal year;
- b) Its statement of operations for such fiscal year; and
- c) Its statement of cash flows for such fiscal year.

PTA shall also provide quarterly statements of operation and cash flow reflecting revenues and expenses for said period no later than forty-five (45) days after the end of each quarter. Each document shall be prepared and certified by a certified public accountant (“CPA”), in conformity with GAAP.

Section 8.13 PTA Improvements. PTA shall have the right and obligation, at its sole cost, to make additions and improvements to the Premises if;

- a) Necessary to comply with governmental regulations, or the terms and conditions of this Agreement;
- b) Required for the safe operation of the Premises or its maintenance or repair;
- c) Required by any contract or agreement authorized by this Agreement and approved by the City; or
- d) Otherwise approved and authorized by the Board, upon recommendation of the Director.

All such additional, future improvements and renovations shall upon inspection and acceptance by the Board become the property of City, free and clear of all liens and encumbrances, subject to the terms of this Agreement. The contractor(s) performing the work shall meet the insurance, indemnification, and defend and hold harmless requirements of City, and shall provide the construction payment and performance bonds equivalent to what City requires of its contractors on like projects, City to be named as an additional insured, indemnity, and obligee, respectively. To the extent feasible, PTA shall use City of Lancaster Park and Recreation Department’s General Conditions. In addition, PTA shall (a) comply with City’s (BID) Business Inclusion and Development Plan, (b) comply with any environmental requirements that are standard in constructing improvements to a comparable City facility; (c) obtain at its sole expense all building permits, other required permits, zoning approvals, and lien waivers from contractors; (d) provide proof of availability of funds satisfactory to the Director to insure construction will be completed; and (e) comply with all applicable laws. PTA shall also require a provision in its construction contract that all contractors shall look solely to PTA and not the City for any claims or compensation. The Director may require PTA to submit plans and specifications to the Board for approval prior to commencing construction of major improvements and renovation, provided that the Director shall assist PTA with obtaining approval of such plans and specifications for the construction projects described in this Section, PTA shall require its construction contractor to furnish performance and payment bonds issued, in accordance with Chapter 253, Texas Government Code, as amended, by a corporate surety or sureties licensed to issue surety bonds in Texas, authorized to do insurance business in Texas, and otherwise acceptable to City. The bonds shall be maintained during the full term of the construction contract. For projects where

the total expenditure will be \$25,000 or less, PTA agrees that it will not pay any construction contractor until completion of the work and receipt of releases or waivers of liens from the construction contractor and any subcontractors used.

Section 8.14. Insurance.

- a) PTA shall during the term hereof maintain in full force and effect insurance policies, including the following: (1) general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating PTA's construction and operation of the Football Facility on the Premises pursuant to this Agreement, with a maximum limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per annual aggregate for injury to persons (including death), and for property damage, and (2) statutory Worker's Compensation Insurance covering all of PTA's employees involved in the provision of services under this Agreement.
- b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds, (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- c) All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service, or approved by the City Risk Manager.
- d) A certificate of insurance evidencing the required insurance shall be submitted to the City within sixty (60) days from the date of execution of this Agreement. Nothing contained herein shall be construed to grant any third party rights or waive the governmental and/or public purpose of the operation or use of any of the facilities named in this Agreement. Proceeds of insurance resulting from damage to, or destruction of, the Premises shall be used to repair or reconstruct the Premises as provided in Section 8.17 herein.

Section 8.15. INDEMNIFICATION. PTA AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY PTA'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF PTA, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS,

AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF PTA AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

Section 8.16. Security Interests. PTA shall not mortgage, pledge, or otherwise encumber its rights and interests under this Agreement or personality to secure financing. PTA shall not suffer or permit mortgages or liens or claims of some against the Premises, and shall indemnify, defend and hold harmless City from and against same.

Section 8.17. Damage or Destruction.

- a) *Effect of damage or destruction.* Beginning with the commencement of construction in the event of any damage to or destruction of the Premises or any improvements thereon from any cause whatever, PTA shall promptly give written notice thereof to City. PTA shall promptly rebuild, repair or restore (hereinafter, called “restore” or “restoration”) the Premises and improvements to its condition immediately prior to such damage or destruction or, if during construction of Premises, to the contemplated, improved or renovated conditions. The procedure for such restoration shall be in accordance with Article VI herein. PTA’s duty to restore any damage or destruction of the Premises or any improvements thereon shall not be conditioned upon the availability of any insurance proceeds to PTA from which the cost of restoration may be paid. Any PTA’s insurance proceeds payable by reason of such damage or destruction shall be paid jointly to PTA and City and shall be held in trust for the restoration of the Premises in an account acceptable to City provided, however, in the event, PTA is in default under the terms of this Agreement at the time such damage or destruction occurs, City may elect to terminate this Agreement and City shall thereafter have the right to receive and retain all insurance proceeds payable as a result of such damage or destruction. Insurance proceeds in excess of the cost of such restoration shall be treated as revenue fro the Premises. This subsection does not apply to insurance or self-insurance reserves maintained by City.
- b) *Precondition to restoration.* Before PTA commences restoration involving an estimated cost of more than Twenty-Thousand and No/100 Dollars (\$20,000.00), plans and specifications for some shall be submitted to Director for approval and PTA shall furnish to City (1) an estimate of the cost of the proposed work; (2) satisfactory evidence of sufficient contractor’s comprehensive general liability insurance covering the Premises, builder’s risk insurance, and workers’ compensation insurance; (3) a performance and payment bond satisfactory in form and substance to City; and (4) such other security as Director may require to insure completion of or payment for all work free and clear of

liens. PTA shall diligently pursue the restoration in a good and workmanlike manner, using only high quality workers and materials, and in conformity with the plans and specifications and all applicable law, ordinances and codes.

- c) *Failure to rebuild.* If the restoration can be completed within one hundred eighty (180) days, and if PTA (i) fails to begin the restoration of the improvements within a period of ninety (90) days after damage or destruction by fire or otherwise (ii) ceases to do so after commencing, or (iii) fails to complete the same within one hundred eighty (180) days from the date of commencement of such restoration, then, in addition to whatever other remedies City may have either under this Agreement, at law or in equity, City shall receive the insurance proceeds, or the balance thereof remaining, as security for the continued performance and observance by PTA of the PTA's covenants and agreements hereunder, or City may terminate this Agreement and then receive said amount as partial liquidated damages resulting from the failure of PTA to comply with the provisions of this Article. If the restoration cannot be completed within one hundred eighty (180) days, PTA or City may elect to terminate this Agreement in lieu of PTA performing said restoration, in which event PTA shall tender to the City the insurance proceeds of all policies required of it under this Agreement under which claims are being or may be made, plus any additional amount necessary to equal the full cost of repair and/or restoration. If this Agreement is not terminated but PTA fails to (i) begin the restoration of the improvements within a period of ninety (90) days after damage or destruction by fire or otherwise, (ii) ceases to do so after commencing, or (iii) fails to complete the same within two hundred seventy (270) days from the date of commencement of such restoration, then, in addition to whatever other remedies City may have either under this Agreement, at law or in equity, City shall receive the insurance proceeds, or the balance thereof remaining, as security for the continued performance and observance by PTA of the PTA's covenants and agreements hereunder, or City may terminate this Agreement and then receive said amount as partial liquidated damages resulting from the failure of PTA to comply with the provisions of this Article. If City and PTA cannot agree on whether the restoration can be completed within one hundred eighty (180) days after the damage, then PTA shall pay for an independent architect acceptable to the City, who shall make that determination.
- d) *No obligation of City to repair damages.* City shall have no duty or obligation to repair any damage to the Premises during the Term of this Agreement or any extension thereof.

Section 8.18. Condemnation.

- a) *Taking of Whole.* If the whole of the Premises, or so much thereof, shall be taken or condemned for a public or quasi-public use or purpose by any competent authority and as a result thereof the balance of the Premises cannot be used for the same purpose and uses as expressed in this Agreement, and in of such event, the Agreement term shall terminate on the date of taking, and any award, compensation, or damage (hereinafter called the "award") shall be paid to and be the sole property of City, whether such award shall be made as compensation for diminution of the value of the Agreement, the

improvements, or the fee interest in the Premises or otherwise, and PTA hereby assigns to City PTA's right, title and interest in and to any and all such award.

- b) *Partial taking after construction commences.* If after construction commences only a portion of the Premises shall be so taken or condemned, and as a result thereof the balance of the Premises can be used for the same purpose as expressed in this Agreement, this Agreement shall not terminate and PTA, at its sole cost and expense, shall repair and restore the Premises to an operational whole. PTA shall promptly and diligently proceed to restore the functionality and utility of the remainder of the Premises and affected improvements, complying with the procedure set forth in Article VI herein. For such purpose, City shall receive and shall hold in trust the amount of the award relating to the improvements and shall disburse such award to apply to the cost of such restoration. If PTA does not complete such restoration within a reasonable period after such taking or condemnation, not to exceed one hundred eighty (180) days, then, in addition to whatever other remedies are available to City under this Agreement, at law or in equity, City may receive and retain the entire award or the balance thereof, as partial liquidated damages resulting from the failure of PTA to comply with the provisions of this paragraph. Any portion of such award as may not have to be expended for such repair or restoration shall be paid to City. Any award amount attributable to the fee title to real estate taken shall be paid over directly to City.
- c) *Partial taking before construction commences.* If before construction commences only a portion of the Premises shall be so taken or condemned, and as a result thereof the balance of the Premises can be used for the same purpose as expressed in this Agreement, City shall have no duty or obligation to repair or restore the Premises; provided, however, in the event of any such partial taking should City elect not to restore the Premises to an operational whole, City or PTA may terminate this Agreement by written notice of said termination delivered prior to commencement of construction. Should PTA not elect to terminate this Agreement, as provided in this paragraph, PTA shall be deemed to have accepted the Premises in its post-taking condition and will proceed with construction and performance of this Agreement.
- d) *Date of taking.* The term "date of taking" shall mean the date on which title to the Premises or a portion thereof passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

**ARTICLE IX
TERMINATION, DEFAULT AND REMEDIES**

Section 9.1. Termination for Convenience. The Director may, at its option and without prejudice to any other remedy City may be entitled to at law, in equity or elsewhere under this Agreement, terminate this Agreement for convenience sixty (60) days after delivering to PTA notice in writing of its intention to terminate.

Section 9.2. Default by PTA. A "PTA Default" shall mean the occurrence of one or more of the following events:

- a) Failure of PTA to pay when due any monetary amount due to City, and the continuation of the failure without cure for a period of ten (10) days after City notifies PTA of the failure in writing in accordance with the notice provisions under this Agreement;
- b) Failure of PTA to maintain any of the insurance or bonds provided for herein;
- c) Failure of PTA to comply with any other material term, covenant, or provision of this Agreement, and the failure by PTA to cure or to proceed diligently to cure the failure within thirty (30) days after City notifies PTA in writing of the failure to comply in accordance with the notice provisions under this Agreement; and
- d) A receiver or trustee is appointed to take possession of all or substantially all of the assets of PTA; or if any action is taken or suffered by PTA pursuant to an insolvency, bankruptcy, or reorganization act; or if PTA makes a general assignment for the benefit of its creditors; and such appointment, action or assignment continues for a period of sixty (60) days.

Any written notice and opportunity to comply/cure provided herein shall not be required of City if the same or a substantially similar event has occurred and been the subject of written notice within the previous twelve (12) months.

Section 8.3. Termination and Other Remedies by City upon a PTA Default.

- a) Upon the occurrence of a PTA Default, City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. Termination or non-termination of this Agreement upon a PTA Default shall not prevent City from pursuing its other remedies. Upon termination by City, City may occupy the Premises, and PTA shall assign to City any of its contracts and agreements requested by City to be so assigned. PTA's contracts and agreements not assumed by City shall terminate immediately upon termination of this Agreement. PTA does hereby appoint City as its agent and attorney in fact for purpose of effecting said assignment(s), said appointment being coupled with an interest therein. In the event PTA fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, City may, but shall not be obligated to do so, pay any such amount or performing any such obligations and the amount so paid and the cost incurred

in said performance the shall immediately be due and payable by PTA to City and shall thereafter bear interest at the rate specified in this Agreement.

- b) Upon termination of this Agreement for any reason, PTA shall surrender control and possession of the Premises, and PTA shall be allowed to remove any personal property within ninety (90) days or any extended date granted by the Director. Title to any personal property left in place after ninety (90) days shall pass to City without compensation to PTA.
- c) In the event this Agreement is for any reason terminated, or at the expiration of the Term of this Agreement, all of the funds raised and deposited by PTA in the accounts discussed in Article V are expressly determined to collectively be City's property and shall be transferred after payment of PTA's expenses to City to be used exclusively for the benefit of the Premises or the Park.
- d) **Section 8.4. City Default and PTA's Remedies.** A "City Default" shall mean failing to comply with any material provision of this Agreement within thirty (30) days after written notice of said specific non-compliance and the cure action requested. PTA's sole and exclusive remedy for a City Default shall be to terminate the Agreement and receive as liquidated damages an amount equal to the un-depreciated construction costs of the original improvements required of PTA under this Agreement. The construction costs of the original improvements shall be specified in the Development Plan. The un-depreciated amount shall be based on the remaining portion of the original Term of the Agreement at the time of termination. In no event shall City ever be liable to PTA for exemplary or punitive damages.

ARTICLE X GENERAL PROVISIONS

Section 10.1. Conflict of Interest.

The following action of the Charter of the City of Lancaster shall be one of the conditions, and a part of, the consideration of this Agreement, to wit:

'CHAPTER XXII, Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHITITED--

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

- b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.
- c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

Section 10.2. Gift to Public Servant.

- a) City may terminate this Agreement immediately if PTA has offered or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.
- b) For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whole welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.
- c) Notwithstanding any other legal remedies, City may require PTA to remove any employee of PTA from the Project who has violated the restrictions of this section or any similar state or feral law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

Section 10.3. Notice of Contract Claim. This Agreement is subject to the provisions of Section 2-86 of the Lancaster City Code, as amended relating to requirements for filing a notice of a breach of contract claim against city. Section 2.36 of the Lancaster City code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. PTA shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

Section 10.4. Offset. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from PTA, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

Section 10.5. Independent contractor. PTA’s status shall be that of an independent contractor and not an agent, servant, employee, or representative of City in the performance of the Services. PTA shall exercise independent judgment in performing duties under this Agreement and is solely responsible for setting working hours, scheduling or prioritizing the workflow and determining how the work is to be performed. No term or provision of this Agreement or act of PTA in the performance of this Agreement shall be construed as making PTA the agent, servant, or employee of City, or making PTA or any of its employees eligible for the fringe benefits, such as retirement, insurance, and worker’s compensation, which City provides its employees.

Section 10.6. Compliance with laws and Regulations. This Agreement is entered into subject to and controlled by the charter and ordinances of the City of Lancaster and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. PTA shall, during the course of performance of this Agreement, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

Section 10.7. Assignment by PTA. PTA shall not sell, assign, transfer, or convey this Agreement, in whole or in part, without the prior written consent of the City. As an express condition of consent to any assignment, PTA shall remain liable for completion of the work in the event of default by the successor contractor or assignee.

Section 10.8. Nondiscrimination. As a condition of this Agreement, PTA covenants that PTA will take all necessary actions to insure that, in connection with any operations under this Agreement, PTA, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, or, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. PTA shall also comply with all applicable requirements of the Americans with Disabilities Act 42 U.S.C.A. §§12101-12213, as amended. In this regard, PTA shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from final Agreement completion, with full access allowed to authorized representatives of City, upon request, for purposes of evaluating compliance with this and other provisions of the Agreement.

Section 10.9. Venue. All obligations of the parties under the terms of this Agreement reasonably susceptible of being paid or performed in Dallas County, Texas, shall be payable and performable in Dallas County, Texas, and venue for any legal actions arising out of this Agreement shall be exclusively in Dallas County, Texas.

Section 10.10. Texas Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

Section 10.11. Captions. The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

Section 10.12. Notices. Any notice, payment, statement, or demand required or permitted to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the address appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

If to CITY:

Sean D. Johnson, Director
Director of Parks and Recreation
City of Lancaster
1700 Veterans Memorial Parkway
Lancaster, Texas 75134

With a copy to:

Opal Mauldin-Robertson, City Manager
City of Lancaster
211 N. Henry
Lancaster, Texas 75146

And

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

If to PTA:

Deion Sanders
Director, PTA Sports Management, Inc.
P.O. Box 1221
Prosper, Texas 76078

Section 10.13. Right of Review and Audit. City may review any and all of the services performed by PTA under this Agreement. City is granted the right to audit, at City's election, all of PTA's records and billings relating to the performance of this Agreement. PTA agrees to retain such records for a minimum of three (3) years following completion of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to City's rights as may be disclosed by such audit.

Section 10.14. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

=

Section 10.15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

Section 10.16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Agreement, their assigns.

Section 10.17. No Implied Waiver. The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement, or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

Section 10.18. Cumulative Remedies. Each right, power, and remedy of City provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by City of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of any or all such other rights, powers, or remedies.

Section 10.19. Recitals and Attachments. The recitals and attachments to this Agreement are incorporated herein for all purposes as if set out herein verbatim.

Section 10.20. Authority. The undersigned officers and/or agents are authorized to execute this contract on behalf of the parties hereto, and each party hereto certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

Section 10.22. Entire Agreement. This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

[Signature Page to Follow]

EXECUTED this _____ day of _____, 2011.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

ATTEST:

By: _____
Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

By: _____
Robert E. Hager, City Attorney

\ **EXECUTED** this _____ day of _____, 2011.

PTA SPORTS MANAGEMENT, INC.

By: _____
Name: _____
Print Name

Title: _____

APPROVED AS TO FORM:

By: _____
Attorney for PTA

EXHIBIT A

**PREMISES LOCATED AT COMMUNITY PARK,
1700 VETERANS MEMORIAL PARKWAY, LANCASTER, TEXAS**

(PREMISES ARE SHOWN IN STRIPED RED AREA OF MAP)

[To Be Attached]



City of Lancaster
Community Park
Proposed Football Field

0 37.5 75
Feet
150



 Proposed Football
Field Location



LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

12
AG11-012

Consider election of a Mayor Pro Tempore.

Background

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

Options

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

Recommendation

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

Attachments

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

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

Date: June 20, 2011

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

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

SECTION 3.03 Compensation

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

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

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

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

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

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

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

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

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

SECTION 3.06 Vacancies, Forfeiture and Filling of Vacancies

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

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

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

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

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

SECTION 3.07 Duties and Powers of the City Council

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

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

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

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

13
AG11-013

Consider election of a Deputy Mayor Pro Tempore.

Background

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

Options

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

Recommendation

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

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

Date: June 20, 2011

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

14

AG11-014

The City Council shall convene into closed executive session pursuant to Section § 551.071 (1) of the TEXAS GOVERNMENT CODE to consult with the City Attorney to seek legal advice concerning the application of the Lancaster Municipal Utility District No. 1 for annexation of land before the Texas Commission on Environmental Quality (TCEQ), Docket No. 2010-1851-DIS and the proposed Strategic Partnership Agreement.

Executive session matter.

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

Date: June 15, 2011

LANCASTER CITY COUNCIL
Agenda Communication for
June 27, 2011

15

AG11-015

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

Background

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

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

Date: June 15, 2011