



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

Monday, June 10, 2013 - 7:00 PM

[City Council photographs will be taken at 6:15 p.m. at the Community House, 100 N Henry Street]

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Councilmember LaShonjia Harris

PROCLAMATION: Juneteenth

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.

- C1. Consider approval of minutes from the City Council Regular Meetings held March 25 and April 22, 2013 and Special Meeting held May 20, 2013.
- C2. Consider a resolution authorizing the City Manager to execute an Interlocal Agreement with the City of Houston relative to the Houston Area Library Automated Network ("HALAN") for computerized library services.
- C3. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 700 at the Lancaster Regional Airport.
- C4. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.
- C5. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.
- C6. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 670 at the Lancaster Regional Airport.

- C7. Consider an ordinance approving and adopting Rate Schedule, Rate Review Mechanism “RRM” – Rate Corporation, Mid-Tex Division to be in force in the city for a period of time as specified in the rate schedule.
- C8. Consider a resolution authorizing the purchase of three (3) Lifepak Monitors/Defibrillators from Physio Control through the federally funded program Resuscitation Outcomes Consortium (ROC) for a total amount not to exceed \$118,573.40.
- C9. Consider a resolution authorizing the City Manager to execute a North Central Texas Public Works Mutual Aid Agreement relative to the initial Public Works response in the event of an emergency, disaster or catastrophic event.
- C10. Consider a resolution authorizing Dallas County to resell 3119 Daniieldale Road, a tax foreclosed property, by public or private sale, to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Tax Code.
- C11. Consider a resolution approving the terms and conditions of a contract for upgrading the Supervisory Control And Data Acquisition (SCADA) system on the existing City’s water infrastructure with Wheco Electric, Inc., for an amount not to exceed \$60,000.

ACTION:

- 12. Consider an ordinance amending the Lancaster Code of Ordinances Chapter 22, Article 22.04, Speed Regulations, Section 22.04.003 by increasing the maximum prima facie speed limit on a certain portion of Houston School Road from 35 mph to 45 mph.
- 13. Consider a resolution authorizing the purchase of a shade structure from USA Shade & Fabric Structures, Inc. through an Interlocal Agreement with BuyBoard (Contract #346-10) for the Texas Parks and Wildlife Department (TPWD) Grant Project #50-000413 in an amount not to exceed \$96,000.
- 14. Consider election of a Mayor Pro Tempore.
- 15. Consider election of a Deputy Mayor Pro Tempore.

ADJOURNMENT

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

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

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on June 7, 2013 @ 9:00 a.m. and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 1

Consider approval of minutes from the City Council Regular Meetings held March 25 and April 22, 2013 and Special Meeting held May 20, 2013.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held March 25, 2013;
- City Council Regular Meeting held April 22, 2013; and
- City Council Special Meeting held May 20, 2013 (canvass of election results)

Submitted by:

Dolle K. Downe, City Secretary

MINUTES

LANCASTER CITY COUNCIL MEETING OF MARCH 25, 2013

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on March 25, 2013 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

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

Councilmember Absent

LaShonjia Harris

City Staff Present:

Opal Mauldin Robertson, City Manager
Dori Lee, Human Resources Director
Suzy Cluse, Interim Finance Director
Pat Adamcik, Assistant Fire Chief
M. C. Smith, Assistant Police Chief
Rona Stringfellow, Managing Director Public Works / Development Services
Sean Johnson, Parks and Recreation Director
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on March 25, 2013.

Invocation:

Pastor John Richardson with Zion Church gave the invocation.

Pledge of Allegiance:

Mayor Marcus Knight led the pledge of allegiance.

Citizens Comments:

Chaz Rodgers, 120 Palm Drive, stated that she was coming before Council again because she is still upset and frustrated with the Lancaster Police Department and the response to her son's death; stated that there has been harassment and confrontation regarding personal belongings which should not have taken three times to get; requested to be on the agenda and stated that she had transcribed eight pages from the dash cam videos; stated that a police officer should not leave a victim in the street; stated that she will continue to come to Council meetings asking for answers to her concerns.

Deputy Mayor Pro Tem Daniels asked why she is requesting to be on the agenda. Ms. Rodgers stated that she has not received sufficient response to her questions and that in talking with the Mayor, the City Manager and a councilmember, the matter has not been placed on an agenda. Deputy Mayor Pro Tem Daniels asked about other investigations. Ms. Rodgers stated that the

Texas Rangers are waiting on certain records to be released but that Police Department policies and procedures should already be in place.

Councilmember Morris stated that as a councilmember she would like to see all the steps laid out about this matter. Mayor Knight commented that Mrs. Rodgers had met with the Police Department, the City Manager, himself and Councilmember Jaglowski; and the City has been responsive, providing information within the context of what is available and under the Attorney General's opinion. Mayor Knight stated that the Council had been provided with an informational packet on the matter from the City Manager.

Ute Queen, 2307 Misty Ridge, Arlington, stated she is dissatisfied with the Animal Shelter, commenting that over the years she has devoted a lot of time and energy to help get animals out of the shelter and successfully placed with a rescue group; started that she had been told she could no longer adopt animals from the shelter and that she thought it was based on some biases from the shelter supervisor; asked that the City reconsider its position.

Mayor Knight asked her to speak with staff for further information regarding her concerns.

Dinesha Schmitt, with A Different Bred Animal Rescue in Anna, Texas, stated she operates a 12 acre sanctuary for rescued animals; commented that the City Animal Shelter is only open from 2 to 5 p.m. on weekdays and closed on weekends.

Susan Anderson, 529 N. Henry, thanked Council for serving the citizens; cautioned councilmembers about public perception and stated that she found the antics several weeks ago about residency of a councilmember disappointing; stated that people watch 24 hours a day and how Council conducts themselves in public is important because it can impact how developers and others view the City; commented that it is difficult for staff and urged Council to work as a unit for the good of the community.

Pastor John Richardson, 1004 N. Jefferson, invited everyone to the Good Friday worship service at noon at Miracle Temple Church on Pleasant Run.

Consent Agenda:

City Secretary Downe read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meeting held March 11, 2013.**
- C2. Consider a resolution approving a first amendment to a Mutual Aid Agreement between the City of Cedar Hill, the City of DeSoto, the City of Duncanville, the City of Glenn Heights, the City of Ferris, the City of Lancaster, the City of Midlothian, the City of Ovilla, the City of Red Oak and the City of Waxahachie, Texas regarding the provision of certain government functions and services in connection with the protection of life and property in the event of a disaster, civil disaster, and/or emergency.**

C3. Consider a resolution approving the resale by the County of Dallas of two residential tax foreclosed properties struck off to the City of Lancaster.

MOTION: Deputy Mayor Pro Tem Daniels made a motion, seconded by Councilmember Jaglowski, to approve consent items C1 – C3. The vote was cast 6 for, 0 against [Harris absent].

4. Discuss and consider appointments to the Planning and Zoning Commission and the Library Advisory Board.

5. Consider a resolution adopting the Lancaster City Council Rules and Procedures, as amended.

Mayor Knight stated that in the interest of consistency, Council may desire to postpone appointments and consideration of the Rules and Procedures until all councilmembers are present.

MOTION: Councilmember Morris made a motion, seconded by Councilmember Jaglowski, to table appointments and consideration of the Rules and Procedures [items 4 and 5] until the next regular council meeting. The vote was cast 6 for, 0 against [Harris absent].

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

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

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

MINUTES

LANCASTER CITY COUNCIL MEETING OF APRIL 22, 2013

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on April 22, 2013 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

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

City Staff Present:

Opal Mauldin Robertson, City Manager
Alicia Oyedele, Assistant to City Manager
Suzy Cluse, Interim Finance Director
Ed Brady, Economic Development Director
Thomas Griffith, Fire Chief
Larry Flatt, Police Chief
Rona Stringfellow, Managing Director Public Works / Development Services
Surupa Sen, Senior Planner
Kevin Moore, Recreation Superintendent
Mike Rasco, Park Superintendent
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on April 22, 2013.

Invocation:

Pastor John Richardson with Zion Chapel gave the invocation.

Pledge of Allegiance:

Deputy Mayor Pro Tem James Daniels led the pledge of allegiance.

Citizens Comments:

Chaz Rodgers, 120 Palm Drive, stated that she had received a letter from the Police Chief and that she is not satisfied; stated that she is asking for the officers names, what type of weapons the officers use and if the weapons were checked to see if they were fired; commented that she is a grieving mother and that she will continue to come to every meeting; stated that she had requested an internal affairs investigation.

Carolyn Morris, 887 W. Wintergreen, stated that she had requested public officials get an opinion regarding the residency issue, commenting that there is still concern by some citizens in the district that the Mayor Pro Tem is not residing at the stated address; stated that it is important for all public servants to have integrity, be trustworthy and be committed to the community.

Daryle Clewis, 1421 Sunny Meadow, noted that a special event had been held in the Pleasant Manor Estates II subdivision on April 6; stated that the special events application says that an attempt should be made to notify all neighbors of the block party to minimize neighborhood concerns; expressed concerns about partial participation by some councilmembers.

Consent Agenda:

City Secretary Downe read the consent agenda.

- C1. Consider a resolution canceling the regular City Council meetings scheduled for May 13 and 27, 2013; and providing for a called Special Meeting on May 20, 2013.**
- C2. Consider a resolution approving the terms and conditions of a License Agreement by and between the City of Lancaster and the North Texas Commission (NTC) and the Texas Commission on Environmental Quality, for the construction, development, operating and maintenance of an air monitoring station at Cedardale Park.**
- C3. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 700 at the Lancaster Regional Airport.**
- C4. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 700 at the Lancaster Regional Airport.**
- C5. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.**
- C6. Consider a resolution approving the terms and conditions of the City owned terminal building cafe commercial lease from building 730 at the Lancaster Regional Airport.**
- C7. Consider a resolution authorizing the purchase of one (1) Lifepak Monitor/Defibrillator from Physio Control through the federally funded program Resuscitation Outcomes Consortium (ROC) for a total amount not to exceed \$39,897.80**
- C8. Consider a resolution authorizing the award of Bid #2013-66 for miscellaneous fire equipment to multiple vendors for a total amount not to exceed \$104,892.41.**
- C9. Consider a resolution authorizing the purchase of radios from Motorola through an Interlocal Agreement with Houston Galveston Area Council (HGAC) (Contract RA05-12) for a total amount not to exceed \$6,520.23.**
- C10. Consider a resolution authorizing the purchase of two (2) thermal cameras from Casco Industries, Inc., through an Interlocal Agreement with BuyBoard (Contract 363-10) for a total amount not to exceed \$26,491.44.**

- C11. Consider a resolution authorizing the purchase of a Mobile Data Terminal (MDT) from CDW Government (CDWG) through an Interlocal Agreement with Texas Cooperative Purchasing Network (TCPN) (Contract R5106) for a total amount not to exceed \$5,716.71.**
- C12. Consider a resolution authorizing the award of a unit price bid #2013-70 for miscellaneous water and sewer parts to Fortiline Waterworks for a total amount not to exceed \$50,000.00.**
- C13. Consider a resolution authorizing the award of a unit price bid #2013-71 for water and sewer pipe to Fortiline Waterworks as the primary vendor and Texas Water Products, Inc. as the secondary vendor for a total amount not to exceed \$95,500.**
- C14. Consider a resolution authorizing the award of a unit price bid # 2013-69 for water meters to Texas Water Products, Inc. as the primary vendor and Britton Meter Supply, Inc. as the secondary vendor for a total amount not to exceed \$262,500.**

Mayor Pro Tem Mejia commented that he is not pulling any particular agenda item but wanted to acknowledge that the City is spending quite a bit of money and that the items are 100% necessary and all related to either safety or infrastructure; he stated that we have to invest in our community.

Councilmember Weaver thanked the Fire Chief for his service and noted that the new fire engine and equipment are well worth the investment.

Councilmember Jaglowski commented that it is a proud day for Lancaster to have the new fire engine and thanked councilmembers and staff for a job well done.

MOTION: Mayor Pro Tem Mejia made a motion, seconded by Deputy Mayor Pro Tem Daniels, to approve consent items C1 – C14. The vote was cast 7 for, 0 against.

- 15. Conduct a public hearing and consider a resolution approving the 2013-2014 Standards of Care for Youth Programs operated by the Lancaster Parks and Recreation Department.**

Recreation Superintendent Moore noted the requirement for all cities to establish and annually review their Standards of Care for Youth Programs. Superintendent Moore highlighted the Standards of Care policies and procedures.

Mayor Knight opened the public hearing.

There was no one present to speak regarding the Standards of Care.

MOTION: Mayor Pro Tem Mejia made a motion, seconded by Councilmember Jaglowski, to close the public hearing. The vote was cast 7 for, 0 against.

MOTION: Councilmember Morris made a motion, seconded by Deputy Mayor Pro Tem Daniels, to approve a resolution adopting the 2013-2014 Standards of Care for Youth Programs operated by the Lancaster Parks and Recreation Department. The vote was cast 7 for, 0 against.

16. Discuss and consider appointments to the Planning and Zoning Commission and the Library Advisory Board.

Councilmember Weaver nominated Tom Barnett to the Planning and Zoning Commission. Councilmember Morris nominated Roosevelt Nichols. A roll call vote was 4 [Weaver, Mejia Daniels, Harris] for Mr. Barnett and 3 [Jaglowksi, Knight, Morris] for Mr. Nichols. Mr. Barnett is appointed to the Planning and Zoning Commission as a regular member with the term expiring 2013.

For the Library Advisory Board, Mayor Knight noted that Council may wish to consider moving Ms. Browning from the alternate position to the vacant regular position. Councilmember Jaglowksi nominated Marcus Slaughter for the alternate position on the Library Advisory Board.

MOTION: Deputy Mayor Pro Tem Daniels made a motion, seconded by Councilmember Weaver, to move Library Advisory alternate member, LaToya Browning, to the vacant regular position and appoint Mr. Slaughter as the alternate. A roll call vote was 7 for, 0 against.

Ms. Browning is appointed to the vacant regular position of the Library Advisory Board with a term ending 2013 and Mr. Slaughter is appointed as an alternate member with a term expiring 2013.

17. Consider a resolution adopting the Lancaster City Council Rules and Procedures, as amended.

MOTION: Mayor Pro Tem Mejia made a motion, seconded by Deputy Mayor Pro Tem Daniels, to leave the City Council Rules and Procedures as currently written.

Councilmember Morris stated that she believes for transparencies purposes there should be a written request by a councilmember for an item to be placed on the agenda.

The vote was cast 4 for [Weaver, Mejia, Daniels, Harris] and 3 against [Jaglowksi, Knight, Morris].

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

The meeting was adjourned at 7:29 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

MINUTES

LANCASTER CITY COUNCIL MEETING OF MAY 20, 2013

The City Council of the City of Lancaster, Texas, met in Special session in the Council Chambers of City Hall on May 20, 2013 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Walter Weaver
Carol Strain-Burk seated following oath of office
Stanley Jaglowski
Mayor Pro Tem Marco Mejia
Deputy Mayor Pro Tem James Daniels
LaShonjia Harris

Councilmember Absent

Nina Morris

City Staff Present:

Opal Mauldin Robertson, City Manager
Aretha Adams, Assistant City Manager
Alicia Oyedele, Assistant to the City Manager
Dori Lee, Human Resources Director
Larry Flatt, Police Chief
Suzy Cluse, Interim Finance Director
Thomas Griffith, Fire Chief
Rona Stringfellow, Managing Director Public Works / Development Services
Sean Johnson, Parks and Recreation Director
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on May 20, 2013.

- 1. Consider a resolution canvassing the returns and declaring the results of the General Election for City Officers held on May 11, 2013.**

Considera una resolucion de escrutinio de los devoluciones y la declaracion de los resultados de las elecciones generales para la oficina de concejal Distrito 1, concejal del Distrito 3, y el concejal del Distrito 5 celebrada el 11 de mayo 2013.

City Secretary Downe read Resolution 2013-05-39 canvassing the returns and declaring the results of the General Election for City Officers held on May 11, 2013 as follows:

RESOLUTION NO. 2013-05-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE GENERAL ELECTION FOR THE OFFICE OF COUNCILMEMBER DISTRICT 1, COUNCILMEMBER DISTRICT 3, AND COUNCILMEMBER DISTRICT 5 HELD ON MAY 11, 2013.

GENERAL ELECTION

Lancaster, Texas

May 11, 2013

CANVASS OF RETURNS AND DECLARATION OF RESULTS OF ELECTION

BE IT REMEMBERED THAT on this the 20th day of May 2013, at a meeting of the City Council of the City of Lancaster, Texas, a quorum being present, the meeting was called to order and the following business was transacted.

Upon motion it was unanimously ordered that the City Council consider the official returns of a General Election held in the City on May 11, 2013, for the election of Councilmembers for District 1, District 3, and District 5 for a three-year term.

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

CANVASS OF RETURNS AND DECLARATION OF RESULTS

WHEREAS, heretofore, the City Council of the City of Lancaster, Texas, called a General Election to be held in the City on May 11, 2013, to elect Councilmembers for District 1, District 3, and District 5 for a three-year term; and

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

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

That the following number of votes was cast for the following named candidates for the office of Councilmember, District 1, to-wit:

	EARLY VOTING	ELECTION DAY	BY MAIL	PROVISIONAL VOTING	TOTAL VOTES	%
Walter Weaver	181	77	2	0	260	44.29%
Carol Strain-Burk	214	102	11	0	327	55.71%

It appearing that Carol Strain-Burk received a majority of all votes cast for the office of Councilmember, District 1, Carol Strain-Burk is hereby declared to be elected to the office of Councilmember, District 1, to serve a three-year term after qualifying.

That the following number of votes was cast for the following named candidates for the office of Councilmember, District 3, to-wit:

	EARLY VOTING	ELECTION DAY	BY MAIL	PROVISIONAL VOTING	TOTAL VOTES	%
Daryle W. Clewis	59	19	0	0	78	25.91%
Marco Mejia	181	42	0	0	223	74.09%

It appearing that Marco Mejia received a majority of all votes cast for the office of Councilmember, District 3, Marco Mejia is hereby declared to be elected to the office of Councilmember, District 3, to serve a three-year term after qualifying.

That the following number of votes was cast for the following named candidates for the office of Councilmember, District 5, to-wit:

	EARLY VOTING	ELECTION DAY	BY MAIL	PROVISIONAL VOTING	TOTAL VOTES	%
LaShonjia Harris	130	65	1	0	196	52.27%
Clyde C. Hairston	129	48	2	0	179	47.73%

It appearing that LaShonjia Harris received a majority of all votes cast for the office of Councilmember, District 5, LaShonjia Harris is hereby declared to be elected to the office of Councilmember, District 5, to serve a three-year term after qualifying.

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

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

DULY PASSED by the City Council of the City of Lancaster, Texas, on this the 20th day of May 2013.

MOTION: Deputy Mayor Pro Tem Daniels made a motion, seconded by Mayor Pro Tem Mejia Morris, to approve Resolution 2013-05-39 canvassing the returns and declaring the results of the General Election as read by the City Secretary. The vote was cast 6 for, 0 against [Morris absent].

2. Administer oaths of office; present Certificates of Election; and seat newly elected councilmembers.

City Secretary Downe administered the Oath of Office for Carol Strain-Burk, Marco Mejia, and LaShonjia Harris. Certificates of Election were presented. Newly elected and re-elected councilmembers were seated: Councilmember Carol Strain-Burk, District 1; Mayor Pro Tem Marco Mejia, District 3; and Councilmember LaShonjia Harris, District 5.

3. Consider election of a Mayor Pro Tempore.

4. Consider election of a Deputy Mayor Pro Tempore.

MOTION: Councilmember Strain-Burk made a motion, seconded by Mayor Pro Tem Mejia, to table election of the Mayor Pro Tem and Deputy Mayor Pro Tem until the next regular Council meeting on June 10, 2013. The vote was cast 6 for, 0 against [Morris absent].

Mayor Pro Tem Mejia thanked District 3 voters for the opportunity to serve again commenting on the progress the City has made and the opportunities ahead; thanked volunteers that assisted with the election.

Councilmember Harris thanked the constituents of District 5 and commented on the support she had from the neighborhood; commented that she will continue to work to make Lancaster a great place to live.

Councilmember Strain-Burk offered a heartfelt thank you to the voters and commented on her passion for the community and that she was looking forward to working with all of Council.

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

The meeting was adjourned at 7:17 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 2

Consider a resolution authorizing the City Manager to execute an Interlocal Agreement with the City of Houston relative to The Houston Area Library Automated Network (“HALAN”) for computerized library services.

This request supports the City Council 2012-2013 Policy Agenda.

Goal 3: Healthy, Safe & Vibrant Neighborhoods

Background

The Lancaster Veterans Memorial Library currently uses a catalog system provided by Innovative Interfaces Inc. (III) called Millennium. Originally, the library shared the system with other area libraries at a cost savings. As the term of the original agreement expired, the other communities migrated to various other systems.

In 2012, staff began researching options that included modern features and learned that a consortium of libraries in the Houston area was interested in hosting additional libraries. The Houston Area Library Automated Network (HALAN) consortium was also preparing a bid for a newer, more robust integrated library system (ILS) and offered to integrate our library. In December 2012, the bids were opened and HALAN, in conjunction with the City of Houston, chose the Symphony system provided by the Sirsi/Dynix Corporation.

Considerations

- **Operational** - The City of Lancaster will be responsible to operate and maintain this automated system locally with assistance.
- **Legal** - The City Attorney has reviewed and approved as to form the attached resolution for the HALAN agreement.
- **Financial** – The current agreement costs \$25,000 annually. The initial cost for integration in year one is \$18,376. However subsequent years are at a reduced rate, Year 2 - \$9,303 and Year 3 - \$9,584. The agreement does include a 7% or Consumer Price Index (CPI) increase annually (whichever is higher).
- **Public Information** – The item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

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

Recommendation

The Lancaster Veterans Memorial Library Advisory Board recommended approval at its May 16, 2013 meeting.

Staff recommends approval of the resolution and agreement as presented.

Attachments

- Resolution
 - Interlocal Agreement
-

Submitted by:

Sean Johnson, Director of Parks, Recreation and Library Services

CITY OF LANCASTER, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CITY OF HOUSTON RELATIVE TO THE HOUSTON AREA LIBRARY AUTOMATED NETWORK (“HALAN”); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Houston Area Library Automated Network (“HALAN”) is a library consortium for residents of Houston and the State of Texas which provides computerized library services including but not limited to integrated library system administration, public and staff desktop support, and network management; and

WHEREAS, the City of Lancaster Veterans Memorial Library can benefit from the integrated library system and related services offered by the HALAN; and

WHEREAS, the City Council of the City of Lancaster finds it in the best interest of its citizens to authorize its City Manager to execute an Agreement between the City of Lancaster and the City of Houston, providing the City of Lancaster with the information and services offered by the HALAN.

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

Section 1. That the City Council hereby approves authorizes the City Manager to execute an Agreement with the City of Houston, attached hereto and incorporated herein as Exhibit A, relative to the HALAN.

Section 2. That any prior Resolution of the City Council in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

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

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, this ____ day of _____, 2013.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

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

THE STATE OF TEXAS '
 '
COUNTY OF HARRIS '

THIS AGREEMENT FOR COMPUTERIZED LIBRARY SERVICES

("Contract") is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS ("City")**, also ("**Houston Public Library**" or "**HPL**"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and _____ ("**Participating Library**"), a public library in the State of Texas, acting through its respective governing body.

RECITALS

1. The Houston Area Library Automated Network ("HALAN") is a library consortium with a common vision for maximizing library and information technologies for residents of Houston and the State of Texas and for enabling efficient operations of the libraries.
2. HALAN is committed to excellence in library service through empowerment of library information partners.
3. HALAN facilitates and promotes collaboration and cooperation, which empowers information agencies to improve and expand access to and delivery of information resources.
4. HALAN provides computerized library services including but not limited to integrated library system administration, public and staff desktop support, and network management and serves as a gateway to the evolving global information community.
5. For management and policy issues the HALAN members acknowledge the advice and consent responsibilities of the HALAN Advisory Board as described in the HALAN Rules of Procedure.
6. The Director of HPL is also the Director of HALAN.
7. The Chief of HALAN and HALAN staff members who are employees of the City and HPL will perform the daily operations of HALAN. HALAN is in the

Information Technology Division of HPL, which is physically located at the Central Library in downtown Houston.

8. HPL (as an agent of the City of Houston) will serve as the business agent for HALAN and will provide administrative and technical support for the Consortium as described in the Contract. HPL will charge HALAN a reasonable administrative fee, at a rate approved by the Director of HPL.
9. This Contract, including the HALAN Bylaws and related Addenda, govern the internal affairs of the HALAN consortium and formalize the purpose, membership guidelines and structure of HALAN. This contract also represents agreement with respect to payment and cost sharing, responsibilities of the City/HPL, responsibilities of each Participating Library and ownership of the network, database, components, software, hardware, licenses and other related items. Participating Libraries may be a full member with the option to receive all services available to HALAN libraries for a single price or an affiliate member who chooses one or more services outlined in the addenda to this contract.

NOW, THEREFORE, the Parties agree as follows:

I. PARTIES

A. Address

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

Director, Library Department
or Designee
City of Houston
500 McKinney
P.O. Box 1562
Houston, Texas 77251

Participating Library

Library: _____
Director: _____
Phone: _____
Fax: _____

B. Table of Contents

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EXHIBITS

Addendum A — HALAN Standards, Duties and Procedures

Addendum B — Definition of HALAN Services

Addendum C — HALAN Membership Criteria

Addendum D — Fee Structure

C. Parts Incorporated

All of the above-described sections and documents are hereby incorporated into this Agreement by this reference for all purposes.

D. Signatures

IN WITNESS HEREOF, the Houston Public Library and the Participating Library have made and executed this Contract in multiple copies, each of which is an original.

"Participating Library"

ATTEST:

APPROVED:

City Secretary

Officer Empowered to Enter into Contracts

CITY OF HOUSTON
"Houston Public Library"

ATTEST:

APPROVED

City Secretary

Mayor

APPROVED:

COUNTERSIGNED

Director of Libraries

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney

L.D. File No. 041-1300006-001

II. DEFINITIONS

Terms used shall have the following meaning for purposes of this Agreement:

- A. "Agreement Year" means the time period of September 1 through August 31 of the following year.
- B. "Central Site Equipment" means any equipment located at 500 McKinney Avenue, Houston, Texas, that is used to provide service to HALAN libraries or any software or equipment provided under "software as a service" contracts between the City and HALAN service providers.
- C. "City" is defined in the section of this Agreement entitled "Parties" and includes its successors and assigns.
- D. "Internet Connection" means leased telephone lines over which data may be transmitted between the Central Computer Site and a Participating Library whether through direct connection with the Central Computer Site or VPN or Cloud service through a local Internet Service Provider connection.
- E. "Computerized Library Services" are defined specifically in the Addendum defining "HALAN Library Services".
- F. "Director" means the Director of Libraries for the City of Houston and HALAN.
- G. "HALAN Advisory Board", referred to as the "Board" is described in the HALAN RULES OF PROCEDURE.
- H. "Houston Area Library Automated Network", sometimes designated as "HALAN", means the combination of all computer equipment and software and staff services used to provide Computerized Library Services as described herein.
- I. "Houston Area Library Automated Network Fund", sometimes-designated "HALAN Fund" means that special fund consisting of all fees paid by participating libraries and the interest accrued thereon.
- J. "Houston Public Library" ("HPL") and "Participating Library" are defined in the section on "Parties" in this Contract. When "Participating Library" is used in the plural or in a generic sense it refers to each and every governing body, including HPL, which has executed this Contract for Computerized Library Services.
- K. "Institution" is the county, municipality, public or private educational institution or other legal entity that operates a Participating Library.
- L. "Integrated Library System", sometimes designated as "ILS", means the

- automation system used to manage the selection, ordering, description, processing, access and usage of library materials.
- M. "Internet" means the international network of information resources through which ILS and other HALAN services are provided.
 - N. "Local Site Equipment" means computer equipment that is owned by the City and that is part of the HALAN, which is located at the site(s) of a Participating Library.
 - O. "Locally-owned Equipment" means workstations and peripheral devices which are purchased by the Participating Library and which are approved for use with the HALAN by HPL.
 - P. "Materials" means online and print resources stocked and circulated by libraries to the general public.
 - Q. "Participating Library", sometimes referred to as "Member", is defined under "Parties" and means either a public entity of the State of Texas, which operates a publicly funded library, or a legal entity operating under the laws of the State of Texas that operates a private library that is a party to this Agreement.
 - R. "Rules of Procedure" is the document that represents the obligations, expectations and regulations that are binding on all parties to this Agreement and is attached hereto as Addendum A.
 - S. "Telecommunications Equipment" means modems, routers, servers, etc. used to communicate with the Central Site Equipment.

III. DUTIES OF HOUSTON PUBLIC LIBRARY

A. Scope of Services.

HPL acting through HALAN may provide the following services, based on type of membership:

1. Provide an integrated library system and related services, see Addendum B for specific integrated library system ("ILS") services.
2. Provide maintenance of telecommunications network equipment and HALAN system hardware and software to achieve minimal downtime; monitor the resolution of data transmission problems between the host computer and member sites; and communicate proprietary issues to appropriate vendor and monitor problem resolution. HALAN shall be responsible for the maintenance of the Central Site equipment in such a fashion as to provide for minimal down time, but

will assume no liability if the HALAN network experiences down time despite reasonable efforts to prevent it. When necessary, HALAN or its contractors may temporarily suspend the availability of services on the network because of operational or maintenance requirements. HALAN shall provide the Participants with reasonable prior notice of system unavailability whenever such unavailability can be foreseen.

3. Assure response time based on vendor contract guarantees.
4. Provide 24 hours a day, 7 days a week access to the online public catalogs and daily system accessibility for staff functions as defined in Addendum B.
5. Maintain 24 hours a day, 7 days a week emergency support for system or network outages. These hours are defined in Addendum B.
6. HALAN Staff will not be available except for emergencies on City designated holidays. An emergency call procedure may be followed during holidays and closed hours.
7. Act as purchasing agent for the HALAN Central site equipment and provide fire and hazard insurance for this equipment.
8. Provide training for use of the ILS.
9. Act as a City/ HALAN agent in negotiation of contracts and licenses with vendors.
10. HPL shall supervise, administer and prepare a budget for expenditures under the HALAN Fund, into which user fees shall be paid. Such Fund is audited yearly at the time other City funds are audited, as covered under the accepted single concept used for grants and special funds. The City audit report may be requested by any Participating Library. City shall have no liability to provide services for or advance funds to a Participating Library that fails to pay its fees as set by its contract.
11. Provide to members, upon request, an extract from the shared database of holdings in machine-readable form.
12. Provide enhanced cooperative borrowing services of library materials held by participating member institutions upon request.
13. Support group negotiation for electronic resources and other products of interest to the membership.

14. Act as a purchasing agent for library and IT software and hardware upon request of a library. Purchases will be made under the guidelines of the City of Houston.
15. Sponsor training, workshops, conferences, and other opportunities for professional development.
16. Support other activities upon approval of HALAN Board.
17. HPL and HALAN act merely in the capacity of an operating agent to provide the services described herein and does not warrant or guarantee the HALAN network and shall not be liable for serious damages resulting from uncontrollable conditions to Participating Libraries arising out of failure of the HALAN network or the use thereof.
18. Maintain the confidentiality of system proprietary software/hardware.
19. See Addendum B for definition of specific HALAN Services.
20. See Addendum C for HALAN Membership Criteria.

B. City of Houston / Houston Public Library Responsibilities

In addition to the responsibilities of HPL (via HALAN) as defined in the Scope of Services, the City and HPL shall also provide HALAN with the following support services at cost to HALAN on terms agreed to by HPL and the Board:

1. Administrative support
 - (a) Serve as business agent.
 - (b) Maintain budget and accounting activities on the City's financial information system.
 - (c) Serve as repository for documentation, correspondence, and other business records.
 - (d) Provide access to City / HPL price agreements and contracts for goods and services.
2. Office space and services
 - (a) Provide suitable office space for HALAN staff.
 - (b) Provide standard mail services and access to contracts for private delivery services.
3. Human resources

- (a) HALAN staff shall be recruited, compensated, and evaluated by the City's Human Resources Unit, with recommendations from the Chief of HALAN, in accordance with City policies and procedures.
- (b) The Chief of HALAN, in accordance with standard City policies and procedures, shall determine classification and terms of appointment for HALAN staff.
- (c) The Chief of HALAN and staff shall be employees of HPL and eligible for standard benefits available to City employees.
- (d) The City shall provide payroll services for HALAN staff in accordance with their status as City employees.

4. Technology

- (a) Provide appropriate computer room space and reliable network capacity for HALAN computer systems.
- (b) Provide microcomputer and staff file server support for HALAN staff.
- (c) Provide telecommunications and network services (phone, fax, e-mail, data storage) for HALAN staff.

5. Other Services

- (a) Legal services through the City, specifically those related to services provided to member libraries through HALAN.
- (b) Purchasing services through HPL and the City's Strategic Purchasing Department, including, but not limited to, duties such as assistance with the procurement of hardware, software, professional services, audits, contract and account management.
- (c) Other technology services through the City's Information Technology Department, including, but not limited to, duties such as assistance in the maintenance and security of the HALAN network, collaboration / coordination of technology-related vendor contracts and training and consultation needs.
- (d) The City and HPL may provide other services under terms agreed upon by HPL and the HALAN Advisory Board.

IV. RESPONSIBILITIES OF PARTICIPATING LIBRARY

A. The basic unit of membership is the Institution. Each Institution is an independent member of HALAN and all libraries within an institution are normally expected to participate in HALAN services and meet membership obligations. Each Participating Library agrees to:

1. Conform to the policies, procedures, protocols, and regulations of HALAN, as set forth in this Agreement, the HALAN Rules of Procedure and this Agreement's Addenda.
2. Provide, maintain, and share bibliographic data according to standards and guidelines for database quality.
3. The bibliographic database constructed by HPL and the Participating Libraries for use by the current and future participants is a shared resource between HPL and the Participating Libraries. The Participating Libraries and HPL agree to use this shared resource for internal library purposes only, and not to sell or otherwise provide information to third parties for purposes other than local library use.
4. Be responsible for verifying copyright and/or fair use status and/or obtaining copyright permission prior to its placing or introducing any information, text, graphics or data into the HALAN database(s). Member Institutions agree they shall be solely responsible for any loss, liability or expense due to loading of copyrighted materials in the HALAN databases by the employees or agents of the member Institution where such loading or subsequent use, viewing, printing, downloading or recopying is alleged to be infringing.
5. Pay entry fees and annual membership fees established by the Board.
6. Not connect to the HALAN network any equipment and/or software without approval from the HALAN staff.
7. Use equipment and software that meets standards set forth in HALAN documentation and/or as recommended by the HALAN staff in consultation with HALAN members.
8. Maintain confidentiality of system proprietary software/hardware.
9. Be responsible for security of its workstations.
10. Be responsible for purchasing and maintaining locally owned hardware and software that is connected to the HALAN network or connects to the HALAN software via a local Internet Connection.

11. Pay all related telecommunications costs to link to the HALAN network or connect to the HALAN software via a local Internet Connection.
12. Perform electrical and other work necessary for the installation, operation and maintenance of the both the HALAN-owned and locally-owned equipment.
13. Contribute to the management of HALAN by maintaining active participation as required on the Board, on the HALAN Planning Committee and in additional groups established to maintain HALAN services. Participation in other groups is encouraged but optional.
14. Pay HALAN an agreed upon amount for any services beyond the scope described in the Addenda.

V. FEES

A. Payment of Fees

Member agrees to pay HALAN an annual fee as described in the HALAN Rules of Procedures and defined in Addendum D—Fee Structure Addendum for the services described herein. Services and fee structure may be redefined with the recommendation and approval of the Board. Annual fees are based on system usage, services and levels of membership as defined in the Fee Structure Addendum and are due within 45 days of receipt of the invoice.

VI. TERM OF AGREEMENT

A. Contract Term

This Agreement shall become effective on Countersignature Date herein and shall remain in effect for a period of 1 year, unless sooner terminated as provided for in this Agreement (“Contract Term”).

B. Renewals

1. Upon expiration of the Contract Term, this Contract will be automatically renewed for ten successive one-year terms on the same terms and conditions. If the Director of HPL or a Participating Library chooses not to renew this Agreement, the non-renewing Party shall notify the other Party(ies) of non-renewal at least 30 days before the expiration of the then-current term.
2. The Director of HPL, not later than 60 days prior to the expiration of any Agreement Year, will declare the intent of HPL to continue operation of HALAN for the forthcoming Agreement Year, contingent on the availability of adequate operating funds. The Director will send each Participating Library a copy of the declaration, together with proposed budget and a schedule of

user fees for operation and maintenance of the HALAN for the forthcoming year. The Board must approve the budget and schedule of costs. If the Director chooses not to continue the operation of HALAN, then the effective date of termination shall be the end of the upcoming Agreement Year. HPL will maintain the connections and current database until that effective date so that Participating Libraries will have time to find alternative access.

3. Payment by the Participant of such fees for a particular Agreement Year shall constitute renewal of this Agreement for that year.

VII. TERMINATION OF AGREEMENT

A. The Participating Library has the right to terminate this Agreement by sending at least 30 days' written notice to the Director.

B. HPL, through the Director, may terminate this Agreement for cause in the event the Participating Library fails to comply with any of its obligations under this Agreement and such failure is not cured prior to the thirtieth (30) day after the Director's notice of termination is received by the Participating Library. To be effective, the Director's notice of termination must: (1) give an effective date of termination (which must be at least thirty (30) days after receipt of notice by Participating Library); and (2) cite the specific activities or omissions of the Participating Library which are noncompliant with the terms of this Agreement.

C. In the event this Agreement is terminated either for convenience or for cause as provided herein, the Participating Library, within two (2) weeks of the effective date of termination, shall return to the HPL all HPL equipment, and HPL shall: (a) terminate access to HALAN on the effective date of termination; (b) shall offload the Participating Library's database onto a mutually agreed upon storage media provided by the Participating Library and; (c) shall return any equipment owned by the Participating Library back to that library

VIII. SPECIAL PROVISIONS

A. Penalties

In accordance with the HALAN Rules of Procedure, HALAN reserves the right to impose a penalty fee to any member who fails to meet the guidelines and standards agreed upon in this Agreement. This fee is further defined in Addendum D and will be based on the cost of remedying any problem caused by the member's failure to adhere to the guidelines and standards agreed upon in this Agreement.

B. Ownership

1. HPL / HALAN owns:

- (a) Shared database(s) in trust for the HALAN members
- (b) Network switches and routers, application and data servers and central telecommunications equipment including supporting workstations;
- (c) Equipment purchased by HALAN;
- (d) Software, licenses, etc. purchased by HALAN; and
- (e) Disposal of equipment purchased and owned by HALAN will be made in accordance with City of Houston policies and procedures.

2. Participating Library owns:

- (a) Records which reflect its holdings;
- (b) Equipment purchased by Participating Library to connect to the Network; and
- (c) Equipment purchased under grants for specific participating libraries.

C. Data Rights and Obligations

1. Data obtained by the central site from each member institution are hereby contributed in perpetuity to the City / HPL for use in achievement of HALAN goals, subject to any third-party rights or license restrictions attached to such data.
2. Data obtained by each member institution from the central system are hereby contributed in perpetuity to the member institution, subject to any third-party license restrictions attached to such data.
3. If a member institution ceases participation in HALAN, the data submitted to the central system at that point shall be removed from the system at the discretion of the Board. Database maintenance costs for removal of data shall be borne by the withdrawing member institution.

D. Confidentiality of Information

1. HALAN and the Participating Library shall, to the extent allowed by law, maintain confidentiality of all proprietary documents, data compilations, reports, computer programs, photographs and any other work provided to or produced by the Participating Library in the performance of this Agreement unless written permission is granted by the Participating Library for its release.

2. Patron information in the HALAN database remains the property of the Participating Library, which entered it. Except to the extent required by the Texas Open Records Act, such information shall be restricted to necessary official in-library use of the Participating Libraries, and shall not be released to others without the written consent of the Participating Library that entered it.

E. Entirety of Agreement

This Agreement, the HALAN Rules of Procedure, Addenda representing HALAN Services, Fee Structure, Resource Sharing and Membership Criteria represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

F. Indemnification

Each party to this agreement shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

G. Notice

All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.

H. HALAN ADVISORY BOARD

In order to provide oversight, review and guidance to the operation, funding and future development of the HALAN, the HALAN Advisory Board (the "Board") was created. Board members are appointed by their governing bodies and membership of the HALAN Advisory Board shall be determined as defined in the HALAN Rules of Procedure.

I. Additional Participating Libraries

Additional Participating Libraries may be added to HALAN by agreement with HPL and with the approval of the HALAN Advisory Board. Any such additional Participating Library shall: (1) execute an agreement with the City substantially identical to this Agreement, and (2) shall pay user fees that are applicable for the particular Contract Year during which the Participating Library is added to HALAN.

J. Fees and Account Management

The HALAN budget reflects fees for the maintenance of the HALAN network which supports the integrated library system, specified online / electronic resources and various web services. Also included are the general operations costs, which cover staff positions, hardware, software, and maintenance expenses. The City and HPL impose an additional fee of "Indirect Costs" upon HALAN for the use of City services. The HPL Central site serves as the host of HALAN operations as well as the fiscal agent.

(1) The fee structure will be determined by the Board and reviewed on a regular basis. It may be amended to best meet the needs of the current membership. See attached Fee Structure document for current fees.

(2) The HALAN budget is approved by the Board. At the end of each fiscal year, if there is an overage, i.e. any unexpended funds, that overage will be retained by HALAN and managed separately to ensure funding for ongoing grant-funded initiatives, network upgrades, and the purchase of a new automated system or for other HALAN-wide special projects as designated by the Board.

(3) If the HALAN consortium is dissolved, all outstanding debts must be paid and contractual obligations completed after which any unexpended HALAN funds shall be dispersed to the current Members based on the percent of the HALAN budget the fees represented in that fiscal year.

K. Other Cooperative Agreements

Libraries participating in HALAN shall not be prohibited from entering into other cooperative agreements, networks, or consortia or contracts with other libraries or groups of libraries for service. Membership with other libraries or groups of libraries for service shall not restrict membership in HALAN.

ADDENDUM A—HALAN RULES OF PROCEDURE

These Rules of Procedure are based upon the HALAN Agreement, signed by all parties. That document represents authoritative and binding obligations, expectations, and regulations on the part of all parties, and these Procedures with accompanying Addenda, are intended to clarify and illustrate certain details included in the Agreement. It is acknowledged by all parties that the terms of the Agreement are the ultimate authority in any question relating to the governance or functioning of the consortium, and in no event may Rules of Procedure be created which violate, supersede, or compromise the terms of the Agreement.

I. Name and Person

The name of this consortium is the Houston Area Library Automated Network (“HALAN”). Its purpose is to maximize library and information technologies for residents of the Houston and the State of Texas and to enable efficient operations of the libraries. HALAN provides computerized library services through an automated library system and serves as a gateway to the evolving global information community. HALAN’s goals are to provide system accessibility with minimum downtime, excellent customer service through a variety of services and effective consortium and account management while balancing the needs of all of the member libraries.

II. Membership

- A. HALAN is a consortium of libraries that wish to share an automated system, participate in resource sharing and/or collaborate in the sharing of costs for online or electronic resources. Participating Libraries may be public, academic, school, special or another consortium.
- B. The Library Director or governing entity of each Participating Library must sign the HALAN Agreement and must adhere to its principles.
- C. To be a Member in good standing, the Participating Library must comply with all terms of the HALAN Agreement, the HALAN Rules of Procedure, and Addenda for Resource Sharing, Fee Structure and Services. Each Member shall meet its financial obligations to the consortium as a condition of continued membership. HALAN charges are due upon invoicing.
- D. If a Member materially breaches its duties and obligations, the Director of HPL, upon recommendation by the Board, may terminate the Participating Library’s membership.
- E. Full Membership: A “Full Member” is a library or organization that supports the goals and objectives of HALAN and receives all services defined in Addendum B as part of its HALAN membership.

- F. **Affiliate Membership:** An "Affiliate Member" is a library or organization that supports the goals and objectives of HALAN and pays an adjusted fee for limited privileges in the consortium.
- G. **New Members:** The Board shall review for approval all requests for membership, and may accept a request by majority vote. Decisions should be based on how the applicant fits within the goals and objectives of the HALAN consortium and, if applicable, within the HALAN Strategic Information Plan.
- H. **Additional categories of special membership** may be approved by the HALAN Advisory Board in order to maintain and grow the consortium and meet the Members' needs.

III. Governing Structure

- A. **Governing Board.** A board of representatives from each full Member Institution governs HALAN and representatives from affiliate groups. That board, called the HALAN Advisory Board and referred to as the "Board", includes voting members and non-voting ex officio members. Voting members are appointed or are elected. Each group of Affiliate Members shall elect or appoint one representative. HALAN management staff participates as non-voting ex officio members as does the Director of HPL, also Director of HALAN.

The purpose of the HALAN Advisory Board is to provide oversight, review and guidance to the operation, funding and future development of HALAN.

- B. **Conduct of Business.** All meetings will be conducted in accordance with the latest edition of *Robert's Rules of Order Newly Revised*.
- C. **Member Representation.** A member representative to the Board is determined by each Participating Library and confirmed in writing or electronically to the Director of HPL / Director of HALAN. The number on the Board may vary, as each full member shall have at least one representative, with one vote, as determined by the following chart:

% of HALAN Budget as defined by Fee Structure	Total Number of Board Members that may be appointed by Participating Library
Large = 50% or more	3
Medium = 5% - 49%	2
Small = Less than 5%	1

Each affiliate member shall have representation by type of affiliation as clarified by the following example:

ILS, Public Access Computing or Digitization Only Member Categories	1 representative, elected by all members for each affiliate membership category
---------------------------------------------------------------------------	------------------------------------------------------------------------------------

Resource sharing members shall not have board representation.

- D. Terms of Office for Board Members. Board members shall be appointed to the HALAN Advisory Board for a term of two fiscal years. Upon expiration of the members' terms of office or resignation, vacancies shall be filled in accordance with the above provision for determining the HALAN Advisory Board.
- E. Election of Officers. The Board shall annually elect a Chair and Vice Chair for a term beginning September 1 and ending August 31. The Chair shall be responsible for the orderly conduct of each meeting. The Chair may refer issues for decision to the Director of HPL / HALAN by electronic means; the rules for quorum and voting at meetings apply. A HALAN staff person shall be responsible for the taking of minutes.
- F. Quorum. A quorum to conduct business shall be equal to a simple majority of board members and that simple majority shall be required for passage of any measure.
- G. Voting. Voting may be conducted in writing, electronically, by voice or by show of hands.
- H. Board Meetings. The Board shall meet at least twice each fiscal year. They may also meet at other times on the call of the Director of HPL / HALAN or the Chair. The Director of HPL in conjunction with the Chief of HALAN determines the time and location of meetings.

 The Chief of HALAN and the Chair of the Board with the approval of the Director of HPL sets the agenda for board meetings. The Chief of HALAN is responsible for preparation of Agenda items, documentation and disseminating it to Board members and HALAN Directors. Board members may submit agenda items in writing or electronically to the Chair or the Chief of HALAN. Agenda items may be added from the floor at the beginning of Board meetings.
- I. Board Responsibilities. The Board will administer the functions of HALAN through equitable decisions in accordance with the HALAN Agreement and Rules of Procedure.

- Approval and amendment to HALAN Rules of Procedure governing HALAN activities and services upon notice to members;
- Set policies for HALAN and its relationship with member institutions;
- Determine strategic priorities and approval of HALAN Technology Plan and other long range plans as prepared at the direction of the HALAN Planning Committee;
- Approval of HALAN budgets and expenditure plans;
- Determination of annual membership fees;
- Approval of new members;
- Establish committees, task forces and advisory groups as needed;
- Be informed of library issues, advances in technology and sound business practices;
- Act as an advocate on behalf of HALAN members; and
- To encourage cooperation, communication, and sharing of resources among the participating HALAN member libraries, the HALAN Board will review resource-sharing opportunities and define the Member requirements. These requirements are based on the type of membership the member libraries have.

J. Planning Committee. Participation on the HALAN Planning Committee consists of at least one representative from each HALAN member. This representative should be in the role of decision-making for the Participating Library. It is not a requirement that this representative also be on the HALAN Advisory Board. The representative attending the meeting may vary according to the meeting agenda and needs of the Participating Library.

The Planning Committee is a working Committee that meets at least once per year. The committee may meet online or at a location and time determined by the Participating Libraries. The Committee is first to review the draft of the budget before it is presented to the Board for approval. The Committee shall also make recommendations to the Board regarding fees and services. The Committee should be responsible for the development and updating of the HALAN Technology Plan in addition to the formation of sub-committees to manage specific consortium projects.

IV. Fiscal Year

The HALAN fiscal year shall be from September 1 through August 31. Budget planning shall be approved by March 31st.

ADDENDUM B– DEFINITION OF HALAN SERVICES

A. HALAN Services

1. Integrated library system (“ILS”) modules, interfaces, services
 - (a) OPAC and Discovery Service
 - (b) Circulation
 - (c) Cataloging/Database Maintenance & Authority Control
 - (d) Acquisitions
 - (e) Serials
 - (f) Reports
 - (g) Inventory Control
 - (h) Basic record-loading, includes system-wide loads and loads where existing profiles have been previously tested and used
 - (i) Library card authentication services including setup and remote access of individually subscribed databases when HALAN is notified prior to purchase. Vendor contact information is required and ability to test databases before purchase is recommended.
 - (j) Enhanced catalog content services such as book jackets, reviews and book recommendations.
 - (k) Any “additional” service / module purchased for all the libraries as part of a contract or approved by the Board for all members and defined in the Fee Structure document.
 - (l) Support of any third party services directly related to ILS services.
2. Network Services
 - (a) Provision and/or maintenance of network and Internet Access either through a connection to the HALAN Network or an Internet service provider contracted by HALAN.
 - (b) Email
 - (c) Host member website
 - (d) Processing of e-rate applications.
 - (e) Wireless installation and/or support
3. Public Access Computing Services
 - (a) OPAC workstations either as desktop or thin client solutions.
 - (b) Provision and support of imaging, security, print, filtering and reservation solutions based on HALAN standard

(c) Support of non-standard imaging, security, print, filtering, and reservation solutions. Members are responsible for the purchase of non-standard solutions.

4. Electronic / Online Resources as agreed upon by all members to be paid for and maintained by HALAN. (May be charged based on Board approval).

5. Customer Service Support

(a) Helpdesk Support Service Levels

Monday – Thursday, 7:00 a.m. – 9:00 p.m.

Friday - 8:00 AM – 6:00 PM

Saturday, 9:00 a.m. – 6:00 p.m.

Sunday, 1:00 PM – 5:00 PM Participating libraries may contact the HALAN helpdesk by phone, voice mail, email or self-service submission into HALAN's IT service management system. Requests will be logged in the City's IT transaction tracking system

Initial responses to requests will be as follows:

- Answer the Phone within 2 minutes 90% of the time.
- Call backs when messages are left on the phone within 45 minutes
- Acknowledge emails and open tickets within 30 minutes

Level 1 Server or Network Downtime

- Response to reports of server or network downtime within 10 minutes
- Server or network downtime addressed within 75 minutes(60 for Sirsi and an additional 15 for us)

Level 2: Software or Hardware Performance Issues

- Response to software or hardware performance within 4 hours
- Begin resolution of performance issues within 2 business days

Resolution due dates will be assigned as follows:

- High Priority: Not to exceed two days
- Medium Priority: not to exceed 5 days
- Low Priority: not to exceed 7 days

When a ticket has not been resolved in seven days, HALAN staff will meet with staff at the affected library to create a written plan for resolution. If resolution has not been reached in 21 days, escalation to higher authorities, including the HPL Assistant Director level, to bring about a resolution.

- (a) Emergency Phone Support available during evening hours and on Sunday and Holidays
 - (b) Technical support for equipment used to access HALAN services,
 - (c) Training – HALAN will provide participating library staff the necessary training to effectively use the HALAN services to which they subscribe. Training may be performed at a central site or local site or by remote computer services and will be scheduled at the convenience of both HALAN staff and participating library staff.
 - (d) HALAN will provide access to the HALAN Intranet and the HALAN Email List to any staff in participating libraries by request.
 - (e) Server Back-up / Disaster Recovery procedures
6. Occasionally HALAN will apply for grants to begin, expand or enhance library services. All participating libraries will be given the opportunity to participate in HALAN sponsored grants.
7. Digitization Services
- (a) Software, hardware, and personnel to complete digitization projects is available for HALAN member libraries. Hourly rates for scanning and metadata services are outlined in the fee schedule in Addendum D.

B. Individual library services

- 1. If a Member undertakes a special project, either through special funding or a grant award, that Participating Library must notify the Chief of HALAN of their intentions in order to better coordinate any tasks that may impact the system or other Members.
- 2. If less than 50% of full and affiliate member institutions are involved in a special project, then this project will be considered an additional service and a fee will be incurred per the approved fee structure.

C. Pilots for new services

- 1. A "pilot" may be defined by the Board in accordance with the goals and objectives of HALAN. A majority of the Members shall agree that if the pilot is a success, they will also plan to implement.
- 2. A "pilot" project should be defined in the HALAN Technology Plan.

3. For a "pilot" project, the Participating Library designated to pilot shall pay the initial cost of the module, product or equipment.
4. For a "pilot" project, HALAN shall pay the maintenance, customization and other related fees.
5. After the designated period for the "pilot" project, should the HALAN Board determine that the service is not feasible to support, and the Participating Library wishes to continue the service, then the Participating Library shall pay all ongoing costs.

ADDENDUM C—HALAN MEMBERSHIP CRITERIA

The following membership categories are available through HALAN.

Full member: Includes all of the services outlined in Addendum B.

Affiliate Member: Includes partial or limited services. Types of affiliate membership include:

ILS Member: Includes Integrated Library System Services as defined in Addendum B and Customer Support services as they relate to integrated library system services. Network Services may be provided if they are necessary for ILS service.

Public Access Computing Member; Includes Public Access Computing Services and Network Services as defined in Addendum B. Includes Customer Support services as they relate to Public Access Computing Services.

Digitization Member: Includes Digitization Services as defined in Addendum B. Includes Customer Support services as they relate to Digitization Services

Resource Sharing Member: This type of Affiliate Membership would be offered to a Library or Institution that wishes to participate in reciprocal borrowing or online resource purchases. The Partner Member pays the costs to implement the identified service with HALAN.

Additional types of affiliate membership may be added with the approval of the HALAN board.

ADDENDUM D– FEE STRUCTURE

HALAN is a government entity and as such bases its fee structure on a cost recovery government model.

For each of the major services provided by HALAN an estimate of the total HALAN annual cost used for that service will be calculated. These calculations shall serve as the total annual cost for the service.

Integrated Library System fees shall be calculated as the institution's proportionate use of the system based on the average of members' circulation transactions and number of item records. Full members and ILS members will be considered together in the calculation of these fees.

Public Access Computing service fees shall be calculated as the institution's proportion of total number of 48-port switches being managed by HALAN. Full members and Public Access Computing members will be considered together in the calculation of these fees.

Fee calculations will take place every fourth year. Fees increases in year two and year three shall not exceed three percent. With approval of the Board, fees may be re-calculated more often.

Resource Sharing Members shall pay the costs to implement services with HALAN. For services shared among several members, a fee structure that represents each institution's proportionate use of the service will be adopted with approval of the Board.

Digitization members will pay for scanning and metadata creation on an at cost basis. Hosting will be charged as a proportion of the total assets contained in the digital assets management system. This proportion will be applied to the annual vendor fee for the digital assets management system. This fee is waived for full members.

All fees are subject to the approval of the Board as part of the annual budget meeting. Fees may also be approved at called board meeting as needed.

Institutions are responsible for the following costs in addition to HALAN service fees.

- Telecommunication fees associated with Internet access are the responsibility of the member institution. If HALAN is providing network access to the institution, the institution will receive separate billing for telecommunications charges adjusted for e-rate refunds.

- All Locally Owned Equipment is the responsibility of the member institution. HALAN will bill the institution the cost of any equipment it orders for the institution.
- An annual fee for wireless access points equal to 10% of the purchase price of each access point will be charged to libraries subscribing to network services.
- ILS and other products that are not under contract for all libraries and not approved by the Board for purchase for all libraries, may be purchased by an institution at its own expense. Ongoing costs for these products will also be the responsibility of the member institution.
- Except with Board approval, Pilot and "Special Technology Project" costs are the responsibility for the institution conducting the pilot.
- Fees shall be payable as follows:
 - (b) For existing HALAN services or for services that are to commence at the beginning of the Agreement Year, HALAN shall send an invoice reflecting the annual fee to the Participating Library on or about the first day of each Agreement Year. Payment will be made when invoiced but prepayment may be negotiated. A written request to extend payment for more than 30 days may be made to the Director of HPL for approval. Member may not be refunded fees upon withdrawal of membership.
 - (c) Annual fees for new members who become Participating Libraries after the beginning of an Agreement Year or for existing Participating Libraries that request Special Services after the beginning of an Agreement Year shall be pro-rated based on the percentage of time remaining in the Agreement Year.
 - (d) Participating Library shall remit payment on any invoice within thirty days of receipt of the invoice
 - (e) Participating libraries whose actions incur charges to HALAN that are not covered under this contract are responsible for 100% of these charges and any fees or penalties associated with these charges.

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 3

Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 700 at the Lancaster Regional Airport.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 700-120 (956 sqft) for a tenant, Mr. Francis Roberts.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement was reviewed and approved by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this small size Community T-hangar is \$170.00 per month.
- **Public Information** - There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit "A" Lease Agreement
-

Submitted by:

Mark Divita, Airport Manager

RESOLUTION NO. 2013-0X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR NON-COMMERCIAL LEASE FROM BUILDING 700 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the lease listed in Exhibit "A";

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

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

SECTION 2. That the City Manager is hereby authorized to execute said lease agreement.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER Regional AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this _____ day of _____, 20____, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and Francis Roberts, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite **700-120**, located at the Airport, and consisting of approximately 956 square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the _____ day of _____, 20____. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$170.00** per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 11 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

c. In the event the payment is received after the 10th day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

II.

STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

2. **Disabled Aircraft:** LESSEE shall store only the following aircraft on the lease premises under any of the following conditions:

- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.

4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.

5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.

6. **Services Furnished by LESSOR:** LESSOR shall furnish adequate utility power service for night time lighting. LESSOR assumes no liability to LESSEE for failures or interruptions of any and all services or utilities furnished to LESSEE when due to causes beyond the control of LESSOR, including but not limited to floods, fire, and power failures.

7. **Care of Premises by LESSEE:** LESSEE shall keep the leased premises in a safe, neat, clean, and presentable condition at all times and shall promptly repair any damage caused by LESSEE, its officers, agents, employees, or invitees.

8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

a. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

b. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand

any deficiency that may arise by reason of such re-letting.

c. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to LESSEE. Notwithstanding any such re-letting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

11. **Assignment, Encumbrances, and Subletting:** LESSEE shall not assign, pledge, or otherwise encumber this lease or the premises covered thereby. LESSEE shall not sublet the premises or any part thereof, or furnish to any other person any ground space, office space, aircraft storage space, or other right or privilege in or on any Airport property without the prior written consent of the LESSOR's Airport Manager. Said consent shall not be unreasonably withheld. The rental rate paid by the SUBLESSEE shall not be greater than that paid by LESSEE to LESSOR.

It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

12. **Surrender of Premises:** Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage cause by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary

wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

13. **Rules and Regulations:** LESSEE shall faithfully observe and comply with all rules and regulations of LESSOR, including any rules and regulations promulgated by LESSOR'S Airport Manager, not inconsistent with the provisions of this lease. Such rules and regulations shall be communicated by LESSOR'S Airport Manager, in writing, to LESSEE and necessary for the reputation, safety, care, or appearance of the building, or preservation of good order, the operation or maintenance of equipment, or the comfort or safety of other Airport tenants.

14. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 9.

15. **Signs:** LESSEE shall not erect, install, or place any signs on or about the leased premises without the prior written consent and approval of the LESSOR'S Airport Manager.

16. **Ingress and Egress:** LESSEE, its invitees, visitors, and suppliers of materials and services shall have full and free rights of ingress and egress to and from the premises and to and from other Airport buildings subject to rules and regulations of LESSOR and LESSOR'S Airport Manager.

17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster
Lancaster Regional Airport
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

LESSEE: Francis Roberts

238 Dower Rd

Terrell, TX 75160

940-293-7122

FirstFlightone@yahoo.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

IN WITNESS HEREOF, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 4

Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 690-108 (956 sqft) for a tenant, Mr. John Thach.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement was reviewed and approved by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this small size Community T-hangar is \$170.00 per month.
- **Public Information** - There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit "A" Lease Agreement
-

Submitted by:

Mark Divita, Airport Manager

RESOLUTION NO. 2013-0X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR NON-COMMERCIAL LEASE FROM BUILDING 690 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the lease listed in Exhibit "A";

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

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

SECTION 2. That the City Manager is hereby authorized to execute said lease agreement.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER Regional AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this _____ day of _____, 20 _____, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and John Thach, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite **690-108**, located at the Airport, and consisting of approximately 956 square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the _____ day of _____, 20 _____. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$170.00** per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 11 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

c. In the event the payment is received after the 10th day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

II.

STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

2. **Disabled Aircraft:** LESSEE shall store only the following aircraft on the lease premises under any of the following conditions:

- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.

4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.

5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.

6. **Services Furnished by LESSOR:** LESSOR shall furnish adequate utility power service for night time lighting. LESSOR assumes no liability to LESSEE for failures or interruptions of any and all services or utilities furnished to LESSEE when due to causes beyond the control of LESSOR, including but not limited to floods, fire, and power failures.

7. **Care of Premises by LESSEE:** LESSEE shall keep the leased premises in a safe, neat, clean, and presentable condition at all times and shall promptly repair any damage caused by LESSEE, its officers, agents, employees, or invitees.

8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

a. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

b. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand

any deficiency that may arise by reason of such re-letting.

c. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to LESSEE. Notwithstanding any such re-letting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

11. **Assignment, Encumbrances, and Subletting:** LESSEE shall not assign, pledge, or otherwise encumber this lease or the premises covered thereby. LESSEE shall not sublet the premises or any part thereof, or furnish to any other person any ground space, office space, aircraft storage space, or other right or privilege in or on any Airport property without the prior written consent of the LESSOR's Airport Manager. Said consent shall not be unreasonably withheld. The rental rate paid by the SUBLESSEE shall not be greater than that paid by LESSEE to LESSOR.

It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

12. **Surrender of Premises:** Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage cause by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary

wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

13. **Rules and Regulations:** LESSEE shall faithfully observe and comply with all rules and regulations of LESSOR, including any rules and regulations promulgated by LESSOR'S Airport Manager, not inconsistent with the provisions of this lease. Such rules and regulations shall be communicated by LESSOR'S Airport Manager, in writing, to LESSEE and necessary for the reputation, safety, care, or appearance of the building, or preservation of good order, the operation or maintenance of equipment, or the comfort or safety of other Airport tenants.

14. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 9.

15. **Signs:** LESSEE shall not erect, install, or place any signs on or about the leased premises without the prior written consent and approval of the LESSOR'S Airport Manager.

16. **Ingress and Egress:** LESSEE, its invitees, visitors, and suppliers of materials and services shall have full and free rights of ingress and egress to and from the premises and to and from other Airport buildings subject to rules and regulations of LESSOR and LESSOR'S Airport Manager.

17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster
Lancaster Regional Airport
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

LESSEE: John Thach

PO Box 278

Lancaster, TX 75146

214-676-3892

Janetthach@yahoo.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

IN WITNESS HEREOF, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 5

Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 690-114 (956 sqft) for a tenant, Miss Amelia Harlow.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement was reviewed and approved by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this small size Community T-hangar is \$170.00 per month.
- **Public Information** - There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit "A" Lease Agreement
-

Submitted by:

Mark Divita, Airport Manager

RESOLUTION NO. 2013-0X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR NON-COMMERCIAL LEASE FROM BUILDING 690 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the lease listed in Exhibit "A";

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

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

SECTION 2. That the City Manager is hereby authorized to execute said lease agreement.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER Regional AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this _____ day of _____, 20____, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and Amelia Harlow, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite **690-114**, located at the Airport, and consisting of approximately 956 square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the _____ day of _____, 20____. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$170.00** per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 11 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

c. In the event the payment is received after the 10th day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

II.

STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

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- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.

4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.

5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.

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8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

a. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

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any deficiency that may arise by reason of such re-letting.

c. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

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It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

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wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

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17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster
Lancaster Regional Airport
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

LESSEE: Amelia Harlow

5934 Sandhust Ln, Unit 108

Dallas, TX 75206

214-629-0725

aharlow@tcco.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

IN WITNESS HEREOF, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 6

Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 670 at the Lancaster Regional Airport.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 670-112 (1,018 sqft) for a tenant, Mr. Scott Bailey.

Considerations

- **Operational** - The City T-hangar non-commercial lease is used for private aircraft owners.
- **Legal** - The lease agreement was reviewed and approved by the City Attorney.
- **Financial** - Lease rates vary based on size of the hangar. All rates were approved in the City's Master Fee Schedule. The monthly rate for this small size Community T-hangar is \$192.00 per month.
- **Public Information** - There are no public information requirements.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit "A" Lease Agreement
-

Submitted by:

Mark Divita, Airport Manager

RESOLUTION NO. 2013-0X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE CITY OWNED T-HANGAR NON-COMMERCIAL LEASE FROM BUILDING 670 AT LANCASTER REGIONAL AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has aircraft T-hangers available for monthly rental for revenue gain; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the hangar lease pursuant to the lease listed in Exhibit "A";

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

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

SECTION 2. That the City Manager is hereby authorized to execute said lease agreement.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER Regional AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this _____ day of _____, 20 _____, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and Scott Bailey, (LESSEE"), evidences the following:

I.

LESSOR leases to LESSEE, and LESSEE takes from LESSOR, the following described premises located at the Lancaster Regional Airport ("Airport"), in the City of Lancaster, Dallas County, Texas, for and in consideration of the uses and for the terms and the rental hereinafter set forth, and subject and in accordance with the standard terms and provisions below.

1. **Premises:** Hangar Row and Suite **670-112**, located at the Airport, and consisting of approximately 956 square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the _____ day of _____, 20 _____. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$192.00** per month, due and payable in advance on the first day of each month.

- a. All rental payments shall be delivered to LESSOR at the following address:

City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 11 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

c. In the event the payment is received after the 10th day of the month, there shall be added a late charge of ten percent (10%) of the amount due.

d. LESSEE'S agreement to make rental payments shall be a covenant independent of all other covenants herein.

e. LESSOR retains the right to review the monthly rental rates and to make adjustments to said rental rates to reflect the then current market rental rates charged for similar facilities.

5. **Utilities:** Utilities are included in LESSEE's rental payment.

II.

STANDARD TERMS AND PROVISIONS

1. **Prohibited Uses:** LESSEE shall not use or permit the use of the premises or any part thereof for any purpose or purposes other than those set forth herein. LESSEE shall not commit or cause to be committed any waste in or upon the premises or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any other tenant of the building or buildings, or permit the use of the premises for any improper or unlawful purposes. Hazardous activities such as, but not limited to: smoking, painting, doping or the other application of hazardous substances are expressly prohibited. Nothing contained in this Section 1 shall, however, prohibit or limit LESSEE's right to use any apparatus, machinery, equipment or devices necessary or useful to LESSEE in the conduct of its activities on or about the premises.

2. **Disabled Aircraft:** LESSEE shall store only the following aircraft on the lease premises under any of the following conditions:

- a. Aircraft in a current airworthy condition according to Federal Aviation Regulations with a current FAA airworthiness certificate and U.S. or foreign registration,
- b. Aircraft with a current FAA airworthiness certificate and registration in a continuing process of overhaul and/or repair showing monthly progress,
- c. Final assembly of amateur built aircraft in preparation to obtain airworthiness certification.

Restoration or construction of an aircraft shall be completed (and an airworthiness certificate issued for amateur built aircraft) within 5 yrs from the beginning of this lease.

Monthly progress is defined as a major component, subcomponent, major system or subsystem is completed or installed on the aircraft every 30 days with appropriate log entries

made.

Upon request from the Airport Manager, LESSEE shall provide monthly evidence of progress. Evidence includes but is not limited to: visual inspection of aircraft, photographs and log entries.

Should LESSEE sell the aircraft, LESSEE shall have ninety (90) days to acquire an aircraft to house upon the leased premises or LESSEE shall relinquish said premises to LESSOR.

Any exception to forgoing requirements must be approved by LESSOR'S Airport Manager.

3. **Compliance with Applicable Laws:** LESSEE shall comply with all applicable laws, ordinances, rules, regulations, and orders of any Federal, State, and City law governing the conduct of LESSEE'S activities on or about the premises.

4. **Alterations.** LESSEE shall make no structural or electrical changes or alterations, or construct any permanent additions or improvements, or do any work in connection therewith, on or about the premises without the prior written consent of the LESSOR'S Airport Manager, whose decision shall be final, and which consent shall not be unreasonably withheld. Any permanent improvements or additions to the leased premises shall be deemed to be fixtures and title to said improvements or additions shall vest in the LESSOR immediately upon completion of construction or attachment.

5. **Entry and Inspection:** LESSOR shall have the right to enter upon and inspect the premises from time to time during the term hereof, to make any repairs deemed necessary by the LESSOR for the safety, improvement, or preservation of the leased premises, without abatement of rent; provided however, that LESSOR shall not, during the course of any such inspection or repairs, unreasonably interfere with the LESSEE'S use and enjoyment of the premises. In lieu of an airport lock/key, LESSEE shall provide a copy of a key or lock combination to airport office.

6. **Services Furnished by LESSOR:** LESSOR shall furnish adequate utility power service for night time lighting. LESSOR assumes no liability to LESSEE for failures or interruptions of any and all services or utilities furnished to LESSEE when due to causes beyond the control of LESSOR, including but not limited to floods, fire, and power failures.

7. **Care of Premises by LESSEE:** LESSEE shall keep the leased premises in a safe, neat, clean, and presentable condition at all times and shall promptly repair any damage caused by LESSEE, its officers, agents, employees, or invitees.

8. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and expenses incurred in connection therewith) for injuries to persons or for loss or damage to property arising out of or in connection with the negligent or intentional

act or omission of LESSEE, its officers, agents, employees, or invitees related to or association with the use and occupancy of the Leased Premises and airport facilities including, but not limited to, claims or damage related to or associated with the storage or maintenance of LESSEE's aircraft upon Airport, or from injury or damage caused to any person's property by reason of the operations of said aircraft. LESSEE further covenants and agrees that LESSEE shall not hold LESSOR or any of its officers, agents, or employees responsible for any loss to LESSEE'S aircraft, automobile, personal property, parts, or supplies that may be located or stored in, on, or about the Leased Premises, where such loss is caused by Natural Disaster fire, rain, windstorm, hail.

9. **Disclaimer:** LESSEE agrees to accept all facilities and the leased premises in the condition in which they are found. LESSOR disclaims and LESSEE accepts LESSOR'S disclaimer of any warranty, express or implied, of the conditions or fitness for the use of the leased premises.

10. **Default:** The following events shall be deemed to be events of default by LESSEE under this Lease Agreement:

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

Upon the occurrence of any event of default specified above, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

a. Terminate this Lease Agreement in which event LESSEE shall immediately surrender the premises to LESSOR; and if LESSEE fails to do so, LESSOR may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove LESSEE, any other person who may be occupying said premises or any part thereof, and contents therein, including LESSEE'S aircraft, by force if necessary, without being liable for prosecution or any claim of damages therefor; and LESSEE agrees to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to re-let the premises on satisfactory terms or otherwise.

b. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand

any deficiency that may arise by reason of such re-letting.

c. Enter upon the premises, by force if necessary, without being liable for prosecution or any claim of damages therefor and do whatever LESSEE is obligated to do under the terms of this Lease Agreement; and LESSEE agrees to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEE's obligations under this Lease Agreement; and LESSEE further agrees that LESSOR shall not be liable for any damages resulting to LESSEE from such action.

No reentry or taking possession of the premises by LESSOR shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to LESSEE. Notwithstanding any such re-letting or reentry or taking possession, LESSOR may at any time thereafter elect to terminate this Lease Agreement for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall the pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages accruing to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. LESSOR's acceptance of rent following an event of default hereunder shall not be construed as LESSOR's waiver of such event of default. No waiver by LESSOR of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by LESSOR to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The loss or damage that LESSOR may suffer by reason of termination of this Lease Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken following possession. Should LESSOR at any time terminate this Lease Agreement for any default, in addition to any other remedy LESSOR may have, LESSOR may recover from LESSEE all damages LESSOR may incur by reason of such default, including cost of recovering the premises and reasonable attorney's fees expended by reason of default.

11. **Assignment, Encumbrances, and Subletting:** LESSEE shall not assign, pledge, or otherwise encumber this lease or the premises covered thereby. LESSEE shall not sublet the premises or any part thereof, or furnish to any other person any ground space, office space, aircraft storage space, or other right or privilege in or on any Airport property without the prior written consent of the LESSOR's Airport Manager. Said consent shall not be unreasonably withheld. The rental rate paid by the SUBLESSEE shall not be greater than that paid by LESSEE to LESSOR.

It is understood that consent of the LESSOR to any subletting in one instance shall not constitute consent of the LESSOR to any other subletting. Any assignment, sublease, or other such agreements consented to shall be in writing and shall be approved as to form by LESSOR'S City Attorney.

12. **Surrender of Premises:** Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage cause by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary

wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

13. **Rules and Regulations:** LESSEE shall faithfully observe and comply with all rules and regulations of LESSOR, including any rules and regulations promulgated by LESSOR'S Airport Manager, not inconsistent with the provisions of this lease. Such rules and regulations shall be communicated by LESSOR'S Airport Manager, in writing, to LESSEE and necessary for the reputation, safety, care, or appearance of the building, or preservation of good order, the operation or maintenance of equipment, or the comfort or safety of other Airport tenants.

14. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 9.

15. **Signs:** LESSEE shall not erect, install, or place any signs on or about the leased premises without the prior written consent and approval of the LESSOR'S Airport Manager.

16. **Ingress and Egress:** LESSEE, its invitees, visitors, and suppliers of materials and services shall have full and free rights of ingress and egress to and from the premises and to and from other Airport buildings subject to rules and regulations of LESSOR and LESSOR'S Airport Manager.

17. **Chemicals and other Toxic Substances:** No chemicals or other toxic substances shall be stored unless in compliance with adopted Lancaster Regional Airport rules and regulations, as amended, which are incorporated herein as is set forth in full and on file with the City Manager or his/her designee.

18. **Notices:** All legal notices given or required in connection with this lease shall be in writing and shall be sent via Mail or E-Mail to the following persons(s):

LESSOR: City of Lancaster
Lancaster Regional Airport
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146

LESSEE: Scott Bailey

8765 Cleaver Ln

Terrell, TX 75160

972-743-1302

L.SBailey@yahoo.com

19. **Insurance:** LESSEE shall, at its own option, carry its own insurance on its aircraft and other equipment which LESSEE stores in or on the leased premises.

20. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

21. **Entire Agreement:** This agreement constitutes the entire understanding between the parties, and, as of its effective date, supersedes all prior or independent agreements covering the LESSEE'S occupation of the leased premises. Any change or modification hereof shall be in writing, signed by both parties. The parties to this agreement hereby agree and acknowledge that they are the principals to the agreement and have the power, right, and authority to enter into this agreement and are not acting on behalf, or as an agent, of any third party.

22. **Severability:** If any provision of this agreement shall be finally declared void or illegal by a court having competent jurisdiction, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties. Venue governed by Texas law except where exempted by Federal law and Rules and Regulations.

23. **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from or related to the performance of this Agreement shall be in a state district court in Dallas County, Texas.

24. **Captions:** The Captions to the various clauses of this agreement are for informational purposes only and in no way alter the substance of the terms and conditions of this agreement.

25. **Landlord's Lien:** Pursuant to Section 54.021 of the Texas Property Code, LESSOR has a preference lien on the property of the LESSEE or any SUBLESSEE in the building for rent that is due and for rent that is to become due during the current 12 month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

IN WITNESS HEREOF, the parties executed this lease as of the day and year first above written.

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 7

Consider an ordinance approving and adopting rate schedule “RRM” – Rate Corporation, Mid-Tex Division to be in force in the city for a period of time as specified in the rate schedule.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Financially Sound City Government

Background

The City, along with 154 other cities served by Atmos Energy Corporation, Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Atmos Cities Steering Committee (“ACSC” or “Steering Committee”). In 2007, ACSC and Atmos Mid-Tex agreed to implement an annual rate review mechanism for Atmos Mid-Tex, known as the Rate Review Mechanism (“RRM”), as a temporary replacement for the statutory mechanism known as GRIP (the “Gas Reliability Infrastructure Program”). This first RRM tariff expired in 2011, and although ACSC and Atmos Mid-Tex met many times to attempt to reach an agreement on a renewed or replacement tariff, they were unable to do so. Atmos Mid-Tex filed a full rate case in 2012. The resulting rates were approved by the Railroad Commission in December 2012 in G.U.D. No. 10170.

ACSC and the Company reviewed discussions to develop revisions to the RRM tariff, and have reached a tentative agreement on the form of the RRM tariff to be in effect for a four-year period from 2013 to 2017.

The RRM tariff was originally approved by ACSC member cities as part of the settlement agreement resolving the Atmos Mid-Tex 2007 system-wide rate filing at the Railroad Commission.

Considerations

- **Operational** – The purpose of the Ordinance is to approve the RRM tariff (“Attachment A”) that reflects the negotiated RRM process. For the RRM process to continue, cities exercising original jurisdiction must approve a tariff that authorizes the process.
- **Legal** – The ordinance was prepared by ACSC legal counsel.
- **Financial** – The Company has agreed that for the first filing under the revised RRM tariff, there will be no increase to the residential customer charge. Thus, some of the primary benefits of the attached RRM tariff are that it moderates the impact of rate adjustments

residential customers by not changing the residential customer charge for the first RRM period. In subsequent years only 40% of the proposed increase in revenues to the residential class will be recovered through the fixed customer charge, and in no event will the residential customer charge increase by more than \$.50 per month. No such constraints exist under the GRIP process.

- **Public Information** – This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

The Council has the option not to approve the rate tariff. However, if cities do not approve the RRM tariff, the Company has stated that it will reinstitute its annual filings under the GRIP provisions. The anticipated GRIP adjustment for 2013 would be approximately \$5 million higher than the Company anticipates requesting through an RRM filing. Additionally, GRIP rate adjustments would place the entire amount of the Company's requested increase into the customer charge.

Recommendation

Staff recommends approval of the ordinance as presented.

Attachments

- Ordinance
- RRM Tariff

Submitted by:

Aretha Adams, Assistant City Manager

ORDINANCE NO. 2013-XX-XX

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, (“CITY”) APPROVING AND ADOPTING RATE SCHEDULE “RRM – RATE CORPORATION, MID-TEX DIVISION TO BE IN FORCE IN THE CITY FOR A PERIOD OF TIME AS SPECIFIED IN THE RATE SCHEDULE; ADOPTING A SAVINGS CLAUSE; DETERMING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND ACSC LEGAL COUNSEL.

WHEREAS, the City of Lancaster, Texas is a gas utility customer of Atmos Energy Corporation, Mid-Tex Division (“Atmos Mid-Tex” or “the Company”), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee (“ACSC”), a coalition of cities, most whom retain original jurisdiction over the rates and services of Atmos Mid-Tex; and

WHEREAS, in 2007 ACSC member cities and Atmos Mid-Tex collaboratively developed the Rate Review Mechanism (“RRM”) Tariff that allows for an expedited rate review process controlled by cities as a substitute for the legislatively-constructed Gas Reliability Infrastructure Program (“GRIP”); and

WHEREAS, the GRIP mechanism does not permit the City to review rate increases, and constitutes piecemeal ratemaking; and

WHEREAS, the RRM process permits City review of requested rate increases and provides for a holistic review of true cost of service for Atmos Mid-Tex; and

WHEREAS, the initial RRM tariff expired in 2011; and

WHEREAS, ACSC’s representatives have worked with Atmos Mid-Tex to negotiate a renewal of the RRM process that avoids litigation and Railroad Commission filings; and

WHEREAS, the ACSC’s Executive Committee and ACSC’s legal counsel recommend ACSC members approve the negotiated new RRM tariff; and

WHEREAS, the attached Rate Schedule “RRM – Rate Review Mechanism” (“RRM Tariff”) provides for a reasonable expedited rate review process that is a substitute for, and is superior to, the statutory GRIP process; and

WHEREAS, the expedited rate review process as provided by the RRM Tariff avoids piecemeal ratemaking; and

WHEREAS, the RRM tariff reflects the ratemaking standards and methodologies authorized by the Railroad Commission in the most recent Atmos Mid-Tex rate case, G.U.D. No. 10170; and

WHEREAS, the RRM Tariff provides for an annual reduction in Atmos Mid-Tex's requested rate increase of at least \$3 million; and

WHEREAS, the RRM Tariff provides for a lower customer charge than if Atmos Mid-Tex pursued GRIP filings; and

WHEREAS, the attached RRM Tariff as a whole is in the public interest.

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

SECTION 1. That the findings set forth in this Ordinance are hereby in all things approved.

SECTION 2. That the City Council finds that the RRM Tariff, which is attached hereto and incorporated herein as Attachment A, is reasonable and in the public interest, and is hereby in force and effect in the City.

SECTION 3. That all provisions of the ordinances of the City of Lancaster 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 of Lancaster not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

SECTION 5. If any article, paragraph, subdivision, clause or provision of this ordinance or the Lancaster Development Code, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision thereof, or of the Lancaster Development Code, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 6. This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

SECTION 7. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Christopher Felan, Vice President of Rates and Regulatory Affairs for Atmos Mid-Tex Division, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1600, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 1 OF 6

I. Applicability

Applicable to Residential, Commercial, Industrial, and Transportation tariff customers in the Mid-Tex Division of Atmos Energy Corporation ("Company") except such customers within the City of Dallas. This Rate Review Mechanism ("RRM") provides for an annual adjustment to the Company's Rate Schedules R, C, I and T ("Applicable Rate Schedules"). Rate calculations and adjustments required by this tariff shall be determined on a System-Wide cost basis.

II. Definitions

"Test Period" is defined as the twelve months ending December 31 of each preceding calendar year.

The "Effective Date" is the date that adjustments required by this tariff are applied to customer bills. The annual Effective Date is June 1. The 2013 filing Effective Date is October 15, 2013.

Unless otherwise noted in this tariff, the term "Final Order" refers the final order issued by the Railroad Commission of Texas in GUD 10170.

The term "System-Wide" means all incorporated and unincorporated areas served by the Company.

"Review Period" is defined as the period from the Filing Date until the Effective Date.

The "Filing Date" is as early as practicable but no later than March 1 of each year with the exception of 2013, which shall have a Filing Date of July 15, 2013. The last annual Effective Date is June 1, 2017.

III. Calculation

The RRM shall calculate an annual, System-Wide cost of service ("COS") that will be used to adjust applicable rate schedules prospectively as of the Effective Date. The annual cost of service will be calculated according to the following formula:

$$\text{COS} = \text{OM} + \text{DEP} + \text{RI} + \text{TAX} + \text{CD} - \text{ADJ}$$

Where:

OM = all reasonable and necessary operation and maintenance expenses from the

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 2 OF 6

Test Period adjusted for known and measurable items and prepared consistent with the rate making treatments approved in the Final Order. Known and measurable adjustments shall be limited to those changes that have occurred prior to the Filing Date. OM may be adjusted for atypical and non-recurring items. Shared Services allocation factors shall be recalculated each year based on the latest component factors used during the Test Period, but the methodology used will be that approved in the Final Order.

DEP = depreciation expense calculated at depreciation rates approved by the Final Order.

RI = return on investment calculated as the Company's pretax return multiplied by rate base at Test Period end. Rate base is prepared consistent with the rate making treatments approved in the Final Order, except that no post Test Period adjustments will be permitted. Pretax return is the Company's weighted average cost of capital before income taxes. The Company's weighted average cost of capital is calculated using the methodology from the Final Order including the Company's actual capital structure and long term cost of debt as of the Test Period end (adjusted for any known and measurable changes) and the return on equity from the Final Order. However, in no event will the percentage of equity exceed 55%. Regulatory adjustments due to prior regulatory rate base adjustment disallowances will be maintained. Cash working capital will be calculated using the lead/lag days approved in the Final Order. With respect to pension and other postemployment benefits, the Company will record a regulatory asset or liability for these costs until the amounts are included in the next annual rate adjustment implemented under this tariff. Each year, the Company's filing under this Rider RRM will clearly state the level of pension and other postemployment benefits recovered in rates.

TAX = income tax and taxes other than income tax from the Test Period adjusted for known and measurable changes occurring after the Test Period and before the Filing Date, and prepared consistent with the rate making treatments approved in the Final Order.

CD = interest on customer deposits.

ADJ = Downward adjustment to the overall, System-Wide test year cost of service in the amount of \$3,000,000.00, adjusted by a percentage equal to the total percentage increase in base-rate revenue sought pursuant to this tariff.

RATE SCHEDULE:	RRM – Rate Review Mechanism	
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IV. Annual Rate Adjustment

The Company shall provide schedules and work papers supporting the Filing’s revenue deficiency/sufficiency calculations using the methodology accepted in the Final Order. The result shall be reflected in the proposed new rates to be established for the effective period. The Revenue Requirement will be apportioned to customer classes in the same manner that Company’s Revenue Requirement was apportioned in the Final Order. For the Residential Class, 40% of the increase may be recovered in the customer charge. The increase to the Residential customer charge shall not exceed \$0.50 per month in any given year. The remainder of the Residential Class increase not collected in the customer charge will be recovered in the usage charge. The Company will forgo any change in the Residential customer charge with the first proposed rate adjustment pursuant to this tariff. For all other classes, the change in rates will be apportioned between the customer charge and the usage charge, consistent with the Final Order. Test Period billing determinants shall be adjusted and normalized according to the methodology utilized in the Final Order.

V. Filing

The Company shall file schedules annually with the regulatory authority having original jurisdiction over the Company’s rates on or before the Filing Date that support the proposed rate adjustments. The schedules shall be in the same general format as the cost of service model and relied-upon files upon which the Final Order was based. A proof of rates and a copy of current and proposed tariffs shall also be included with the filing. The filing shall be made in electronic form where practical. The Company’s filing shall conform to Minimum Filing Requirements (to be agreed upon by the parties), which will contain a minimum amount of information that will assist the regulatory authority in its review and analysis of the filing. The Company and regulatory authority will endeavor to hold a technical conference regarding the filing within ten (10) calendar days after the Filing Date.

The 2013 Filing Date will be July 15, 2013.

A sworn statement shall be filed by an Officer of the Company affirming that the filed schedules are in compliance with the provisions of this Rate Review Mechanism and are true and correct to the best of his/her knowledge, information, and belief. No testimony shall be filed, but a brief narrative explanation shall be provided of any changes to corporate structure, accounting methodologies, allocation of common costs, or atypical or non- recurring items included in the filing.

VI. Evaluation Procedures

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
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The regulatory authority having original jurisdiction over the Company's rates shall review and render a decision on the Company's proposed rate adjustment prior to the Effective Date. The Company shall provide all supplemental information requested to ensure an opportunity for adequate review by the relevant regulatory authority. The Company shall not unilaterally impose any limits upon the provision of supplemental information and such information shall be provided within seven (7) working days of the original request. The regulatory authority may propose any adjustments it determines to be required to bring the proposed rate adjustment into compliance with the provisions of this tariff.

The regulatory authority may disallow any net plant investment that is not shown to be prudently incurred. Approval by the regulatory authority of net plant investment pursuant to the provisions of this tariff shall constitute a finding that such net plant investment was prudently incurred. Such finding of prudence shall not be subject to further review in a subsequent RRM or Statement of Intent filing.

During the Review Period, the Company and the regulatory authority will work collaboratively and seek agreement on the level of rate adjustments. If, at the end of the Review Period, the Company and the regulatory authority have not reached agreement, the regulatory authority shall take action to modify or deny the proposed rate adjustments. The Company shall have the right to appeal the regulatory authority's action to the Railroad Commission of Texas. Upon the filing of an appeal of the regulatory authority's order relating to an annual RRM filing with the Railroad Commission of Texas, the regulatory authority having original jurisdiction over the Company's rates shall not oppose the implementation of the Company's proposed rates subject to refund, nor will the regulatory authority advocate for the imposition of a third party surety bond by the Company. Any refund shall be limited to and determined based on the resolution of the disputed adjustment(s) in a final, non-appealable order issued in the appeal filed by the Company at the Railroad Commission of Texas.

In the event that the regulatory authority and Company agree to a rate adjustment(s) that is different from the adjustment(s) requested in the Company's filing, the Company shall file compliance tariffs consistent with the agreement. No action on the part of the regulatory authority shall be required to allow the rate adjustment(s) to become effective on June 1. To the extent that the regulatory authority does not take action on the Company's RRM filing by May 31, the rates proposed in the Company's filing shall be deemed approved effective June 1. (2013 filing RRM rate will be effective October 15, 2013 if no action is taken). Notwithstanding the preceding sentence, a regulatory authority may choose to take affirmative action to approve a rate adjustment under this tariff. In those instances where such approval cannot reasonably occur by May 31, the rates finally approved by the regulatory authority shall be deemed effective as of June 1.

RATE SCHEDULE:	RRM – Rate Review Mechanism	
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To defray the cost, if any, of regulatory authorities conducting a review of the Company's annual RRM filing, the Company shall reimburse the regulatory authorities on a monthly basis for their reasonable expenses incurred upon submission of invoices for such review. Any reimbursement contemplated hereunder shall be deemed a reasonable and necessary operating expense of the Company in the year in which the reimbursement is made. A regulatory authority seeking reimbursement under this provision shall submit its request for reimbursement to the Company no later than August 1 of the year in which the RRM filing is made and the Company shall reimburse regulatory authorities in accordance with this provision on or before August 30 of the year the RRM filing is made.

To the extent possible, the provisions of the Final Order shall be applied by the regulatory authority in determining whether to approve or disapprove of Company's proposed rate adjustment.

This Rider RRM does not limit the legal rights and duties of a regulatory authority. Nothing herein shall abrogate the jurisdiction of the regulatory authority to initiate a rate proceeding at any time to review whether rates charged are just and reasonable. Similarly, the Company retains its right to utilize the provisions of Texas Utilities Code, Chapter 104, Subchapter C to request a change in rates. The provisions of this Rider RRM are implemented in harmony with the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105).

The annual rate adjustment process set forth in this tariff shall remain in effect during the pendency of any Statement of Intent rate filing.

VII. Reconsideration, Appeal and Unresolved Items

Orders issued pursuant to this mechanism are ratemaking orders and shall be subject to appeal under Sections 102.001(b) and 103.021, et seq., of the Texas Utilities Code (Vernon 2007).

VIII. Notice

Notice of each annual RRM filing shall be provided by including the notice, in conspicuous form, in the bill of each directly affected customer no later than forty-five (45) days after the Company makes its annual filing pursuant to this tariff. The notice to customers shall include the following information:

- a) a description of the proposed revision of rates and schedules;

RATE SCHEDULE:	RRM – Rate Review Mechanism	
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- b) the effect the proposed revision of rates is expected to have on the rates applicable to each customer class and on an average bill for each affected customer;
- c) the service area or areas in which the proposed rates would apply;
- d) the date the annual RRM filing was made with the regulatory authority; and
- e) the Company's address, telephone number and website where information concerning the proposed rate adjustment be obtained.

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 8

Consider a resolution authorizing the purchase of three (3) Lifepak Monitors/Defibrillators from Physio Control through the federally funded program Resuscitation Outcomes Consortium (ROC) for a total amount not to exceed \$118,573.40.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Healthy, Safe & Vibrant Neighborhoods

Background

The most important piece of equipment carried on the Lancaster Fire Department ambulances is the heart monitor. The Resuscitation Outcomes Consortium (ROC) is a national research program to study cardiac outcomes regarding CPR. As part of the Consortium, the Federal Government has contracted with various vendors for related equipment. The Lifepak/Defibrillator qualifies for the discount under this program.

Considerations

- **Operational** - This unit is essential for operations. The manufacturer no longer makes replacement parts for our existing models.
- **Legal** - The City maintains an executed agreement with ROC and is eligible to receive the equipment discount through the Federal GSA program. Texas law authorizes cooperative agreements to help save time developing specifications and duplication during the bid process.
- **Financial** - Funding is available in the Capital Improvement Fund. Expenditures will not exceed \$118,573.40 and funds will be encumbered at the issuance of the purchase order.
- **Public Information** - Item being considered at a regular meeting of the Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve the purchase as outlined.
2. City Council may reject the resolution.

Recommendation

Staff recommends authorizing the purchase of three (3) Lifepak/Defibrillators from Physio Control for a total amount not to exceed \$118,573.40.

Attachments

- Resolution
 - Quote
-

Submitted by:

Thomas Griffith, Fire Chief

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE PURCHASE OF THREE (3) LIFEPAK MONITORS/ DEFIBRILLATORS FROM PHYSIO CONTROL THROUGH AN AGREEMENT WITH THE FEDERALLY FUNDED PROGRAM RESUSCITATION OUTCOMES CONSORTIUM (ROC) FOR A TOTAL AMOUNT NOT TO EXCEED \$118,573.40; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ISSUE A PURCHASE ORDER PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to purchase new Defibrillators for use on ambulances and utilize the ROC Agreement with Physio Control.

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

SECTION 1. The City Council approves the purchase of three (3) Lifepak Monitors/ Defibrillators from Physio Control through the federally funded program Resuscitation Outcomes Consortium (ROC) in the amount not to exceed one hundred eighteen thousand, five hundred seventy three dollars and forty cents (\$118,573.40). A copy of the quote is attached hereto and incorporated herein as Exhibit A.

SECTION 2. The City Manager or designee is authorized to issue a purchase order.

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 10th day of June, 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



Physio-Control, Inc.
 11811 Willows Road NE
 P.O. Box 97023
 Redmond, WA 98073-9723 U.S.A
 www.physio-control.com
 tel 800.442.1142
 fax 800.732.0956

To: Dee Dee Hilary
 Lancaster Fire Department
 1501 North Dallas Avenue
 Lancaster, TX 75134
 Phone: (214) 227-1813

Quote#: 1-263539199

Rev#: 1
 Quote Date: 05/02/2013
 Sales Consultant: Elizabeth Roberts
 800-442-1142 x 72438
 FOB: Redmond, WA

Terms: All quotes subject to credit approval and the following terms & conditions

Contract: ROC

Exp Date: 07/31/2013

Line	Catalog # / Description	Qty	Price	Unit Disc	Trade-In	Unit Price	Ext Total
1	99577-001257 - LP15 MONITOR/DEFIB, CPR, Pace, to 360j, SPO2/CO/MetHb, 12L GL, NIBP, CO2, Trend, BT THE LIFEPAK 15 IS AN ADAPTIV BIPHASIC FULLY ESCALATING (TO 360 JOULES) MULTI-PARAMETER MONITOR/DEFIBRILLATOR . 2 PAIR QUIK-COMBO ELECTRODES PER UNIT - 11996-000091, TEST LOAD - 21330-001365, IN-SERVICE DVD - 21330-001486 (one per order) , SERVICE MANUAL CD- 21300-008084 (one per order) and SHIP KIT (RC Cable) 41577-000126 INCLUDED. HARD PADDLES, BATTERIES AND CARRYING CASE NOT INCLUDED.	3	\$36,595.00	\$7,319.00	\$0.00	\$29,276.00	\$87,828.00
2	11577-000004 - STATION BATTERY CHARGER AC OPERATION FOR STATIONARY APPLICATIONS, FOR USE WITH THE LI-ION 5.7 AMP BATTERY. INCLUDES AC POWER CORD, MOUNTING BRACKET AND OPERATING INSTRUCTIONS	3	\$1,633.00	\$326.60	\$0.00	\$1,306.40	\$3,919.20
3	21330-001176 - LI-ION BATTERY 5.7 AMP HOUR CAPACITY RECHARGEABLE LITHIUM-ION, WITH FUEL GAUGE	15	\$412.00	\$82.40	\$0.00	\$329.60	\$4,944.00
4	11996-000323 - MASIMO SET RED LNCS PATIENT CABLE - 4 FEET RED LNC-04,PATIENT CABLE,4FT,REF 2055	3	\$196.00	\$39.20	\$0.00	\$156.80	\$470.40
5	11171-000032 - RAINBOW DCI-DC8,ADULT REUSE SENSOR,8FT,REF 2407 RAINBOW DCI-DC8,ADULT REUSE SENSOR,8FT,REF 2407	3	\$844.00	\$168.80	\$0.00	\$675.20	\$2,025.60
6	11171-000033 - RAINBOW DCIP-DC8,PED REUSE SENSOR,8FT,REF 2640 RAINBOW DCIP-DC8,PED REUSE SENSOR,8FT,REF 2640	3	\$844.00	\$168.80	\$0.00	\$675.20	\$2,025.60
7	11160-000001 - NIBP CUFF-REUSEABLE,INFANT	3	\$20.00	\$4.00	\$0.00	\$16.00	\$48.00
8	11160-000003 - NIBP CUFF-REUSEABLE,CHILD	3	\$23.00	\$4.60	\$0.00	\$18.40	\$55.20

Quote#: 1-263539199
 Rev#: 1
 Quote Date: 05/02/2013

Quote Products (continued)

Line	Catalog # / Description	Qty	Price	Unit Disc	Trade-In	Unit Price	Ext Total
9	11160-000005 - NIBP CUFF-REUSEABLE,ADULT	3	\$28.00	\$5.60	\$0.00	\$22.40	\$67.20
10	11160-000007 - NIBP CUFF-REUSEABLE,LARGE ADULT	3	\$31.00	\$6.20	\$0.00	\$24.80	\$74.40
11	11160-000009 - NIBP CUFF- REUSEABLE,X-LARGE ADULT	3	\$46.00	\$9.20	\$0.00	\$36.80	\$110.40
12	11577-000002 - LIFEPAK 15 Basic Carry Case w/ right & left pouches Includes shoulder strap 11577-000001	3	\$276.00	\$55.20	\$0.00	\$220.80	\$662.40
13	11220-000028 - Top Pouch Storage for sensors and electrodes. Insert in place of standard paddles.	3	\$49.00	\$9.80	\$0.00	\$39.20	\$117.60
14	11260-000039 - LP15 Rear Pouch for carrying case	3	\$71.00	\$14.20	\$0.00	\$56.80	\$170.40
15	MC999-001005-5 - POS - 5 YEAR . On-site repair and one inspection per year. Price per unit. Contracts with 4 and 5 year terms must be paid in full up front.	3	\$5,165.00	\$0.00	\$0.00	\$5,165.00	\$15,495.00
16	50999-000118 - ZONE TRAVEL CHARGE: ZONE 2	5	\$75.00	\$0.00	\$0.00	\$75.00	\$375.00

SUB TOTAL \$118,388.40
 ESTIMATED TAX \$0.00
 ESTIMATED SHIPPING & HANDLING \$185.00
GRAND TOTAL \$118,573.40

Pricing Summary Totals	
List Price:	\$144,018.00
Cash Discounts:	- \$25,629.60
Tax + S&H:	+ \$185.00

GRAND TOTAL FOR THIS QUOTE \$118,573.40

**TO PLACE AN ORDER, PLEASE FAX A COPY OF THE QUOTE AND PURCHASE ORDER TO:
800-732-0956, ATTN: REP SUPPORT**

PHYSIO-CONTROL, INC. REQUIRES WRITTEN VERIFICATION OF THIS ORDER. A PURCHASE ORDER IS REQUIRED ON ALL ORDERS \$10,000 OR GREATER BEFORE APPLICABLE FREIGHT AND TAXES. THE UNDERSIGNED IS AUTHORIZED TO ACCEPT THIS ORDER IN ACCORDANCE WITH THE TERMS AND PRICES DENOTED HEREIN. SIGN TO THE RIGHT:

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

NAME

TITLE

DATE

Ref. Code: SS/01656601/1-4CWK4U

Notes:

Taxes, shipping and handling fees are estimates only and are subject to change at the time of order. Shipping and handling applies to ground transport only. Physio-Control will assess a \$10 handling fee on any order less than \$200.00.

Above pricing valid only if all items in quote are purchased (optional items not required).

To receive a trade-in credit, Buyer agrees to return the trade-in device(s) within 30 days of receipt of the replacement device(s) to Physio-Control's place of business or to an authorized Physio-Control representative. Physio-Control will provide instructions for returning the device(s) and will pay for the associated shipping cost.

In the event that trade-in device(s) are not received by Physio-Control within the 30-day window, Buyer acknowledges that this quote shall constitute a purchase order and agrees to be invoiced for the amount of the trade-in discount. Invoice shall be payable upon receipt.

Items listed above at no charge are included as part of a package discount that involves the purchase of a bundle of items. Buyer is solely responsible for appropriately allocating the discount extended on the bundle when fulfilling any reporting obligations it might have.

If Buyer is ordering service, Buyer affirms reading and accepts the terms of the Physio-Control, Inc. Technical Service Support Agreement which is available from your sales representative or <http://www.physio-control.com/uploadedFiles/products/service-plans/TechnicalServiceAgreement.pdf>

TERMS OF SALE

General Terms

Physio-Control, Inc.'s acceptance of the Buyer's order is expressly conditioned on product availability and the Buyer's assent to the terms set forth in this document and its attachments. Physio-Control, Inc. agrees to furnish the goods and services ordered by the Buyer only on these terms, and the Buyer's acceptance of any portion of the goods and services covered by this document shall confirm their acceptance by the Buyer. These terms constitute the complete agreement between the parties and they shall govern any conflicting or ambiguous terms on the Buyer's purchase order or on other documents submitted to Physio-Control, Inc. by the Buyer. These terms may only be revised or amended by a written agreement signed by an authorized representative of both parties.

Pricing

Unless otherwise indicated in this document, prices of goods and services covered by this document shall be Physio-Control, Inc. standard prices in effect at the time of delivery. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services covered by this document. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services covered by this document unless Physio-Control, Inc. receives a copy of a valid exemption certificate prior to delivery. Please forward your tax exemption certificate to the Physio-Control, Inc. Tax Department P.O. Box 97006, Redmond, Washington 98073-9706.

Payment

Unless otherwise indicated in this document or otherwise confirmed by Physio-Control, Inc. in writing, payment for goods and services supplied by Physio-Control, Inc. shall be subject to the following terms:

- Domestic (USA) Sales - Upon approval of credit by Physio-Control, Inc., 100% of invoice due thirty (30) days after invoice date.
- International Sales - Sight draft or acceptable (confirmed) irrevocable letter of credit.

Physio-Control, Inc. may change the terms of payment at any time prior to delivery by providing written notice to the Buyer.

Delivery

Unless otherwise indicated in this document, delivery shall be FOB Physio-Control, Inc. point of shipment and title and risk of loss shall pass to the Buyer at that point. Partial deliveries may be made and partial invoices shall be permitted and shall become due in accordance with the payment terms. In the absence of shipping instructions from the Buyer, Physio-Control, Inc. will obtain transportation on the Buyer's behalf and for the Buyer's account.

Delays

Delivery dates are approximate. Physio-Control, Inc. will not be liable for any loss or damage of any kind due to delays in delivery or non-delivery resulting from any cause beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio-Control, Inc. inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio-Control, Inc. and the Buyer's agreement and the delivery dates shall be extended for the length of such delay.

Inspections and Returns

Claims by the Buyer for damage to or shortages of goods delivered shall be made within thirty (30) days after shipment by providing Physio-Control, Inc. with written notice of any deficiency. Payment is not contingent upon immediate correction of any deficiencies and Physio-Control, Inc. prior approval is required before the return of any goods to Physio-Control, Inc. Physio-Control, Inc. reserves the right to charge a 15% restocking fee for returns. The Physio-Control Returned Product Policy is located at http://www.physio-control.com/uploadedFiles/support/ReturnPolicy_3308529_A.pdf.

Service Terms

All device service will be governed by the Physio-Control, Inc. Technical Services Support Agreement which is available from your sales representative or <http://www.physio-control.com/uploadedFiles/products/service-plans/TechnicalServiceAgreement.pdf>. All devices that are not under Physio-Control Limited Warranty or a current Technical Service Support Agreement must be inspected and repaired (if necessary) to meet original specifications at then-current list prices prior to being covered under a Technical Service Support Agreement. If Buyer is ordering service, Buyer affirms reading and accepts the terms of the Technical Service Support Agreement.

Warranty

Physio-Control, Inc. warrants its products in accordance with the terms of the standard Physio-Control, Inc. product warranty applicable to the product to be supplied. Physio-Control, Inc. warrants services and replacement parts provided in performing such services against defects in accordance with the terms of the Physio-Control, Inc. service warranty set forth in the Technical Service Support Agreement. The remedies provided under such warranties shall be the Buyer's sole and exclusive remedies. Physio-Control, Inc. makes no other warranties, express or implied, including, without limitation, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO-CONTROL, INC. BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.

Patent & Indemnity

Upon receipt of prompt notice from the Buyer and with the Buyer's authority and assistance, Physio-Control, Inc. agrees to defend, indemnify and hold the Buyer harmless against any claim that the Physio-Control, Inc. products covered by this document directly infringe any United States of America patent.

Miscellaneous

a) The Buyer agrees that products purchased hereunder will not be reshipped or resold to any persons or places prohibited by the laws of the United States of America. b) Through the purchase of Physio-Control, Inc. products, the Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products, and the Buyer expressly agrees not to reverse engineer or decompile such products or related software and information. c) The rights and obligations of Physio-Control, Inc. and the Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the State of Washington, United States of America. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorneys fees, shall be reimbursed by the other party.

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 9

Discuss a resolution authorizing the City Manager to execute a North Central Texas Public Works Mutual Aid Agreement relative to the initial Public Works response in the event of an emergency, disaster or catastrophic event.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Healthy, Safe & Vibrant Neighborhoods

Background

In 2012 the City of Lancaster experienced an F2 tornado. The Public Works response was a model for our region. In cooperation with the North Central Texas Council of Government, a regional Public Works response Mutual Aid Agreement has been developed. This Agreement allows participating cities to assist each other in the event of disasters and emergencies. In the event of an incident like a tornado it will allow participating cities to call on each other for resources.

Considerations

- **Operational** - This Agreement increases the resources available during disasters and emergencies.
- **Legal** - This agreement assists in protecting each City from liability during a response. The agreement has been reviewed and approved as to form by the City Attorney.
- **Financial** - This Agreement has no cost for the first 36 hours of assistance provided.
- **Public Information** – This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. Approve the Resolution as presented.
2. Reject the Resolution and reject mutual aid assistance with participating cities.

Recommendation

Staff recommends approving the Resolution.

Attachments

- Mutual Aid Agreement
 - Resolution
-

Submitted by:

Thomas Griffith, Fire Chief

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A NORTH CENTRAL TEXAS PUBLIC WORKS MUTUAL AID AGREEMENT RELATIVE TO THE INITIAL PUBLIC WORKS RESPONSE IN THE EVENT OF AN EMERGENCY, DISASTER OR CATASTROPHIC EVENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in an effort coordinated through the North Central Texas Council of Government (NCTCOG), participating Public Works Departments have established a more formal means of providing Mutual Aid in the event of an emergency, disaster or catastrophic event with the creation of a Public Works Emergency Response Team (PWERT) and through “Mutual Aid Agreements”; and

WHEREAS, the North Central Texas PWERT is a part of the statewide Texas Mutual Aid System and supports local jurisdiction in their response to a catastrophic event by providing critical public works personnel, equipment and materials as needed to facilitate recovery; and

WHEREAS, the Mutual Aid Agreement establishes protocol for parties to provide and obtain assistance for an immediate and integrated public works response for recovery of critical services and infrastructure; and

WHEREAS, the City Council of the City of Lancaster finds it in the best interest of its citizens to authorize its City Manager to execute a North Central Texas Public Works Mutual Aid Agreement relative to the initial public works response in the event of an emergency, disaster or catastrophic event.

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

SECTION 1. That the City Council hereby authorizes the City Manager to execute a North Central Texas Public Works Mutual Aid Agreement, attached hereto and incorporated herein as Exhibit A, relative to the initial public works response in the event of an emergency, disaster or catastrophic event.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

This mutual aid agreement (“Agreement”) is entered into by, between, and among the North Central Texas Participating Local Governments and/or Public/Political Sub-Divisions located wholly or partially within the State of Texas acting by and through their duly authorized officials. The undersigned Participating Local Governments and any and/or Public/Political Sub-Divisions of the State of Texas adopting this agreement upon a formal order of their respective governing bodies as provided therein may be referred to in this Agreement individually as “Party” and collectively as “Parties.” By signing this document, and sending it to the Public Works Emergency Response Team, at an address maintained by the NCTCOG, the agency has indicated that it consents to be a party to this emergency mutual aid agreement, and acknowledges that it is not necessary to receive copies of the agreement from other agencies that are party to such agreement.

RECITALS

WHEREAS, the Parties recognize the vulnerability of the people and communities located within local governments and public subdivisions to damage, injury, and loss of life and property resulting in emergencies, disasters or civil emergencies and recognize that such incidents may present equipment and personnel requirements beyond the capacity of each individual (governmental entity) (Party); and

WHEREAS, the governing officials of the Parties desire to secure for each Party the benefits of Mutual Aid for the protection of life and property in the event of an emergency, disaster or civil emergency or public works emergency; and

WHEREAS, the Parties *that* wish to make suitable arrangements to provide Mutual Aid are so authorized, and make this Agreement pursuant to *all governmental power inherent in home rule and other municipalities and all statutory authority, including, but not limited to, the Interlocal Cooperation Act Chapter 791 of the Texas Government Code); the Texas Disaster Act of 1975 as amended Chapter 418 of the Texas Government Code including the Texas Statewide Mutual Aid System of the Emergency Management Chapter, set out in Subchapter E-1 of Texas Government Code, Section 418.111 et seq, and any amendments to that authority or other authority that may be set out in the constitution of laws of the State of Texas;*

WHEREAS, it is understood that the creation of this Agreement and the Texas Statewide Mutual Aid System (SB11) under Chapter 418 E-1 does not replace or supersede existing mutual aid agreements or interfere with the ability of municipalities to enter into written mutual aid agreements in the future. It is understood that if a written agreement is entered into by governmental entities or municipalities requesting resources, then the terms *of* that agreement control the rights and responsibilities of the participating parties to the extent the agreement provides terms that differ from the Texas Statewide Mutual Aid System.

WHEREAS, it is expressly understood that any mutual aid extended under this Agreement and the operational plan adopted pursuant thereto, is furnished in accordance with the “Texas Disaster Act” and other applicable provision of law and except as otherwise provided by law, that the responsible local official in whose jurisdiction an incident requiring Mutual Aid has occurred shall remain in charge at such incident including the direction of such personnel and equipment provided him/her through the operation of such Mutual Aid Plans;

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

Section 1: Incorporation: The above whereas provisions and statements are incorporated as if written word for word below.

Section 2: Purpose: This Agreement is hereby established to provide planning and operating procedures whereby public works related Agencies may request aid and assistance in the form of personnel, equipment, materials and/or other associated services from other public works related agencies. This agreement allows for better coordination of efforts, identifies available resources and helps ensure that timely aid can be provided.

Section 3: Definitions

- A. "Agency" means any municipal public works agency, township road district, county highway departments, or any Public/Political sub-division that performs a public works function that abides by the provisions as found in this Agreement.
- B. "Administrative Agency" means the entity designated by the Parties to be responsible for maintaining the documents associated with this Agreement including distributing Point of Contact and Resource Inventory information.
- C. "Assisting Party" or "Responding Party" means the agency or organization which has received a request to furnish aid and assistance from another Party and has agreed to provide the same.
- D. "Civil Emergency" means an unforeseen combination of circumstances or the resulting consequences thereof within the geographic limits of a given jurisdiction that calls for immediate action or for which there is an urgent need for assistance or relief to protect the general citizenry.
- E. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, winter storm, biological or health hazards, dam or levee break, drought, explosion, riot,, acts of terrorism and other public calamity requiring emergency action or requiring homeland security activity (as that term is defined in Chapter 421 of the Texas Government Code entitled Homeland Security) that is or likely to be, beyond the control of the services personnel equipment and facilities of a Party that requires assistance under this Agreement, but must be coordinated through the appropriate local accredited/certified Emergency Management Agency coordinator.
- F. "Emergency" means any occurrence or threat thereof, whether natural or caused by man, in war or in peace, which results in substantial injury or harm to the population, or substantial damage to or loss of property.
- G. "Homeland security activity means any activity related to the prevention or discovery of, response to, or recovery from a terrorist attack, natural or man-made disaster, hostile military or paramilitary action, or extraordinary law enforcement emergency.
- H. "Mutual Aid" means providing resources such as personnel, equipment, services and supplies. These resources support typical public works missions or tasks such as: removal of debris, restoration of water/wastewater operations, flood control, infrastructure system repairs, standby power, and damage assessment.

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

- I. “National Incident Management System (NIMS)” means a Presidential directive that provides a consistent nationwide approach that allows federal, state, local and tribal governments as well as private sector and nongovernmental organizations to work together to manage incidents and disasters of all kinds.
- J. “Operational Period” shall mean a period of time beginning at the time of the request for Mutual Aid and lasting no longer than thirty six (36) hours. Typically assistance would be given in Twelve (12) hour shifts for operational efficiencies. It is the intention of this mutual aid to be for assistance in the initial response to the emergency and not part of the long term recovery. If assistance is requested beyond the initial 36 hours, then the requesting agency must work with the responding agency directly and put in place a mutual agreeable contract and payment for services rendered. It is also understood that any agency responding under this mutual aid agreement will not receive any reimbursement for their mutual aid assistance up to the first 36 hours, even if the event becomes a declared emergency by the President. After the first 36 hours repayment shall be provided. It is also understood that any agency for any reason may decline to assist or recall their mutual aid at any time.
- K. “Point of Contact” means a person and/or an agency’s department/office serving as the coordinator or focal point of information dealing with public works emergency response activities.
- L. “Public Works Emergency Response Team” (PWERT) means a working group of Public Works Officials representing their agencies; whose mission is to develop and maintain a region wide network of public works’ related agencies. This teams’ principal purpose is to provide mutual aid response and recovery assistance, to each other, when confronted with natural or man-made emergencies or disasters. This Group is designated as the Administrative Agency to manage this Agreement.
- M. “Requesting Party” means the agency or organization receiving aid and assistance from a Assisting Party.
- N. Public/Political Sub-Division means a basic level of independent local government or quasi-government authorized by Section 52 of the Texas Constitution that typically have a specific or limited purpose including Dallas Fort Worth International Airport, Toll Authorities, independent school districts, water or wastewater districts and improvement and economic development districts and exist separately from general purpose local governments such as county, city or townships.

Section 4: Term

This Agreement shall become effective as to each Party on date of adoption as indicated on the signature page for each Party and shall continue in force and remaining binding on each and every Party for twelve (12) months from the effective date. This Agreement shall renew automatically for a period of one year upon the completion of the initial term and each subsequent term unless such time as the governing body of a Party terminates its participation in this Agreement pursuant to Section 4 of this Agreement. Termination of participation in this Agreement by a Party or Parties shall not affect the continued operation of this Agreement between and among the remaining Parties

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

Section 5: Termination

Any Party may at any time by resolution or notice given to all the other Parties decline to participate in the provision of Public Works Mutual Aid. The Governing Body of a Party shall, by Resolution, give notice of termination of participation in this Agreement and submit a copy of such resolution to the Administrative Agency and all other Parties. Such termination shall become effective thirty (30) days after filing of such notice. The termination by one or more of the Parties of its participation in this Agreement shall not affect the operation of this Agreement as between the other Parties hereto.

Section 6: Responsibility of Parties

Provision of Aid: Each Party recognizes that it may be requested to provide aid and assistance at a time when it is necessary to provide similar aid and assistance to the Party's own constituents. This Agreement shall not be construed to impose any unconditional obligation on any Party to provide aid and assistance. A Party may choose not to render aid and assistance at any time for any reason, or to recall aid that has been deployed at anytime.

Section 7: Request for Assistance: The request for assistance will:

- A. Be made only with a Declaration of a state of Local Civil Emergency or Declaration of Disaster by a Requesting Party pursuant to Section 418.108, Texas Government Code or after a proclamation of a State of Emergency under Section 433.001, Texas Government Code,
- B. Be made only without a Declaration of a state of Local Civil Emergency or Declaration of Disaster if the requesting agency expects to use the resource(s) for less than one operational period or if the declaration of emergency is expected to be issued during the first operational period.
- C. Be made by the highest ranking authority of Requesting Party available at the time of need,
- D. Be made to the highest ranking authority of the Responding Party available at the time of need, and
- E. Specify to the greatest extent possible the nature of the problem requiring assistance and the resources requested.

Section 8: Procedures for Requests and Provision of Mutual Aid: See Attachment 1

Section 9: Cost Limitation

A Requesting Party shall not be required to reimburse a Responding Party for costs incurred during the first Operational Period as defined in Section 2 of this Agreement. A Requesting Party shall be required to reimburse a Responding Party for costs incurred after the first Operational Period.

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

Section 10: Expending Funds:

A Responding Party that performs services or furnishes aid pursuant to this Agreement shall do so with their own current funds. No Party shall have any liability for the failure to expend funds to provide aid hereunder.

Section 11: Insurance

- A. Worker's Compensation Coverage: Each Party shall be responsible for its own actions and those of its employees and is responsible for complying with the Texas Workers' Compensation Act.
- B. Automobile Liability Coverage: Each Party shall be responsible for its own actions and is responsible for complying with the Texas motor vehicle financial responsibility laws.
- C. To the extent permitted by law and without waiving sovereign immunity, each Party shall be responsible for any and all claims, demands, suits, actions, damages, and causes of action related to or arising out of or in any way connected with its own actions and the actions of its personnel in providing Mutual Aid assistance rendered or performed pursuant to the terms and conditions of this Agreement. Each party agrees to obtain general liability and public official's liability insurance, if applicable, or maintain a comparable self-insurance program.

Section 12: Miscellaneous

- A. Entirety: This Agreement contains all commitments and agreements of the Parties with respect to the Mutual Aid to be rendered hereunder during or in connection with an Emergency, Disaster and/or Civil Emergency. No other oral or written commitments of the Parties with respect to mutual aid under this Agreement shall have any force or effect if not contained herein, except as provided in Section 12E below.
- B. Other Mutual Aid Agreements: This Agreement is not intended to replace or conflict with - local mutual aid agreements for other emergency response needs such as fire and police or for the other purposes
- C. Severability: If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provision of the Agreement that can be given effect without the invalid provision, and to this end the provisions of the Agreement are severable.
- D. Validity and Enforceability: If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made as part of the Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirement of the limitations, and so modified, this Agreement shall continue in full force and affect.
- E. Amendment: This Agreement may be amended only by the mutual written consent of the Parties.
- F. Governing Law and Venue: The Laws of the State of Texas shall govern this Agreement. In the event of an Emergency or Disaster physically occurring within the geographical limits of only one county that is a Party hereto, venue shall lie in the county in which the Emergency or Disaster occurred. In the event an Emergency or Disaster physically occurring in more

**NORTH CENTRAL TEXAS PUBLIC WORKS
MUTUAL AID AGREEMENT**

than one county that is a Party thereto, venue shall be determined in accordance with the Texas Rules of Civil Procedure.

- G. Signatories: The PWERT shall be the official repository of original pages of the Parties to this Agreement and will maintain an up-to-date list of those Parties. Each Party will retain a copy of their own originally signed document with an additional individual signature page from their Agency to be filed with the PWERT under this Agreement. *PWERT will maintain contact information from all of the parties and provide for a means of communication whenever there is a need to call for mutual aid. This agreement may be signed in multiple copies, and it is only necessary for the agencies to notify the PWERT and keep them informed of the contact information.*
- H. PWERT – the Administrative Agency, managing this agreement, provides for one membership seat for each participating agency and one alternate seat. The primary seat should be held by a Public Works Official or designee. The alternate seat should be held by a member of the jurisdiction of the Emergency Management Division or designee. The jurisdiction is not required to fill the seats, but, it is strongly recommended, in order to receive information and training for emergency response.

EXECUTED this _____ day of _____, 2013

_____, Texas
(Local Jurisdiction)

By: _____

Printed Name: _____

Title: _____

Attachment 1

PROCEDURES TO USE FOR THE NORTH CENTRAL TEXAS PUBLIC WORKS MUTUAL AID AGREEMENT

Here are the suggested steps for your agency to follow when using the Agreement. Generally if the Emergency Operations Center for your city is activated follow the incident command system and associated communications operations plan to request resources

1. Requesting Agency Steps to Follow:

- A. Assess the situation and determine the resources needed.
- B. Fill out the REQUESTING AGENCY Checklist (Form 1).
- C. Locate agencies included in the agreement **OR** Contact the Public Works Emergency Response Team (PWERT) standby point of contact for assistance to complete the remaining steps.
- D. Call one or more agencies that may have the resources you need.
- E. Fill out a REQUESTING AGENCY MUTUAL AID INFORMATION Form (Form 2).
- F. Send copy of the form to the RESPONDING AGENCY as soon as possible.

2. Responding Agency Steps to Follow:

- A. Make sure you can fulfill the request before providing an answer. Notes: 1) obtain required local authority to deploy the resources 2) providing assistance is voluntary and an agency is not required to fulfill the request if you determine the resources are critical to your operational needs.
- B. Analyze the risk level of the request.
- C. Complete the RESPONDING AGENCY Checklist (Form 3) with the information given by the REQUESTING AGENCY.
- D. Brief your employees and prepare the equipment.
- E. Complete the Employee & Equipment Information Form (Form 4). Provide copies to your responding staff and to the REQUESTING AGENCY.
- F. Dispatch staff to the REQUESTING AGENCY for assistance.

3. Supervision and Control: The responding personnel, equipment and other resources will be under the operational control of the Requesting Agency. These response operations shall be NIMS compliant as well as organized and functioning within an Incident Command System (ICS), Unified Control System (UCS). Direct supervision and control of responding agency's resources shall remain with their designated supervisor(s). The designated supervisor(s) shall: maintain personnel time records, material records and a log of equipment hours and report work progress to the Requesting Agency. The Responding agency's personnel and other resources remain subject to recall by the Responding Agency's authority at any time, subject to reasonable notice to the Requesting Agency.

4. Food, Housing and Self Sufficiency: Unless specifically instructed otherwise, the Responding agency will have the ability to be self-sufficient as practicable from the time of arrival to their designated staging area location to the time of their arrival back at the responding agency's home department. However, the requesting agency may need to provide resources for tasks extending normal supplies. For example, if the required tasks require significant mobile activities and fuel, the Requesting agency should be prepared to augment their gas/diesel supplies.

**PROCEDURES TO USE FOR THE NORTH CENTRAL TEXAS
PUBLIC WORKS MUTUAL AID AGREEMENT**

5. Communications: Unless specifically instructed otherwise, the Requesting Agency shall have the responsibility for coordinating communications between the personnel of the Responding Agency and the Requesting Agency. Responding Agency should be prepared to furnish their own internal communications equipment sufficient to only maintain communications among their respective operating units.

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 10

Consider a resolution of the City of Lancaster, Texas authorizing Dallas County to resell 3119 Danieldale Road, a tax foreclosed property, by public or private sale, to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Tax Code

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Financially Sound City Government

Background

Following a judgment of the District Court of Dallas County, parcels of land were offered for sale at public auction for foreclosure of the tax liens, securing payment of delinquent property taxes, accrued penalty and interest, and court costs. One of these parcels, 3119 Danieldale Road, is in the City of Lancaster. These parcels did not receive sufficient bid as set by law and were struck off to Dallas County in May of 2013.

Dallas County is preparing for the resale of 3119 Danieldale Road, a tax foreclosed property, which is now in the ownership of the taxing authorities. Pursuant to Section 34.05(a) of the Tax Code, Dallas County is requesting the City of Lancaster's consent to sell said property to the highest qualified purchaser, by either public or private sale.

The sale of said property will bring it back onto the City of Lancaster's tax roll, increasing the tax base and often recouping the portions of delinquent taxes due as a result of judgments.

Considerations

- **Operational** – As trustee for the City of Lancaster, Dallas County coordinates the public or private sale of the tax foreclosed property.
- **Legal** – The attached resolution was prepared by Dallas County and has been reviewed and approved as to form.
- **Financial** – The current judgment/strike off amount for the property at 3119 Danieldale Road was \$50,056.34. Following the sale of the property the City will receive a proportionate share of the back taxes. The property will be placed back on the tax rolls and we will begin to receive tax revenue. At this time, the City is receiving no tax revenue from this parcel.

- **Public Information** – Dallas County is responsible for all applicable legal notices required under the Texas Property Code for the public sale of tax foreclosed properties. This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

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

Recommendation

Staff recommends of the resolution as presented.

Attachments

- Resolution
 - PropertyMap
 - Exhibit A
-

Submitted by:

Opal Mauldin Robertson, City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING DALLAS COUNTY TO RESELL TAX FORECLOSED PROPERTY BY PUBLIC OR PRIVATE SALE, TO THE HIGHEST QUALIFIED PURCHASER, AS PROVIDED BY SECTION 34.05 OF THE TEXAS PROPERTY TAX CODE

- WHEREAS,** this matter was briefed to the Lancaster City Council (“City Council”) on Monday, June 10, 2013, wherein the City Council agreed to use this form of Resolution to provide the County of Dallas consent to sell specific properties to the highest qualified purchaser by public or private sale; and
- WHEREAS,** several parcels of land were offered for sale by the Sheriff of Dallas County, Texas, at public auction pursuant to a judgment of the District Court of Dallas County, Texas, for foreclosure of the tax liens securing payment of delinquent property taxes, accrued penalty and interest, and court costs; and
- WHEREAS,** those parcels of land which did not receive a sufficient bid as set by law were struck off to the County of Dallas, the City of Lancaster and Lancaster Independent School District (Taxing Authorities) pursuant to Section 34.01(j) of the Property Tax Code; and
- WHEREAS,** by this resolution, the County of Dallas, as Trustee for itself and the other Taxing Authorities is authorized to resell these struck off parcels of land, which did not receive a sufficient bid as set by law and to execute quitclaim deeds for said parcels conveying the right, title, and interest acquired or held by the City of Lancaster as a party to the judgment foreclosing tax liens, and
- WHEREAS,** the City of Lancaster desires to resell said parcel(s) in an expeditious manner pursuant to Section 34.05 of the Property Tax Code.

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

- Section 1.** The City does hereby provide specific authorization to the County of Dallas to act as Trustee to offer for sale by public or private sale the parcels of land shown in Exhibit “A,” attached hereto and made a part hereof and the Lancaster City Council does hereby consent to the sale of said parcels to the highest purchaser, even if the amount tendered is less than the market value of the land specified in the judgment of foreclosure or the total amount of the judgment against the property in compliance with Section 34.05(i) of the Texas Property Tax Code, or for an amount equal to or greater than its current market value as shown by the most recent certified appraisal role, if the sum of the amount of the judgment plus post-judgment taxes, penalties, and interest owing against the property exceeds the market value in compliance with Section 34.05(j) of the Texas Property Tax Code, and each taxing unit entitled to receive proceeds of the sale consents to the sale for that amount.
- Section 2.** This Resolution shall take effect immediately from and after its passage in accordance with the provisions of the law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 10th day of June 2013.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

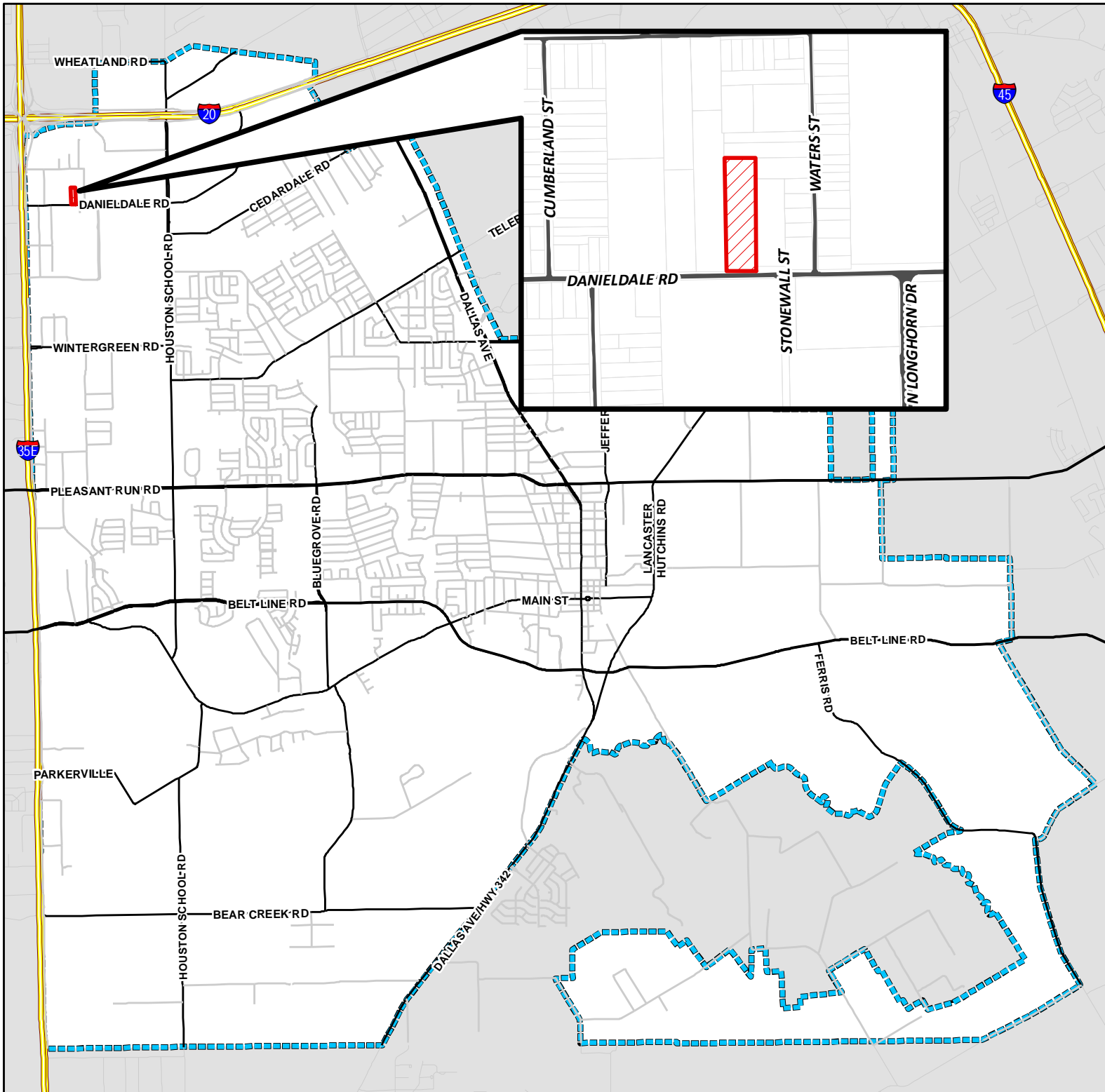
Robert E. Hager, City Attorney

EXHIBIT "A"




TAX FORECLOSURE PROPERTY STRUCK OFF TO THE COUNTY OF DALLAS AS TRUSTEE FOR LANCASTER I.S.D. AND CITY OF LANCASTER

STREET ADDRESS	TAX ACCOUNT #	JUDGMENT CAUSE #	IMPROVED / UNIMP.	LAND SIZE	JUDGMENT/ STRIKE OFF AMOUNT	MARKET VALUE SPECIFIED IN JUDGMENT	2012 DCAD VALUE	TAX YEARS INCLUDED IN JUDGMENT (COUNTY/CITY/ SCHOOL)	DATE OF SHERIFF'S SALE
3119 Danieldale Rd., Lancaster, Texas	65119918010230000	TX-09-31602	U	165' x 632'	\$50,056.34	\$78,600	\$78,600	County: 1987-99, 01-04, 06-09 City: 1989-99,01-04, 06-09 LISD: 1989-99,01-04, 06-09	4/2/13

City of Lancaster
Proposed Tax
Foreclosed Property
3119 Daniieldale Rd

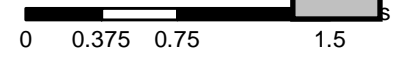


Legend

-  City Limits
-  Parcels
-  Proposed Tax Foreclosed Property



125



LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 11

Consider a resolution approving the terms and conditions of a contract for upgrading the Supervisory Control and Data Acquisition (SCADA) system on the existing City's water infrastructure with Wheco Electric, Inc., for an amount not to exceed \$60,000.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Sound Infrastructure

Background

Supervisory Control and Data Acquisition (SCADA), is a computer system for gathering and analyzing data in our water system. The SCADA system provides critical information and displays it in a logical and organized fashion to maintain and improve the delivery system.

The current SCADA system originally installed in the mid 1990's can no longer be installed or integrated into our new elevated storage tank and SCADA system. During the design and construction phase of the new storage tank; Wheco Electric, Inc. performed a review of our existing SCADA system.

To ensure long term maintenance and compatibility, our current system will be upgraded while minimizing total cost impact.

Considerations

- **Operational** – The upgrade will be managed by the Public Works & Development Services Department. The Water/Wastewater Division will be trained on the upgraded equipment and responsible for daily operations and maintenance.
- **Legal** – Contract documents and resolution were reviewed and approved as to form by the City Attorney.
- **Financial** – The upgrade cost will not exceed \$60,000.
- **Public Information** – This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
 - Contract
-

Submitted by:

Shwetha Pandurangi, P.E., CFM, City Engineer

RESOLUTION NO. 2013-06-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A CONTRACT FOR UPGRADING THE SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) SYSTEM ON THE EXISTING CITY'S WATER INFRASTRUCTURE WITH WHECO ELECTRIC., INC. FOR AN AMOUNT NOT TO EXCEED \$60,000; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, upgrades are needed to the existing Supervisory Control and Data Acquisition (SCADA); and

WHEREAS, the City Council desires to enter into a contract with Wheco Electric, Inc. for the upgrades.

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

SECTION 1. The City Council approves the contract for the SCADA upgrade project with Wheco Electric, Inc. in the amount not to exceed sixty thousand dollars and no cents (\$60,000.00) a copy of which is attached hereto and incorporated herein as Exhibit A and A-1.

SECTION 2. The City Manager is authorized to execute the contracts.

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 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

EXHIBIT A
AGREEMENT FOR PURCHASE, INSTALLATION, AND MAINTENANCE OF
SCADA SYSTEM FOR WATER

This **AGREEMENT FOR PURCHASE, INSTALLATION, AND MAINTENANCE OF CONTROL MICROSYSTEMS SCADAPACK SCADA SYSTEM FOR WATER** (“Agreement”) dated this ____ day of June, 2013, is by and between the City of Lancaster, Texas, a Texas home rule municipality (“City”) and WHECO Controls, a division of WHECO Electric, Inc., a Texas corporation (“Prime”).

RECITALS

WHEREAS, the City had previously installed a Motorola SCADA system at its water and waste water sites; and

WHEREAS, the City has incurred significant costs in maintaining and repairing the Motorola SCADA system; and

WHEREAS, new technology has developed since the time of the initial installation of the Motorola SCADA system, and said new technology offers greater capability and reliability, and the City anticipates that installing this new technology will reduce costs to the City; and

WHEREAS, the City is in the process of constructing a new water tower and desires to install a new SCADA system at that location; and

WHEREAS, the City desires to upgrade the City’s existing SCADA system at the same time the new system is installed; and

WHEREAS, WHECO Controls has been providing the City repair and maintenance services related to its existing SCADA system and has submitted a proposal (the “Proposal”, attached as Exhibit A) for installation of the new Control Microsystems SCADAPack system (the “System”); and

WHEREAS, City and Prime desire to enter an agreement for the purpose of purchasing, installing, and maintaining the System;

NOW, THEREFORE, for and in consideration of the promises, covenants, and conditions set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, City and Prime agree as follows:

1. **The System to be Purchased:** City agrees to purchase, and Prime agrees to sell, install, and maintain, the System and equipment at the locations described in the Proposal. “The System,” as that term is used herein, is more specifically described as including all hardware, firmware, software, and related cables, connectors, equipment, and other accessories and appurtenances described in the Proposal.

2. **Pricing:** City agrees to pay Prime for purchase and installation of the System the amount of **SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00)** (“the Purchase Price”), which price includes the labor, materials and equipment described in the Proposal.
3. **Payment Terms:** City agrees to pay the Purchase Price within thirty (30) days of receipt of an invoice from the Prime.
4. **Installation:** Not later than ten (10) business days after signing of this Agreement, City and Prime shall negotiate and agree on a project schedule. Subject to the occurrence of an event of Force Majeure, the Installation of the Equipment shall be completed no later than one hundred thirty (130) days after the Effective Date of this Agreement.
5. **Incorporation of Proposal:** City and Prime understand and agree that this Agreement expressly incorporates by reference the Proposal. In the event of any irreconcilable conflict between or among this Agreement and the Proposal, unless otherwise provided in this Agreement or agreed later in writing by City and Prime, the order of priority in resolving any such conflict, from greatest to least, shall be this Agreement, then the Proposal.
6. **Insurance and Bonds:** Not later than five (5) business days after the Effective Date, Prime shall provide a certificate of insurance indicating the Prime has in effect the types and amounts of coverage set forth in the Proposal in the form required by this Agreement, as detailed below:
 - (a) Prime shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Prime’s performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; and (iii) statutory Worker’s Compensation Insurance at the statutory limits and Employers Liability covering all of Professional’s employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00.
 - (b) All insurance and certificate(s) of insurance shall contain the following provisions:
 - (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance;
 - (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City of Lancaster that indicates the insurance company will provide to the City at least a thirty (30) prior written notice for

cancellation, non-renewal, and/or material changes of the policy. A specific endorsement must be added to the General liability policy required herein indicating that pollution and/or environmental contamination damage coverage is covered by said policies and/or not excluded by said policies.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service.
 - (d) A certificate of insurance and policy endorsements evidencing the required insurance shall be submitted prior to commencement of services under this Agreement. All required policies shall be endorsed to provide the City with thirty (30) days advance notice of cancellation or material change in coverage.
7. **Warranty Period:** In addition to any warranties that may be provided by manufacturers or vendors related to hardware, firmware, software, or equipment purchased as components of the System, Prime agrees to warrant the labor provided under this agreement for a period of one (1) year, and will warrant all equipment provided under this Agreement for a period of two (2) years, in accordance with Page 2 of the Proposal (“the Warranty Period”). The Warranty Period shall commence upon City’s determination that final acceptance testing of the fully installed System has been completed, which determination shall not be unreasonably withheld or delayed.
8. **Assignment of Third-Party Warranties and Licenses:** To the extent that warranties and/or user licenses obtained by Prime from third parties with respect to any component of the System are initially granted to Prime, Prime hereby assigns or agrees to assign all of Prime’s right, title, and interest in such third-party warranties and user licenses to City.
9. **Confidentiality of Information:** Prime understands and acknowledges that the System will be an integral part of City’s public water and sanitary sewer system which are critical infrastructure systems to the City as defined in Chapter 421 of the Texas Government Code. Prime, for itself, its officers, directors, shareholders, employees, agents, and representatives agrees that all information related to the System, including, but not limited, to, all plans, specifications, drawings, and similar documents relating to the location of all components of the System, shall be held as confidential and not disclosed to any third party except with the express written consent of City or as otherwise required by law. In the event disclosure of such confidential information to a third party is required in order for Prime to perform this Agreement, such third party must execute a non-disclosure agreement in form and substance approved by City’s city attorney prior to disclosure of the information to said third-party. In addition to the information related to the System, this Section 10 shall also relate to any and all information obtained by Prime about City’s water and/or sanitary sewer systems during Prime’s performance of this Agreement. Prime shall notify City not later than two (2) business days after receipt of a request of any request from a third party not involved in the purchase, installation, and/or maintenance of the System for information about the System covered by this Section 10.

10. **Notice:** Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If to City:

City of Lancaster, Texas
Attn: City Manager
211 N. Henry
Lancaster, Texas 75146

With a copy to:

City Engineer
700 E. Main Street
Lancaster, Texas 75146

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If to Prime:

WHECO Controls,
A Division of WHECO Electric, Inc.
Attn: Kent Meyerhoffer, President
8501 Jacksboro Hwy.
Fort Worth, Texas 76135

With a copy to:

Notice shall be deemed to have been given (i) if by hand delivery, at the time of delivery, or (ii) if mailed, seventy-two (72) hours after the deposit of same in any United States mail post office box in the state to which the notice is addressed or ninety-six (96) hours after the deposit in any post office in the state other than the state to which the notice is addressed, postage paid, addressed as set forth above. The addresses and addressees for the purpose of this section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

11. **Entire Agreement.** This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.
12. **Assignment.** The Prime may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Prime to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

13. **Successors and Assigns.** Subject to the provisions regarding assignment, 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.
14. **Governing Law.** The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and 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.
15. **Amendments.** This Agreement may be amended by the mutual written agreement of the parties.
16. **Severability.** 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 any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
17. **Independent Contractor.** It is understood and agreed by and between the parties that the Prime in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Prime pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Prime shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.
18. **Right-of-Access.** The Prime shall not enter onto private property without lawful right-of-access to perform the required surveys, or other necessary investigations. The Prime will take reasonable precautions to minimize damage to the private and public property in the performance of such surveys and investigations. Any right-of-access to public or private property shall be obtained in accordance with the Scope of Services.
19. **Effective Date:** This Agreement shall become effective upon signing by the authorized representatives of the parties hereto (“the Effective Date”).

SIGNED AND AGREED by the parties hereto on the dates set forth below.

CITY OF LANCASTER, TEXAS

WHECO Controls, a Division of
WHECO Electric, Inc

By: _____
Opal Mauldin Robertson, City Manager

By: _____
Kent Meyerhoffer, President
WHECO Controls

Date: _____

Date: _____

ATTEST:

Dolle Downe, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibit A - 1

City of Lancaster

SCADA Upgrade Proposal

Equipment:

Programmable Logic Controllers (PLC) - Control Microsystems:

SCADAPack 334 w/Ethernet communications for the following sites:

Belt Line Elevated Storage Tank, Pleasant Run Elevated Storage Tank

Pleasant Run valve vault, Dallas Avenue valve vault

(New Elevated Storage Tank will have SCADAPack 334 furnished under separate contract)

SCADAPack 357 w/Ethernet communications for the following sites:

Bonnie View Pump Station, Ames Pump Station #1

Ames Pump Station #2,

SCADAPack 330 for Field Interface Unit (FIU),

existing backup FIU (not being used) is not included in proposal

Radios – Freewave 900MHz spread spectrum Ethernet radios at all sites

New 120/24VDC Power Supplies for all sites

New radio whip and polyphasor lightning surge suppressor, coax and connectors as required.

New yagi directional antennas, and omni for the top of the elevated storage tank, 200' coax to feed omni antenna on top of elevated storage tank. Based on topo study, installing an omni at the top of the elevated storage tank and utilizing as a repeater will eliminate all the recurring communication issues

New backpan for each RTU enclosure w/terminal blocks and interposing relays as required to interface with existing field equipment

New 350VA UPS for each remote site

WHECO Remote Access (WRA) Service for one year with Remote Programming Device (RPD) included

Proposed timing once order is received:

1 day 2 men to do preliminary investigation to confirm I/O points and gather data for drawings 6-8 weeks complete panel drawing, procure equipment, build panels, program system and test communications/polling

1 day 2 men to install coax and accessories to top of EST for repeater

1 day testing/training at WHECO offices prior to deployment

1 day conversion 4- 2 man crews one day to install and have system running

2 days 2men on site to complete system check out

Total estimated time frame from receipt of order to completion – 130 days

Not included in the proposal:

Any maintenance, repair or replacement of field equipment found to be defective during the upgrade

Any equipment of service not specifically itemized above

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 12

Consider an ordinance amending the Lancaster Code of Ordinances Chapter 22, Article 22.04, Speed Regulations, Section 22.04.003 by increasing the maximum prima facie speed limit on a certain portion of Houston School Road from 35 mph to 45 mph.

This request supports the City Council 2012-2013 Policy Agenda.

Goal: Sound Infrastructure

Background

The City of Lancaster has completed the Houston School Road reconstruction project. The Houston School Road Project, a partnership project between Dallas County and the City of Lancaster between Pleasant Run Road and Wheatland Road has been repaved and widened to a 6-lane concrete roadway. The roadway was designated to accommodate higher speeds once the roadway was complete.

Currently, as per City Ordinance No. 2009-06-16, the posted speed limit on Houston School Road is as follows in accordance with the attached Exhibit A:

Section 1 (Houston School Road) : From its point of intersection with Pleasant Run Road to a point 200 feet north of its point of intersection with Wintergreen Road is **35 mph**.

Section 2 (Houston School Road) : From a point 200 feet north of its intersection with Wintergreen Road to a point 100 feet north of its point of intersection with Ames Road is **35 mph**.

Section 3 (Houston School Road) : From a point 100 feet north of its intersection with Ames Road to its point of intersection with Duncanville Wheatland Road is **45 mph**.

Section 4 (Houston School Road): From its point of intersection with Belt Line Road to its point of intersection with Pleasant Run Road is **45 mph**.

A speed study was conducted. The total recorded volumes indicated that the mode speed for this study is 45 mph. Based on the traffic study results, staff is proposing to change the posted speed to 45 mph along Houston School Road between Pleasant Run Road and 100 feet north of its intersection with Ames Road (Sections 1 & 2).

Considerations

- **Operational** – The speed change is warranted as per the traffic study.
- **Legal** – Ordinance and Speed study have been reviewed and approved as to form by the City Attorney.
- **Financial** – There are no financial implications from this project.
- **Public Information** – There are no public information requirements.

Options/Alternatives

1. City Council may approve the ordinance as presented.
2. City Council may reject the ordinance.

Recommendation

Staff recommends approval of the ordinance as presented.

Attachments

Ordinance
Attachment 1 – Exhibit A

Submitted by:

Shwetha Pandurangi, P.E., CFM, City Engineer

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE LANCASTER CODE OF ORDINANCES OF THE CITY OF LANCASTER, TEXAS, CHAPTER 22, ARTICLE 22.04, SPEED REGULATIONS, SECTION 22.04.003 BY INCREASING THE MAXIMUM PRIMA FACIE SPEED LIMIT ON A CERTAIN PORTION OF HOUSTON SCHOOL ROAD AS DESCRIBED HEREIN FROM 35 MPH TO 45 MPH; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ERECT THE APPROPRIATE SIGNAGE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Article 22.04 provides for the regulation of speed limits on streets and roadways within the City; and,

WHEREAS, the City has caused a speed limit study to be conducted of Houston School Road from its point of intersection with Pleasant Run Road to a point 100 feet north of its intersection with Ames Road which indicated that the posted speed limit should be increased to 45 miles per hour; and

WHEREAS, the City has determined that Chapter 22, Article 22.04 should be amended by amending Section 22.04.003 by increasing the maximum prima facie speed limit on Houston School Road, as described herein, from 35 miles per hour to 45 miles per hour.

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

SECTION 1. That Chapter 22 of the Lancaster Code of Ordinances be, and the same is, hereby amended by amending Article 22.04, Section 22.04.003 by increasing the maximum prima facie speed limit on a portion of Houston School Road as described herein, which shall read as follows:

“ARTICLE 22.04 SPEED REGULATIONS”

.....

Sec. 22.04.003 Speed limits on specific streets

.....

<i>Street</i>	<i>Extent</i>	<i>Speed (mph)</i>
.....
Greene Road	From its point of intersection with Lancaster-Hutchins Road to its point of intersection with the eastern Lancaster City limits.	40
Houston School Road	From its point of intersection with Pleasant Run Road to a point 200 feet north of its point of intersection with Wintergreen Road.	45
Houston School Road	From a point 200 feet north of its intersection with Wintergreen Road to a point 100 feet north of its point of intersection with Ames Road.	45
Houston School Road	From a point 100 feet north of its intersection with Ames Road to its point of intersection with Duncanville Wheatland Road.	45
.....”

SECTION 2. That the City Manager or designee is hereby directed to erect or cause to be erected appropriate signage giving notice of the speed limits and parking regulations established herein and such provision shall not be effective unless such signs or markings are in place at the time of an alleged offense.

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 amended, 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. If any article, paragraph or subdivision, clause or provision of this Ordinance shall be adjudged invalid or held unconstitutional, 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 invalid or unconstitutional.

SECTION 5. This Ordinance shall take effect immediately from and after the publication of its caption, as the law in such cases provides.

DULY PASSED by the City Council of the City of Lancaster, Texas, on the 10th day of June, 2013.

APPROVED:

MARCUS E. KNIGHT, MAYOR

ATTEST:

DOLLE K. DOWNE, CITY SECRETARY

APPROVED AS TO FORM:

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

City of Lancaster
 Houston School Rd
 Speed Zone Map



Legend

City Limits

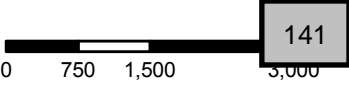
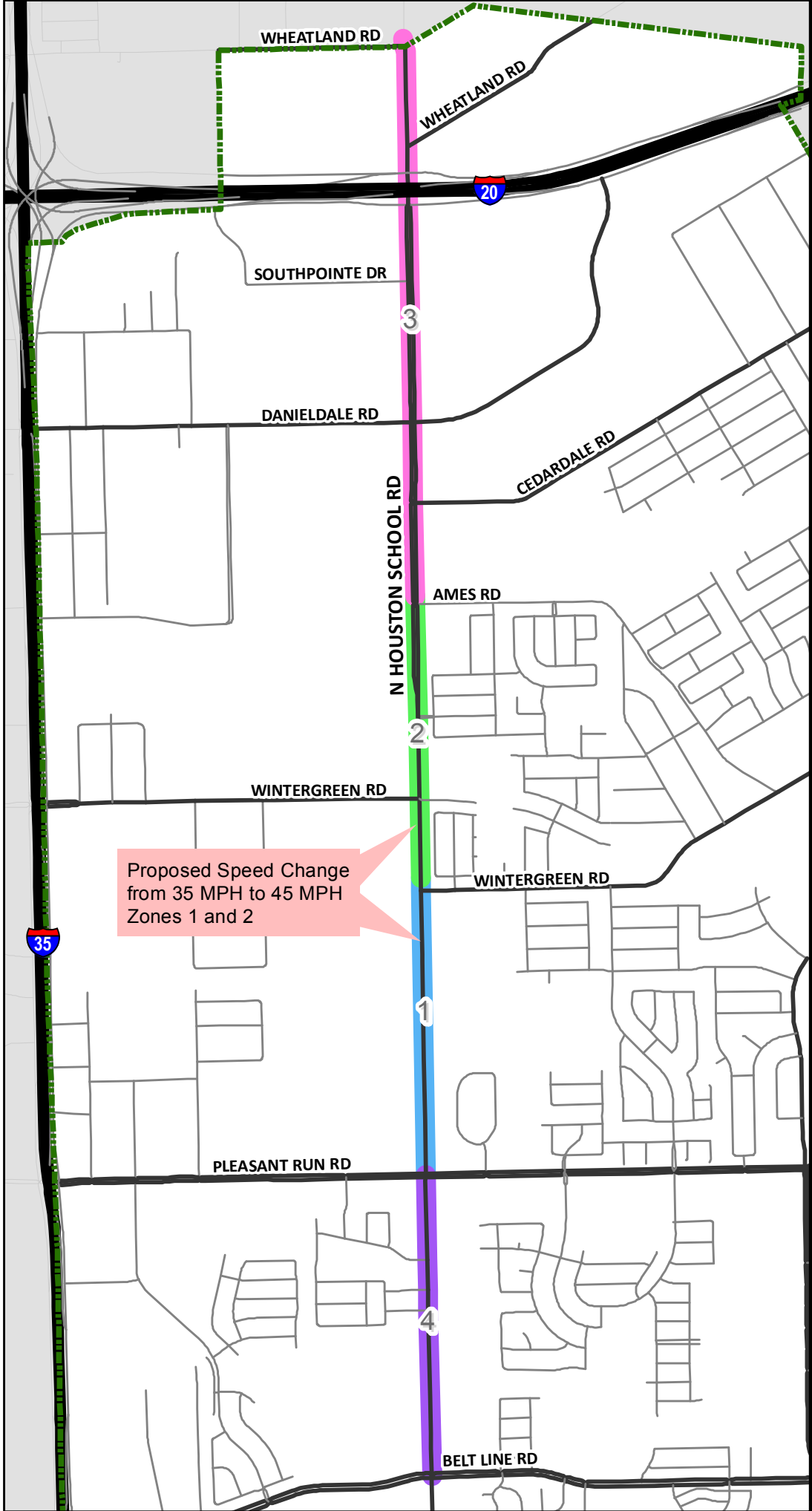
Speed Zones

Zone #

- 1
- 2
- 3
- 4

Zone	Speed
1	35 MPH
2	35 MPH
3	45 MPH
4	45 MPH

Proposed Speed Change
 from 35 MPH to 45 MPH
 Zones 1 and 2



LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 13

Consider a resolution authorizing the purchase of a shade structure from USA Shade & Fabric Structures, Inc. through an Interlocal Agreement with BuyBoard (Contract #346-10) for the Texas Parks and Wildlife Department (TPWD) Grant Project #50-000413 in an amount not to exceed \$96,000.

This request supports the City Council 2012-2013 Policy Agenda.

Goal 2: Quality Development

Goal 3: Healthy, Safe & Vibrant Neighborhoods

Background

The shade structure is part of the amphitheater package. Northstar Construction, Inc., the contractor for the amphitheater, will install the piers/footings as designed for this structure. USA Shade & Fabric Structures, Inc. will assemble and install the shade structure.

Considerations

- **Operational** - The City of Lancaster will operate and maintain the facilities constructed.
- **Legal** - The City maintains an executed Interlocal Agreement with BuyBoard. Texas law authorizes cooperative agreements to help save time developing specifications and duplication during the bid process. The City Attorney has reviewed the contract documents.
- **Financial** – Funding for the amphitheater is included in the 50/50 match grant through the Texas Parks and Wildlife Department.
- **Public Information** – This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution as presented.

Attachments

- Resolution
 - Contract
-

Submitted by:

Sean Johnson, Director of Parks, Recreation and Library Services

RESOLUTION NO. 2013-06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE AWARD OF BID FOR A CUSTOM AMPHITHEATER STRUCTURE TO USA SHADE & FABRIC STRUCTURES, INC., IN AN AMOUNT NOT TO EXCEED \$96,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

- WHEREAS,** the purchase and installation is partially funded through the Texas Parks and Wildlife Department (TPWD) Grant Project #50-000413; and,
- WHEREAS,** the City Council of the City of Lancaster desires to utilize an Interlocal Agreement to purchase a custom amphitheater structure through the BuyBoard Contract # 346-10; and,
- WHEREAS,** the City Council of the City of Lancaster desires to contract for a shade structure at the Community Park Amphitheater.

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

- Section 1. The City Council hereby authorizes the award of bid of a custom amphitheater structure to USA Shade & Fabric Structures, Inc., in an amount not to exceed \$96,000.00; pursuant to the contract attached hereto and incorporated herein by reference as Exhibit "A".
- Section 2. The City Manager of the City of Lancaster, Texas, is hereby authorized to execute the contract.
- 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 10th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster, Texas

Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and USA Shade & Fabric Structures, Inc., (hereinafter referred to as the "Contractor") for construction of Lancaster Community Park Amphitheater Shade Structure (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

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

1.2. THE CONTRACT DOCUMENTS

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

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

1.3 ENTIRE AGREEMENT

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

1.4 NO PRIVACY WITH OTHERS

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

1.5 INTENT AND INTERPRETATION

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

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

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

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

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

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

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

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

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

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

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

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

ARTICLE II: THE WORK

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

2.2 WORK

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

Lancaster Community Park Amphitheater Shade Structure

The project consists of the construction of a shade structure over the amphitheater at Community Park

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

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than forty-five (45) working days from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

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

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

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

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

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

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

3.2 SUBSTANTIAL COMPLETION

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

3.3 TIME IS OF THE ESSENCE

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

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of \$96,000.00.

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

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

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

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

5.2 PAYMENT PROCEDURE

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

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

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

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

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

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

5.3 WITHHELD PAYMENT

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

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

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

5.4 UNEXCUSED FAILURE TO PAY

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

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

5.5 SUBSTANTIAL COMPLETION

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

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

5.6 COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

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

ARTICLE VI: THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

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

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

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

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

6.2 RIGHT TO STOP WORK

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

6.3 OWNER'S RIGHT TO PERFORM WORK

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

ARTICLE VII: THE CONTRACTOR

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

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

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

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

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

7.4 WARRANTY

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

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

7.6 SUPERVISION

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

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

NAME	FUNCTION

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

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

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

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

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

7.10 CLEANING THE SITE AND THE PROJECT

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

7.11 ACCESS TO WORK AND INSPECTIONS

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

7.12 INDEMNITY AND DISCLAIMER

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

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

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

7.13 NONDISCRIMINATION

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

7.14 PREVAILING WAGE RATES

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

7.15 JOB SITE SAFETY PRECAUTIONS

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

7.16 WARNING DEVICES AND BARRICADES

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

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

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

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

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

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

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

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

8.2 ARCHITECT'S ADMINISTRATION

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

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

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

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

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

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

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

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

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

8.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

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

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

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

8.4 FIELD ORDERS

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

8.5 MEDIATION

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

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

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

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

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

9.2 AWARD OF SUBCONTRACTS

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

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

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

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

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

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

10.2 CHANGE ORDER DEFINED

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

10.3 CHANGES IN THE CONTRACT PRICE

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

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

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

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

10.4 MINOR CHANGES

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

10.5 EFFECT OF EXECUTED CHANGE ORDER

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

10.6 NOTICE TO SURETY; CONSENT

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

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.1 UNCOVERING WORK

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

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

11.2 CORRECTING WORK

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

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

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

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

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

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

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

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

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

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

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

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

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

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

12.2.1.4

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

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

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

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

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

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

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

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

12.2.2 FOR CAUSE

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

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

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

ARTICLE XIII: INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

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

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

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

13.2 TYPES AND AMOUNTS OF INSURANCE

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

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

13.2 INSTALLATION FLOATER

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

13.3 Builders Risk

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

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

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

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

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

13.4 ADDITIONAL INSURED / PROJECT INFORMATION

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

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

13.5 WRITTEN NOTIFICATION

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

13.6 PREMIUMS AND ASSESSMENTS

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

13.7 CERTIFICATE OF INSURANCE

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

13.8 PRIMARY COVERAGE

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

13.9 WORKER'S COMPENSATION INSURANCE COVERAGE

13.9.1 The Contractor shall:

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

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

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

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

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

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

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

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

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

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

Required Workers' Compensation Coverage

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

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

14.2 GOVERNING LAW

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

14.3 SUCCESSORS AND ASSIGNS

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

14.4 SURETY BONDS

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

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

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

14.5 SEVERABILITY

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

14.6 AMENDMENTS

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

14.7 NOTICES

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

EXECUTED in single or multiple originals, this 10th day of June, 2013.

CITY OF LANCASTER

USA Shade & Fabric Structures, Inc.

Opal Mauldin-Robertson, City Manager

Type/Print Name and Title

ATTEST:

8505-A Chancellor Row
Dallas, TX 75247

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 14

Consider election of a Mayor Pro Tempore.

This request supports the City Council 2012-2013 Policy Agenda.

City Charter Provision

Background

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

Options/Alternatives

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

Recommendation

No staff recommendation. This matter is at Council's discretion.

Attachments

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

Submitted by:

Dolle K. Downe, City Secretary

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

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

SECTION 3.03 Compensation

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

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

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

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

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

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

(B) The City Council shall elect a Mayor Pro Tem and a Deputy Mayor Pro Tem at the first meeting as provided herein.

(C) The Mayor Pro-Tem shall be a Councilmember elected by the City Council at the first regular meeting after each election of Councilmembers and/or Mayor. The Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor, and in this capacity shall have the rights conferred upon the Mayor.

(D) The Deputy Mayor Pro-Tem shall be a Councilmember elected by the City Council at the first regular meeting after each election of Councilmembers and/or Mayor. The Deputy Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor and Mayor Pro-Tem, and in this capacity shall have the rights conferred upon the Mayor.

SECTION 3.06 Vacancies, Forfeiture and Filling of Vacancies

(A) The office of a Councilmember or the Mayor shall become vacant upon his/her death, resignation, forfeiture of, or removal from office by any manner authorized by law.

(B) Any person on the City Council who ceases to possess the required qualifications for office or who is convicted of a felony or is convicted of violating any State laws regulating conflicts of interest of municipal officers shall forfeit his/her office. Every forfeiture shall be declared and enforced by the City Council.

(C) If there is a vacancy in the office of Mayor, a new Mayor shall be elected as provided by state law.

(D) A vacancy in the office of any Councilmember shall be filled by special election in accordance with the TEXAS ELECTION CODE. If the vacated office is that of Mayor Pro-Tem (or Deputy Mayor Pro-Tem), the City Council shall elect a new Mayor Pro-Tem (or Deputy Mayor Pro-Tem) at the next regular meeting.

(E) Vacancies filled by special election shall be for the remainder of the term that was vacated.

SECTION 3.07 Duties and Powers of the City Council

(A) The City Council shall have all powers necessary and incident to the proper discharge of the duties imposed upon it and is hereby invested with all powers necessary to carry out the terms of this Charter; it being intended that the City Council and Mayor shall have and exercise all powers enumerated in this Charter or implied thereby and all powers that are or hereafter may be granted to municipalities by this Charter, the Constitution or laws of the State of Texas.

(B) Any member of the City Council shall have the unabridged right to place an item on the agenda of a duly convened meeting of the Council; nothing contained in this Charter shall be construed to limit or circumscribe such right.

(C) During each calendar year, the City Council shall undertake one (1) annual review of the performance of the City Manager in writing. The City Manager shall be responsible for

LANCASTER CITY COUNCIL

Agenda Communication

June 10, 2013

Item 15

Consider election of a Deputy Mayor Pro Tempore.

This request supports the City Council 2012-2013 Policy Agenda.

City Charter Provision

Background

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

Options/Alternatives

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

Recommendation

No staff recommendation. This matter is at Council's discretion.

Submitted by:

Dolle K. Downe, City Secretary