



**NOTICE OF REGULAR MEETING AGENDA  
LANCASTER CITY COUNCIL  
MUNICIPAL CENTER CITY COUNCIL CHAMBERS  
211 N. HENRY STREET, LANCASTER, TEXAS**



**Monday, September 25, 2017 - 7:00 PM**

---

**CALL TO ORDER**

**INVOCATION:** Ministerial Alliance

**PLEDGE OF ALLEGIANCE:** Councilmember Carol Strain-Burk

**PRESENTATION:** Dr. Michael D. McFarland

**RECOGNITION:** Best Yard Award

**CITIZENS' COMMENTS:**

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

**CONSENT AGENDA:**

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

1. Consider approval of minutes from the City Council Regular Meeting held on September 11, 2017 and the City Council Special Meeting held on September 18, 2017.
2. Discuss and consider a resolution adopting the City of Lancaster Debt Management Policy establishing guidelines for debt financing to provide for needed land, long-term capital additions, and infrastructure improvements while minimizing the impact of debt payments on current and future revenues.
3. Consider a resolution ratifying the terms and conditions of an agreement with Highway Intelligent Traffic Solutions, Inc. for the repair of median lighting on North Interstate Highway 35 from south of Pleasant Run Road to the southern city limits in an amount not to exceed fifty three thousand, four hundred forty-one dollars and thirty-nine cents (\$53,441.39).

**PUBLIC HEARING:**

4. Conduct a public hearing and consider an ordinance amending the Code of Ordinances by amending readopting, ratifying, republishing and extending Ordinance No. 2014-06-10, codified as Chapter 14, "offenses and additional provisions", by amending Article 14.02, "Minors", by repealing and replacing with a new Division 2, "Curfew"; providing a penalty clause, providing a severability clause; and providing for an effective date for a period of three (3) years.

5. Z17-05 Conduct a Public Hearing and consider approval of a Specific Use Permit for Auto Repair Garage, Minor (oil change) located on the north side of Stanford Drive and approximately 186 feet west of North Dallas Avenue and contains approximately 0.7 acres of land. It is specifically addressed as 2613 N. Dallas Avenue in the City of Lancaster, Dallas County, Texas.

#### **ACTION:**

6. Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and Ashta Vinayak Hospitality, LLC.
7. Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement for a real property tax rebate pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and Ashta Vinayak Hospitality, LLC.
8. Discuss and consider a resolution repealing Resolution 2017-08-54 in its entirety, and authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and CH Realty VII/I Dallas Houston School Rd, L.P.
9. Discuss and consider a resolution repealing Resolution 2017-08-51 in its entirety, and ratifying the terms and conditions of an incentive grant by and between CH Realty VII/I Dallas Houston School Rd., L.P. and the Lancaster Economic Development Corporation.

#### **ADJOURNMENT**

---

EXECUTIVE SESSION: The City Council reserve 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: Meetings of the City Council are held in municipal facilities are 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.

---

PURSUANT TO SECTION 30.06 PENAL CODE (TRESPASS BY HOLDER WITH A CONCEALED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.

CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

PURSUANT TO SECTION 30.07 PENAL CODE (TRESPASS BY HOLDER WITH AN OPENLY CARRIED HANDGUN), A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (HANDGUN LICENSING LAW), MAY NOT ENTER THIS PROPERTY WITH A HANDGUN THAT IS CARRIED OPENLY.

CONFORME A LA SECCION 30.07 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO AL AIRE LIBRE CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO AL AIRE LIBRE.

---

## Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on September 22, 2017 @ 4:30 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



---

Sorangel O. Arenas  
City Secretary

# LANCASTER CITY COUNCIL

## City Council Regular Meeting

1.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda

**Goal(s):** Professional & Committed City Workforce

**Submitted by:** Sorangel O. Arenas, City Secretary

---

### **Agenda Caption:**

Consider approval of minutes from the City Council Regular Meeting held on September 11, 2017 and the City Council Special Meeting held on September 18, 2017.

### **Background:**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held on September 11, 2017 and
- City Council Special Meeting held on September 18, 2017.

### **Attachments**

September 11, 2017 Minutes

September 18, 2017 Minutes

---

## MINUTES

### LANCASTER CITY COUNCIL REGULAR MEETING OF SEPTEMBER 11, 2017

The City Council of the City of Lancaster, Texas, met in a called Regular session in the Council Chambers of City Hall on September 11, 2017 at 7:00 p.m. with a quorum present to-wit:

#### **Councilmembers Present:**

Mayor Marcus E. Knight  
Carol Strain-Burk  
Stanley Jaglowski  
Marco Mejia (arrived following consent items)  
Spencer W. Hervey, Jr.  
Mayor Pro Tem Clyde C. Hairston  
Deputy Mayor Pro Tem Nina Morris

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

Opal Mauldin-Jones, City Manager  
Rona Stringfellow, Assistant City Manager  
Dori Lee, Human Resources Director  
Shane Shepard, Director of Economic Development  
Baron Sauls, Finance Director  
Sean Johnson, Managing Director of Quality of Life & Cultural Services  
Jermaine Sapp, Director of Equipment and Facility Services  
Sam Urbanski, Police Chief  
Robert Franklin, Fire Chief  
Alton Dixon, Purchasing Agent  
Dale Jackson, Building Official/Interim Development Services Director  
Chris Youngman, Assistant Fire Chief  
Than Nguyen, City Engineer  
David T. Ritter, City Attorney  
Cheryl Womble, Administrative & Community Relations Supervisor  
Imelda Speck, ICMA Fellow for Economic Development  
Mayra A. Ortiz, Deputy City Secretary  
Sorangel O. Arenas, City Secretary

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

Mayor Knight called the meeting to order at 7:00 p.m. on September 11, 2017.

#### **Invocation:**

Pastor Henry Batson gave the invocation.

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

Deputy Mayor Pro Tem Morris led the pledge of allegiance.

#### **Proclamation:**

Mayor Knight presented a proclamation to Alexis Myers proclaiming the month of September as "Blood Cancer Awareness Month" and encourage all citizens in joining with Leukemia & Lymphoma Society (LLS) to educate the citizens about the need for finding cures and creating access to treatments for all types of blood cancers.

Mayor Knight proclaimed the month of September as "National Preparedness Month" and urged everyone in the community to learn more about and to participate in emergency preparedness activities available in Lancaster and to visit the regional KnoWhat2Do emergency preparedness website, [www.KnoWhat2Do.com](http://www.KnoWhat2Do.com).

#### **Citizens' Comments:**

Zoila Correon, 2726 Gun Drive, shared her concerns regarding Senate Bill 4.

Mary Bush, 1245 Tall Grass Drive, spoke in opposition to item 11 and shared that she is opposing the development of a Truck Stop being constructed within the Meadowview Public Improvement District.

Liz Richardson, 3016 Paint Brush Place, spoke in opposition to item 11 and is opposing the similar development stated by Ms. Bush.

**Consent Agenda:**

City Secretary Arenas read the consent agenda.

1. **Consider approval of minutes from the City Council Regular Meeting held on August 28, 2017.**
2. **Consider a resolution providing for the adoption of the Master Fee Schedule for all fees and charges assessed and collected by the City of Lancaster.**
3. **Consider a resolution approving the terms and conditions of the 2017 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds Sharing and Fiscal Agency Agreement between the City of Lancaster and the County of Dallas, Texas to provide funds to prevent and control crime and to improve the criminal justice system.**
4. **Consider a resolution adopting the City of Lancaster's Financial Policy providing for prudent financial management of all funds to enable the city to maintain a long-term stable and positive financial condition and provide guidelines for the day-to-day planning and operation of the city's financial matters.**

**MOTION:** Mayor Pro Tem Hairston made a motion, seconded by Councilmember Strain-Burk to approve consent items 1 through 4. The vote was cast 6 for, 0 against [Mejia absent].

**PUBLIC HEARING:**

5. **Conduct a public hearing and discuss an ordinance regarding the proposed revenue increase from levying ad valorem taxes for fiscal year 2017/2018 at \$0.8675 per one hundred dollars assessed valuation of all taxable property within the corporate limits to provide revenues for current maintenance and operation expenses and interest and sinking fund requirements; providing due and delinquent dates; penalties and interest; providing a homestead exemption and disability exemption.**

City Manager Mauldin-Jones stated that the current tax rate for fiscal year 2017/2018 is proposed at \$0.8675 per one hundred dollars assessed valuation on taxable property within the corporate limits. The proposed tax rate of eighty-six seventy-five one thousandths cents (\$0.8675) on each one hundred dollars (\$100.00) assessed value of taxable property to be apportioned and distributed as follows: \$0.6012 for the purpose of maintenance and operations, and \$0.2663 for interest and sinking fund requirements. This is the second of two public hearings regarding the proposed tax rate. The governing body may not adopt the tax rate at a public hearing. However, the governing body must announce the date, time and place of the meeting at which it will officially vote on the tax rate. The vote on the tax rate is scheduled for Monday, September 18, 2017 at 7:00 p.m. at Lancaster Municipal Center, City Council Chambers located at 211 North Henry Street.

Mayor Knight opened the public hearing.

There were no speakers.

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Hairston to close the public hearing and place item 5 on September 18, 2017 agenda. The vote was cast 7 for, 0 against.

6. **Conduct a public hearing and discuss an ordinance regarding the proposed fiscal year 2017/2018 budget for the fiscal year beginning October 1, 2017 ending September 30, 2018 providing that expenditures for said fiscal year shall be in accordance with said budget.**

City Manager Mauldin-Jones stated that item 6 is to consider fiscal year 2017/2018 budget in the amount of \$55,398,889.00. This is the second of two public hearings on the proposed budget. Additionally, the City has hosted two Budget Town Hall Meetings which were held on Thursday, August 31, 2017 at 6:30 p.m. and Saturday, September 9, 2017 at 9:00 a.m. Also, consideration for adoption of the proposed budget is scheduled on Monday, September 18, 2017 at the Lancaster City Council Regular Meeting.

Councilmember Hervey thanked staff for their sacrifices endured during the budget procedure.

Mayor Knight opened the public hearing.

There were no speakers.

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Hairston to close the public hearing and place item 6 on September 18, 2017 agenda. The vote was cast 7 for, 0 against.

**7. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Beltline Ashmoore Public Improvement District.**

Councilmember Strain-Burk requested additional staff comments. City Manager Mauldin-Jones shared that Council received a memorandum on the dais regarding an electronic mail delivered to a member on the governing body with a number of concerns related to the implementation of Public Improvement Districts and, in particular, the Meadowview PID. In summary, the information contained in the City Council packets is the service plans for each Public Improvement District. The budgets are submitted to staff in a different format that explains what projects are underway for the upcoming year in the explanation column of the budgets. We are working with the PIDs to assist with oversight of the implementation of the service plans, scheduling meetings and posting agendas. We have an upcoming PID Advisory Board meeting scheduled and will continue to work with the PID Advisory Boards and other interested parties to ensure that PID monies are spent in compliance with Chapter 372. At the August 28, 2017 Council Meeting, the City conducted public hearings for each Public Improvement District. Staff has reviewed the financial reports from the past to determine what was spent on the line items in the past and what is being proposed. As stated previously, staff will continue to work closely with PIDs to provide a fiscally sound service plan implementation. The City assist with the implementation of the PID in an effort to assist maintaining property values within the City, as identified in Council's goal of a Healthy, Safe and Engaged Community. The City and/or City staff derives no monetary benefit from the implementation of the PID. Staff monitors the PID budgets in the same manner and oversight that other department budgets are being monitored.

**MOTION:** Mayor Pro Tem Hairston made a motion, seconded by Councilmember Hervey to approve item 7. The vote was cast 7 for, 0 against.

**8. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Boardwalk Public Improvement District.**

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Strain-Burk to approve item 8. The vote was cast 7 for, 0 against.

**9. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Glendover Estates Public Improvement District.**

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Strain-Burk to approve item 9. The vote was cast 7 for, 0 against.

**10. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Lancaster Mills Public Improvement District.**

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Councilmember Hervey to approve item 10. The vote was cast 7 for, 0 against.

**11. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Meadowview Public Improvement District.**

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Hervey to approve item 11. The vote was cast 7 for, 0 against.

**12. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Millbrook East Public Improvement District.**

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Hervey to approve item 12. The vote was cast 7 for, 0 against.

**13. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Pleasant Run Estates, Phase 1-A Public Improvement District.**

Mayor Knight recused himself from this item.

**MOTION:** Councilmember Hervey made a motion, seconded by Councilmember Jaglowski to approve item 13. The vote was cast 6 for, 0 against [Knight recused]

**14. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Rolling Meadows Public Improvement District.**

Councilmember Jaglowski recused himself from this item.

**MOTION:** Mayor Pro Tem Hairston made a motion, seconded by Councilmember Strain-Burk to approve item 14. The vote was cast 6 for, 0 against [Jaglowski recused].

**15. Discuss and consider an ordinance making certain findings in connection with the proposed supplemental services ordered in connection with the Tribute at Mills Branch and Tribute East at Mills Branch Public Improvement District.**

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Hairston to approve item 15. The vote was cast 7 for, 0 against.

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

The meeting was adjourned at 7:39 p.m.

**ATTEST:**

**APPROVED:**

---

Sorangel O. Arenas, City Secretary

---

Marcus E. Knight, Mayor



## MINUTES

### LANCASTER CITY COUNCIL SPECIAL MEETING OF SEPTEMBER 18, 2017

The City Council of the City of Lancaster, Texas, met in a called Special session in the Council Chambers of City Hall on September 18, 2017 at 7:00 p.m. with a quorum present to-wit:

#### **Councilmembers Present:**

Mayor Marcus E. Knight  
Carol Strain-Burk  
Stanley Jaglowski  
Marco Mejia  
Spencer W. Hervey, Jr.  
Mayor Pro Tem Clyde C. Hairston  
Deputy Mayor Pro Tem Nina Morris

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

Opal Mauldin-Jones, City Manager  
Rona Stringfellow, Assistant City Manager  
Dori Lee, Human Resources Director  
Shane Shepard, Director of Economic Development  
Baron Sauls, Finance Director  
Sean Johnson, Managing Director of Quality of Life & Cultural Services  
Jermaine Sapp, Director of Equipment and Facility Services  
Sam Urbanski, Police Chief  
Robert Franklin, Fire Chief  
Alton Dixon, Purchasing Agent  
Fabrice Kabona, Assistant to the City Manager  
Dale Jackson, Building Official/Interim Development Services Director  
Chris Youngman, Assistant Fire Chief  
Than Nguyen, City Engineer  
David T. Ritter, City Attorney  
Cheryl Womble, Administrative & Community Relations Supervisor  
Jason B. Boulton, Assistant Police Chief  
Chris Youngman, Assistant Fire Chief  
Andy Waits, Water/Wastewater Superintendent  
Imelda Speck, ICMA Fellow for Economic Development  
Sorangel O. Arenas, City Secretary

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

Mayor Knight called the meeting to order at 7:00 p.m. on September 18, 2017.

#### **Consent Agenda:**

City Secretary Arenas read the consent agenda.

- 1. Consider a resolution adopting the City of Lancaster's Investment Policy providing that all funds of the city be managed and invested for safety, liquidity, diversification and yield and that investments be chosen in a manner which promotes diversity by market sector, credit and maturity; providing that this policy serve to satisfy the requirements of Chapter 2256 of the Local Government Code, "Public Funds Investment Act".**
- 2. Consider an ordinance approving the proposed fiscal year 2017/2018 budget for proceeds of seized property for the Lancaster Police Department for the fiscal year beginning October 1, 2017 and ending September 30, 2018; providing that expenditures for said fiscal year shall be in accordance with said budget.**

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Hairston to approve consent items 1 through 2. The vote was cast 7 for, 0 against.

**3. Discuss and consider an ordinance, establishing Civil Service classifications within the Police and Fire Departments; prescribing the number of positions in each classification.**

**MOTION:** Deputy Mayor Pro Tem Morris made a motion, seconded by Mayor Pro Tem Hairston to approve item 3. The vote was cast 7 for, 0 against.

**4. Consider an ordinance regarding the proposed fiscal year 2017/2018 budget for the fiscal year beginning October 1, 2017 ending September 30, 2018 providing that expenditures for said fiscal year shall be in accordance with said budget.**

**MOTION:** Mayor Pro Tem Hairston made a motion, seconded by Councilmember Strain-Burk to approve item 4. The vote was cast 7 for, 0 against.

**5. Discuss and consider a resolution ratifying the budget for the fiscal year 2017/2018 that results in an increase of revenues by 8.33% from property taxes than the previous year.**

Deputy Mayor Pro Tem Morris requested additional staff comments on item 5. City Manager Mauldin-Jones shared that item 5 resulted in an increase of revenues from property taxes by 8.33 percent. However, the tax rate is considered to remain the same at \$0.8675.

**MOTION:** Mayor Pro Tem Hairston made a motion, to approve a budget that will result in an increase of revenue from property taxes than the previous year and to ratify a property tax revenue increase reflected in said budget, seconded by Councilmember Hervey. The vote was cast 7 for, 0 against.

**6. Consider approval of an ordinance regarding the proposed revenue increase from levying ad valorem taxes for fiscal year 2017/2018 at \$0.8675 per one hundred dollars assessed valuation of all taxable property within the corporate limits to provide revenues for current maintenance and operation expenses and interest and sinking fund requirements; providing due and delinquent dates; penalties and interest; providing a homestead exemption and disability exemption.**

Mayor Pro Tem Hairston requested additional staff comments on item 6. City Manager Mauldin-Jones shared that the current tax rate for fiscal year 2017/2018 is proposed at \$0.8675 per one hundred dollars assessed valuation on taxable property within the corporate limits. The proposed tax rate of eighty-six seventy-five one thousandths cents (\$0.8675) on each one hundred dollars (\$100.00) assessed value of taxable property to be apportioned and distributed as follows: \$0.6012 for the purpose of maintenance and operations, and \$0.2663 for interest and sinking fund requirements.

Deputy Mayor Pro Tem Morris thanked City Manager Mauldin-Jones for managing the budget well and expressed her appreciation to all of staff for presenting the budget in a timely manner.

**MOTION:** I, Mayor Pro Tem Hairston, move that the property tax rate be increased by the adoption of a tax rate of 0.867500, which is effectively a 3.54 percent increase in the tax rate, seconded by Councilmember Hervey. The vote was cast 7 for, 0 against.

Mayor Knight announced that District 6 Town Hall Meeting is scheduled for Tuesday, September 19, 2017 at 6:30 p.m. at the Lancaster Recreation Center, Grand Hall located at 1700 Veterans Memorial Parkway.

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

The meeting was adjourned at 7:09 p.m.

**ATTEST:**

**APPROVED:**

---

Sorangel O. Arenas, City Secretary

---

Marcus E. Knight, Mayor

# LANCASTER CITY COUNCIL

## City Council Regular Meeting

2.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda.

**Submitted by:** Baran Sauls, Finance Director

---

### **Agenda Caption:**

Discuss and consider a resolution adopting the City of Lancaster Debt Management Policy establishing guidelines for debt financing to provide for needed land, long-term capital additions, and infrastructure improvements while minimizing the impact of debt payments on current and future revenues.

### **Background:**

Debt management policy statements are written guidelines, allowances and restrictions that guide the debt issuance practices for the City. Government Finance Officers Association (GFOA) recommends that state and local governments adopt comprehensive written debt management policies; and that the Debt Management Policy include the issuance process, management of the debt portfolio, and adherence to various laws and regulations. These policy statements will be reviewed annually to reflect current laws as well as significant changes in the City which may have an impact.

### **Operational Considerations:**

The Debt Management Policies set forth comprehensive guidelines for the financing of capital expenditures and demonstrates good fiscal administration of the City's debt obligations while promoting accountability to its citizens. Adherence to a debt management policy signals that the government is well managed and is likely to meet its debt obligations in a timely manner. Approval by the governing body ensures that there is a common understanding regarding the entity's approach to debt financing. Debt Management policies provide precedents for future policy-makers and financial managers on common financial goals and strategies; thereby providing credibility and transparency

### **Legal Considerations:**

This policy demonstrates compliance with the related legal and contractual issues in accordance with provisions of the City Charter, the Texas Local Government Code; and bond referenda approved by voters. The resolution has been reviewed and approved as to form by the City Attorney.

### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

### **Options/Alternatives:**

1. Approve the resolution, as presented.
2. Deny the resolution.

**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

Exhibit A

---

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ADOPTING THE CITY OF LANCASTER DEBT MANAGEMENT POLICY PROVIDING FOR PRUDENT FINANCIAL MANAGEMENT OF ALL DEBT FINANCING TO PROVIDE FOR NEEDED LAND, LONG-TERM CAPITAL ADDITIONS, AND INFRASTRUCTURE IMPROVEMENTS WHILE MINIMIZING THE IMPACT OF DEBT PAYMENTS ON CURRENT AND FUTURE REVENUES ; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has reviewed the Debt Management Policy and found it to be acceptable; and

**WHEREAS**, the City of Lancaster Debt Management Policy provides for financial management through integrity, prudent stewardship, planning, accountability, full disclosure and communication regarding all debt service;

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

**SECTION 1.** The City of Lancaster Debt Management Policy, 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; and, the City Manager and staff shall implement and execute the procedures and policies adopted therein.

**SECTION 2.** This resolution shall take effect 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 25th day of September, 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

Exhibit "A"

CITY OF LANCASTER, TEXAS  
DEBT MANAGEMENT POLICIES  
September 25, 2017

## DEBT MANAGEMENT POLICIES

### Table of Contents

	Page No.
I. Purpose Statement.....	1
II. Responsibility .....	1
III. Capital Projects.....	3
IV. Debt Management.....	4
V. Short Term Debt .....	7
VI. Long Term Debt .....	8
VII. Refunding .....	10
VIII. Capital Leasing .....	10
IX. Other Types of Financing .....	11
X. Ratios and Reserves .....	11
XI. Official Statement .....	12
XII. Ratings .....	12
XIII. Credit Enhancements .....	13
XIV. Secondary Market Disclosure .....	13
XV. Arbitrage Liability Management.....	14
XVI. Modification to Policies .....	15

CITY OF LANCASTER, TEXAS  
DEBT MANAGEMENT POLICIES

I. PURPOSE

The Debt Management Policies set forth comprehensive guidelines for the financing of capital expenditures. It is the objective of the policies that (1) the city obtains financing only when necessary, (2) the process for identifying the timing and amount of debt or other financing be as efficient as possible and (3) the most favorable interest and other costs be obtained.

With the establishment of these guidelines for debt financing to provide needed land, long-term capital additions, and infrastructure improvements while minimizing the impact of debt payments on current and future revenues; the City shall annually review and monitor the state of the City's capital assets, setting priorities for the addition, replacement, and renovation of these assets based on needs, funding alternatives, and availability of resources.

II. RESPONSIBILITY

The primary responsibility for developing financing recommendations rests with the Director of Finance; however, the City shall employ the assistance of its financial advisors and consultants, as needed, to assist in the administration and management of the City's financial affairs, debt administration and financial modeling. In developing the recommendations, the Director of Finance shall be assisted by the Assistant City Manager and the Assistant Director of Finance. The Director of Finance shall hold as follows:

- meet no less than twice a year with Department Managers to consider the need for financing and assess progress on the Capital Improvement Program,
- meet as necessary in preparation for a financing,
- review changes in state and federal legislation,
- review annually the provisions of ordinances authorizing issuance of obligations, and to
- annually review services provided by the Financial Advisor, Bond Counsel, Paying Agent and other service providers to evaluate the extent and effectiveness of services being provided.

Prior to the meetings, a written report will be presented on the status of Capital Improvement Program financing. The report shall be based in part on information collected from the primary capital improvement project manager in the city and shall include a projection of near term financing needs compared to available resources, an analysis of the impact of contemplated financings on the property tax rate and user charges, and a financing recommendation.

In developing financing recommendations, consideration will be given as follows:

- the time proceeds of obligation are expected to remain on hand and the related carrying cost;



- the options for interim financing including short term and interfund borrowing, taking into consideration federal and state reimbursement regulations;
- the effect of proposed action on the tax rate and user charges;
- trends in interest rates; and
- other factors as appropriate.

#### A. Bond Counsel Involvement

The Bond Counsel will issue an opinion as to the legality and tax exempt status of any obligations. The city will also seek the advice of Bond Counsel on all other types of financings and on any other questions involving federal tax or arbitrage law. Bond Counsel is also responsible for the preparation of the ordinance authorizing issuance of obligations and all of the closing documents to complete their sale and will perform other services as defined by contract approved by the City Council. Bond counsel to the City shall provide an objective legal opinion concerning the issuance of bonds and other debt instruments. Generally, bonds are not marketable without the opinion of bond counsel indicating the bonds are valid and binding obligations of the City and exempt from federal and state income taxes.

Due to the complexity of the City's financial structure and the benefits that come from a history and knowledge of the City, the City maintains an ongoing relationship with the bond counsel for continuity. The engagement letter with bond counsel may be terminated as set forth in our contractual agreement.

#### B. Financial Advisor Involvement

The city will seek the advice of the Financial Advisor when necessary. The Financial Advisor will advise on the structuring of obligations to be issued, inform the city of various options, advise the city as to how choices will impact the marketability of city obligations, assist with determining the method of sale and the selection of other financing team members, and shall provide other financial advice and expertise, as needed. The Financial Advisor will inform the City Manager of significant issues. The City issues various types of securities to finance its capital improvement program and shall employ a financial advisor for these services. Debt issuance and restructuring requires a comprehensive list of services associated with municipal transactions including, but not limited to, analysis of market conditions, size and structure of the issue, method of sale, preparation of disclosure documents, evaluation of and advice on the pricing of securities, facilitation of rating agency relations, and calculation of debt service schedules.

Due to the complexity of the City's financial structure and the benefits that come from a history and knowledge of the City, the City maintains an ongoing relationship with the financial advisor for continuity. The City's agreement with the financial advisor may be terminated as set forth in our contractual agreement.

### III. CAPITAL PROJECTS

The City shall maintain capital project funds to account for and report financial resources that are restricted, committed, or assigned for capital outlay (e.g., bond funds).

#### A. Capital Improvement Plan

As part of the annual budget process, the City shall prepare a capital improvement plan (CIP) based on the needs for capital improvements and equipment, including replacement and renovation and potential new projects. Annual capital spending needs shall be considered within the scope of the long-range capital improvement plan taking into consideration pay-as-you-go, debt requirements, operating costs, etc.

Capital expenditures are generally defined as those to purchase and/or construct land, buildings, improvements other than buildings, and infrastructure, including roads, sidewalks, bridges, utility lines, etc., in order to provide services over a considerable period of time. Capital costs typically consist of preliminary and final engineering and design and construction, but may also include the acquisition of land or easements. For each project identified in the plan, a project scope and justification shall be provided for review and consideration and shall include cost estimates, funding sources, and projected annual operation and maintenance costs. Capital projects shall become part of the City's asset inventory.

The Capital Improvement Plan may be reviewed along with the annual budget. Appropriations are for the life of the capital project. At fiscal year-end, projects shall be reviewed and if complete, shall be closed. Following completion of a project, any remaining funds shall be re-appropriated as part of the next year's capital budget. Funds remaining from bond proceeds may only be used in accordance with the legal use of those funds.

#### B. Infrastructure Evaluation and Replacement/Rehabilitation

Water, wastewater, drainage, street lighting, streets and sidewalks, municipal facilities, and other infrastructure are fundamental and essential for public health and safety, environmental protections, and the economic well-being of the City. The City's CIP shall be focused on ensuring that infrastructure is replaced as needed to protect the City's investment, to minimize future replacement and maintenance costs, to maintain existing levels of service, and to accommodate growth.

Infrastructure will be replaced, if feasible, at the end of its useable service life. If upgrades are warranted to meet current design standards, a cost/benefit analysis shall be done and presented to City Council for review and consideration.

#### C. Capital Expenditure Financing

The City utilizes several basic methods of financing its capital needs: pay-as-you-go from current revenues, fund balance/working capital, and debt. Capital projects shall not commence prior to the necessary funds being appropriated.

When cash funding is available, the City may elect to pay for all or part of its capital improvements from the appropriate fund rather than through the issuance of debt. The anticipated benefit of pay-as-you-go financing is a reduced or minimized impact on the property tax rate and utility rates. The use of pay-as-you-go financing may not reduce fund balance below target levels.

Debt financing may include general obligation bonds, revenue bonds, certificates of obligation, lease/purchase agreements, and other obligations permitted by state law. Capital improvement projects may not be debt-financed for periods longer than the projected useful life of the project or improvement.

#### D. Reporting

A summary and status report on capital projects and expenditures may be included in the quarterly financial report presented to City Council.

### IV. DEBT MANAGEMENT

The City shall establish guidelines for debt financing to provide needed land, long-term capital additions, and infrastructure improvements while minimizing the impact of debt payments on current and future revenues. The City has no general obligation legal debt limit other than a ceiling on the tax rate as specified by the State of Texas. The prescribed maximum is \$2.50 per \$100 assessed valuation.

#### A. Use of Debt Financing

Debt financing, including general obligation bonds, revenue bonds, certificates of obligation, lease/purchase agreements, and other obligations permitted by state law, may only be used to purchase capital assets that cannot be acquired from current revenues or fund balance/working capital. Debt financing may be used to fund infrastructure improvements and additions.

#### B. Debt Financing

The City may not assume more tax-supported general purpose debt than it retires each year without conducting an objective analysis regarding the City's ability to assume and support additional debt service. This analysis may include an examination of the costs and benefits of the proposed capital spending and the anticipated impact on the property tax rate. The decision to issue new debt should be based on this analysis, a review of the current and projected conditions of the municipal bond market, and the City's ability to service the new debt.

General Obligation Bonds require voter approval and shall be issued to accomplish projects identified in the bond referendum. General Obligation Bonds shall be used to fund capital assets of the City and shall not be used to fund current operating expenditures.

Certificates of Obligation may be issued without voter approval to finance any public works project or capital improvement, as permitted by state law. The City may issue Certificates of

Obligation in the event it is more economical than issuing Revenue Bonds.

Revenue Bonds are secured by the revenues of an enterprise fund and require adequate projected revenues to cover anticipated future payments over the life of the bonds. If the City determines it is feasible to issue Revenue Bonds, it may also be necessary to make adjustments to the City's utility rate structure to maintain required coverage. Coverage requirements, and the need for and level of reserve funds to provide additional security in support of the bonds, are subject to rating agency review and market standards.

#### C. Debt Structure

The term of any debt issuance may not exceed the useful life of the asset funded by the debt. Relative to the issuance of revenue bonds, the term of the debt shall also be consistent with the revenue-generating capacity of the asset. The maximum term of any debt issue shall not exceed 40 years.

The structure of any debt issuance shall be designed to achieve the best possible results for the City given current market conditions, etc. Consideration shall be given to the term, amortization schedule, interest rates, yield, pricing and call provisions.

To achieve a more favorable interest rate, the City shall strive to issue bonds in amounts such that the issue is bank qualified. However, if the City needs to issue debt that is non-bank qualified, the fact that the issue is so designated will not be a consideration if all other factors support the issuance.

#### D. Debt Refunding

The City's financial advisor shall monitor the municipal bond market for opportunities to obtain interest savings by refunding outstanding debt. The City may issue an advance refunding if the difference between when the new bonds are issued and the outstanding bonds being refunded are called or paid at maturity is greater than 90-days. If that difference is less than 90-days, the City may issue a current refunding. Pursuant to federal tax law, the City may advance refund bonds only once on a tax-exempt basis. There is no limit on the number of times the City may refund current bonds.

As a general rule, the net present value savings of an advance refunding should exceed three percent (3%) of the refunded maturities (including cost of issuance), unless, a debt restructuring is necessary.

#### E. Bond Elections

General obligation bond elections shall be determined and set by the City Council and an analysis showing the impact of the new debt on the City's tax rate and total debt capacity will be included with each proposal to issue new general obligation bonds.

#### F. Method of Sale

The City may use a competitive bidding process for the sale of debt unless the nature of the issue warrants a negotiated sale. The City may utilize a negotiated sale when the debt issuance is, or contains, a refinancing that is dependent on market timing.

#### G. Underwriting Syndicates

As part of the debt issuance process, the City shall partner with qualified and experienced firms. The City shall be actively involved in the debt issuance process and shall work with the financial advisor, bond counsel, and underwriter(s) to develop and recommend the most appropriate debt financing to meet the City's needs. For any given bond issue, the City may elect to work with a single underwriter or with an underwriting syndicate, which includes several firms and a designated lead underwriter.

#### H. Rating Agency Presentations

Full disclosure of operations and open lines of communication shall be maintained with the rating agencies. The City shall work with the financial advisor to prepare the necessary materials and presentation to the rating agencies. Credit ratings will be sought from one or more of the nationally recognized municipal bond rating agencies, currently Moody's Investor Service, Standard & Poor's Ratings Services, and Fitch Ratings, based on the recommendation of the financial advisor.

#### I. Bond Ratings

The City shall prudently manage the general and enterprise funds in order to maintain or improve the City's bond rating.

#### J. Lease/Purchase Agreements

The City may consider lease/purchase agreements for short-term financing needs when it is the most cost-effective option.

#### K. Interest Earnings on Debt Proceeds

Interest earnings on debt proceeds shall remain in the construction fund or be transferred to the debt service fund. Interest earnings on water and wastewater debt proceeds shall remain in the enterprise fund.

#### L. Continuing Financial Disclosure

The City shall comply with all requirements for continuing financial disclosure prescribed by state and federal regulations and City bond ordinances. In order to meet these requirements, the City must annually provide certain updated financial information and operating data to the Municipal Securities Rulemaking Board.

#### M. Post-Issuance Compliance

The City will follow post-issuance compliance policies and procedures to address the requirements of the Tax Code relative to its debt issuances. These requirements include restrictions on the use of proceeds, arbitrage yield restrictions, and the arbitrage rebate

requirement. In general, these requirements are applicable throughout the period the debt issuance remains outstanding.

#### N. Arbitrage Investments and Reporting

The investment of bond proceeds shall be made in accordance with the same priority order of safety, liquidity, and yield. Bond proceeds shall be invested in separate instruments or accounts and not commingled with other investment purchases. Arbitrage rebate calculations shall be done for each bond issue, as required, and funds shall be set aside for any positive arbitrage. Arbitrage shall be rebated to the federal government when due. The City is responsible for the annual arbitrage rebate calculation on each bond issue. The City shall provide the necessary information and records to a qualified firm for completing these calculations and preparing the required report filings. The City shall make timely payments of any rebate amount owed to the federal government. Requests for qualifications shall be solicited at least every five years from firms qualified to prepare arbitrage rebate calculations and reports

#### V. SHORT TERM DEBT

##### A. General

Short term obligations may be issued to finance projects or portions of projects for which the city ultimately intends to issue long term debt; i.e., it will be used to provide interim financing which will eventually be refunded with the proceeds of long term obligations.

Short term obligations may be backed with a tax or revenue pledge, or a pledge of other available resources.

The amount of short term obligations due to mature in a year shall not exceed 5% of outstanding long term debt.

Interim financing may be appropriate when long term interest rates are expected to decline in the future. In addition, some forms of short term obligations can be obtained quicker than long term obligations and thus can be used in emergencies until long term financing can be obtained. In some cases, when the amount of financing required in the immediate future is relatively small, it may be cheaper for the city to issue a small amount of short term obligations to provide for its immediate needs than to issue a larger amount of long term obligations to provide financing for both immediate and future needs when the carrying costs of issuing obligations which are not immediately needed are taken into account.

##### B. Commercial Paper

Interest rates on commercial paper are generally favorable to an issuer relative to interest on other forms of debt. However, it does not appear to be feasible for the City of Lancaster to issue commercial paper because the cost of issuance for small issuers is too great and the market for commercial paper from a small issuer is poor. In addition, cities may legally only issue commercial paper for revenue supported projects. However, should the opportunity to

participate in a commercial paper issuance pool present itself, the advantages and disadvantages shall be evaluated.

### C. Line of Credit

With the approval of the City Council, the city may establish a tax-exempt line of credit with a financial institution selected through a competitive process. Draws shall be made on the line of credit when (1) the need for financing is so urgent that time does not permit the issuance of long term debt, or (2) the need for financing is so small that the total cost of issuance of long term debt including carrying costs of debt proceeds not needed immediately is significantly higher.

Draws will be made on the line of credit to pay for projects designated for line of credit financing by the City Council. Only projects which will ultimately be financed with the proceeds of authorized bonds may be so designated.

Note: Lines of credit must mature within the current fiscal year.

The Director of Finance (or designee) will authorize draws and the Assistant Finance Director (or designee) will execute them. The Finance department will identify line-of-credit draws and expenditures on the books of account, and quarterly verify compliance and adequacy of documentation.

Additionally, a line of credit may be established to fulfill bond covenant requirements for a reserve fund when permitted under applicable ordinances and it is cost beneficial to do so. Before drawing on a line of credit for a capital item, the city should adopt a reimbursement resolution for the project in the event bonds need to be issued.

## VI. LONG TERM DEBT

### A. General

Long-term obligations will not be used for operating purposes, and the life of the obligations will not exceed the useful life of the projects financed.

Debt service structure will approximate level debt service unless operational matters dictate otherwise.

The city will strive to limit its annual issuance of long term obligations to \$10 million in order to take advantage of small issuer exemptions in the federal arbitrage laws. Should subsequent changes in the law raise these limits, then the city's policies will be adjusted accordingly.

The cost of issuance of private activity bonds is usually higher than for governmental purpose bonds. Consequently, private activity bonds will be issued only when they will economically benefit the city.

The cost of taxable debt is higher than for tax exempt debt. However, the issuance of taxable debt is mandated in some circumstances, and may allow valuable flexibility in subsequent contracts with users or managers of the improvement constructed with the bond proceeds. Therefore, the city will usually issue obligations tax-exempt, but may occasionally issue taxable obligations.

#### B. Bonds – General Obligation or Revenue

Long-term general obligation or revenue bonds shall be issued to finance significant capital improvements for purposes set forth by voters in bond elections. Additionally, revenue bonds may be issued in response to public need without voter authorization.

Bonds may have an average life of 30 years or less.

A resolution of intent to issue bonds authorizing staff to proceed with preparations may be presented for the consideration of the City Council when the capital budget is presented, as necessary.

The city may consider the use of surety bonds, lines of credit or similar instruments to satisfy reserve requirements.

#### C. Certificates of Obligation

Certificates of obligation may be issued to finance permanent improvements and land acquisition, if the need arises between bond elections. In addition, they may be used to finance cost overruns or to acquire equipment costing at least \$100,000. The life of certificates of obligation issued to finance equipment shall match the life of the equipment.

In accordance with state law, a resolution authorizing publication of notice of intent to issue certificates of obligation shall be presented for the consideration of the City Council no less than 45 days before an expected issuance. The notice of intent shall be published in the City's publication of record or a newspaper of general circulation in the city once a week for two consecutive weeks with the first publication to be at least thirty (30) days prior to the sale date.

Certificates of obligation can be backed by revenues eligible to be pledged under state law. Some revenues are restricted as to the uses for which they may be pledged. Water and wastewater revenues may be pledged without limit for water and wastewater purposes, but may only be pledged up to \$100,000 for non-water and wastewater purposes.

Certificates of obligation may also be backed by a tax pledge under certain circumstances as defined by law. They may also be backed by a combination tax and revenue pledge.

#### D. Public Property Finance Contractual Obligation

Public property finance contractual obligations may be issued to finance the acquisition of personal property.



## E. Anticipation Notes

Anticipation Notes empower municipalities to issue debt without giving notice of intent. Anticipation Notes may be secured and repaid by a singular pledge, but not plural pledge, of revenue, taxes, or the proceeds of a future debt issue. Anticipation Notes are authorized by an ordinance adopted by the city.

Anticipation Notes may be used to finance projects or acquisition that could also be financed with Certificates of Obligation.

Anticipation Notes have several restrictions which include:

- 1) Anticipation Notes issued for general purposes must mature before the seventh anniversary of the date the Attorney General approves the issue,
- 2) Anticipation Notes may not be used to repay inter-fund borrowing or a borrowing that occurred 24 months prior to the date of issuance,
- 3) A governing body may not issue Anticipation Notes that are payable from bond proceeds unless the proposition authorizing the issuance of the bonds has already been approved by the voters.

## F. Bond Elections

Before a bond election, the City Manager and City Councilmembers will be provided with competent debt capacity analyses, tax and user fee impact projections and other information as deemed appropriate by the City Manager's Office. The Bond Counsel and Financial Advisor will provide support during the process.

## VII. REFUNDING

The city shall consider refunding debt whenever an analysis indicates the potential for present value savings of approximately 3% of the principal being refunded or at least \$200,000. The city will not refund less than 3% of its outstanding debt at one time except in unusual circumstances such as when it intends to change bond covenants.

Private activity bonds may be refunded in a current refunding only.

## VIII. CAPITAL LEASING

Capital leasing is an option for the acquisition of a piece or package of equipment costing less than \$1,000,000.

Leasing shall not be considered when funds are on hand for the acquisition unless the interest expense associated with the lease is less than the interest that can be earned by investing the funds on hand or when other factors such as budget constraints or vendor responsiveness override the economic consideration.

Whenever a lease is arranged with a private sector entity, a tax-exempt rate shall be sought. Whenever a lease is arranged with a government or other tax-exempt entity, the city shall

strive to obtain an explicitly defined taxable rate so that the lease will not be counted in the city's total annual borrowings subject to arbitrage rebate.

The lease agreement shall permit the city to refinance the lease at no more than reasonable cost should the city decide to do so. A lease which can be called at will is preferable to one which can merely be accelerated.

Since the market for lease financings is relatively inefficient, the interest rates available at any one time may vary widely. Therefore, the city shall obtain at least three competitive proposals for any major lease financing. The net present value of competitive bids shall be compared, taking into account whether payments are in advance or in arrears, and how frequently payments are made. The purchase price of equipment shall be competitively bid as well as the financing cost.

The advice of the city's bond counsel shall be sought in any leasing arrangement and when federal tax forms 8038 are prepared to ensure that all federal tax laws are obeyed.

The city may consider issuing certificates of participation to finance a very large project. Care should be taken because financing costs may be greater than for other types of financing. When possible, the lease agreement will be backed with a tax pledge.

If the city is obligated to make payments more than a year in the future, then the agreement will probably be considered debt by the state. However, if the payments are subject to annual appropriation by the City Council, then they may not.

#### IX. OTHER TYPES OF FINANCING

From time to time, other types of financing may become available. Examples of these options are debt pools with other entities and low-interest loans from state agencies such as the Texas Water Development Board.

#### X. RATIOS AND RESERVES

The portion of the city's property tax rate levied for debt service shall not exceed 40% of the total tax rate.

The Water and Wastewater Fund total long-term debt outstanding shall not exceed the amount of fund equity.

The city will endeavor to maintain 1.25 coverage for all indebtedness of the Water and Wastewater Fund and 1.50 coverage for the Lancaster Recreational Development Fund.

Debt Service Funds should not have reserves or balances in excess of 1/12 of last year's principal and interest expense except that (1) the city's Water/Wastewater revenue bond debt

service reserves will be maintained at the level of the average annual debt service plus amounts accrued for the next debt service payment, (2) the City's Parks & Recreation Sales Tax Venue revenue bond reserves will be maintained at the level of maximum annual debt service plus amounts accrued for the next debt service payment.

When revenue supported, tax-backed debt is issued, a debt service reserve or similar alternative backup source from which to pay debt service will be established. The source of the reserve will be determined on a case by case basis. When the revenue source being financed with the debt has become well established, then it will no longer be necessary to maintain the reserve or similar alternative backup source.

## XI. OFFICIAL STATEMENT

The Official Statement is the disclosure document prepared by or on behalf of the city for an offering of securities. The City's Financial Advisor and Bond Counsel will assist in the preparation of the Official Statement. The information contained in the Official Statement is gathered from departments/divisions throughout the city. Coordination and compilation of the information provided to the Financial Advisor by the City is the responsibility of the Assistant Director of Finance under the supervision of the Director of Finance.

## XII. RATINGS

The city's goal is to maintain or improve its bond ratings. To that end, prudent financial management policies will be adhered to in all areas. Therefore, it is important for the City to continue to build its liquidity and maintain solid general fund performance. The City could receive a one-notch upgrade assuming that all other factors/inputs remain constant.

Full disclosure of operations will be made to the bond rating agencies. The city staff, with the assistance of the financial advisors and bond counsel, will prepare the necessary materials for presentation to the rating agencies.

The city shall maintain a line of communications with the national rating agencies informing them of major financial events in the city as they occur. The Comprehensive Annual Financial Report shall be distributed to the rating agencies after it has been accepted by the City Council.

The rating agencies will also be notified either by telephone or through written correspondence when the city begins preparation for a debt issuance. After the initial contact, a formal ratings application will be prepared and sent along with the draft of the Official Statement relating to the bond sale to the rating agencies. This application and related documentation should be sent several weeks prior to the bond sale to give the rating agencies sufficient time to perform their review.

A personal meeting with representatives of the rating agencies will be scheduled every few years or whenever a major project is initiated.

### XIII. CREDIT ENHANCEMENTS

Credit enhancements are mechanisms which guarantee principal and interest payments. They include bond insurance and a line or letter of credit. A credit enhancement, will be considered if it results in and lowers overall costs.

During debt issuance planning, the Financial Advisor will advise the city whether or not a credit enhancement is cost effective under the circumstances and what type of credit enhancement, if any, should be purchased. In a negotiated sale, bids may be taken during the period prior to the pricing of the sale. In a competitive sale, bond insurance may be provided by the purchaser if the issue qualifies for bond insurance.

### XIV. SECONDARY MARKET DISCLOSURE

In compliance with SEC 15c2-12 regulations, which became effective July 3, 1995, municipal debt issuers are required to annually provide specified financial and operating information to the Municipal Securities Rulemaking Board (MSRB) Electronic Municipal Market Access (EMMA) designated by the SEC. This information is available free of charge via the Electronic Municipal Market Access (EMMA) system at [www.emma.msrb.org](http://www.emma.msrb.org). Additionally, issuers must notify the State Information Depositories (SIDs) if one exists.

The information to be provided includes quantitative financial information and operating data as well as audited financial statements. This financial disclosure must be filed by March 31 of each year.

In addition to the financial and operating information any material event must be provided to EMMA within 10 business days of occurrence. Municipal debt issuers will be obligated to provide ongoing disclosure on the status of the following material events:

- Principal and interest payment delinquencies
- Nonpayment-related defaults
- Unscheduled draws on reserves
- Unscheduled draws on credit enhancements
- Substitution of credit or liquidity providers, or the failure to perform
- Adverse tax opinions or events affecting the tax-exempt status of the security
- Modifications to rights of security holders
- Bond calls
- Defeasances
- Matters affecting collateral
- Rating changes

The Director of Finance will be designated "Compliance Officer" for disclosure requirements. Levels of reporting will include:

- Annual compliance report to the City Manager,

- Notification by electronic filing to EMMA, and SID's of material events, with copies to the City Council
- Copies of CAFR and updated tables from the Official Statement to EMMA and SIDs within six months of fiscal year end.

## XV. ARBITRAGE LIABILITY MANAGEMENT

It is the city's policy to minimize the cost of arbitrage rebate and yield restriction while strictly complying with the law.

### A. General

Federal arbitrage legislation is intended to discourage entities from issuing tax exempt obligations unnecessarily. In compliance with the spirit of this legislation, the city will not issue obligations except for identifiable projects with very good prospects of timely initiation. Obligations will be issued as closely in time as feasible to the time contracts are expected to be awarded so that they will be spent quickly.

### B. Responsibility

Because of the complexity of arbitrage rebate regulations and the severity of noncompliance penalties, the advice of Bond Counsel and other qualified experts will be sought whenever questions about arbitrage rebate regulations arise. The city maintains a contract for arbitrage rebate services.

The Director of Finance will be responsible for identifying the amount of unspent debt proceeds including interest which is on hand and for ensuring that, to the extent feasible, the oldest proceeds on hand are spent first.

The arbitrage rebate consultant maintains a system for computing and tracking the arbitrage rebate liability, and will notify the city of the amount of accrued liability. They will also be responsible for notifying the city two months in advance of when a rebate of excess arbitrage earnings is due to the Internal Revenue Service.

The city's bond counsel and financial advisor shall review in advance any arbitrage rebate payments and forms sent to the Internal Revenue Service.

The expenditure of obligation proceeds will be tracked in the financial accounting system by type of issue. Investments will be pooled for financial accounting purposes and may, at the discretion of the Director of Finance, be pooled for investment purposes. When investments of bond proceeds are co-mingled with other investments, the city shall adhere to the Internal Revenue Service rules on accounting allocations.

Arbitrage rebate costs shall be charged as negative interest revenue to the funds in which the related obligation proceeds were originally deposited.

### C. Internal Interim Financing

In order to defer the issuance of obligations, when sufficient non-restricted reserve funds are on hand, consideration shall be given to appropriating them to provide interim financing for large construction contracts or parts of contracts. When the appropriations are subsequently re-financed with the proceeds of obligations or other resources, the non-restricted reserve funds shall be repaid. When expenditures are reimbursed from debt issuances, applicable state law and the Internal Revenue Service rules on reimbursements will be complied with so that the reimbursements may be considered expenditures for arbitrage purposes.

Requirements are in general:

- The city shall declare its intention to reimburse an expenditure with debt proceeds before paying the expenditure, and will exclude costs such as design and engineering fees or cost of issuance;
- Reimbursement bonds must be issued and the reimbursement made within one year after the expenditure was made or the property financed by the expenditure was placed in service, whichever is later; and
- The expenditure to be reimbursed must be a capital expenditure.

### D. Two Year Spend-out Option

Arbitrage rebate legislation offers a safe harbor whereby obligations issued for construction will be exempt from arbitrage rebate if certain rules are adhered to and the proceeds are spent within two years. However, if this option is elected and all the proceeds are not spent according to the prescribed schedule, penalties are imposed. The option should be considered when circumstances indicate the city will with certainty be successful in achieving a two-year spendout goal. Such circumstances may include, but are not limited to the following:

- Obligations are issued to finance a variety of small construction projects, not large projects which might be unexpectedly delayed after the issuance. Also, project management understands the requirements and is firmly committed to achieving the spendout goal.
- Obligations are issued for a single, large high priority project with a relatively short construction period and there is a high level of commitment to speedy completion.

When the two year spend out option is elected, debt will be issued for an estimated one year of expenditures to provide for unexpected delays of up to a year without incurring penalties. The exercise of the two year spend out option will always be coordinated with Bond Counsel and the Financial Advisor.

## XVI. MODIFICATION TO POLICIES

These policies will be reviewed annually and presented to the City Council for consideration.

# LANCASTER CITY COUNCIL

## City Council Regular Meeting

3.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda.

**Goal(s):** Sound Infrastructure

**Submitted by:** Jermiane Sapp, Equipment and Facilities Director

### **Agenda Caption:**

Consider a resolution ratifying the terms and conditions of an agreement with Highway Intelligent Traffic Solutions, Inc. for the repair of median lighting on North Interstate Highway 35 from south of Pleasant Run Road to the southern city limits in an amount not to exceed fifty three thousand, four hundred forty-one dollars and thirty-nine cents (\$53,441.39).

### **Background:**

In July 1997 the City of Lancaster entered into an Agreement for Construction, Maintenance and Operation of Continuous Highway Lighting Systems within a Municipality with the Texas Department of Transportation. This agreement requires the City to maintain the median lighting from south of Pleasant Run Road to the southern city limits. The City subsequently amended the agreement in 2004 and 2006.

### **Operational Considerations:**

The City received numerous complaints regarding the lights along North Interstate Highway 35 not being operational within the City of Lancaster. The Texas Department of Transportation coordinated with staff to evaluate the concern and ensure compliance with the maintenance agreement.

While the operation of the lights is a maintenance requirement of the City of Lancaster, the light fixtures provide illumination to the cities of Lancaster, DeSoto and Glenn Heights.

### **Legal Considerations:**

Highway Intelligent Traffic Solutions is an authorized vendor to perform work within the Texas Department of Transportation rights-of-way. The resolution has been reviewed and approved as to form by the City Attorney.

### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

### **Fiscal Impact:**

The total cost was fifty-three thousand, four hundred forty-one dollars and thirty-nine cents (\$53,441.39).

### **Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Attachments**

Resolution

Proposal

Resolution No. 2006-08-59

---



**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND HIGHWAY INTELLIGENT TRAFFIC SOLUTIONS, INC. FOR THE REPAIR OF MEDIAN LIGHTING ON NORTH INTERSTATE HIGHWAY 35 FROM SOUTH OF PLEASANT RUN ROAD TO THE SOUTHERN CITY LIMITS IN AN AMOUNT NOT TO EXCEED FIFTY-THREE THOUSAND FOUR HUNDRED FORTY-ONE DOLLARS AND THIRTY-NINE CENTS (\$53,441.39); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the Texas Department of Transportation Agreement for Construction, Maintenance and Operation of Continuous Highway Lighting Systems within a Municipality agreement dated July 28, 1997 and Amendment #01 dated March 2004 and Amendment #002 dated August 2006; and

**WHEREAS**, the City of Lancaster is required to provide for the maintenance and continuous operation of the lights along North Interstate Highway 35; and

**WHEREAS**, the City of Lancaster recognizes the value and importance of the maintenance and operation of the lights along North Interstate Highway 35; and

**WHEREAS**, after consideration, the City Council has determined that it would be in the best interest of the City and its citizens to ratify said expenditure; and

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

**SECTION 1.** The City Council ratifies the expenditure of fifty three thousand four hundred forty-one dollars and thirty-nine cents \$53,441.39 to Intelligent Traffic Solutions, Inc.

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

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

**SECTION 4.** This Resolution shall 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 25th day of September 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

Project: CITY OF LANCASTER  
 CSJ:  
 Highway: IH 35 ETC  
 County: DALLAS

Highway Intelligent Traffic Solutions  
 1500 HIGH MEADOWS WAY  
 CEDAR HILL TX 75104  
 469-454-4674

**PROPOSAL**

Item No	Desc Code	S.P. NO.	UNIT	ITEM DESCRIPTION	QTY	Unit Price	Item Extension
500	2001	000	LS	MOBILIZATION	1.000	\$6,460.00	\$6,460.00
502	2001	000	EA	BARRICADES, SIGNS AND TRAF HANDLE - LANE CLOSURE ON IH 35 - TO BE INVOICED AS NEEDED	7.000	\$1,204.00	\$8,428.00
COL	1	000	HR	HOURLY RATE FOR REPAIRS/TROUBLE SHOOTING - 2 MAN CREW - (half hour per pole will be charged for diagnostic)	16.000	\$148.94	\$2,383.04
7854	2046	000	EA	REPLACE FIXTURE - HPS	38.000	\$761.00	\$28,918.00
7584	2001	000	EA	REPLACE LAMP	14.000	\$57.50	\$805.00
7584	2002	000	EA	REPLACE FUSE	44.000	\$19.40	\$853.60
7584	2003	000	EA	REPLACE FUSE HOLDER - HEX NEW STYLE TXDOT APPROVED	3.000	\$180.50	\$541.50
620	2009	000	LF	REPLACE #6 BARE	500.000	\$1.65	\$825.00
620	2010	000	LF	REPLACE #6 INSULATED	1,000.000	\$1.90	\$1,900.00
620	2014	000	LF	REPLACE #12 WIRE IN POLE	0.000	\$1.12	\$0.00
COL	7	000	EA	REPLACE GROUND BOX COVER	2.000	\$150.00	\$300.00
COL	8	000	EA	SEAL BOXES WITH FOAM	5.000	\$158.25	\$791.25
COL	9	000	LS	MISC - SPLIT BOLTS, SPLICE KITS, MULE TAPE	1.000	\$1,236.00	\$1,236.00
							\$53,441.39

BOND NOT INCLUDED  
 TXDOT INSURANCE REQUIREMENTS PROVIDED  
 ANYTHING ABOVE TXDOT REQUIREMENTS WILL BE EXTRA  
 NO PERMITS/FEE'S ETC INCLUDED  
 MATERIALS WILL BE EXTENDED AS INSTALLED

**RESOLUTION NO. 2006-08-59**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING AMENDMENT 02, MADE BY AND BETWEEN THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION, AND THE CITY OF LANCASTER, ACTING BY AND THROUGH ITS DULY AUTHORIZED OFFICERS, TO EXTEND CONSTRUCTION, MAINTENANCE AND OPERATION OF CONTINUOUS HIGHWAY LIGHTING SYSTEMS FOR I-35E FROM SOUTH OF PLEASANT RUN ROAD TO THE SOUTHERN CITY LIMIT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interests of the City to execute Amendment 02 to the Agreement for Construction Maintenance, and Operation of Continuous Highway Lighting Systems Within A Municipality, which said Amendment will extend the median lighting south of Pleasant Run Road to the southern city limit; and

**WHEREAS,** the City has requested the State to contribute financial aid in the construction, maintenance, and operation of a continuous lighting system on the freeway or expressway designated as I-35E within the limits from south of Pleasant Run Road to the southern city limits in accordance with Section 25.11, Texas Administrative Code; and

**WHEREAS,** all other provisions of the original contract are unchanged and remain in full force and effect.

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

Section 1. The City Council of the City of Lancaster, Texas, hereby approves the Amendment 02 to the Agreement, attached hereto as Exhibit "A", to extend the construction, maintenance, and operation of a continuous highway lighting systems from south of Pleasant Run Road to the southern corporate limits of the City of Lancaster.

Section 2. That the City Manager of the City of Lancaster, Texas is authorized to execute the appropriate documents to implement this Amendment 02 to the Agreement.

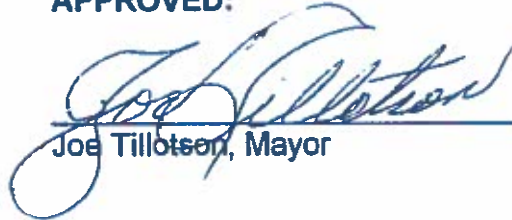
Section 3. Any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

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

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 14<sup>th</sup> day of August 2006.


**APPROVED:**

  
\_\_\_\_\_  
Joe Tillotson, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF CONTINUOUS HIGHWAY LIGHTING SYSTEMS WITHIN A MUNICIPALITY (FREEWAYS OR EXPRESSWAYS) (Specific Limits) AMENDMENT # 02**

**THIS AMENDMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of Lancaster, acting by and through its duly authorized officers, hereinafter called the Local Government.

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed a contract on 11<sup>th</sup> of August, 1997 to effectuate their agreement to maintain and operate the continuous lighting system on IH 35E from Parkerville road to north of Pleasant Run within the City of Lancaster and, executed Amendment No 1 on the 22<sup>nd</sup> of April, 2004 to amend the limits of the continuous lighting system to south of Parkerville Road to south of Pleasant Run; and,

**WHEREAS**, it has become necessary to amend that contract;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Local Government do agree as follows:

**AGREEMENT**

**Article 1. Description of Amended Items**

The City has requested the State to contribute financial aid in the construction, maintenance, and operation of a continuous highway lighting system on the freeway or expressway designated as IH 35E within the limits from south of Pleasant Run to the southern city limit inside the City which is in accordance with Section 25.11, Texas Administrative Code.

All other provisions of the original contract are unchanged and remain in full force and effect.

**Article 2. Signatory Warranty**

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this agreement.

**THE LOCAL GOVERNMENT**

City of Lancaster  
Name of Local Government  
By: [Signature]  
Signature  
Jim Landon  
Printed Name  
City Manager  
Title  
August 14, 2006  
Date

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.  
By: [Signature]  
Name  
William L. Hale, P.E.  
Dallas District Engineer  
Title  
8/14/06  
Date



# Texas Department of Transportation

P.O. BOX 133067 • DALLAS, TEXAS 75313-3067 • (214) 320-6100

September 18, 2006

Control: 442-3-31, etc.  
IH 35E: From Parkerville  
To US 77  
Dallas and Ellis Counties

Mr. Jim Landon  
City Manager  
City of Lancaster  
700 E Main Street  
Lancaster, TX 75146

Dear Mr. Landon:

We are forwarding you the original counterpart of *Amendment 02 to the Agreement for Construction, Maintenance and Operation of Continuous Highway Illumination within a Municipality* for your files. This amendment extends the limits of continuous illumination maintained by the City of Lancaster on IH 35E to the south Lancaster city limit. Feel free to contact Ms. Melanie Young, P.E., (214)320-6229, if needed.

Sincerely,

Gary D. Charlton, P.E.  
Interim Director of Transportation Operations

Attachment

copy to Dallas  
copy to Jim  
9/24/06



City of Lancaster  
OFFICE OF THE CITY SECRETARY

Lancaster  
**2-0-0-6**  
All-America City Finalist

211 N. Henry Street \* Lancaster, TX 75146 \* 972.218.1311 \* 972.218-1399 FAX  
www.lancaster-tx.com

August 23, 2006

William L. Hale  
District Engineer  
Texas Department of Transportation  
4777 East Highway 80  
Mesquite, Texas 75150

RE: Amendment #2 – Continuous Highway Lighting Agreement  
IH-35E to Southern City Limits

Dear Mr. Hale:

Enclosed are two originals, executed by City Manager Jim Landon, of the Amendment No. 2 to the Continuous Highway Lighting Agreement for I-35E to the southern city limits. Would you please execute the amendments and return one original to my attention for our files.

I have enclosed a copy of the Resolution 2006-08-59 approving the amendment for your records.

Thank you for your assistance.

Sincerely,

Dolle K. Shane, TRMC  
City Secretary

Enclosures

cc: Jim Smith, Public Works Director

STATE OF TEXAS §  
COUNTY OF TRAVIS §

**AGREEMENT FOR CONSTRUCTION, MAINTENANCE  
AND OPERATION OF CONTINUOUS HIGHWAY LIGHTING  
SYSTEMS WITHIN A MUNICIPALITY  
(FREEWAYS OR EXPRESSWAYS)  
(Specific Limits)  
AMENDMENT # 02**

**THIS AMENDMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of Lancaster, acting by and through its duly authorized officers, hereinafter called the Local Government.

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed a contract on 11<sup>th</sup> of August, 1997 to effectuate their agreement to maintain and operate the continuous lighting system on IH 35E from Parkerville road to north of Pleasant Run within the City of Lancaster and, executed Amendment No 1 on the 22<sup>nd</sup> of April, 2004 to amend the limits of the continuous lighting system to south of Parkerville Road to south of Pleasant Run; and,

**WHEREAS**, it has become necessary to amend that contract;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the State and the Local Government do agree as follows:

**A G R E E M E N T**

**Article 1. Description of Amended Items**

The City has requested the State to contribute financial aid in the construction, maintenance, and operation of a continuous highway lighting system on the freeway or expressway designated as IH 35E within the limits from south of Pleasant Run to the southern city limit inside the City which is in accordance with Section 25.11, Texas Administrative Code.


All other provisions of the original contract are unchanged and remain in full force and effect.

**Article 2. Signatory Warranty**

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this agreement.

**THE LOCAL GOVERNMENT**

City of Lancaster  
Name of Local Government  
By:   
Signature  
Jim Landon  
Printed Name  
City Manager  
Title  
August 14, 2006  
Date

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.  
By: \_\_\_\_\_  
Name  
William L. Hale, P.E.  
Dallas District Engineer  
Title  
\_\_\_\_\_  
Date





# Texas Department of Transportation

P.O. BOX 133067 • DALLAS, TEXAS 75313-3067 • (214) 320-6100

July 12, 2006

Control: 442-3-31, etc.  
IH 35E: From Parkerville  
To US 77  
Dallas and Ellis Counties

Mr. Jim Landon  
City Manager  
City of Lancaster  
700 E Main Street  
Lancaster, TX 75146

Dear Mr. Landon:

As requested, we are forwarding you two (2) copies of *Amendment 02 to the Agreement for Construction, Maintenance and Operation of Continuous Highway Illumination within a Municipality*. This amendment will extend the limits of continuous illumination maintained by the City of Lancaster on IH 35E to the south Lancaster city limit. TxDOT will design and install this additional section of continuous illumination as part of the current roadway reconstruction project.

Please have these documents signed by the proper City officials and return both originals to us for further handling. Feel free to contact Ms. Melanie Young, P.E., (214)320-6229, if needed.

Sincerely,

Mohammad H. Moabed  
Director of Transportation Operations

Attachments

**LANCASTER CITY COUNCIL**

**City Council Regular Meeting**

**4.**

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda.

**Goal(s):** Healthy, Safe & Engaged Community

**Submitted by:** Sam Urbanski, Chief of Police

**Agenda Caption:**

Conduct a public hearing and consider an ordinance amending the Code of Ordinances by amending readopting, ratifying, republishing and extending Ordinance No. 2014-06-10, codified as Chapter 14, "offenses and additional provisions", by amending Article 14.02, "Minors", by repealing and replacing with a new Division 2, "Curfew"; providing a penalty clause, providing a severability clause; and providing for an effective date for a period of three (3) years.

**Background:**

Chapter 370.002 of the Texas Local Government Code provides that curfew ordinances be reviewed by the governing body of the city every three years. The police department requested that the City Attorney review the ordinance. It is the recommendation of the police department and the City Attorney that the city continues the provisions of the code without any modifications and schedules the next review in September of 2020.

**Operational Considerations:**

The police department will take the necessary enforcement action on any individual found in violation of this article and will not issue a citation or make an arrest under this article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under Section 14.02.032 is present. Defenses include:

- (a) It is a defense to prosecution under Section 14.02.032 that the minor was:
  - (1) accompanied by the minor's parent or guardian;
  - (2) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
  - (3) in a motor vehicle involved in interstate travel;
  - (4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - (5) involved in an emergency;
  - (6) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
  - (7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor;

(8) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(9) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.

(b) It is a defense to prosecution under Section 14.02.032(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

*Note:* Item (b) above is a defense for the owner, operator, or employee of an establishment, but not for the minor. Section 14.02.032(c) states that an owner, operator, or employee commits an offense if he knowingly allows a minor to remain on the premises of the establishment during curfew hours. It is a defense if the owner, operator, or employee promptly notified the police department that a minor was present on the premises during curfew hours and refused to leave.

**Legal Considerations:**

The City Attorney has reviewed and approved the ordinance as to form.

**Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

**Options/Alternatives:**

1. The City Council may approve the ordinance as presented.
2. The City Council may deny the ordinance.

**Recommendation:**

Staff recommends approval of the ordinance as presented.

**Attachments**

Ordinance

Ordinance No. 2014-05-10

Ordinance No. 2011-05-10

Ordinance No. 2007-05-10

Ordinance No. 2004-05-10

---

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14, "OFFENSES AND ADDITIONAL PROVISIONS", BY AMENDING ARTICLE 14.02, "MINORS", BY REPEALING AND REPLACING WITH A NEW DIVISION 2, "CURFEW"; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has previously passed and adopted Ordinance No. 2014-06-10, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and

**WHEREAS**, such Ordinance has been codified as Chapter 14, Article 14.02, Minors, Division 2, Curfew, Section 14.02.031 through Sections 14.02.036, of the Code of Ordinances; and

**WHEREAS**, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

**WHEREAS**, prior to the expiration of such three (3) year period, the Police Department has furnished records and reports indicating the need for such ordinance to remain in effect; and

**WHEREAS**, the City desires to continue the provisions of the Code without any modifications and schedule.

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

**SECTION 1.** That the Code of Ordinance is hereby amended by amending Chapter 14, Offenses and Additional Provisions, amending Article 14.02, Minors, by repealing and replacing in its entirety Division 2, Curfew, to read as follows:

## “CHAPTER 14

### OFFENSES AND ADDITIONAL PROVISIONS

.....

#### **Division 2. Curfew**

##### **Sec. 14.02.031 Definitions**

Curfew hours.

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day;
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
- (3) 9:00 a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday; provided, however, the hours defined in this subsection shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to section 25.085, Texas Education Code, nor shall the hours defined in this subsection be considered as curfew hours on days or during periods in which the school where the minor is enrolled is closed or classes for which the minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives.

Emergency. An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment. Any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Guardian.

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court. Minor. Any person ten (10) years of age to sixteen (16) years of age.

Operator. Any individual, firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or parents [partners] of an association or partnership and the officers of a corporation.

Parent. A person who is:

- (1) A natural parent, adoptive parent, or step-parent of another person;  
or
- (2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place. Any place to which the public or a substantial group of the public has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain. To:

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

#### **Sec. 14.02.032 Offenses**

- (a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

#### **Sec. 14.02.033 Defenses**

- (a) It is a defense to prosecution under section 14.02.032 that the minor was:
  - (1) Accompanied by the minor's parent or guardian;

- (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
- (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (9) Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code, as amended.

(b) It is a defense to prosecution under section 14.02.032(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

**Sec. 14.02.034 Enforcement**

Before taking any enforcement action under this division, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this division unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under section 14.02.033 is present. (2002 Code, sec. 8.804)

**Sec. 14.02.035 Review of ordinance**

In accordance with section 370.002 of the Texas Local Government Code, as amended, the city council shall review this division and the conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter. Upon review, public hearings shall be conducted on

the need to continue, modify or abolish the ordinance.

**Sec. 14.02.036 Penalty**

(a) A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine in accordance with section 1.01.009 of this code.

(b) When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 14.02.032(a) of this division and shall refer the minor to juvenile court.

.....”

**SECTION 2.** That all provisions of the Code of 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 3.** Any person, firm or corporation violating any of the provisions of this ordinance of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of five hundred (\$500.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

**SECTION 4.** That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be 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 Code of Ordinances as a whole.

**SECTION 5.** That this ordinance shall take effect immediately from and after its passage and publication, as the law and charter in such cases provide.



**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, this  
the 25<sup>th</sup> day of September, 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**ORDINANCE NO. 2014-06-10**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14, "OFFENSES AND ADDITIONAL PROVISIONS", BY AMENDING ARTICLE 14.02, "MINORS", BY REPEALING AND REPLACING WITH A NEW DIVISION 2, "CURFEW"; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has previously passed and adopted Ordinance No. 2007-02-06, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and

**WHEREAS**, such Ordinance has been codified as Chapter 14, Article 14.02, Minors, Division 2, Curfew, Section 14.02.031 through Sections 14.02.036, of the Code of Ordinances; and

**WHEREAS**, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

**WHEREAS**, prior to the expiration of such three (3) year period, the Police Department has furnished records and reports indicating the need for such ordinance to remain in effect; and

**WHEREAS**, the City desires to continue the provisions of the Code without any modifications and schedule.

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

**SECTION 1.** That the Code of Ordinance is hereby amended by amending Chapter 14, Offenses and Additional Provisions, amending Article 14.02, Minors, by repealing and replacing in its entirety Division 2, Curfew, to read as follows:

**"CHAPTER 14**

**OFFENSES AND ADDITIONAL PROVISIONS**

.....

## **Division 2. Curfew**

### **Sec. 14.02.031 Definitions**

#### Curfew hours.

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day;
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday; and
- (3) 9:00 a.m. until 2:30 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday; provided, however, the hours defined in this subsection shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to section 25.085, Texas Education Code, nor shall the hours defined in this subsection be considered as curfew hours on days or during periods in which the school where the minor is enrolled is closed or classes for which the minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives.

Emergency. An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment. Any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

#### Guardian.

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court. Minor. Any person ten (10) years of age to sixteen (16) years of age.

Operator. Any individual, firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or parents [partners] of an association or partnership and the officers of a corporation.

Parent. A person who is:

- (1) A natural parent, adoptive parent, or step-parent of another person;  
or
- (2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place. Any place to which the public or a substantial group of the public has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain. To:

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

#### **Sec. 14.02.032 Offenses**

- (a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

#### **Sec. 14.02.033 Defenses**

- (a) It is a defense to prosecution under section 14.02.032 that the minor was:
  - (1) Accompanied by the minor's parent or guardian;
  - (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
  - (3) In a motor vehicle involved in interstate travel;

- (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
- (7) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;
- (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (9) Married or had been married or had disabilities of minority removed in accordance with chapter 31 of the Texas Family Code, as amended.

(b) It is a defense to prosecution under section 14.02.032(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

#### **Sec. 14.02.034 Enforcement**

Before taking any enforcement action under this division, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this division unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under section 14.02.033 is present. (2002 Code, sec. 8.804)

#### **Sec. 14.02.035 Review of ordinance**

In accordance with section 370.002 of the Texas Local Government Code, as amended, the city council shall review this division and the conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter. Upon review, public hearings shall be conducted on the need to continue, modify or abolish the ordinance.

#### **Sec. 14.02.036 Penalty**

(a) A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine in accordance with section 1.01.009 of this code.

(b) When required by section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates section 14.02.032(a) of this division and shall refer the minor to juvenile court.

.....”

**SECTION 2.** That all provisions of the Code of 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 3.** Any person, firm or corporation violating any of the provisions of this ordinance of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of five hundred (\$500.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

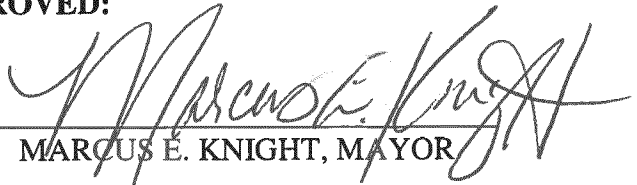
**SECTION 4.** That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Code of Ordinances as a whole.

**SECTION 5.** That this ordinance shall take effect immediately from and after its passage and publication, as the law and charter in such cases provide.

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 23<sup>rd</sup> day of June, 2014.

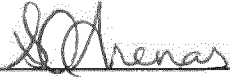
**APPROVED:**

By:

  
MARCUS E. KNIGHT, MAYOR

**ATTEST:**

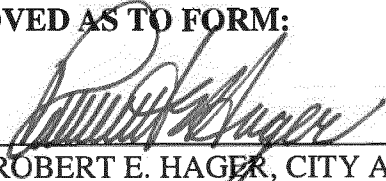
By:



SORANGEL O. ARENAS, CITY SECRETARY

**APPROVED AS TO FORM:**

By:

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

**ORDINANCE NO. 2011-05-10**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING ORDINANCE NO. 2007-02-06, CODIFIED AS CHAPTER 8 OF THE CODE OF ORDINANCES, ARTICLE 8.800, CURFEW HOURS FOR MINORS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has previously passed and adopted Ordinance No. 2007-02-06, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and

**WHEREAS**, such Ordinance has been codified as Chapter 8, Article 8.800, Sections 8.801 through 8.806, of the Code of Ordinances; and

**WHEREAS**, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

**WHEREAS**, prior to the expiration of such three (3) year period, the Police Department has furnished records and reports indicating the need for such ordinance to remain in effect; and

**WHEREAS**, the City desires to continue the provisions of the Code without any modifications and schedule the same for review in May 2014.

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

**SECTION 1.** That Ordinance No. 2007-02-06, codified as Chapter 8, Article 8.800, Sections 8.801 through 8.806 of the Code of Ordinances is hereby readopted, ratified, republished and extended from the date of its execution and shall remain in effect through May 2014, unless otherwise terminated under the provisions of State law.



**SECTION 2.** That all provisions of the Code of 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 3.** That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be 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 Code of Ordinances as a whole.

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

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 23<sup>rd</sup> day of May 2011.


**APPROVED:**

By:

  
MARCUS E. KNIGHT, MAYOR

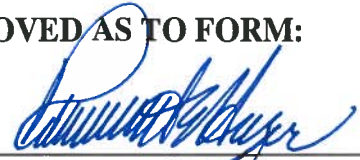
**ATTEST:**

By:

  
DOLLE K. DOWNE, CITY SECRETARY

**APPROVED AS TO FORM:**

By:

  
ROBERT E. HAGER, CITY ATTORNEY  
(REH/cdb 5/23/11)

**ORDINANCE NO. 2007-02-06**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING ORDINANCE NO. 2004-06-19, CODIFIED AS CHAPTER 8 OF THE CODE OF ORDINANCES, ARTICLE 8.800, CURFEW HOURS FOR MINORS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council has previously passed and adopted Ordinance No. 2004-06-19, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and

**WHEREAS**, such Ordinance has been codified as Chapter 8, Article 8.800, Sections 8.801 through 8.806, of the Code of Ordinances attached hereto as Exhibit "A"; and

**WHEREAS**, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

**WHEREAS**, prior to the expiration of such three (3) year period, the Police Department has furnished records and reports indicating the need for such ordinance to remain in effect; and

**WHEREAS**, the City desires to continue the provisions of the Code without any modifications and schedule the same for review in June 2010.

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

**SECTION 1.** That Ordinance No. 2004-06-19, codified as Chapter 8, Article 8.800, Sections 8.801 through 8.806 of the Code of Ordinances is hereby readopted, ratified, republished and extended from the date of its execution and shall remain in effect through June 2010, unless otherwise terminated under the provisions of State law.

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

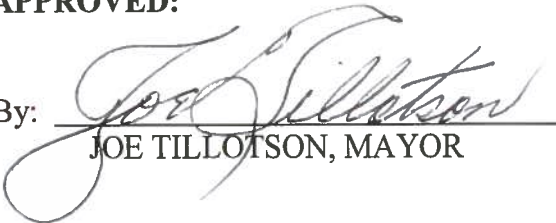
all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 3.** That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be 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 Code of Ordinances as a whole.

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

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this 26<sup>th</sup> day of February 2007.

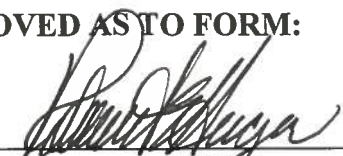
**APPROVED:**

By:   
JOE TILLOTSON, MAYOR

**ATTEST:**

By:   
DOLLE K. SHANE, CITY SECRETARY

**APPROVED AS TO FORM:**

By:   
ROBERT E. HAGER, CITY ATTORNEY  
(REH/cdb 2/26/07)

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS**

**ORDINANCE NO. 2004-06-19**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING CHAPTER 7, ARTICLE 7.800, "CURFEW HOURS FOR MINORS", SECTIONS 7.801 THROUGH 7.805 OF THE CODE OF ORDINANCES PROVIDING CURFEW HOURS FOR MINORS IN THE CITY OF LANCASTER, TEXAS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING FOR OFFENSES; PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING A SUNSET CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the safety of children is a public concern; and

**WHEREAS**, the City Council has previously passed and adopted an Ordinance, which provides for "Curfew Hours for Minors" establishing such curfew hours and penalties for violations thereof; and,

**WHEREAS**, such Ordinance has been codified in Chapter 7, Article 7.800, "Curfew Hours For Minors", Sections 7.801 through 7.805; and

**WHEREAS**, Chapter 370.002 of the TEXAS LOCAL GOVERNMENT CODE, as amended, provides that the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years from its date of passage and every third year thereafter and conduct public hearings to determine the need to continue, modify or abolish the ordinance; and

**WHEREAS**, the Police Department has furnished records and reports indicating the need for such to remain in effect in order to provide a safe environment for persons under the age of seventeen (17); and

**WHEREAS**, the City desires to continue the provisions of the Code without any modifications, and schedule the same for review in June 2007

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

**Section 1.** That the City Council hereby readopts, ratifies, republishes and extends Chapter 7, Article 7.800, "Curfew Hours For Minors", Sections 7.801 through 7.805 of the Code of Ordinances, which reads as follows:

**“ARTICLE 7.800 CURFEW HOURS FOR MINORS**

**Sec. 7.801 Definitions**

- (a) Curfew Hours mean:
- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
  - (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
  - (3) 9:00 a.m. until 2:30 p.m. any Monday, Tuesday, Wednesday, Thursday, or Friday; provided however, the hours defined in this article shall not be considered as curfew hours for minors not subject to compulsory school attendance pursuant to Section 21.032, Texas Education Code, nor shall the hours defined in this paragraph be considered as curfew hours on days or during periods in which the school where the minor is enrolled is closed or classes for which the minor is enrolled have been canceled under the order and direction of officials authorized to issue such orders and directives.
- (b) Emergency: An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (c) Establishment: Any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- (d) Guardian. Means:
- (1) a person who, under court order, is the guardian of the person of a minor; or
  - (2) a public or private agency with whom a minor has been placed by a court.
- (e) Minor. Any person ten (10) years of age to sixteen (16) years of age.
- (f) Operator. Any individual firm, association, partnership or corporation operating, managing, or conducting any establishment. The term includes the members or parents of an association or partnership and the officers of a corporation.
- (g) Parent. A person who is:

- (1) a natural parent, adoptive parent, or step-parent of another person; or
- (2) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(h) Public place. Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospital, apartment houses, office buildings, transport facilities, and shops.

(i) Remain. Mean to:

- (1) linger or stay; or
- (2) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(j) Serious bodily injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

#### **Sec. 7.802     Offenses**

- (a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the City during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the City during curfew hours.
- (c) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

#### **Sec. 7.803     Defenses**

- (a) It is a defense to prosecution under Section 7.802 that the minor was:
  - (1) accompanied by the minor's parent or guardian;
  - (2) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
  - (3) in a motor vehicle involved in interstate travel;

- (4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - (5) involved in an emergency;
  - (6) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
  - (7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Lancaster, a civic organization, or another similar entity that takes responsibility for the minor;
  - (8) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
  - (9) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code, as amended.
- (b) It is a defense to prosecution under Section 7.802(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

**Sec. 7.804     Enforcement**

Before taking any enforcement action under this Article, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Article unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense under Section 7.803 is present.

**Sec. 7.805     Administration**

In accordance with Chapter 370.002 of the Texas Local Government Code, as amended, the City Council shall review the Article and conditions the ordinance was intended to remedy three (3) years for its date of passage and every third year thereafter. Upon review, public hearings shall be conducted on the need to continue, modify or abolish the ordinance.

**Sec. 7.806 Penalties**

(a) A person who violates a provision of this Section is guilty of a separate offense for each day or part of day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

(b) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Section 7.802(a) of this Section and shall refer the minor to juvenile court.”

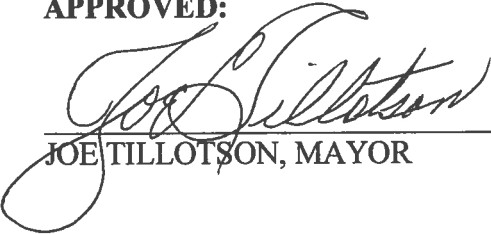
Section 2. That the provisions of this ordinance shall remain in effect through June 2007, unless otherwise terminated under the provisions of the State law

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

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

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 28<sup>th</sup> day of June 2004.

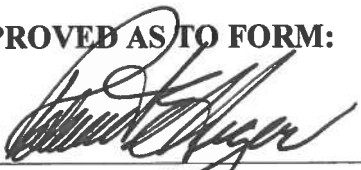
**APPROVED:**

  
\_\_\_\_\_  
JOE TILLOTSON, MAYOR

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
ROBERT E. HAGER, CITY ATTORNEY  
(REH/cdb/6/29/04)



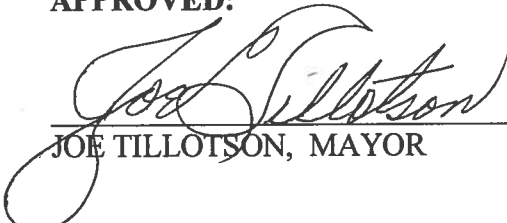
**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS**

**ORDINANCE NO. 2004-06-19**

**AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, READOPTING, RATIFYING, REPUBLISHING AND EXTENDING CHAPTER 7, ARTICLE 7.800, "CURFEW HOURS FOR MINORS", SECTIONS 7.801 THROUGH 7.805 OF THE CODE OF ORDINANCES PROVIDING CURFEW HOURS FOR MINORS IN THE CITY OF LANCASTER, TEXAS, FOR A PERIOD OF THREE (3) YEARS; PROVIDING FOR OFFENSES; PROVIDING FOR DEFENSES; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING A SUNSET CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 28<sup>th</sup> day  
of June, 2004.

**APPROVED:**

  
\_\_\_\_\_  
JOE TILLOTSON, MAYOR

**ATTEST:**

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

# LANCASTER CITY COUNCIL

## City Council Regular Meeting

5.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda

**Goal(s):** Quality Development

**Submitted by:** Bester Munyaradzi, Senior Planner

### **Agenda Caption:**

Z17-05 Conduct a Public Hearing and consider approval of a Specific Use Permit for Auto Repair Garage, Minor (oil change) located on the north side of Stanford Drive and approximately 186 feet west of North Dallas Avenue and contains approximately 0.7 acres of land. It is specifically addressed as 2613 N. Dallas Avenue in the City of Lancaster, Dallas County, Texas.

### **Background:**

1. **Location and Size:** The property is located on the north side of Stanford Drive and approximately 186 feet west of North Dallas Avenue and contains approximately 0.7 acres of land.

2. **Current Zoning:** The subject property is currently zoned R, Retail.

#### **3. Adjacent Properties:**

North: R, Retail (vacant)

South: R, Retail (Hand Car Wash)

East: R, Retail (vacant)

West: R, Retail (vacant)

4. **Comprehensive Plan Compatibility:** The Comprehensive Plan identifies this site as suitable for Suburban Mixed-Use. The proposal is not consistent with the Comprehensive Plan.

### **Operational Considerations:**

This is a request for a Specific Use Permit (SUP) for Auto Repair Garage, Minor - oil change facility. The proposed oil change facility will be located on the north side of Stanford Drive and approximately 186 feet west of North Dallas Avenue. The land use of Auto repair garage, minor requires a SUP.

An SUP is required for any use identified in the Land Use Table as requiring one and for uses with standards where the standards are not being met, unless otherwise set out. The Planning and Zoning Commission, in considering and determining its recommendation to the City Council on any request for an SUP may require site plans, additional information, operating data and expert evaluation concerning the location, function and characteristics of any building or use proposed. The City Council may, in the interest of public welfare and to assure compliance, establish conditions of operation, location, arrangement and construction of any use for which an SUP is authorized.

In authorizing the location of any of the uses listed as requiring an SUP's, the City Council may impose such development standards and safeguards such as important to the welfare and protection of adjacent property from excessive noise, vibration, dust, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions. The Planning and Zoning Commission and/or City Council may enforce additional restrictions or stipulations as the facts and circumstances of each case may warrant.

The site plan shows five (5) oil change service bays. The oil change facility is screened with Chinese pistache

and ornamental trees. The applicant is proposing to install perennial trees such as autumn sage, large laceback elm trees, a wide variety of shrubs, ground covers and grass to minimize the impact of the oil change facility to the adjacent properties and streets.

Hours of operation will be limited to 6:00 a.m. to 6:00 p.m., Central Standard Time.

**Comprehensive Plan Compatibility and City Council Vision:**

The Comprehensive Plan identifies this site as suitable for Suburban Mixed-Use. The Comprehensive Plan states that "Mixed-use neighborhoods will offer Lancaster residents the ability to live, work and play in the same location. These neighborhoods will offer a mix of housing types and residential densities ranging from single-family attached units to urban residential structures within walking distance of the goods and services required for daily living. They will include both vertically and horizontally integrated mixed-use buildings in a highly walkable environment".

Primary land uses envisioned in Suburban Mixed Use are retail, restaurants, townhomes, urban residential, senior housing, professional office and live/work/shop units. Secondary land uses include civic and institutional uses, parks and community buildings.

While retail zoning allow minor auto repair garage (which includes oil change) with Specific Use Permit (SUP), the description, the stated primary and secondary land uses given above in addition to the attached precedent photos from the Comprehensive Plan do not show any use that is close to an oil change facility in this location. Therefore staff recommends denial of the SUP request for an oil change facility as it is not consistent with the Comprehensive Plan and the vision for this area.

**Legal Considerations:**

This item is being considered at a regular meeting of the Planning and Zoning Commission noticed in accordance with the Texas Open Meetings Act.

**Public Information Considerations:**

On August 23, 2017, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to all of the 7 property owners that are within 200-feet of the subject site. No letters in support or opposition were received.

**Options/Alternatives:**

1. Approve the SUP request.
2. Deny the SUP request.





**Recommendation:**

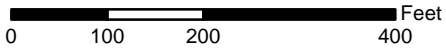
On September 5, 2017, the P&Z Commission recommended denial of the rezoning request. Since the P&Z recommended denial of the rezoning request, it will require a super-majority (6 of the 7 members of Council) to approve the request. Staff concurs with the P&Z recommendation for denial.

**Attachments**

- Location Map
  - Letter of Intent
  - Site Plan
  - Facades
  - Landscape Plan
  - Comprehensive Plan Excerpt
  - P&Z Draft Minutes
-



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



**City of Lancaster**  
**2613 N Dallas Ave**  
**200' Notification Area**

**CITY Of Lancaster**

**700 E Main Street**

**Lancaster, Texas 75146**

**Re: Letter Of Intent**

To Whom It May Concern

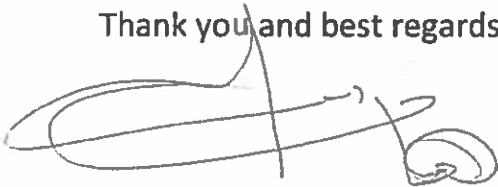
Please let this letter serve as our intent to build a Lube and change oil center DBA Oasis Lube and Oil on North Dallas Avenue.

Our center will be built with state of the art equipment and building material to meet or exceed City of Lancaster standards and will conserve energy

Our working hours will be from 8:00 AM until 6:00 Pm , please see Attached site plans, we also respectfully waiting for the SUP results.

We appreciate your consideration in advance, and we look forward to growing with the city of Lancaster.

Thank you and best regards

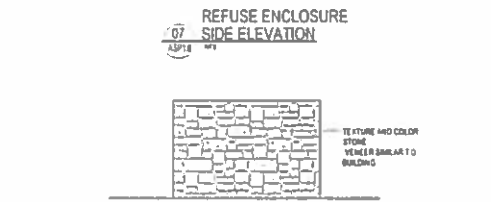
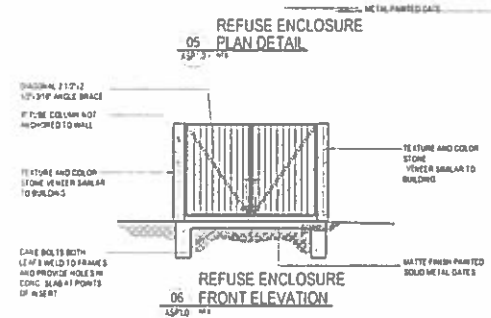
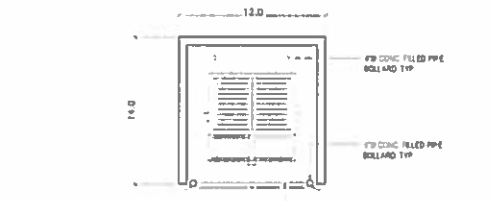
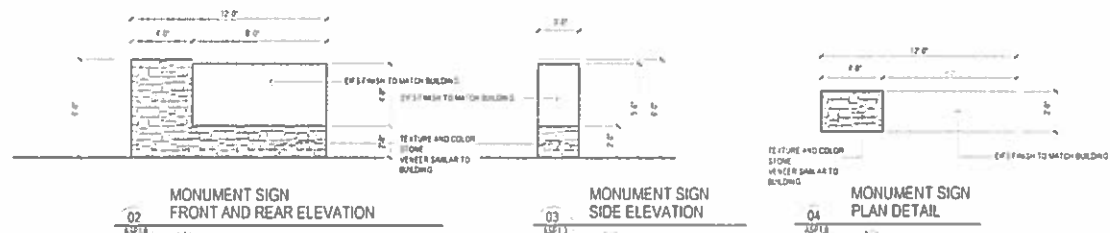
A handwritten signature in black ink, appearing to read 'Hani Elkady', with a large, stylized flourish at the end.

Hani Elkady

Representative of owner and general contractor

3120 Ashwood Ct.

Richardson, Texas 75082



VACANT  
 FUTURE LOT 7  
 1.788 Acres  
 Residual of 7.7936 Acre Tract 1  
 DCC # 201000099041

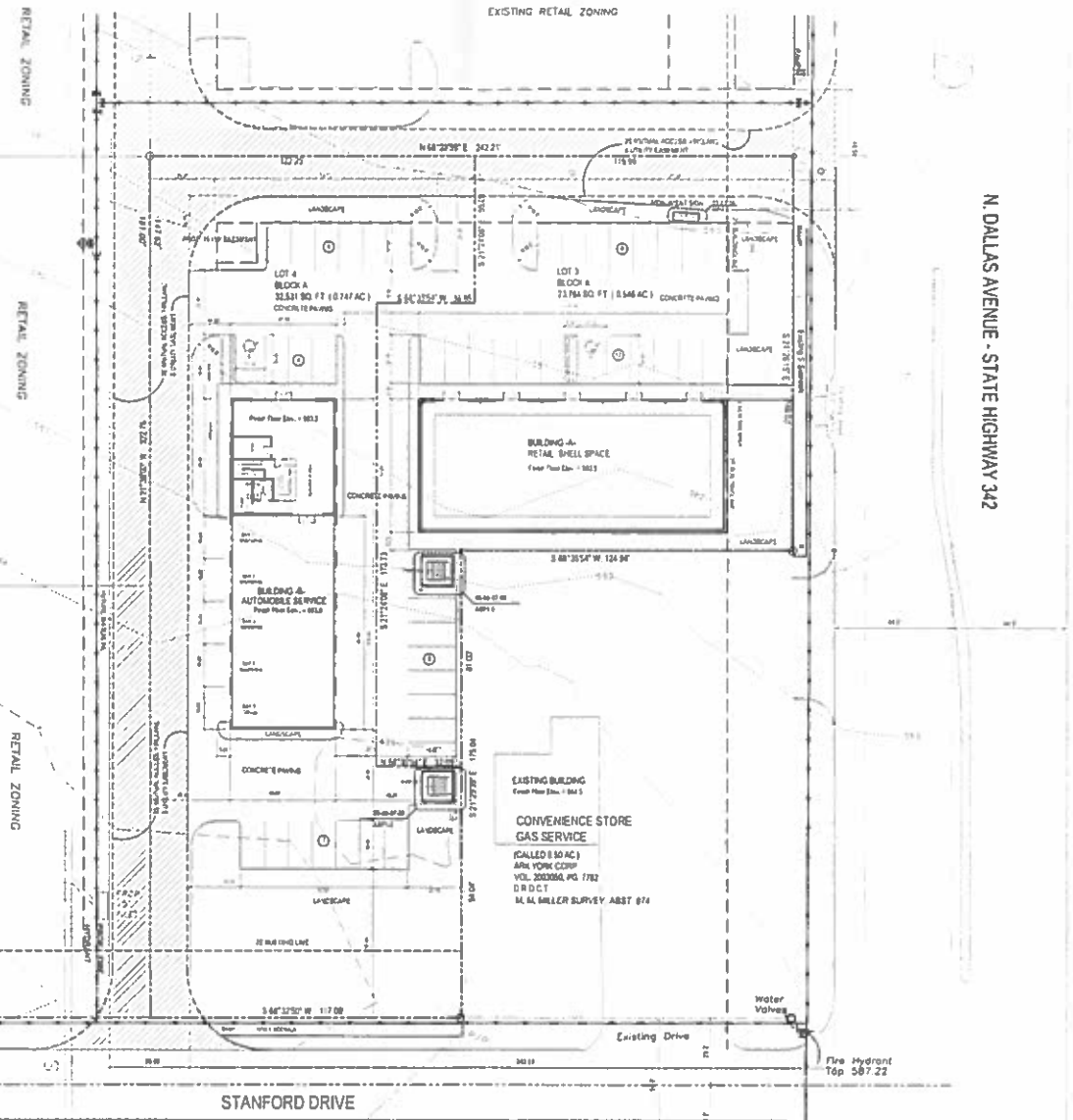
VACANT  
 FUTURE LOT 6  
 0.7978 Acre  
 Residual of 7.7936 Acre Tract 1  
 DCC # 201000099041

VACANT  
 FUTURE LOT 5  
 0.8015 Acre  
 Residual of 7.7936 Acre Tract 1  
 DCC # 201000099041

FOR FINISH GRADING  
 SEE SHEET A1.1

FOR UTILITIES PLAN  
 SEE SHEET A1.2

CONVENIENCE STORE  
 GAS SERVICE  
 Lot 2, Block A  
 1.588 Acres  
 ( 69,163 sq. ft. )  
 EXISTING RETAIL ZONING



Coffman Investments, LP  
 17.7382 Acres  
 Vol. 97035, Pg. 861 DRDCT  
 M. M. MILLER SURVEY, ABST. 874  
 RETAIL ZONING  
 VACANT

Coffman Investments, LP  
 17.7382 Acres  
 Vol. 97035, Pg. 861 DRDCT  
 M. M. MILLER SURVEY, ABST. 874  
 VACANT

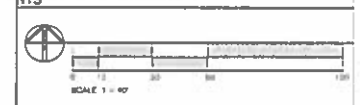
**SITE DATA SUMMARY LOT 3**

EXISTING ZONING	PROPOSED USE BUILDING A	PROPOSED USE BUILDING B
RETAIL	RETAIL SALES	RETAIL SALES
LOT 3 AREA	73,783 SF ( 3.434 AC )	73,783 SF ( 3.434 AC )
BUILDING A AREA	57,363 SQ FT	57,363 SQ FT
BUILDING A HEIGHT	22'-0"	22'-0"
LOT 3 COVERAGE	15.2%	15.2%
PARKING REQUIRED - RETAIL	29 SPACES	29 SPACES
PARKING PROVIDED - RETAIL	30 SPACES	30 SPACES
HANDICAPPED SPACES REQUIRED	1 SPACE	1 SPACE
HANDICAPPED SPACES PROVIDED	1 SPACE	1 SPACE

**SITE DATA SUMMARY LOT 4**

EXISTING ZONING	PROPOSED USE BUILDING A	PROPOSED USE BUILDING B
RETAIL	RETAIL SALES	RETAIL SALES
LOT 4 AREA	32,531 SF ( 1.474 AC )	32,531 SF ( 1.474 AC )
BUILDING A AREA	21,111 SQ FT	21,111 SQ FT
BUILDING A HEIGHT	22'-0"	22'-0"
LOT 4 COVERAGE	15.2%	15.2%
PARKING REQUIRED	18 SPACES	18 SPACES
PARKING PROVIDED	17 SPACES	17 SPACES
HANDICAPPED SPACES REQUIRED	1 SPACE	1 SPACE
HANDICAPPED SPACES PROVIDED	1 SPACE	1 SPACE

**LOCATION MAP**



OWNER:  
 ABBAS FAHAS  
 2625 N. DALLAS AV.  
 LANCASTER, TX 75134  
 PH: 469.471.8650  
 abbasfahas506@gmail.com

APPLICANT:  
 TARIQA GROUP LLC  
 3120 ASHWOOD CT  
 RICHARDSON, TX 75082  
 214.213.7192  
 at.taryady27@gmail.com

Civil Engineering  
 Dave & Madri, Inc.  
 PO Box 428 Wauvatche, TX 75168  
 PH: 972.938.1185

Architect  
 INTERDESIGN Studio  
 2418 LUNA RD., SUITE 264  
 CARROLTON, TX 76181  
 PH: 469.471.8650  
 architecturestudio@gmail.com

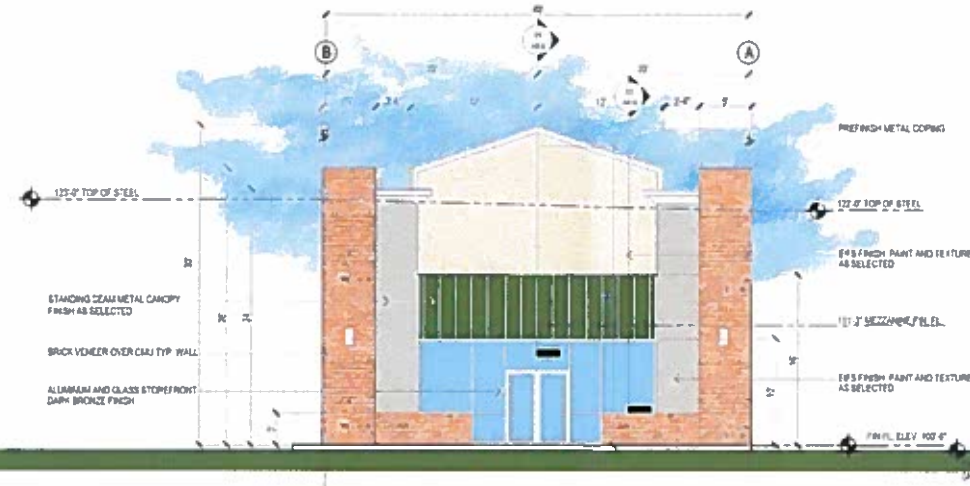
01 SITE PLAN  
 CEDAR SHELL ADDITION  
 LOTS 3 & 4, BLOCK A  
 1.293 AC  
 ( 56,323 sq. ft. )  
 RETAIL ZONING  
 ABSTRACT # 874 PLAT # MINOR PLAT  
 DALLAS, DALLAS COUNTY, TX.

REVISION	DATE	DESCRIPTION
1	June 26, 2017	
2	July 12, 2017	
3	August 15, 2017	
4	August 21, 2017	

**INTERDESIGN STUDIO**  
 REGISTERED ARCHITECTS  
 19405  
 STATE OF TEXAS  
 July 12, 2017

LANCASTER PLAZA MIX USE DEVELOPMENT  
 2807 N. DALLAS AV.  
 LANCASTER, TEXAS.

SITE PLAN  
 Sheet No.  
 ASP1.0



**01 NORTH EXTERIOR ELEVATION**

SCALE 1/8" = 1'-0"  
FACE BRICK = 50.0%  
STUCCO = 50.0%

**LOCATION MAP**



NTS

**FACADE ELEVATIONS PLAN**



**CEDAR SHELL ADDITION  
LOTS 3 & 4, BLOCK A**

23,783 SF (0.546 AC) LOT 3 AREA  
32,539 SF (0.747 AC) LOT 4 AREA

RETAIL ZONING

**OWNER:**  
ABBAS FAWAS  
2625 N. DALLAS AV.  
LANCASTER, TX. 75134  
PH. 469 471 8660  
abbasfawas506@gmail.com

**Civil Engineering:**  
Davis & McMill, Inc.

PO Box 428 Waxahachie, TX. 75168  
PH. 972 938 1185

**Architecture:**  
INTERDESIGN Studio  
2410 Luna Rd. - Suite 264  
Carrollton, TX. 78118  
PH. 469 471 8660  
architectureds@gmail.com

**ABSTRACT # 874  
DALLAS, DALLAS COUNTY, TX.**



**02 WEST EXTERIOR ELEVATION**

SCALE 1/8" = 1'-0"  
FACE BRICK = 7.5%  
TEXTURED CMU = 92.5%

BUILDING MATERIALS CALCULATIONS								
	NORTH	PERCENT	SOUTH	PERCENT	EAST	PERCENT	WEST	PERCENT
FACE BRICK	316 SF	50.0%	0	0	158 SF	7.8%	158 SF	7.5%
STUCCO	316 SF	50%	0	0	0	0	0	0%
TEXTURED CMU	0	0	933 SF	100%	1954 SF	92.2%	1940 SF	92.5%
TOTAL	632 SF	100%	933 SF	100%	2112 SF	100%	2098 SF	100%

SUBMISSION DATE:		June 01, 2017
REVISION	1	June 26, 2017
REVISION	2	July 12, 2017
REVISION	3	August 15, 2017
REVISION	4	August 21, 2017

**LANCASTER PLAZA  
MIX USE DEVELOPMENT  
LANCASTER, TEXAS.**

REVISIONS

Issue Date: April 11, 2014  
Issue by: Permit  
Issue for Construction  
EXTERIOR ELEVATION  
Sheet No.

**LT-A4.0**

**LOCATION MAP**



NTS

**FACADE ELEVATIONS PLAN**



**CEDAR SHELL ADDITION  
LOTS 3 & 4, BLOCK A**  
23,783 SF ( 0.546 AC ) LOT 3 AREA  
32,539 SF ( 0.747 AC ) LOT 4 AREA  
RETAIL ZONING

OWNER:  
ABBAS FAWAS  
2625 N. DALLAS AV.  
LANCASTER, TX 75134  
PH. 469 471 8660  
abbasfawas506@gmail.com

Civil Engineering:  
Davis & McDill, Inc.

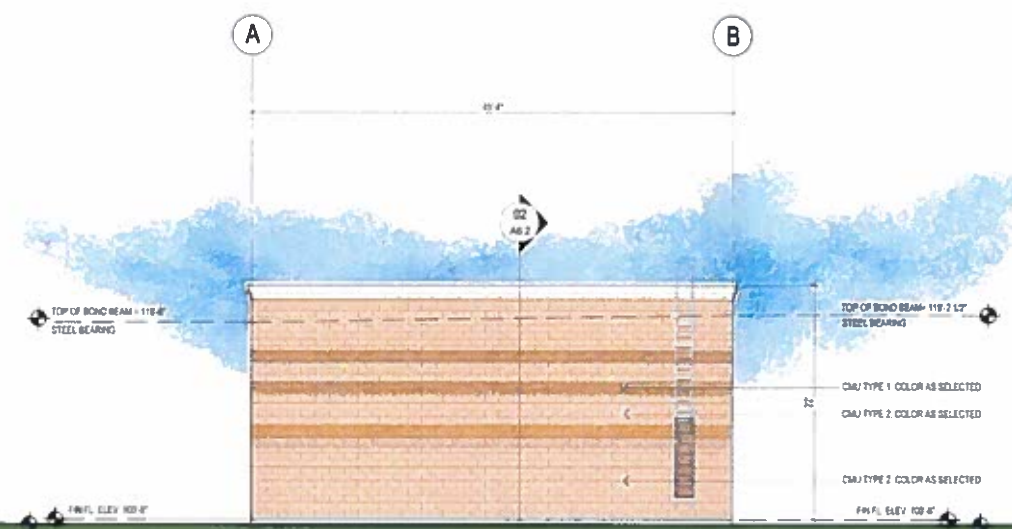
PO Box 428 Waxahachie, TX. 75168  
PH. 972 938 1185

Architecture:  
INTERDESIGN Studio  
2410 Luna Rd. - Suite 264  
Carrollton, TX. 7818  
PH. 469 471 8660  
architectureds@gmail.com

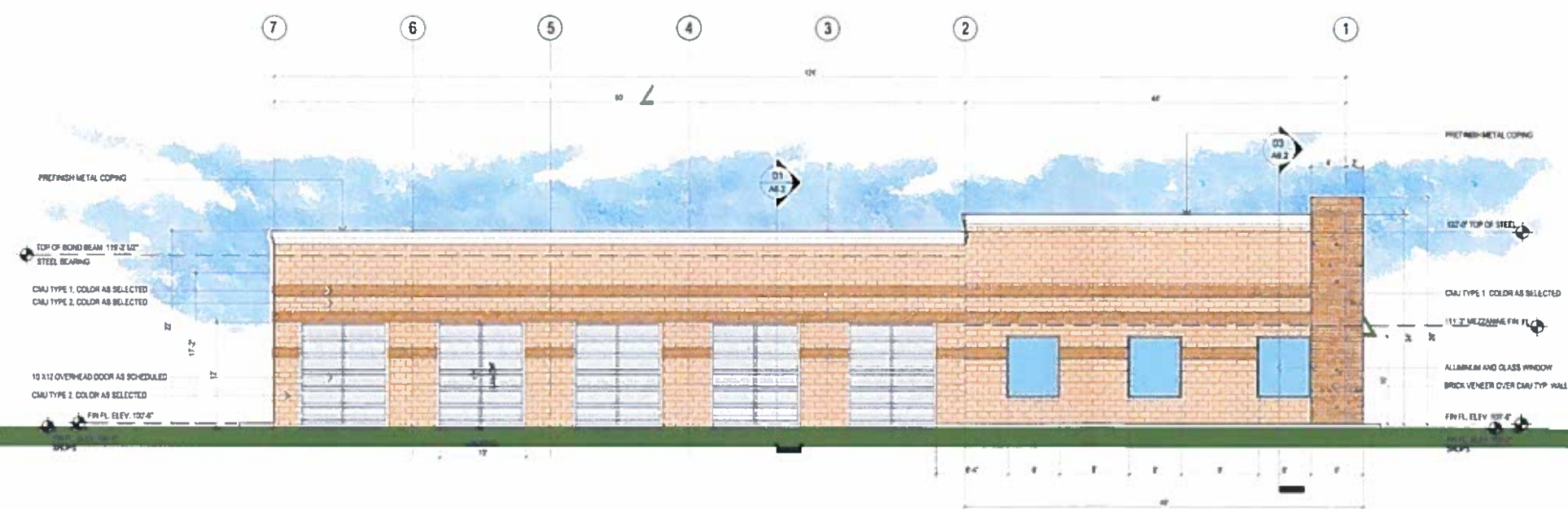
**ABSTRACT # 874  
DALLAS, DALLAS COUNTY, TX.**

SUBMISSION DATE: June 01, 2017

REVISION	: 1	June 26, 2017
REVISION	: 2	July 12, 2017
REVISION	: 3	August 15, 2017
REVISION	: 4	August 21, 2017



**01 SOUTH EXTERIOR ELEVATION**  
SCALE 1/8" = 1'-0"  
TEXTURED CMU = 92.5 %



**02 EAST EXTERIOR ELEVATION**  
SCALE 1/8" = 1'-0"  
FACE BRICK = 7.5 %  
TEXTURED CMU = 92.5 %

**BUILDING MATERIALS CALCULATIONS**

	NORTH	PERCENT	SOUTH	PERCENT	EAST	PERCENT	WEST	PERCENT
FACE BRICK	316 SF	50.0%	-	-	158 SF	7.5%	158 SF	7.5%
STUCCO	316 SF	50%	-	-	-	-	-	0%
TEXTURED CMU	-	-	933 SF	100%	1854 SF	92.2%	1940 SF	92.5%
TOTAL	632 SF	100%	933 SF	100%	2012 SF	100%	2098 SF	100%

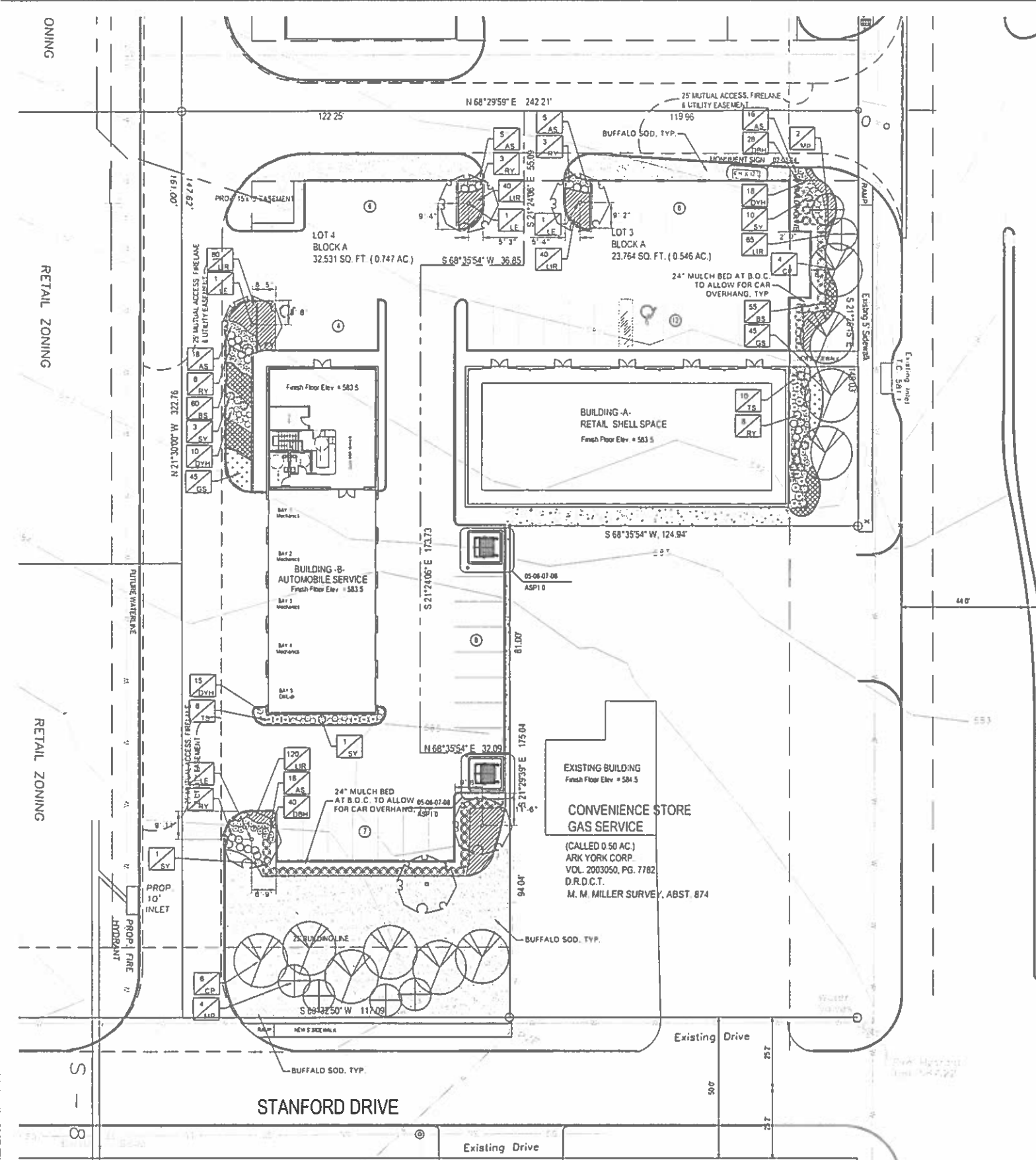
**LANCASTER PLAZA  
MIX USE DEVELOPMENT  
LANCASTER, TEXAS.**

REVISIONS

Issue Date: April 18, 2015  
Issue for Permit  
Issue for Construction  
ELEVATION ELEVATION  
Sheet No.

**LT-A4.1**





PLANT SCHEDULE					
QTY	LABEL	COMMON NAME	SCIENTIFIC NAME	SIZE	NOTES
<b>SHADE TREES</b>					
10	CP	Chinese Pistache	<i>Pistacia chinensis</i>	3" cal	12' ht. 4' spread matching
6	LE	Lacebark Elm	<i>Ulmus parvifolia</i> 'Sempervirens'	3" cal	12' ht. 4' spread
<b>ORNAMENTAL TREES</b>					
6	MP	Mexican Plum	<i>Prunus mexicana</i>	30 gal	8' ht. 4' spread min
<b>SHRUBS</b>					
80	AS	Autumn Sage	<i>Salvia greggii</i>	3 gal	full 24" o.c.
67	DBH	Dwarf Burford Holly	<i>Ilex cornuta</i> 'Burford Nana'	5 gal	full 20" spread, 36" o.c.
43	DYH	Dwarf Yaupon Holly	<i>Ilex vomitoria</i> 'Condeau'	5 gal	full 24" sprd, 30" o.c.
29	RY	Red Yucca	<i>Hesperaloe parviflora</i>	5 gal	full 24" sprd, 30" o.c.
15	SY	Softleaf Yucca	<i>Yucca recurvifolia</i>	5 gal	full 30" o.c.
18	TS	Texas Sage 'Green Cloud'	<i>Leucophyllum frutescens</i> 'Green Cloud'	5 gal	full 24" sprd, 36" o.c.
<b>GROUNDCOVER/VINES/GRASS</b>					
115	BS	Black Eyed Susan Mix	<i>Rudbeckia hirta</i>	1 gal	full 18" o.c.
80	GS	Grey Santolina	<i>Santolina chamaecyparissus</i>	1 gal	full 18" o.c.
345	LIR	Liriodendron	<i>Buchloe dactyloides</i>	1 gal	full 18" o.c.

Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. Trees shall have a strong central leader and be of matching specimens. All plant material shall meet or exceed remarks as indicated.

**LANDSCAPE TABULATIONS for Lancaster, TX**

**LOT 3**

**STREETSCAPE BUFFER**

1. A landscape buffer strip with a minimum width of 6' must be provided along the entire length of the property being developed.

REQUIRED	PROVIDED
6' buffer	NOT APPLICABLE

**MINIMUM LANDSCAPING REQUIREMENTS**

- 20% of the site must be landscaped.
- In streetyards more than 10,000 sq ft - ten trees plus one tree per two thousand sq ft is required.
- Two ornamental trees may be substituted for one required large tree.
- At least one shrub shall be required for every 50 sq ft of required landscape area.
- At least 10% of the required landscape area shall be maintained in groundcover.
- Where on site parking is located adjacent to a street, roadway or public open space, a minimum 10' landscape buffer is required. A screen with a minimum height of 3' and a max of 4' above grade of parking shall be provided.

REQUIRED	PROVIDED
4,753 sq ft (20%)	4,758 sq ft
4 trees, 3" cal.	4 trees (3" cal.)
2 ornamental trees	2 ornamental trees
95 shrubs	98 shrubs
475 sq ft groundcover (10%)	478 sq ft Groundcover
buffer/screen	buffer/screen

**INTERNAL PARKING LOT LANDSCAPING**

- Parking lot landscape area requirements shall be on the percentage of parking located between the building facade and the ROW. Less than 25% = 15 sq ft per parking stall, 25-75% = 20 sq ft per parking stall.
- No parking space may be located more than 80' from the trunk of a large canopy tree.

REQUIRED	PROVIDED
28 stalls * 20 sq ft = 560 sq ft	697 sq ft

**LANDSCAPE TABULATIONS for Lancaster, TX**

**LOT 4**

**STREETSCAPE BUFFER**

1. A landscape buffer strip with a minimum width of 6' must be provided along the entire length of the property being developed.

REQUIRED	PROVIDED
6' buffer	NOT APPLICABLE

**MINIMUM LANDSCAPING REQUIREMENTS**

- 20% of the site must be landscaped.
- In streetyards more than 10,000 sq ft - ten trees plus one tree per two thousand sq ft is required.
- Two ornamental trees may be substituted for one required large tree.
- At least one shrub shall be required for every 50 sq ft of required landscape area.
- At least 10% of the required landscape area shall be maintained in groundcover.
- Where on site parking is located adjacent to a street, roadway or public open space, a minimum 10' landscape buffer is required. A screen with a minimum height of 3' and a max of 4' above grade of parking shall be provided.

REQUIRED	PROVIDED
6,506 sq ft (20%)	6,451 sq ft
Stanford Drive	Stanford Drive
10 trees, 3" cal.	10 trees (3" cal.)
2 ornamental trees	4 ornamental trees
130 shrubs	132 shrubs
650 sq ft groundcover (10%)	813 sq ft Groundcover
buffer/screen	buffer/screen

**INTERNAL PARKING LOT LANDSCAPING**

- Parking lot landscape area requirements shall be on the percentage of parking located between the building facade and the ROW. Less than 25% = 15 sq ft per parking stall, 25-75% = 20 sq ft per parking stall.
- No parking space may be located more than 80' from the trunk of a large canopy tree.

REQUIRED	PROVIDED
17 stalls * 20 sq ft = 340 sq ft	1010 sq ft

**LOCATION MAP**



NTS

**OWNER**  
 ABBAS FAWAS  
 2625 N. DALLAS AV.  
 LANCASTER, TX 75134  
 PH 469 471 8650  
 abbasfawas506@gmail.com

**Civil Engineering**  
 DAVIS & MCDONALD, INC.  
 PO Box 428 Watahatche, TX 75168  
 PH 972 938 1185

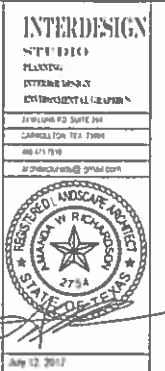
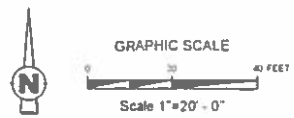
**Architecture**  
 INTERDESIGN Studio  
 2410 Luna Rd - Suite 264  
 Carrollton, TX 75018  
 PH 469 471 8650  
 architecture@idm.com

**CEDAR SHELL ADDITION**  
 LOTS 3 & 4, BLOCK A

**LANDSCAPE PLAN**

**ABSTRACT # 874**  
 DALLAS, DALLAS COUNTY, TX.

SUBMISSION DATE	DATE
REVISION 1	June 01, 2017
REVISION 2	June 26, 2017
REVISION 3	July 12, 2017
REVISION 4	August 15, 2017
REVISION 5	August 22, 2017



**LANCASTER PLAZA MIX USE DEVELOPMENT**  
 2607 N. DALLAS AV.  
 LANCASTER, TEXAS.

REVISION	DATE
REVISION 1	June 01, 2017
REVISION 2	June 26, 2017
REVISION 3	July 12, 2017
REVISION 4	August 15, 2017
REVISION 5	August 22, 2017

**LANDSCAPE PLAN**

L1.01

## Urban Neighborhood

### Character & Intent

Urban neighborhoods provide a range of housing choices, including higher densities that target residents from young professionals to empty nesters. The urban neighborhood will encourage active living, walkable streets and open space access.

### Land Use Considerations

#### Primary Land Uses

Townhomes, urban residential, live/work/shop units

#### Secondary Land Uses

Single-family detached, civic and institutional uses, parks and community buildings

### Precedent Photos



## Mixed-Use Neighborhood

### Character & Intent

Mixed-use neighborhoods will offer Lancaster residents the ability to live, work and play in the same location. These neighborhoods will offer a mix of housing types and residential densities ranging from single-family attached units to urban residential structures within walking distance of the goods and services required for daily living. They will include both vertically and horizontally integrated mixed-use buildings in a highly walkable environment.

### Land Use Considerations

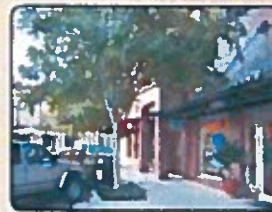
#### Primary Land Uses

Retail, restaurants, townhomes, urban residential, senior housing, professional office, live/work/shop units

#### Secondary Land Uses

Civic and institutional uses, parks, community buildings

### Precedent Photos



MINUTES  
PLANNING & ZONING COMMISSION MEETING OF SEPTEMBER 5, 2017

**Commissioners Present:**

Racheal Hill – Chair  
Isabel Aguilar – Vice Chair  
Cynthia Johnson  
Jeremy Reed

**Absent:**

Karen Collins

**City Staff:**

Bester Munyaradzi, Senior Planner  
Emma Chetuya, Planner  
Terrence Welch, City Attorney  
Kelley Frazier, Development Coordinator

**Call to order:**

Acting Chair Hill called the meeting to order at 7:00 p.m. on August 1, 2017.

**ACTION:**

- 1. Z17-05 Conduct a Public Hearing and consider a Specific Use Permit for Auto Repair Garage, Minor (oil change) located on the north side of Stanford Drive and approximately 186 feet west of North Dallas Avenue and contains approximately 0.7 acres of land. It is specifically addressed as 2613 N. Dallas Avenue in the City of Lancaster, Dallas County, Texas.**

Bester Munyaradzi, Senior Planner, stated that this is a request for a Specific Use Permit for an oil change facility, located on the north side of Stanford Drive, 186 feet west of North Dallas Avenue. It is 0.7 acres and zoned Retail. An oil change facility in retail zoned districts requires a SUP, however, this request is not consistent with the Comprehensive Plan at this location. The Comp Plan designates this area as Suburban Mixed Use with uses such as retail, restaurants, townhomes, urban residential, senior housing, professional office and live/work/shop units. The Comp Plan has pictures with the City's vision for the area and an oil change facility is not in keeping with that vision. As such, staff recommends denial of the requested SUP for an oil change facility.

Vice Chair Aguilar inquired as if this area was part of the recent Comprehensive Plan amendment to allow Retail in this area. Ms. Munyaradzi indicated it was.

Chair Hill opened the public hearing.

Hani Elkady, 3120 Ashwood Court, Richardson, Texas, spoke on behalf of the applicant to further explain the application. He indicated that this particular property surrounded by auto type uses and as such this is a perfect addition. Mr. Elkady added that there are currently gas stations on both sides of this property and a future car wash on the corner. He also noted that the style and architecture is in keeping with the other developments by this applicant.

Commissioner Johnson asked why the applicant wanted an Oil Lube location when a Retail facility would work also. Mr. Elkady indicated that the front portion would be a retail center but since the back of the property is less visible they felt it made more sense to do an Oil Lube to compliment the other auto uses that already exist.

Commissioner Johnson asked if this use was approved wouldn't this be an example of spot zoning. Ms. Munyaradzi indicated this zoning would still be Retail so this would not be considered spot zoning. Mr. Elkady stated that he was aware of the pictures in the Comprehensive Plan however he didn't feel that any residential would be appropriate at this location considering it is surrounded by auto uses.

Commissioner Reed asked the applicant what his plans for the remainder of this lot would be. Mr. Elkady indicated that currently the plan was to make the remainder of the property into a public park.

Chair Hill asked what best practices that other cities have implemented when zoning is one way and it not a lot of property like residential homes around that area. What are the best practices?. Ms. Munyaradzi indicated that this mixed use plan is best fit for this area based on the major arterials that surround the property.

Commissioner Reed stated that last month when looking at a plat the Commission was told that even if a use is contrary to the Comprehensive Plan as long as the applicant was not asking for a zoning change. While this applicant needs a Specific Use Permit, he is not requesting a zoning change, so why is staff recommending denial of this application. Mr. Welch stated that with straight zoning it would be consistent however with a Specific Use Permit you look at whether it is consistent with that site.

**MOTION:** Commissioner Reed made a motion and seconded by Commissioner Johnson to close the public hearing. The vote was cast 4 for, 0 against [Collins absent].

Chair Hill indicated that with all the effort that was put into the Comprehensive Plan this is an opportunity to do something more creative with this property to get what the citizens would really like to see in this city. Commissioner Reed, Johnson and Aguilar concurred with this thought.

**MOTION:** Vice Chair Aguilar made a motion, and seconded by Commissioner Johnson to deny item 1. The vote was cast 4 for, 0 against [Collins absent].

## **ACTION**

2. **PS 17-02 Discuss and consider a Preliminary Plat for Bear Creek Ranch, Phase 3A and 3B being 623 Residential Lots, 7 open spaces and 1 municipal site on 144.116 acres located approximately .28 miles north of the City limit boundary, west of McBride Road, south of the existing Phase 2 and TXU power line easement, and east of Green Acre Road. The property is more particularly described as a tract of land situated in the Samuel T. Bledsoe Survey, Abstract Number 119 and 120; William C. Walker Survey, Abstract Number 1528; and Money Weatherford Survey, Abstract Number 1554 being an Addition to the Lancaster Municipal Water District #1, Dallas County, Texas.**
3. **PS 17-18 Discuss and consider a Final Plat for Boardwalk Phase 3, being 174 residential lots on approximately 59.4 acres located south of Cedardale Road, north of Swift Fox Drive, east of Cedardale Park and west of North Dallas Avenue. The property is described as a tract of land that is a part of the Jonathon L. Sampson Survey, Abstract No.1311 in the City of Lancaster, Dallas County, Texas.**

# LANCASTER CITY COUNCIL

## City Council Regular Meeting

6.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2016-2017 Policy Agenda

**Goal(s):** Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

### **Agenda Caption:**

Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and Ashta Vinayak Hospitality, LLC.

### **Background:**

Ashta Vinayak Hospitality, LLC has purchased property in Lancaster, Texas with the intent of constructing a 67,578 square foot hotel, encompassing a 3,750 square foot meeting room, 800 square foot pre-function area, and board room for at least twelve (12) seats; a restaurant, and a retail store other than a dollar store or dollar store equivalent for an aggregate cost exceeding five million (\$5,000,000). Construction must occur within three (3) months from the passage of this resolution. The project must be completed within twelve (12) months.

Staff entered into discussions with the company prior to the company selecting Lancaster for their operation and the closing of the property. The company estimates approximately five million (\$5,000,000) in value added capital investment at their site in Lancaster plus revenue from Hotel Occupancy Tax. The company has applied for hotel occupancy tax incentives grant in compliance with the City's Incentive Policy.

### **Operational Considerations:**

Ashta Vinayak Hospitality, LLC will annually submit receipts for hotel occupancy tax payments in order to exercise the grant. Within 60 days of verification of payment, the City will remit fifty percent (50%) of the payment to the company for a period of five (5) years.

### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement is to form.

### **Public Information Considerations:**

This item is being considered at a meeting of the City Council, noticed and held in accordance with the Texas Open Meetings Act.

### **Fiscal Impact:**

Based on the estimated value added capital investment submitted by the company and in consideration of the fifty percent (50%) hotel occupancy tax grant for five (5) years, the project will represent approximately fifty-five thousand (\$55,000) annually over the next five year period in new hotel occupancy tax revenue to the City.

### **Options/Alternatives:**

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may deny the resolution and agreement.

**Recommendation:**

Staff recommends approval of the resolution and agreement.

**Attachments**

Resolution

Exhibit A

---

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND ASHTA VINAYAK HOSPITALITY, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster, Texas ("City") desires to grant certain incentives to Ashta Vinayak Hospitality, LLC, for the purpose of constructing a hotel within the City of Lancaster, Texas; and

**WHEREAS**, the City sees the opportunity to add to the spectrum of lodging choices and event space for the array of visitors that are not currently available in Lancaster, Texas; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Grant Agreement ("the Agreement") and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City is appropriate.

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

**SECTION 1.** The City Council of the City of Lancaster, Texas approves a Chapter 380 Economic Development Agreement for a Hotel Occupancy Tax Rebate by and between the City of Lancaster and Ashta Vinayak Hospitality, LLC; and

**SECTION 2.** The City Council authorizes the City Manager to execute the Economic Development Grant Agreement - Hotel Occupancy Tax between the City of Lancaster and Ashta Vinayak Hospitality, LLC.; and

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage as provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 25th day of September, 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

<b>STATE OF TEXAS</b>	§	
	§	<b>Economic Development Grant</b>
<b>COUNTY OF DALLAS</b>	§	<b>Agreement – Hotel Occupancy Tax</b>

This Economic Development Agreement (“Agreement”) is made by and between the **CITY OF LANCASTER, TEXAS** (“City”), and **ASHTA VINAYAK HOSPITALITY, LLC**, a Texas limited liability company (the “Company”), acting by and through their respective authorized representatives.

**WITNESSETH:**

**WHEREAS**, the Company is planning to build a Springhill Suites hotel in the City of Lancaster, Texas, at a site more particularly described in Exhibit “1” (the “Premises”); and

**WHEREAS**, the Company’s Springhill Suites hotel project contemplates the construction of a hotel building totaling at least 67,578 square feet and which shall include: (a) a meeting room of at least 3,750 square feet; (b) a restaurant and (c) one other retailer (other than a “dollar store” or equivalent discount retail use), and related infrastructure at a total cost of not less than \$5 million (the “Project”); for which building permits will be applied for and construction will commence on the building within three (3) months from the execution of this Agreement; and

**WHEREAS**, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Hotel Occupancy Taxes associated with the hotel building associated with the Project (hereinafter defined); and

**WHEREAS**, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

**WHEREAS**, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

**WHEREAS**, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, the City has determined that making an economic development grant to the



Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Article I Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grant(s) to be provided by the City in an amount equivalent to fifty percent (50%) of the Hotel Occupancy Taxes assessed by the City and paid as a result of the hotel operations on the Premises for a given tax year for a period of five (5) consecutive tax years beginning with the first calendar year following the Commencement Date;

“Casualty” shall mean an event or events in which the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company's occupancy of the Improvements; or (b) January 1, 2018, whichever is earlier.

“Company” shall mean Ashta Vinayak Hospitality, LLC.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company's parent.

“Effective Date” shall mean the date that the latter of the two parties to this Agreement executes the Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90)

days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean the fourth (4th) year after the payment of the first Annual Grant.

“Hotel Occupancy Tax” or “HOT” shall mean the City’s receipt of tax imposed by the City pursuant to Chapter 351, Texas Tax Code.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Improvements” shall mean a Springhill Suites-branded hotel building totaling at least 67,578 square feet and which shall include: (a) a meeting room of at least 3,750 square feet or with the occupancy for 300 people, whichever is larger; (b) a pre-function area of 800 square feet; (c) board room with a board room table with at least twelve board room chairs surrounding the table (b) a restaurant; (c) one other national or regional retailer (other than a “dollar store” or equivalent discount retail use), and related infrastructure at a total cost of not less than \$5 million (the “Project”); for which building permits will be applied for and construction will commence on the building within three (3) months from the execution of this Agreement

“Premises” shall mean the real property described on Exhibit “1” with or without Improvements.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the development of the Premises, by the design, construction and maintenance of the Improvements.

“Real Property Taxes” shall mean, all real estate ad valorem taxes assessed and levied by the City in accordance with state law on the Premises.

“Related Infrastructure” shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building

construction etc. necessary to receive a City issue “Certificate of Occupancy” at completion of the Project.

“Required Use” shall mean continuous operation of a hotel use on the Premises.

“Taxable Value” shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and end on the Expiration Date or upon termination of the Agreement as set forth herein.

## **Article III Economic Development Grants**

3.1 Annual Grants. Subject to the Company’s continued satisfaction of all the Article IV conditions and other terms of this Agreement, the City agrees to provide the Company with up to five (5) Annual Grants to be paid on March 1 of each calendar year, (or the immediately following business day of March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received payment of the Hotel Occupancy Taxes assessed against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made) and the City has received payment for all Real Property Taxes assessed against the Premises for the respective tax year. Such Hotel Occupancy Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant, which shall be made in the amount of fifty percent (50%) of the Hotel Occupancy Taxes incurred and actually paid for the appropriate tax year.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City’s obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

Nothing contained herein shall obligate the City to appropriate fund or otherwise provide a contractual remedy under this agreement.

34 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

35 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

#### **Article IV Conditions to the Economic Development Grant**

The obligation of the City to provide the Grants shall be conditioned upon the Company's compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously construct and maintain through ownership, lease or make available for lease the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall:

- (1) apply for building permits and commence construction on the Project within three (3) months of the Effective Date of this Agreement; and

- (2) complete the Project within twelve (12) months of the Effective Date of this Agreement; and
- (3) construct the Improvements as defined in Article I; and
- (4) expend at least five million (\$5,000,000) on Project costs.
- (5) During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the taxes abated herein within 120 days after the date the Company is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101(c), TEXAS GOVERNMENT CODE, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

43 The Company shall not have an uncured breach or default of this Agreement.

44 The Company shall comply with all the terms and conditions of this Agreement.

#### **Article V Termination**

51 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an event of bankruptcy or insolvency; or
- (e) by either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

52 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

53 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

54 In the event that the City fails to appropriate funds to pay the grant set forth herein, the Company shall have no further obligation to perform under this agreement; and Company has no remedy to damages or specific performance or, any other remedy of law or equity.

## **Article VI Miscellaneous**

61 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

62 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

63 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

64 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

65 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster  
Attn: Opal Mauldin-Jones  
City Manager  
P. O. Box 940

With a copy to:

David T. Ritter  
Brown & Hofmeister,  
740 E. Campbell Road  
Suite 800

211 North Henry Street  
Lancaster, Texas 75146-0946

Richardson, TX 75081

If intended for Company:

Ashta Vinayak Hospitality, LLC  
Spring Hill Suites  
2480 North I-35 East  
Lancaster, Texas 75134

66 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

67 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

68 **Amendment.** Except as otherwise provides, this Agreement may only be amended by the mutual written agreement of the parties. Within ten (10) business days prior to the expiration of any performance deadline stated within this Agreement, Company may submit to the City Manager a written request for extension, along with a reasonable justification for the delay and the requested duration extension, but no longer than ninety (90) days. The City Manager or his/her designee may approve of the extension in writing without the need for formal amendment of this Agreement signed by both parties. Such written approval shall thereafter amend the performance deadline so stated.

69 **Legal Construction.** In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except to: (1) a Company Affiliate; or (2) for collateral assignment purposes for Company's lender(s). Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this

Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, or Company's lender(s), without obtaining the City's prior written consent. Any attempted assignment by the Company, except to a Company Affiliate, or to Company's lender(s) in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

6.12 **Estoppel Certificate.** Upon written request by Company to the City, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.

6.13 **Recitals.** The recitals to this Agreement are incorporated herein.

6.14 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.15 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.16 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out Improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

**Signature page to follow**



**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF LANCASTER, TEXAS**

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

**Attest:**

By: \_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
David T. Ritter, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Ashta Vinayak Hospitality, LLC

By: Raj Patel, Manager

**EXHIBIT 1**

LOT 2, BLOCK A, OF PARK 20, ACCORDING TO THE  
REPLAT OF LOT 1, BLOCK A, TIRE CENTER ADDITION,  
RECORDED ON MAY 16, 2016 AS DOCUMENT NUMBER  
201600131565 IN THE OFFICIAL PUBLIC RECORDS OF  
DALLAS COUNTY, TEXAS.

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin-Jones, City Manager of the City of Lancaster, a Texas municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that she executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2017

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

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Raj Patel, Manager of Ashta Vinayak Hospitality, LLC, a Texas limited liability company, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said LLC, and that he executed the same as the act of said LLC for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

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

# LANCASTER CITY COUNCIL

## City Council Regular Meeting

7.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda.

**Goal(s):** Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

---

### **Agenda Caption:**

Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement for a real property tax rebate pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and Ashta Vinayak Hospitality, LLC.

### **Background:**

Ashta Vinayak Hospitality, LLC has purchased property in Lancaster, Texas with the intent of constructing a 67,578 square foot hotel, encompassing a 3,750 square foot meeting room, 800 square foot pre-function area, and board room for at least twelve (12) seats; a restaurant, and a retail store other than a dollar store or dollar store equivalent for an aggregate cost exceeding five million dollars (\$5,000,000). Construction must occur within three (3) months from the passage of this resolution. The project must be completed within 12 months.

Staff entered into incentive discussion with the company prior to the company selecting Lancaster for their operation and closing of the property. The company estimates approximately five million dollars (\$5,000,000) in value added investment at their site in Lancaster. The company has applied for a real property tax incentive grant in compliance with the City's Incentive Policy.

### **Operational Considerations:**

Ashta Vinayak Hospitality will annually submit receipts for real property tax payments in order to exercise the Grant. Within sixty (60) days of verification of payment, the City will remit thirty percent (30%) of the payment to the company for a period of three (3) years.

### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

### **Fiscal Impact:**

Based on the estimated value added capital investment by the company and in consideration of the thirty percent (30%) real property tax rebate for three (3) years, the project will represent approximately \$30,362 annually over the three year period in new real property tax revenue to the City.

### **Options/Alternatives:**

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may deny the resolution and agreement.

**Recommendation:**

Staff recommends approval of resolution and agreement.

**Attachments**

Resolution

Exhibit A

---

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 AGREEMENT FOR A REAL PROPERTY TAX REBATE BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND ASHTA VINAYAK HOSPITALITY, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster, Texas ("City") desires to grant certain incentives to Ashta Vinayak Hospitality, LLC for the purpose of constructing a hotel within the City of Lancaster, Texas; and

**WHEREAS**, the City realizes the opportunity to add to the spectrum of lodging choices and event space for the array of visitors that are not currently available in Lancaster, Texas; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Grant Agreement ("the Agreement") and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City is appropriate.

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

**SECTION 1.** The City Council of the City of Lancaster, Texas approves a Chapter 380 Economic Development Agreement for a Real Property Tax Rebate by and between the City of Lancaster and Ashta Vinayak Hospitality, LLC; and

**SECTION 2.** The City Council authorizes the City Mangager to execute the Economic Development Grant Agreement - Property Taxes between the City of Lancaster and Ashta Vinayak Hospitality, LLC; and

**SECTION 3.** This Resolution shall take effect immediatlely from and after the date of passage as provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 25th day of September, 2017.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

**EXHIBIT A**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF DALLAS**       §                   **Economic Development Grant  
Agreement – Property Taxes**

This Economic Development Agreement (“Agreement”) is made by and between the **CITY OF LANCASTER, TEXAS** (“City”), and **ASHTA VINAYAK HOSPITALITY, LLC**, a Texas limited liability company (the “Company”), acting by and through their respective authorized representatives.

**WITNESSETH:**

**WHEREAS**, the Company is planning to build a Springhill Suites hotel in the City of Lancaster, Texas, at a site more particularly described in Exhibit “1” (the “Premises”); and

**WHEREAS**, the Company’s Springhill Suites hotel project contemplates the construction of a hotel building totaling at least 67,578 square feet and which shall include: (a) a meeting room of at least 3,750 square feet; (b) a restaurant and (c) one other retailer (other than a “dollar store” or equivalent discount retail use), and related infrastructure at a total cost of not less than \$5 million (the “Project”); for which building permits will be applied for and construction will commence on the building within three (3) months from the execution of this Agreement; and

**WHEREAS**, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Property Taxes associated with the Project (hereinafter defined); and

**WHEREAS**, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

**WHEREAS**, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

**WHEREAS**, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic



Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Article I Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Annual Grant(s)” shall mean annual economic development grant(s) to be provided by the City in an amount equivalent to thirty percent (30%) of the Real Property Taxes assessed by the City and paid against the Premises for a given tax year for a period of three (3) consecutive tax years beginning with the first calendar year following the Commencement Date;

“Casualty” shall mean an event or events in which the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company's occupancy of the Improvements; or (b) January 1, 2018, whichever is earlier.

“Company” shall mean Ashta Vinayak Hospitality, LLC.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company's parent.

“Effective Date” shall mean the date that the latter of the two parties to this Agreement executes the Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean the fourth (4th) year after the payment of the first Annual Grant.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Improvements” shall mean a Springhill Suites-branded hotel building totaling at least 67,578 square feet and which shall include: (a) a meeting room of at least 3,750 square feet or with the occupancy for 300 people, whichever is larger; (b) a pre-function area of 800 square feet; (c) board room with a board room table with at least twelve board room chairs surrounding the table (b) a restaurant; (c) one other national or regional retailer (other than a “dollar store” or equivalent discount retail use), and related infrastructure at a total cost of not less than \$5 million (the “Project”); for which building permits will be applied for and construction will commence on the building within three (3) months from the execution of this Agreement

“Premises” shall mean the real property described on Exhibit “1” with or without Improvements.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Program” shall mean the economic incentive program established by the City pursuant to Chapter 380 of the Texas Local Government Code together with any amendments, permutations, or recodifications of such Code provisions whether renaming such economic incentive or other modifications thereof.

“Project” shall mean the development of the Premises, by the design, construction and maintenance of the Improvements.

“Real Property Taxes” shall mean, all real estate ad valorem taxes assessed and levied by the City in accordance with state law on the Premises.

“Related Infrastructure” shall mean all City development and building code

requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issue “Certificate of Occupancy” at completion of the Project.

“Required Use” shall mean continuous operation of a hotel use on the Premises.

“Taxable Value” shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and end on the Expiration Date or upon termination of the Agreement as set forth herein.

## **Article III Economic Development Grants**

**Annual Grants.** Subject to the Company’s continued satisfaction of all the Article IV conditions and other terms of this Agreement, the City agrees to provide the Company with up to three (3) Annual Grants to be paid on March 1 of each calendar year, (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received payment of the Real Property Taxes assessed against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made) and the City has received payment for all Hotel Occupancy Taxes collected at the Premises for the respective tax year. Such Real Property Taxes incurred and actually paid for the immediately preceding tax year are used to determine the amount of each Annual Grant, which shall be made in the amount of thirty percent (30%) of the Real Property Taxes incurred and actually paid for the appropriate tax year<sup>1</sup>

3.1 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City’s obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.2 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City

---

<sup>1</sup> For example and illustration purposes only, if the Real Property taxes assessed against the Premises for tax year 2017 is \$100,000.00, and that amount has been paid by Company, then the amount of the first Annual Grant for the Premises for Tax Year 2017 would be \$30,000.00 (\$100,000.00 x 30%), and would be paid on March 1, 2018).

agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction. Nothing contained herein shall obligate the City to appropriate fund or otherwise provide a contractual remedy under this agreement.

33 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

34 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

35 **Indemnification. THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIELY FOR PRUPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, CLAIMS, LAWSUUTS, JUDGMENTS, BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED USE TAX ATTRIBUTED TO THE COMPANY DIRECT PAYMENT PERMIT AND THE COLLECTION OR PAYMENT OF USE TAX BY COMPNANY FOR TAXABLE ITEMS USED OR CONSUMED IN THE CITY FOR ANY GRANT PERIOD DURING THE TERM OF THIS AGREEMENT (COLLECTIVELY, A "CLAIM"). IT BEING THE INTENTION OF THE PARTIES THAT THE COMPANY SHALL BE RESPONSIBLE ONLY FOR THE REPAYMENT OF ANY GRANTS PAID TO THE COMPANY HEREIN BY THE CITY THAT INCLUDES USE TAX RECIEPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE PAID ERRONEOUSLY, DISTRIBUTED, OR ALLOCATED TO THE CITY. THE PROVISIONS**

**OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM THE COMPANY TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.**

**Article IV  
Conditions to the Economic Development  
Grant**

The obligation of the City to provide the Grants shall be conditioned upon the Company's compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously construct and maintain through ownership, lease or make available for lease the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall:

- (1) apply for building permits and commence construction on the Project within three (3) months of the Effective Date of this Agreement;
- (2) complete the Project within twelve (12) months of the Effective Date of this Agreement; and
- (3) construct the Improvements as defined in Article I; and
- (4) expend at least \$5million on Project costs.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

**Article V  
Termination**

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;

- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an event of bankruptcy or insolvency; or
- (e) by either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

52 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

53 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

54 In the event that the City fails to appropriate funds to pay the grant set forth herein, the Company shall have no further obligation to perform under this agreement; and Company has no remedy to damages or specific performance or, any other remedy of law or equity.

## **Article VI Miscellaneous**

61 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

62 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

63 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

64 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

65 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster  
Attn: Opal Mauldin-Jones  
City Manager  
P. O. Box 940  
211 North Henry Street  
Lancaster, Texas 75146-0946

With a copy to:

David T. Ritter  
Brown & Hofmeister,  
740 E. Campbell Road  
Suite 800  
Richardson, TX 75081

If intended for Company:

Ashta Vinayak Hospitality, LLC  
Spring Hill Suites  
2480 North I-35 East  
Lancaster, Texas 75134

66 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

67 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

68 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

69 **Legal Construction.** In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal,

valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company subsidiary. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company subsidiary, without obtaining the City's prior written consent, which may not be withheld. Any attempted assignment by the Company, except to a Company subsidiary, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

6.12 **Recitals.** The recitals to this Agreement are incorporated herein.

6.13 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out Improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

**Signature page to follow**



**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF LANCASTER, TEXAS**

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

**Attest:**

By: \_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
David T. Ritter, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Ashta Vinayak Hospitality, LLC

By: Raj Patel, Manager

**EXHIBIT 1**

LOT 2, BLOCK A, OF PARK 20, ACCORDING TO THE  
REPLAT OF LOT 1, BLOCK A, TIRE CENTER ADDITION,  
RECORDED ON MAY 16, 2016 AS DOCUMENT NUMBER  
201600131565 IN THE OFFICIAL PUBLIC RECORDS OF  
DALLAS COUNTY, TEXAS.

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin-Jones, City Manager of the City of Lancaster, a Texas municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that she executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2017

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

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Raj Patel, Manager of Ashta Vinayak Hospitality, LLC, a Texas limited liability company, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said LLC, and that he executed the same as the act of said LLC for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

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

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

8.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda.

**Goal(s):** Quality Development

**Submitted by:** Shane Shepard, Economic Development Director

### **Agenda Caption:**

Discuss and consider a resolution repealing Resolution 2017-08-54 in its entirety, and authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and CH Realty VII/I Dallas Houston School Rd, L.P.

### **Background:**

CH Realty VII/I Dallas Houston School Rd, L.P. has purchased property in Lancaster, Texas with the intent of constructing two 600,000 s/f buildings for warehousing and distribution.

The company estimates approximately \$20,000,000 in value added capital investment at their site in Lancaster. The company has applied for a real property tax incentive rebate in compliance with the City's Incentive Policy.

This item was approved by the City Council on August 14, 2017. It is coming before City Council again because there are necessary corrections that need to be made. The minimum taxable value in the Agreement needs to be changed from \$82,000,000 to \$20,000,000. While the previous agenda communication stated two-pronged structure of the annual grants, the Agreement did not reflect that accurately. Language reflecting the Council's Incentive Policy for Real Property Tax Rebate was added to reflect the Valuation Matrix with terms and reduction percentages. Additionally, the definitions of 'annual grant' and 'required used' were updated. The definition of 'annual grant' needed to remove conflicting wording stating the grant payment would be equivalent to sixty-five percent (65%) of Real Property Taxes and replaced with wording that referred to the Real Property Tax Rebate Schedule in Article III of the Agreement. The definition of 'required use' needs to be changed from a "company's continuous operation as owner occupied manufacturing facilities on the premise" to "(1) permitted by right in accordance with the City of Lancaster's Development Code or (2) permitted by Special Use Permit under the Development Code, which complies with all other applicable state law and local ordinances."

### **Operational Considerations:**

CH Realty VII/I Dallas Houston School Rd, L.P. will annually submit receipts for real property tax payments in order to exercise the rebate. Within 60 days of verification of payment, the City will remit rebate on property taxes, for a minimum of \$20,000,000 capital investment, according to the Real Property Tax Rebate Schedule included in the Incentive Policy for the corresponding terms and percentage of reduction.

### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

Based on the estimated value added capital investment submitted by the company and in consideration of the forty-five percent (45%) real property tax grant for five (5) years, the project will represent approximately \$95,425 annually over the five year period in new revenue to the City. If the project exceeds \$35 million and the City remits fifty percent (50%) for seven (7) years, the project will represent approximately \$151,000 annually over the seven year period in new revenue to the City.

**Options/Alternatives:**

1. The City Council may approve the resolution and agreement as presented.
2. The City Council may deny the resolution and agreement.

**Recommendation:**

Staff recommends approval of the resolution and agreement.

**Attachments**

Resolution

Exhibit 1

---

## RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, REPEALING RESOLUTION NO. 2017-08-54, AND APPROVING A CHAPTER 380 AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS, LANCASTER ECONOMIC DEVELOPMENT CORPORATION AND CH REALTY VIII/I DALLAS HOUSTON SCHOOL RD, L.P., AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster, Texas passed Resolution No. 2017-08-54 on August 14, 2017, which approved a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas ("City") and CH Realty VII/I Dallas Houston School Road, L.P. ("CH Realty"); and

**WHEREAS**, the City authorized the City Manager to execute the Economic Development Agreement between the City and CH Realty; and

**WHEREAS**, the Economic Development Agreement by and between the City and CH Realty incorrectly described the terms and conditions; and

**WHEREAS**, the City wishes to repeal Resolution No. 2017-08-54 and take action to correctly describe the terms and conditions within the Economic Development Agreement;

**WHEREAS**, the City desires to grant certain incentives to CH Realty, for the purpose of constructing a warehouse / distribution facility within the City of Lancaster, Texas; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, an Economic Development Agreement containing the terms of the grant of incentives from both the City is appropriate.

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

**SECTION 1.** The City Council of Lancaster, Texas approves a Chapter 380 Economic Development Agreement by and between the City of Lancaster and CH Realty VII/I Dallas Houston School Road, L.P.; and

**SECTION 2.** The City Council authorizes the City Manager to execute the Economic Development Agreement between the City of Lancaster and CH Realty VII/I Dallas Houston School Road, L.P.; and

**SECTION 3.** That all provisions of any City of Lancaster resolution in conflict with the provisions of this resolution be, and the same are hereby, repealed, and City of Lancaster resolution no in conflict with the provisions of this resolution shall remain in full force and effect. It is expressly ordained that Resolution No. 2017-08-54, passed by the City Council of Lancaster on August 14, 2017, be hereby repealed in its entirety.

**SECTION 4.** This Resolution shall take effect immediately from and after the date of passage and is so resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 25th day of September, 2017.

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney



**EXHIBIT 1**

**THE STATE OF TEXAS     §**  
**§           ECONOMIC DEVELOPMENT AGREEMENT**  
**COUNTY OF DALLAS       §**

This Economic Development Agreement ("Agreement") is made by and between the City of Lancaster, Texas ("City"), and CH Realty VII/I Dallas Houston School Rd, L.P., a Delaware limited partnership (the "Company"), acting by and through their respective authorized representatives.

**W I T N E S S E T H:**

**WHEREAS,** the Company has purchased real property in the City of Lancaster, Texas, being more particularly described in Exhibit "A" (the "Property"); and

**WHEREAS,** the Company intends to construct two buildings, each comprising approximately 610,606 square feet, and totaling approximately 1,221,612 square feet and related infrastructure for warehousing and distribution (the "Project"), for which Company intends to apply for building permits and commence construction within six (6) months from the execution of this Agreement; and

**WHEREAS,** the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Property Taxes (hereinafter defined); and

**WHEREAS,** the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

**WHEREAS,** promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and enhance the Premises tax base and economic vitality of the City; and

**WHEREAS,** the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS,** the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS,** the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Article I**

### **Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Annual Grant(s)" shall mean an annual economic development grant to be paid by the City as set forth herein in an amount equivalent to 65 percent (65%) of the Real Property Taxes assessed against the Premises for a given tax year for a period of ten (10) consecutive tax years beginning with the first calendar year following the Commencement Date.

"Casualty" shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

"City" shall mean the City of Lancaster, Texas.

"Commencement Date" shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company's occupancy of the Improvements; and (b) January 1, 2018.

"Company" shall mean CH Realty VII/I Dallas Houston School Rd, L.P., a Delaware limited partnership, its permitted successors and assigns.

"Company Affiliate" shall mean any entity, incorporated or otherwise, under common control with, controlled by or controlling Company. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

"Effective Date" shall mean the last date of execution hereof.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of

a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

"Expiration Date" shall mean the eleventh (11th) year after the payment of the first Annual Grant.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property owned by Company within the City.

"Improvements" shall mean any improvements, structures or related infrastructure located on the Premises for incorporation in the Project.

"Premises" shall mean the real property described on Exhibit "A" with or without improvements.

"Project" shall mean the development of the Premises, by the design, construction and maintenance of new improvements and related infrastructure for two speculative construction warehousing and distribution buildings totaling in the aggregate approximately 1,221,612 square feet, and for which the aggregate Taxable Valuation is not less than \$20,000,000 for the first tax year following completion of the buildings.

"Real Property Taxes" shall mean, all real estate ad valorem taxes assessed and levied by the City on the Premises in accordance with state law.

"Related Infrastructure" shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction and related requirements necessary to receive a "Certificate of Occupancy" issued by the City.

"Required Use" shall mean uses: (1) permitted by right in accordance with the City of Lancaster's Development Code, *Ordinance 2006-04-13*, as amended; or (2); permitted by Special Use Permit under the Development Code, and which complies with all other applicable state law and local ordinances.

"Taxable Value" shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

## Article II

### Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and end upon Company's receipt of the last Annual Grant due and payable hereunder, unless earlier terminated in accordance with the terms hereof.

## Article III

### Economic Development Grants

3.1 **Annual Grants.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with an Annual Grant to reimburse the Company for Real Property Tax actually paid and incurred by the Company and attributable to the Project for up to ten (10) years. The Annual Grants are to be paid on March 1 of each calendar year, (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received the Real Property Taxes assessed and paid against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such Real Property Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant).

The Incentive Payments shall be based the following criteria:

<b>Real Property Tax Assessed Value</b>	<b>Years of Eligibility</b>	<b>Percentage of Real Property Taxes Reimbursed</b>
<b>\$75 million+</b>	<b>10</b>	<b>65%</b>
<b>\$50 million+ to \$75 million</b>	<b>8</b>	<b>60%</b>
<b>\$35 million+ to \$50 million</b>	<b>7</b>	<b>50%</b>
<b>\$20 million+ to \$35 million</b>	<b>5</b>	<b>45%</b>
<b>\$10 million+ to \$20 million</b>	<b>5</b>	<b>40%</b>
<b>\$5 million+ to \$10 million</b>	<b>3</b>	<b>30%</b>

It is understood that the amount of the Annual Grant may vary from year to year based on the amount of the Real Property Tax Assessed Value and tax actually paid by Company for the Project. It is also understood that if the Real Property Tax Assessed Value drops to a level for which the number of years of eligibility have already been exhausted, no payment may be received that year – for example, if Real Property Tax Assessed Value has been at the \$50 million + to \$75 million level for seven years, and in year eight, the Real Property Tax Assessed Value drops to \$45 million, no Annual Grant would be due that year, as the \$35 million+ to \$50 million level has only seven years of eligibility. If Real Property Tax Assessed Value returned to the \$50 million + level the next year, a payment would be due, as that level has a total of eight years of eligibility. Real Property Tax Annual Grants shall be available only for up to the first

ten (10) years following the payment of Real Property tax for the first full calendar year after completion of the Project's construction.

Notwithstanding the foregoing, the City shall have no obligation to pay Company any Annual Grant until receipt of the Real Property Tax Report (annual, detailed verification of the Real Property Tax report including certification by Company of Real Property Tax paid to each taxing entity). The City agrees to provide the Annual Grant to Company within thirty (30) days following receipt and acceptance of the Real Property Tax Report.

For illustration purposes only, assume that the Real Property Taxes assessed against the Premises for tax year 2017 is \$100,000.00. Then, the amount of the first Annual Grant for Tax Year 2017 would be \$65,000.00 ( $\$100,000.00 \times 65\%$ ), and would be paid on March 1, 2018.

The Annual Grants herein do not apply in any Tax Year where the Value of the Real Property Improvements is less than Five Million Dollars (\$5,000,000) on December 31 of such year.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Further, the time period during which an Annual Grant may be paid shall automatically be extended by one year for every year in which the City does not appropriate funds for an Annual Grant payable pursuant to the terms of this Agreement. Notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds and Corrections.** In the event the City determines in its reasonable discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information reasonably necessary to support such determination), pay such amount to the City. Notwithstanding the foregoing, the City shall only be entitled to request such a refund and Company shall only be obligated to pay such refund to the City within six (6) months of the date such Annual Grant is paid by the City to

Company. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled, the City shall, within sixty (60) days, pay the adjustment to the Company and provide such records, reports and other information reasonably necessary to support such determination. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

**3.6 Indemnification. THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, CLAIMS, LAWSUITS, JUDGMENTS, BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED USE TAX ATTRIBUTED TO THE COMPANY DIRECT PAYMENT PERMIT AND THE COLLECTION OR PAYMENT OF USE TAX BY COMPANY FOR TAXABLE ITEMS USED OR CONSUMED IN THE CITY FOR ANY GRANT PERIOD DURING THE TERM OF THIS AGREEMENT (COLLECTIVELY, A "CLAIM"). IT BEING THE INTENTION OF THE PARTIES THAT THE COMPANY SHALL BE RESPONSIBLE ONLY FOR THE REPAYMENT OF ANY GRANTS PAID TO THE COMPANY HEREIN BY THE CITY THAT INCLUDES USE TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE PAID ERRONEOUSLY, DISTRIBUTED, OR ALLOCATED TO THE CITY, THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM THE COMPANY TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.**

#### Article IV

##### Conditions to the Economic Development Grant

The obligation of the City to provide the Annual Grant(s) shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement, including the conditions set forth below:

4.1 During the period of time beginning on the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination of the Agreement, the Company agrees to continuously own, lease or make available for lease the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within six (6) months of the execution date of this Agreement or the Agreement will terminate, subject to any

notice and cure rights allowed pursuant to Article V herein.

4.3 The Company shall not have an uncured breach or material default of this Agreement or been in arrears for any ad valorem taxes owed to the City; nothing contained herein shall preclude a good faith tax protest under section 3.4 of this Agreement.

4.4 The Company shall substantially complete construction of the Project on the Premises within eighteen (18) months of the Effective Date of this Agreement.

4.5 The Company shall comply with all the terms and conditions of this Agreement.

## **Article V**

### **Termination and Default**

5.1 This Agreement terminates upon Company's receipt of the last Annual Grant due and payable hereunder, and may be terminated prior to such date upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the material terms or conditions of this Agreement and such default or breach is not cured as described in Section 5.2 below;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent and Company has not timely and properly initiated proceedings to protest or contest such taxes or Impositions and such default or breach is not cured as described in Section 5.2 below;
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable in its entirety.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further effect.

5.2 Unless and to the extent stated elsewhere in this Agreement, a party will be in default under this Agreement if that party breaches any term or condition of this Agreement and such breach remains uncured after sixty (60) calendar days following receipt of written notice from the other party referencing this Agreement, the nature of the alleged default and the steps necessary to cure such default (or, if the party in breach has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than sixty (60) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith). Such amounts shall be due, owing, and payable to the City within sixty (60) days after the expiration of the above mentioned sixty (60) day period. The Parties acknowledge that the City will suffer damages in



the event of the Company's default under this Agreement. The Parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine. Company's obligation to pay any amounts hereunder shall survive termination of this Agreement.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or , the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company. Under all other sections, if termination shall occur, the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement and as liquidated damages pay to the City all taxes. As identified in Section 3.1, which otherwise would have been paid to the City for the Land and Improvements without benefit of this Agreement for the calendar year in which this Agreement is terminated with interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Texas Code, as amended, but without penalty.

5.4 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

## Article VI

### Miscellaneous

6.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if

sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster  
Attn: Opal Mauldin-Jones  
City Manager  
P. O. Box 940  
211 North Henry Street  
Lancaster, Texas 75146-0946

With a copy to:

David T. Ritter  
Brown & Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

If intended for Company:

CH Realty VII/I Dallas Houston School Rd, L.P.  
Attn: Asset Manager  
3819 Maple Avenue  
Dallas, Texas 75219

With a copy to:

Winstead PC  
Attn: Greg Zimmerman  
500 Winstead Building  
2728 N. Harwood St.  
Dallas, Texas 75201

6.6 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 **Amendment.** Except as otherwise provided, this Agreement may only be amended by the mutual written agreement of the parties. Within ten (10) business days prior to the expiration of any performance deadline stated within this Agreement, Company may submit to the City Manager a written request for extension, along with a reasonable justification for the delay and the requested duration extension, but no longer than ninety (90) days. The City Manager or his/her designee may approve of the extension in writing without the need for formal amendment of this Agreement signed by both parties. Such written approval shall thereafter amend the performance deadline so stated.

6.9 **Legal Construction.** In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, except to: (1) a Company Affiliate; or (2) for collateral assignment purposes for Company's lender(s). Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, or Company's lender(s), without obtaining the City's prior written consent. Any attempted assignment by the Company, except to a Company Affiliate, or to Company's lender(s) in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

6.12 **Estoppel Certificate.** Upon written request by Company to the City, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.

6.13 **Recitals.** The recitals to this Agreement are incorporated herein.

6.14 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.15 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.16 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

*[signatures begin on the following page]*

**EXECUTED in triplicate originals** on this \_\_\_\_ day of \_\_\_\_\_, 2017.

**CITY OF LANCASTER, TEXAS**

By: \_\_\_\_\_  
Opal Mauldin-Jones, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
David T. Ritter, City Attorney

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS     §  
  §  
COUNTY OF DALLAS     §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin-Jones, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2017.

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

My Commission Expires:

\_\_\_\_\_

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CH REALTY VII/I DALLAS HOUSTON SCHOOL RD, L.P**, a Delaware limited partnership

By: CH Realty VII/I Dallas Houston School Rd GP, L.L.C., a Delaware limited liability company, its general partner

By: Fund VII Managers, L.L.C., a Texas limited liability company its manager

By: \_\_\_\_\_  
Ben C. Doherty  
Vice President

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS       §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Ben C. Doherty, Vice President of Fund VII Managers, LLC, a Texas limited liability company, manager of CH Realty VII/I Dallas Houston School Rd GP, LLC, a Delaware limited liability company, general partner of CH Realty VII/I Dallas Houston School Rd, LP, a Delaware limited partnership, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said entities, and that he executed the same as the act of said entities for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2017.

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

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

## EXHIBIT "A" LEGAL DESCRIPTION

No.: 001281127

SITUATED in the City of Lancaster, in the Marady Parks Survey, Abstract No. 1120 of Dallas Texas County, and being a part of that certain called 77.49 acre tract of land described in a deed from- Ecanae, Inc. to 12, recorded in Volume 2003011, Page 6116, Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described by metes & bounds as follows:

BEGINNING at a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701" (hereinafter referred to as "with cap"), found at the intersection of the south right-of-way line of Fabrication Drive (60' wide RO.W.) and the East right-of-way line of West longhorn Drive (60' wide RO.W.) as dedicated by a Street Dedication Plat, recorded Lu Volume 67205, Page 2752, Deed Records of Dallas County, Texas (O.R.D.C.T.);

THENCE: North 89 deg. 53 min. 14 sec. East, along the south line of said Fabrication Drive, a distance of 477.50 feet to a 1/2 inch iron rod, with cap, found for corner;

THENCE: South 00 deg. 06 min. 46 sec. East, departing from the south line of said Fabrication Drive, a distance of 505.00 feet to a 1/2 inch iron rod, with cap, found on the north right-of-way line of South longhorn Drive (60' wide ROW.);

THENCE: South 89 deg. 53 min. 14 sec. West, along the north line of said South Longhorn Drive, a distance of 452.50 feet to a 1/2 inch iron rod, with cap, found for corner at the beginning of a curve to the right having a radius of 25.00 feet and a chord that bears North.45 deg. 06 min. 46 sec, West...35.36

THENCE: Continuing along the north right-of-way of said South Longhorn Drive and along said curve to the right, through a central angle of 90 deg. 00 min. 00 sec and along an arc distance of 39.27 feet to a 1/2 inch iron rod, with cap, set for corner at the end of said curve, on the east right-of-way line of the above mentioned West Longhorn Drive;

THENCE: North 00 deg. 06 min. 46 sec. West, along the east line of said West Longhorn Drive, a distance of 480.00 feet to the POINT OF BEGINNING and containing 241,005 square feet or 5.533 acres land.

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

9.

**Meeting Date:** 09/25/2017

**Policy Statement:** This request supports the City Council 2017-2018 Policy Agenda.

**Submitted by:** Shane Shepard, Economic Development Director

---

#### **Agenda Caption:**

Discuss and consider a resolution repealing Resolution 2017-08-51 in its entirety, and ratifying the terms and conditions of an incentive grant by and between CH Realty VII/I Dallas Houston School Rd., L.P. and the Lancaster Economic Development Corporation.

#### **Background:**

The Board of Directors of the Lancaster Economic Development Corporation convened on July 27, 2017, to consider a grant for the reimbursement applied for by CH Realty VII/I Dallas Houston School Rd., L.P. in an amount not to exceed sixty thousand dollars (\$60,000) associated with the construction and finish out of two (2) facilities of an approximately 600,000 square feet each, owned by CH Realty VII/I Dallas Houston School Rd., L.P. in Lancaster, Texas.

The City Council approved Resolution 2017-08-51 at the August 14, 2017 Regular Meeting. It is coming before City Council again to amend Section III.B(1) in the Incentive agreement stating LEDC would issue a reimbursement payment equivalent to the lessor of (1) \$30,000, or (2) fifty percent (50%) of the actual paid costs for each building. The new agreement removes the option to pay fifty percent (50%) of actual paid costs for each building, resulting in a reimbursement payment equivalent of the actual paid permit and infrastructure fees, not to exceed a total of \$30,000 per building.

#### **Operational Considerations:**

CH realty VII/I Dallas Houston School Rd., L.P. will submit copies of the City issued Certificate of Occupancy for the facility in order to exercise the Grant. Within 60 days of verification of terms, the Lancaster Economic Development Corporation will remit a reimbursement payment equivalent of the actual paid permit fees, not to exceed thirty thousand (\$30,000) per building.

#### **Legal Considerations:**

The City Attorney has reviewed and approved the resolution and agreement as to form.

#### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

#### **Fiscal Impact:**

The grant total not to exceed thirty thousand dollars (\$30,000) per building is within the LEDC incentive fund. Within 60 days of verification of terms, the Lancaster Economic Development Corporation will remit payment.

#### **Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of resolution ratifying the actions of LEDC.

**Attachments**

Resolution

Exhibit 1

---



## RESOLUTION NO.

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, REPEALING RESOLUTION NO. 2017-08-51, AND RATIFYING THE TERMS AND CONDITIONS OF AN INCENTIVE GRANT BY AND BETWEEN CH REALTY VII/I DALLAS HOUSTON SCHOOL RD., L.P. AND THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION (LEDC) AUTHORIZING LEDC TO ENTER INTO A FORMAL AGREEMENT; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster, Texas passed Resolution No. 2017-08-51 on August 14, 2017, which ratifies actions of the Board of Directors of the Lancaster Economics Development Corporation ("LEDC") approving an incentive grant to CH Realty VII/I Dallas Houston School Rd., L.P. ("CH Realty"); and

**WHEREAS**, the City Council authorized LEDC to enter into an incentive agreement with CH Realty; and

**WHEREAS**, the Incentive Agreement by and between the LEDC and CH Realty incorrectly described the terms and conditions of the reimbursement payment to be made by the LEDC; and

**WHEREAS**, the City Council wishes to repeal Resolution No. 2017-08-51 and take action to correctly describe the terms and conditions in the Incentive Agreement; and

**WHEREAS**, pursuant to LEDC Resolution 2017-05 which was passed and approved on the 5th of September by the Board of Directors of the LEDC, offering an incentive grant to CH Realty; and

**WHEREAS**, CH Realty has purchased property in the City of Lancaster with the intent to construct two 600,000 square foot buildings for warehousing and distribution; and

**WHEREAS**, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

**WHEREAS**, pursuant to Texas Local Government Code, Chapter 501, et seq, as amended, LEDC, as a non-profit corporation, in accordance with the Act, shall promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities through the use of sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

**WHEREAS**, pursuant to the Act and the bylaws of the LEDC, LEDC has authority to enter into agreements as LEDC considers necessary or convenient to implement economic development in Lancaster, Texas

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

**SECTION 1.** The City Council ratifies the September 5, 2017 actions of the Board of Directors of the LEDC approving an incentive grant to CH Realty VII/I Dallas Houston School Rd., L.P.

**SECTION 2.** The City Council authorizes LEDC to enter into an incentive agreement with CH Realty VII/I Dallas Houston School Rd., L.P., which is attached hereto and incorporated as Exhibit 1.

**SECTION 3.** That all provisions of any City of Lancaster resolution in conflict with the provisions of this resolution be, and the same are hereby, repealed, and City of Lancaster resolution not in conflict with the provisions of this resolution shall remain in full force and effect. It is expressly ordained that Resolution No. 2017-08-51, passed by the City Council of Lancaster on August 14, 2017, be hereby repealed in its entirety.

**SECTION 4.** This resolution shall be effective from and after its passage as provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 25th day of September, 2017.

**ATTEST:**

\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, City Attorney

## **INCENTIVE AGREEMENT**

This Incentive Agreement (the "Agreement") is entered into by and between the Lancaster Economic Development Corporation, a non-profit corporation chartered by the State of Texas, acting by and through its Board of Directors (hereinafter referred to as the "LEDC") and CH Realty VII/I Dallas Houston School Rd, L.P., a Delaware limited partnership (hereinafter referred to as the "Company").

### **W I T N E S S E T H :**

**WHEREAS**, the Lancaster Economic Development Corporation was established to promote enhanced business opportunities within the corporate limits of the City of Lancaster, Texas ("City"); and

**WHEREAS**, the LEDC recognizes the need to offer business incentives to develop real property within the City; and

**WHEREAS**, in order to maintain and enhance the economic and employment base within the City, it is in the best interests of the LEDC to enter into this Agreement in accordance with the terms provided herein; and

**WHEREAS**, the Company wishes to locate operations as a viable economic project within the City thereby creating new business capital investment and new jobs in the City; and

**WHEREAS**, the Board of Directors of LEDC finds that the intended scope of the Project, hereinafter defined, is to own, and construct two buildings and related infrastructure totaling approximately 1,221,612 square feet of warehousing and distribution space in the City owned by the Company.

**NOW THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of employment, the attraction of major investment within the City which contributes to the economic development of Lancaster, and to the enhancement of the tax base for the City, the parties agree as follows:

### **I. EFFECTIVE DATE; TERM OF AGREEMENT**

This Agreement shall become effective after the Board of Directors of the LEDC's approval of this agreement and confirmation of same by the City Council of the City of Lancaster authorizing the LEDC to enter into this Agreement with the Company and on the last date of execution of this Agreement by the LEDC and the Company ("Effective Date"). This Agreement shall terminate upon Company's receipt of all grant payments due and payable pursuant to Section III(B)(1) herein or upon the event of a default and termination hereunder.

## II. DEFINITIONS

Whenever used in this Agreement, the following term shall have the meaning ascribed to it:

**"City"** shall mean the City of Lancaster, Texas.

**"Certificate of Occupancy"** shall mean the City issued permit confirming that all Improvements on the Premises have been completed and the Project is approved for Company business operations to commence.

**"Company"** shall mean CH Realty VII/I Dallas Houston School Rd, L.P.

**"Company Affiliate"** shall mean any party which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with the Company, and "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

**"Improvements"** shall mean the construction and finish out work necessary to commence Company operations in two (2) facilities of approximately 610,806 square feet each located on the Premises.

**"Premises"** shall mean the property described in **Exhibit A**, attached hereto and made a part hereof for all purposes, including any improvements made thereto.

**"Project"** shall mean the improvements, Related Infrastructure and occupancy activities associated with the location, construction, finish out and maintenance of the Improvements.

**"Related Infrastructure"** shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction, and related requirements necessary to receive a City issued "Certificate of Occupancy" for the Improvements.

## III. PROVISIONS RELATING TO INCENTIVE AGREEMENT

### A. Company's Obligations, Warranties, Covenants, and Duties:

1. The Company will begin construction of the Improvements within six (6) months from the Effective Date of this Agreement.
2. The Company will substantially complete the Improvements within eighteen (18) months from the Effective Date of this Agreement.

3. The Premises and Improvements constructed thereon at all times shall be used in a manner that is consistent with the City of Lancaster's Comprehensive Zoning Ordinance, as amended, and other applicable state law and/or ordinances.
4. The Company agrees to provide any and all documentation reasonably necessary to confirm data required to implement provisions of the incentive grant pursuant to this Agreement.
5. The Company represents and warrants that it is authorized to do business and is in good standing in the State of Texas, and shall remain in good standing in the State of Texas during the Incentive Period.
6. Company represents and warrants that the execution of this Agreement has been authorized by Company's governing body, and the person signing this Agreement on behalf of Company is an officer of same and is empowered and authorized to execute this Agreement and bind Company; that such authorization and signing is not in contravention of any law, rule or regulation, or of any other agreement or instrument to which Company is a party or by which it may be bound.
7. Company represents and warrants that no litigation or governmental proceeding is pending or, to the knowledge of Company or its officers, threatened against or affecting Company that may result in any material adverse change in Company's business, properties or operation. No consent, approval or authorization of or registration of declaration within any governmental authority is required in connection with the execution of this Agreement.
8. Company represents and warrants that no certificate, statement or record of any nature delivered by Company to the LEDC in connection with this Agreement or in leading up to this Agreement, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.
9. Company represents and warrants that there are no bankruptcy or receivership proceedings currently pending or contemplated involving Company, and Company has not been informed and has no knowledge of any potential involuntary bankruptcy or receivership proceedings.
10. Company represents and warrants that it has acquired and maintained all necessary rights, licenses, permits, and authorizations to transact and carry on its business in the State of Texas, and will continue to maintain all such rights, licenses, permits, and authorizations to the extent required to transact and conduct business in the State of Texas.
11. Company represents and warrants that it shall timely pay all employment, income, franchise and other taxes due and owing to all local, state and federal taxing authorities.

12. Company represents and warrants that all of its transactions, programs and other activities arising out of this Agreement shall fully comply with all Civil Rights Acts and will not discriminate against any person on the basis of race, color, national origin, sex or disability.

B. LEDC's Obligations:

1. LEDC agrees to award the Company two (2) grants of up to thirty-thousand and no/100 dollars (\$30,000) to offset the cost of City permitting associated with the construction of two (2) approximately 610,806 square foot facilities on the Premises. The Company will pay the City of Lancaster the full cost of permit fees associated with the construction and finish out of the Improvements and present to LEDC copies of actual paid receipts for said fees or other documentation reasonably sufficient to substantiate payment of such fees ("Fee Receipts") subject to the provisions of this Agreement. LEDC will issue a reimbursement payment up to \$30,000 of actual paid permit costs for each building. The LEDC payment will be made within thirty (30) days of Company's submittal of Fee Receipts to the City, following the issuance of a valid Certificate(s) of Occupancy for the Improvements to the Company.
2. All grants of funds shall be made from available sales tax proceeds from the LEDC and is not pledged against future sales tax proceeds or the full faith and credit of LEDC or the City of Lancaster.

**IV.**

**DEFAULT; RECAPTURE OF GRANT FUNDS**

- A. In the event the Company (i) fails to commence construction of the Project and Improvements on the Premises within twelve (12) months of the Effective Date of this Agreement; (ii) fails to complete the Project in accordance with this Agreement, as evidenced by a Certificate of Occupancy for the Improvements; or (iii) materially breaches any of the terms or conditions of this Agreement, then the Company, after the expiration of the notice and cure periods described in Paragraph IV (B) below, shall be in default of this Agreement. As LEDC's sole and exclusive remedy under this Agreement in the event of such non-cured default, the Company shall refund to LEDC all grants previously paid by LEDC under this Agreement to the Company, which refund shall constitute liquidated damages owing to LEDC. The parties acknowledge that actual damages in the event of such a default would be speculative and difficult to determine. The parties further agree that the recapture of grant funds due LEDC as a result of the Company's default under this Agreement, shall be recoverable against the Company, its successors and assigns and shall continue as a lien on the Premises.
- B. Other events of default shall include:
  1. Insolvency. The dissolution or termination of Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of Company's property, any assignment of all or substantially all of the assets of

Company for the benefit of creditors of Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

2. False Statements. Any written warranty, representation or statement made or furnished to the LEDC under this Agreement or any documents(s) related hereto furnished to the LEDC is/are false or misleading in any material respect, either now or at the time made or furnished, and the Company fails to cure same within thirty (30) days after written notice from the LEDC describing the violation or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or iff the Company obtains actual knowledge that any such warranty, representation, or statement has become false or misleading after the time that it was made, and the Company fails to provide written notice to the LEDC of the false or misleading nature of such warranty, representations or statement within ten (10) days after the Company learns of its false or misleading nature.
  3. The appointment of a receiver of Company, or of all, or any substantial part, of its property.
  4. The adjudication of Company as a bankrupt.
  5. The filing of a voluntary or involuntary bankruptcy petition against Company.
- C. Upon breach by the Company of any of its obligations under this Agreement, the LEDC shall notify the Company, in writing. The Company shall have ninety (90) days from receipt of the notice in which to cure any such default; provided, however, that if such breach or default cannot reasonably be cured within ninety (90) days, the Company shall have such additional time as is reasonably required to cure such breach or default.
- D. If the Company fails to cure the default within the time provided as specified in Paragraph IV(B) above, or, as such time period may be extended by written agreement of the parties, then the LEDC at its sole option and as its sole and exclusive remedy, shall have the right to demand repayment of the incentives it has made hereunder to the Company in accordance with this section IV.
- E. Upon the LEDC's election under the preceding paragraph, all incentives provided by LEDC to the Company under this Agreement shall be repaid as set forth in paragraph IV(A), and shall become due and payable ninety (90) days after notice to the Company of a non-cured default hereunder beyond the expiration of all applicable notice and cure periods. The LEDC shall have all remedies provided by law for the collection of such grant funds. The LEDC at its sole discretion has the option to provide a repayment schedule. The obligation of the Company to repay such grant funds to LEDC in the event of default shall survive the termination of this Agreement.

- F. If agreement is not signed by the company within 60 days of City Council ratification, the agreement will be deemed as null and void.

**V.  
SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the consent of the LEDC, which shall not be unreasonably withheld, conditioned or delayed, except to a Company Affiliate.

**VI.  
NOTICES**

All notices required by this Agreement shall be addressed to the following, or other such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

If intended for Company:

CH Realty VII/I Dallas Houston School Rd, L.P.

Attn: Asset Manager  
3819 Maple Ave  
Dallas, Texas 75219

If intended for the LEDC:

Shane Shepard  
Lancaster Economic Development Corporation  
P.O. Box 940  
Lancaster, Texas 75146

**VII.  
LEDC AUTHORIZATION**

This Agreement was authorized by resolution of the LEDC, approved by its Board of Directors, authorizing its officer to execute this Agreement on behalf of the LEDC.

**VIII.  
SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph,



sentence, phrase or word.

**IX.  
APPLICABLE LAW**

THIS AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. Venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

**X.  
ESTOPPEL CERTIFICATE**

Upon written request by Company to the City, the City will provide Company with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Company is in breach of this Agreement, the nature of the breach; (ii) a statement as to whether this Agreement has been amended and, if so, the identity of each amendment; and (iii) any other factual matters reasonably requested that relate to this Agreement.

**XI.  
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. Facsimile or .pdf signatures may be used in place of original signatures on this Agreement.

**XII.  
ENTIRE AGREEMENT**

This Agreement embodies the complete agreement between the parties relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties. The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of the Company and the LEDC. While there is no obligation for the LEDC to fund future expansion beyond that contemplated by this Agreement, nothing herein precludes the Company from requesting further assistance on future projects.

**XIII.  
RECORDATION OF AGREEMENT**

A certified copy of this Agreement may be recorded in the Deed Records of Dallas County, Texas.

**XIV.  
INCORPORATION OF RECITALS**

The determinations recited and declared in the preambles to this Agreement are hereby

incorporated herein and form a part of this Agreement.

**XV.  
EXHIBITS**

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**XVI.  
TIME IS OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

**XVII  
BINDING OBLIGATION**

This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Company warrants and represents that the individual or individuals executing this Agreement on behalf of Company has full authority to execute this Agreement and bind Company to the same. LEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

**XVIII  
INDEMNIFICATION CLAUSE**

**COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY AND THE CITY AND THE LEDC DO NOT ASSUME ANY RESPONSIBILITY OR LIABILITY TO THIRD PARTIES IN CONNECTION WITH THE FACILITY OR THE COMPANY'S BUSINESS OPERATIONS. COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE LEDC, AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE CONDUCT OR MANAGEMENT OF COMPANY'S BUSINESS, OR FROM THE PERFORMANCE OF THIS AGREEMENT, OR FROM ANY ACT OF NEGLIGENCE OF COMPANY, ITS AGENTS, CONTRACTORS, OR EMPLOYEES, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY AND THE LEDC, OR THEIR OFFICERS, AGENTS OR EMPLOYEES.**

**XIX**  
**UNDOCUMENTED WORKERS**

Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Company is convicted of a violation under 8 U.S.C. § 1324a(f), Company shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate plus two percent (2%) per annum, not later than the 120th day after the date the LEDC notifies Company of the violation.

[Signatures begin on the following page.]

**EXECUTED in triplicate** originals this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**LANCASTER ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
**Sandi Collier**, Vice President

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS     §  
  §  
COUNTY OF DALLAS     §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Vanessa Sheffield, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_ day of \_\_\_\_\_, 2017.

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

My Commission Expires:

\_\_\_\_\_



## EXHIBIT "A" LEGAL DESCRIPTION

No.: 001281127

SITUATED in the City of Lancaster, in the Marady Parks Survey, Abstract No. 1120 of Dallas Texas County, and being a part of that certain called 77.49 acre tract of land described in a deed from- Ecanae, Inc. to 12, recorded in Volume 2003011, Page 6116, Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described by metes & bounds as follows:

BEGINNING at a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701" (hereinafter referred to as "with cap"), found at the intersection of the south right-of-way line of Fabrication Drive (60' wide RO.W.) and the East right-of-way line of West longhorn Drive (60' wide RO.W.) as dedicated by a Street Dedication Pint, recorded Lu Volume 67205, Page 2752, Deed Records of Dallas County, Texas (O.R.D.C.T.);

THENCE: North 89 deg. 53 min. 14 sec. East, along the south line of said Fabrication Drive, a distance of 477.50 feet to a 1/2 inch iron rod, with cap, found for corner;

THENCE: South 00 deg. 06 min. 46 sec, East, departing from the south line of said Fabrication Drive, a distance of 505.00 feet to a 1/2 inch iron rod, with cap, found on the north right-of-way line of South longhorn Drive (60' wide ROW.);

THENCE: South 89 deg. 53 min. 14 sec. West, along the north line of said South Longhorn Drive, a distance of 452.50 feet to a 1/2 inch iron rod, with cap, found for corner at the beginning of a curve to the right having a radius of 25.00 feet and a chord that bears North.45 deg. 06 min. 46 sec, West...35.36

THENCE: Continuing along the north right-of-way of said South Longhorn Drive and along said curve to the right, through a central angle of 90 deg. 00 min. 00 sec and along an arc distance of 39.27 feet to a 1/2 inch iron rod, with cap, set for corner at the end of said curve, on the east right-of-way line of the above mentioned West Longhorn Drive;

THENCE: North 00 deg. 06 min. 46 sec. West, along the east line of said West Longhorn Drive, a distance of 480.00 feet to the POINT OF BEGINNING and containing 241,005 square feet or 5.533 acres land.