



**NOTICE OF SPECIAL WORK SESSION AND  
SPECIAL MEETING AGENDA  
LANCASTER CITY COUNCIL  
MUNICIPAL CENTER CITY COUNCIL CHAMBERS  
211 N. HENRY STREET, LANCASTER, TEXAS**



**Thursday, November 19, 2020 - 7:00 PM**

**While the Mayor may be physically present at City Hall, the other Councilmembers will attend via video or audio link due to the COVID-19 emergency situation.**

**IMPORTANT NOTICE: Due to the COVID-19 (coronavirus) state of emergency and consistent with the Governor's Order regarding modifications to the Texas Open Meetings Act ("TOMA"), and executive orders regarding the public will not be admitted to the physical meeting location.**

**Please click the link below for forms:**

<https://www.lancaster-tx.com/1413/Notice-Regarding-Public-Participation>

**Please click the link below to join the webinar:**

<https://us02web.zoom.us/join/register/tZErcOuhrTspHtb6c3ZsbectfOfsvZZNA0i7>

**The meeting will be broadcast live via video at the following address:**

<http://www.lancaster-tx.com/324/Watch-Meetings>

**7:00 P.M. SPECIAL MEETING:**

**CALL TO ORDER**

**PUBLIC TESTIMONY:**

At this time citizens who have pre-registered before the call to order will be allowed to speak on consent or action item on the agenda, with the exception of public hearings, for a length of time not to exceed three minutes. Anyone desiring to speak on an item scheduled for a public hearing is requested to hold their comments until the public hearing on that item.

**CONSENT AGENDA:**

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

1. Consider a resolution approving the terms and conditions of the Texas Department of Transportation (TxDOT) Grant for the Routine Airport Maintenance Program.
2. Consider a resolution approving the terms and conditions of the 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds Sharing and Fiscal Agency Agreement between the City of Lancaster and the County of Dallas, Texas to provide funds to prevent and control crime and to improve the criminal justice system.



3. Consider a resolution approving payment to QKB Inc. in the amount of three hundred thousand dollars and zero cents (\$300,000.00) for the provision of emergency sewer & water line repair services for an eight-inch (8") sanitary sewer line repair and eight-inch (8") water main repair.
4. Consider a resolution approving the terms and conditions of an agreement with Reynolds Asphalt & Construction Company through the utilization of an Interlocal Agreement with the City of Grand Prairie for the reconstruction of Bear Creek Road between South Houston School Road and Bluegrove Road (Phase II) in an amount not to exceed nine hundred five thousand eight hundred ninety-six dollars and zero cents (\$905,896.00).
5. Consider a resolution approving the terms and conditions of an agreement with Reynolds Asphalt & Construction Company through the utilization of an Interlocal Agreement with the City of Grand Prairie for the reconstruction of West Main Street between North Houston School Road and South Houston School Road Phase II in an amount not to exceed three hundred sixty-six thousand ninety-seven dollars and thirty-two cents (\$366,097.32).
6. Consider a resolution approving the terms and conditions of an agreement with Reynolds Asphalt Company through the utilization of an Interlocal Agreement with the City of Grand Prairie for the reconstruction of East 5th Street between North Dallas Avenue and Jefferson Street in an amount not to exceed one hundred twenty thousand twenty-seven dollars and ninety-six cents (\$120,027.96).

## **ADJOURN SPECIAL MEETING**

### **7:10 P.M. SPECIAL WORK SESSION:**

#### **CALL TO ORDER**

1. Receive a presentation from a representative of Texas Coalition for Affordable Power, Inc. (TCAP).
2. Receive a presentation regarding the FY 2020/2021 One-Time Expenditures for city facilities and equipment.
3. Discuss the Code of Ordinances Article 6 Building Regulations, Sec. 6.03.002 Commencing work without permit and requirements used to remove work constructed without a permit.
4. Receive a presentation and discuss establishing the City of Lancaster Legislative Priorities for the 87th Session of the Texas Legislature.
5. Discuss and receive an update on the fourth quarter of Fiscal Year (FY) 2019/2020 operations and management of Countryview Golf Course.
6. Receive a presentation and discuss the Quarterly Financial Report for the fourth quarter of FY 2019/2020 for the period ending September 30, 2020.



7. Discuss the report of City Council Five-Year Goals and Strategies established during the annual City Council Strategic Planning Session June 14 and June 15, 2019, for the fourth quarter of Fiscal Year 2019/2020.

## **ADJOURNMENT**

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EXECUTIVE SESSION: The City Council reserve the right to convene into executive session on any posted agenda item pursuant to Section 551.071(2) of the Texas Government Code to seek legal advice concerning such subject.

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ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

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

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

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

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

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### **Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on November 16, 2020 @ 7:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**



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Sorangel O. Arenas  
City Secretary



## LANCASTER CITY COUNCIL

### City Council Special Meeting

1.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Sound Infrastructure

**Submitted by:** Kellen Benbrook, Airport Manager

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### **Agenda Caption:**

Consider a resolution approving the terms and conditions of the Texas Department of Transportation (TxDOT) Grant for the Routine Airport Maintenance Program.

### **Background:**

The Routine Airport Maintenance Program (RAMP) is a 50/50 match grant program designed by TxDOT for smaller Texas airports to assist with routine maintenance requirements. Lancaster Regional Airport has fully participated in and benefited from this program in past years. This grant program supplements airport expenditures in the maintenance of the airport by defraying fifty percent (50%) of the cost.

### **Operational Considerations:**

Utilization of the RAMP grant has assisted with the routine maintenance and general upkeep on the city-owned T-hangers, repairs to airfield lighting, and pavement repairs. Multiple taxi-lane pavement repairs have been made utilizing RAMP grant funds. The fiscal year 2020 RAMP grant is planned to be used for routine maintenance.

### **Legal Considerations:**

The resolution has been approved as to form by the City Attorney.

### **Public Information Considerations:**

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

### **Fiscal Impact:**

The City is eligible to receive up to fifty thousand dollars (\$50,000). The 50/50 match will be reimbursed based on expenditures up to \$50,000.

### **Options/Alternatives:**

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



**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

Exhibit A

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## **RESOLUTION NO.**

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

**WHEREAS**, the Texas Department of Transportation provides fifty percent (50%) matching grants under the Routine Airport Maintenance Program; and

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

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

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

**SECTION 1.** The City Council hereby approves the terms and conditions of the grant agreement for the FY2021 Routine Airport Maintenance Program, by and between the City of Lancaster, Texas, and the Texas Department of Transportation, attached hereto and incorporated herein by reference as "Exhibit A".

**SECTION 2.** The City Manager of the City of Lancaster, Texas is authorized to execute said grant agreement.

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

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

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19<sup>th</sup> day of November 2020.



**ATTEST:**

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

**APPROVED:**

\_\_\_\_\_  
Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

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



**TEXAS DEPARTMENT OF TRANSPORTATION  
GRANT FOR ROUTINE AIRPORT MAINTENANCE PROGRAM  
(State Assisted Airport Routine Maintenance)**

**TxDOT Project ID: M2118LNCA**

**Part I - Identification of the Project**

TO: The City of Lancaster, Texas

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

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

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

The project is for **airport maintenance** at the LANCASTER - LANCASTER RGNL Airport.

**Part II - Offer of Financial Assistance**

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

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

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

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



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

Work shall be accomplished by August 31, 2021, unless otherwise approved by the State.

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

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

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

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

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

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

4. The Sponsor specifically agrees that it shall pay any project costs which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount B) as stated in Paragraph II-1.



5. Scope of Services may be accomplished by State contracts or through local contracts of the Sponsor as determined appropriate by the State. All locally contracted work must be approved by the State for scope and reasonable cost. Reimbursement requests for locally contracted work shall be submitted on forms provided by the State and shall include copies of the invoices for materials or services. Payment shall be made for no more than 50% of allowable charges.

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

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

### **Part III - Sponsor Responsibilities**

1. In accepting this Grant, if applicable, the Sponsor guarantees that:
  - a. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State in connection with this Grant; and
  - b. the Airport or navigational facility which is the subject of this Grant shall be controlled by the Sponsor for a period of at least 20 years; and
  - c. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Grant; and
  - d. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
  - e. through the fence access shall be reviewed and approved by the State; and
  - f. it shall not permit non-aeronautical use of airport facilities without prior approval of the State; and



- g. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and
- h. all fees collected for the use of the airport shall be reasonable and nondiscriminatory. The proceeds from such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility; and
- i. an Airport Fund shall be established by resolution, order or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or another revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent grant or loan, Sponsor has complied with the requirements of this subparagraph; and
- j. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and
- k. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State.
- l. mowing services will not be eligible for state financial assistance. Sponsor will be responsible for 100% of any mowing services.



2. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting claim or liabilities which might be imposed on the State as the result of those activities by the Sponsor, the Sponsor's agents or employees.
3. The Sponsor's acceptance of this Offer and ratification and adoption of this Grant shall be evidenced by execution of this Grant by the Sponsor. The Grant shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport.

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

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



#### **Part IV - Nomination of the Agent**

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.
2. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:
  - a. accept, receive, and deposit with the State any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;
  - b. enter into contracts as necessary for execution of scope of services;
  - c. if State enters into a contract as Agent: exercise supervision and direction of the project work as the State reasonably finds appropriate. Where there is an irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor or any service provider, the State shall issue a written order which shall prevail and be controlling;
  - d. receive, review, approve and pay invoices and payment requests for services and materials supplied in accordance with the State approved contracts;
  - e. obtain an audit as may be required by state regulations; the State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
  - f. reimburse sponsor for approved contract maintenance costs no more than once a month.

#### **Part V - Recitals**

1. This Grant is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party.
2. It is the intent of this grant to not supplant local funds normally utilized for airport maintenance, and that any state financial assistance offered under this grant be in addition to those local funds normally dedicated for airport maintenance.



3. This Grant is subject to the applicable provisions of the Transportation Code, Chapters 21 and 22, and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Grant or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
  - a. Of primary importance to the State is compliance with the terms and conditions of this Grant. If, however, after all reasonable attempts to require compliance have failed, the State finds that the Sponsor is unwilling and/or unable to comply with any of the terms of this Grant, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to this Grant, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to this Grant, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Grant null and void, or (5) any other remedy available at law or in equity.
  - b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Grant, or for enforcement of any of the provisions of this Grant, is specifically set by Grant of the parties in Travis County, Texas.
4. The State reserves the right to amend or withdraw this Grant at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.
5. This Grant constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.
6. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.



## **Part VI - Acceptances**

### **Sponsor**

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

The City of Lancaster, Texas

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*Sponsor*

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*Sponsor Signature*

City Manager

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*Sponsor Title*

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*Date*



### **Acceptance of the State**

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

STATE OF TEXAS

TEXAS DEPARTMENT OF TRANSPORTATION

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*Signature*

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*Title*

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*Date*



**Attachment A**

**Scope of Services**  
**TxDOT Project ID: M2118LNCA**

<b>Eligible Scope Item</b>	<b>Estimated Costs Amount A</b>	<b>State Share Amount B</b>	<b>Sponsor Share Amount C</b>
<b>GENERAL MAINTENANCE</b>	\$100,000.00	\$50,000.00	\$50,000.00
<b>TOTAL</b>	\$100,000.00	\$50,000.00	\$50,000.00

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*Sponsor Signature*

**City Manager**

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*Sponsor Title*

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*Date*

GENERAL MAINTENANCE: As needed, Sponsor may contract for services / purchase materials for routine maintenance / improvement of airport pavements, signage, drainage, AWOS systems, approach aids, lighting systems, utility infrastructure, fencing, herbicide / application, sponsor owned and operated fuel systems, hangars, terminal buildings and security systems; professional services for environmental compliance, approved project design. Special projects to be determined and added by amendment.

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



## CERTIFICATION OF AIRPORT FUND

TxDOT Project ID:

M2118LNCA

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

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*Sponsor Signature*

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**City Manager**

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*Sponsor Title*

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*Date*



### **Certification of State Single Audit Requirements**

I, \_\_\_\_\_, do certify that the City of Lancaster, Texas, will comply with all requirements of the State of Texas Single Audit Act if the City of Lancaster, Texas, spends or receives more than the threshold amount in any grant funding sources during the most recently audited fiscal year. And in following those requirements, the City of Lancaster, Texas, will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold in grant receivables or expenditures, please submit a letter indicating that your entity is not required to have a State Single Audit performed for the most recent audited fiscal year.

\_\_\_\_\_  
*Sponsor Signature*

\_\_\_\_\_  
**Director of Finance**

\_\_\_\_\_  
*Sponsor Title*

\_\_\_\_\_  
*Date*



## DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

TxDOT Project ID: M2118LNCA

The City of Lancaster, Texas, designates,

, Kellen Benbrook, Airport Manager as the Sponsor's authorized  
(Name, Title)

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

\_\_\_\_\_  
*Sponsor Signature*

City Manager

\_\_\_\_\_  
*Sponsor Title*

\_\_\_\_\_  
*Date*

## DESIGNATED REPRESENTATIVE

Kellen Benbrook

\_\_\_\_\_  
*First Name, Last Name*

Airport Manager

\_\_\_\_\_  
*Title*

950 Ferris Road

Lancaster, TX 75146

\_\_\_\_\_  
*Address*

972-227-5721

\_\_\_\_\_  
*Phone Number*

kbenbrook@lancaster-tx.com

\_\_\_\_\_  
*Email Address*



## LANCASTER CITY COUNCIL

### City Council Special Meeting

2.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

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

**Submitted by:** Charley Miller, Assistant Police Chief

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### **Agenda Caption:**

Consider a resolution approving the terms and conditions of the 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds Sharing and Fiscal Agency Agreement between the City of Lancaster and the County of Dallas, Texas to provide funds to prevent and control crime and to improve the criminal justice system.

### **Background:**

This item is for consideration to approve the 2020 JAG Program Funds Sharing and Fiscal Agency Agreement. This agreement will allow the Lancaster Police Department to be eligible to receive a grant in the amount of \$14,038.00 through the Dallas County Justice Assistance Grant ("JAG"). Pursuant to the Sharing Funds Agreement, the City of Lancaster shall transfer the grant administration fee of \$4,211.40 to Dallas County. An additional amount of \$687.86 must also be transferred to the fiscal agent, the City of Dallas.

### **Operational Considerations:**

Approval of this agreement will provide grant funding from Dallas County JAG for the purchase of body cameras, in an amount of \$9,138.74 after administration and fiscal agent fees.

### **Legal Considerations:**

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

### **Public Information Considerations:**

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

### **Options/Alternatives:**

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

### **Recommendation:**

Staff recommends approval of the resolution, as presented.

### **Attachments**

Resolution

JAG Agreement

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE 2019 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FUNDS SHARING AND FISCAL AGENCY AGREEMENT FOR THE SHARING OF FUNDS BETWEEN THE CITY OF LANCASTER AND THE COUNTY OF DALLAS, TEXAS; TO PROVIDE FUNDS THROUGH DALLAS COUNTY JUSTICE ASSISTANCE GRANT ("JAG"); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Part E of Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Edward Byrne Memorial Justice Assistance Grant Program (the "JAG Program") authorize the Department of Justice's Bureau of Justice Assistance (the "BJA") to make funds (the "JAG Funds") available to units of local government in order to support a broad range of activities to prevent and control crime and to improve the criminal justice system; and

**WHEREAS**, the County and the Cities are eligible for 2019 JAG Program Funds and have been certified by the Department of Justice Bureau of Justice Assistance (BJA) as a disparate jurisdiction; and

**WHEREAS**, for the purposes of simplifying the application process, the JAG Program permits the chief executive officer of one of the eligible units of local government in the disparate jurisdiction to submit a joint application for JAG Funds on behalf of the other eligible units of local governments within that jurisdiction and to act as the fiscal agent for those local governments in administering the JAG Funds; and

**WHEREAS**, certified disparate jurisdictions must reach an agreement regarding the sharing of JAG Funds prior to submission of the JAG Program application; and

**WHEREAS**, the County and the Cities agree and acknowledge that as a certified disparate jurisdiction, they must reach an agreement regarding the sharing of JAG Funds prior to submitting a JAG application with the BJA; and

**WHEREAS**, the County and the Cities hereby agree to name a fiscal agent to administer and distribute the JAG Funds and to designate a share of each jurisdiction's JAG Funds for administrative costs to be paid to the fiscal agent named below, prior to submission of the joint application for JAG Funds to the BJA; and

**WHEREAS**, the County and the Cities wish to name Dallas as the fiscal agent to administer and distribute the JAG Funds pursuant to the JAG Program; and

**WHEREAS**, a unit of local government may transfer up to ten percent (10%) of its allocation of JAG Funds for costs associated with administering the JAG Funds to the fiscal agent; and

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of the parties, that the undertaking will benefit the public, and that the share of the JAG Funds to each jurisdiction fairly compensates the parties for their respective functions under this Agreement.

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

**SECTION 1.** The Agreement by and between the City of Lancaster and Dallas County, Texas, attached hereto 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.** The City Manager of the City of Lancaster, Texas is hereby authorized to execute said Agreement.

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

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of November, 2020.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Clyde C. Hairston, Mayor



**APPROVED AS TO FORM:**

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David T. Ritter, City Attorney



**GMS Application # 2020-H8434-TX-DJ  
2020 EDWARD BYRNE MEMORIAL  
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FUNDS SHARING AND FISCAL AGENCY AGREEMENT**

**THIS AGREEMENT** (the “Agreement”), is made and entered into by and between the following parties:

The County of Dallas, Texas (the “County”) located at County Administration Building, 2nd Floor, 411 Elm Street, Dallas, Texas 75202, political body recognized as a legal subdivision of the State of Texas pursuant to Article XI, Section 1 of the Texas Constitution; and

The City of Balch Springs, Texas (“Balch Springs”), located at City Hall, 13503 Alexander Road, Balch Springs, Texas 75181, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Carrollton, Texas (“Carrollton”), located at City Hall, 1945 East Jackson Road, Carrollton, Texas 75006, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Dallas, Texas (“Dallas”), located at City Hall, 1500 Marilla Street, Dallas, Texas 75201, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of DeSoto, Texas (“DeSoto”), located at City Hall, 211 East Pleasant Run Road, Suite A, DeSoto, Texas 75115, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution;

The City of Duncanville, Texas (“Duncanville”), located at City Hall, 203 East Wheatland Road, Duncanville, TX 75116, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Garland, Texas (“Garland”), located at City Hall, 200 North Fifth Street, 4th Floor, Garland, Texas 75040, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Grand Prairie, Texas (“Grand Prairie”), located at City Hall, 317 College Street, Grand Prairie, Texas 75050, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and



The City of Irving, Texas (“Irving”), located at City Hall, 825 West Irving Boulevard, Irving, Texas 75060, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Lancaster, Texas (“Lancaster”), located at City Hall, 211 North Henry Street, Lancaster, Texas 75146, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Mesquite, Texas (“Mesquite”), located at City Hall, 757 North Galloway Avenue, Mesquite, Texas 75149, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Richardson, Texas (“Richardson”), located at City Hall, 411 West Arapaho, Richardson, Texas 75080, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution.

The aforementioned Cities shall be referred to collectively in this Agreement as the “Cities.”

The County and Cities that are signatories to this Agreement are the only parties to this Agreement.

#### **W I T N E S S E T H:**

**WHEREAS**, Part E of Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Edward Byrne Memorial Justice Assistance Grant Program (the “JAG Program”) authorize the Department of Justice’s Bureau of Justice Assistance (the “BJA”) to make funds (the “JAG Funds”) available to units of local government in order to support a broad range of activities to prevent and control crime and to improve the criminal justice system; and

**WHEREAS**, the County and the Cities are eligible for 2020 JAG Program Funds and have been certified by the BJA as a disparate jurisdiction; and

**WHEREAS**, for the purposes of simplifying the application process, the JAG Program permits the chief executive officer of one of the eligible units of local government in the disparate jurisdiction to submit a joint application for JAG Funds on behalf of the other eligible units of local governments within that jurisdiction and to act as the fiscal agent for those local governments in administering the JAG Funds; and

**WHEREAS**, certified disparate jurisdictions must reach an agreement regarding the sharing of JAG Funds prior to submission of the JAG Program application; and



**WHEREAS**, the County and the Cities agree and acknowledge that as a certified disparate jurisdiction, they must reach an agreement regarding the sharing of JAG Funds prior to submitting a JAG application with the BJA; and

**WHEREAS**, the County and the Cities hereby agree to name a fiscal agent to administer and distribute the JAG Funds and to designate a share of each jurisdiction's JAG Funds for administrative costs to be paid to the fiscal agent named below, prior to submission of the joint application for JAG Funds to the BJA; and

**WHEREAS**, the County and the Cities wish to name Dallas as the fiscal agent to administer and distribute the JAG Funds pursuant to the JAG Program; and

**WHEREAS**, a unit of local government may transfer up to ten percent (10%) of its allocation of JAG Funds for costs associated with administering the JAG Funds to the fiscal agent; and

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of the parties, that the undertaking will benefit the public, and that the share of the JAG Funds to each jurisdiction fairly compensates the parties for their respective functions under this Agreement; and

**WHEREAS**, on September 26, 2019, the United States District Court for the Northern District of Illinois issued a permanent injunction against the Department of Justice's imposition of the challenged immigration-related grant conditions for FY 2017, 2018, 2019, and all future grant years, and as a result, the Department of Justice is permanently enjoined from imposing the challenged conditions upon all U.S. Conference of Mayors (USCM) members that have been allocated, have applied for, or have been awarded Byrne JAG funds for FY 2017, 2018, 2019, and all future grant years; and

**WHEREAS**, as a result of this permanent injunction, USCM members, which includes the City of Dallas, that administer funds to subrecipients do not need to enforce the enjoined conditions, Chief Legal Officer (CLO) certification requirements, or Department of Homeland Security (DHS) questions requirements on those subrecipients, regardless of whether the subrecipients are USCM members; and

**WHEREAS**, the Department of Justice advises that USCM members that administer funds to subrecipients should provide sufficient notice to subrecipients about the enjoined conditions in the event that the conditions are reinstated later by the appellate court, and they have been included in this Agreement, and

**WHEREAS**, USCM members that are subrecipients are eligible to receive awards without the enjoined conditions being enforced. The City of Dallas, therefore, is not required to enforce the enjoined conditions, CLO certification requirements, or DHS questions requirements, on



subrecipients that are USCM members, and USCM members that are subrecipients do not need to submit any of the CLO certifications or submit answers to DHS questions.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

## **SECTION 1. PURPOSE**

This Agreement shall set forth the following: (A) the nature of the relationship between the County and the Cities and Dallas as fiscal agent for the County and the Cities; (B) the parties' reporting, legal, and audit obligations; (C) the amount of JAG Funds initially allocated by the BJA to the County and the Cities (the "Initial Allocations"); (D) the amount of the Initial Allocations of the JAG Funds to be transferred from the Cities to the County; (E) the allocation of JAG Funds for each jurisdiction *after* the transfer of a portion of the Initial Allocations of JAG Funds from the Cities to the County (the "Adjusted Allocations"); (F) the amount of the grant administration fees to be paid to Dallas as the fiscal agent for both the County and the Cities; (G) the allocation of JAG Funds for the County and the Cities *after* the grant administration fee has been deducted from the Adjusted Allocations (the "Final Allocations"); and (H) other rights and responsibilities of Dallas, the County, and the Cities with regard to Dallas' application for, administration of, and distribution of the JAG Funds on behalf of the County and the Cities.

## **SECTION 2. FISCAL AGENT**

A. Dallas as Fiscal Agent. The County and the Cities do hereby agree that Dallas shall act as the fiscal agent for purposes of applying for, administering, and distributing the JAG Funds on behalf of both the County and the Cities. In consideration for Dallas acting as the fiscal agent for purposes of the JAG Program, the County and the Cities, save Dallas, each agree to pay Dallas seven percent (7%) of their Adjusted Allocations for costs associated with administering the JAG Funds. Dallas shall allocate greater than seven percent (7%) of its Adjusted Allocation toward administration; provided, however, the total contribution of Adjusted Allocations toward grant administration, including Dallas' contribution, shall not exceed ten percent (10%) of the total allocation to the parties' disparate jurisdiction. Dallas further agrees to prioritize the expenditure of the grant administration fees to include the following activities: distributing the JAG Funds, monitoring the award, submitting reports to the BJA (including performance measures and program assessment data), and providing ongoing assistance to the County and the Cities as subrecipients of the JAG Funds.

B. No Additional Funds. The County and the Cities agree that Dallas has no obligation to provide funds to the County and the Cities from any source other than the JAG Program and in any amount other than the Final Allocation of JAG Funds for each party as set forth in this



Agreement regardless of whether the JAG Funds are sufficient to fully accomplish the priorities set forth in Section 2.A above. In the event a portion of the JAG grant administration fee remains upon completion of the project set forth in this Agreement, as determined by Dallas, Dallas may expend such funds on other eligible projects under the JAG Program at Dallas's sole discretion.

### **SECTION 3. REPORTING, LEGAL, AND AUDIT REQUIREMENTS**

#### **A. Reports.**

(1) Quarterly Reports. The County and the Cities agree to provide Dallas with quarterly financial and programming reports no later than eighteen (18) days after the last day of the calendar quarter that demonstrate the appropriate use and management of the JAG Funds in conformance with the JAG Program and the BJA guidelines.

(2) Semi-Annual Reports. The County and the Cities agree to provide Dallas with semi-annual progress reports in conformance with the JAG Program and the BJA guidelines.

B. Legal Requirements. The County and the Cities agree to act in accordance with the Edward Byrne Memorial Justice Assistance Grant (JAG) Program Fiscal year (FY) 2020 Local Assistance Application, all Office of Justice Programs financial guidelines and the Mandatory Award Terms and Conditions, and all of the requirements of the JAG Program guidance, including but not limited to: Administrative Funds, Disparate Certification, Prohibited and Controlled Uses, Compliance with Applicable Federal Laws, Body-Worn Camera (BWC) purchases, Body Armor, DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database, Interoperable Communications, Non-Supplanting of State and Local Funds; Civil Rights Compliance; Anti-Lobbying Act; Financial and Government Audit Requirements, includes Single Audit Act Requirements; National Environmental Policy Act (NEPA); DOJ Information Technology Standards; Compliance with Office of Justice Programs Financial Guide; and Government Performance and Results Act (GPRA); Federal Funding Accountability and Transparency Act (FFATA) of 2006; and the Uniform Administrative Requirements, Cost Principles, and Audits Requirements of Federal Awards, particularly, those set out at 2 CFR 200.303 and 2 CFR 200.205.

C. Award Terms and Conditions. Cities and County shall comply with the award terms and conditions, and other legal requirements, including but not limited to Office of Management and Budget (OMB), Department of Justice (DOJ), or other federal regulations which will be included in the award and are incorporated by reference into the award and into this Agreement, including, but not limited to, compliance with 8 U.S.C §1373, 1644 and related requirements regarding immigration requests from the Department of Homeland Security, except as these requirements are modified by the permanent injunction issued September 26, 2019, by the United States District Court for the Northern District of Illinois against the Department of Justice's



imposition of the challenged immigration-related grant conditions for FY 2017, 2018, 2019, and all future grant years.

D. Audit Requirements. The County and the Cities shall maintain records to demonstrate proper expenditure of JAG Program Funds and Dallas, as fiscal agent, has the right to review and audit any and all of such financial records. The County and the Cities shall retain all such records for a minimum of three (3) years following completion of this Agreement. The County and the Cities must require that any of its contractors, subcontractors, vendors, or partner agencies allow Dallas to review and audit their financial records pertaining to any contracts they may have with the County or the Cities utilizing JAG Funds.

#### **SECTION 4. INITIAL ALLOCATIONS**

For 2020, the BJA has determined the Initial Allocations of JAG Funds for the parties to this Agreement as follows:

THE COUNTY	\$0.00
BALCH SPRINGS	\$11,009.00
CARROLLTON	\$12,756.00
DALLAS	\$683,041.00
DESOTO	\$12,667.00
DUNCANVILLE	\$13,331.00
GARLAND	\$48,061.00
GRAND PRAIRIE	\$36,300.00
IRVING	\$34,929.00
LANCASTER	\$14,038.00
MESQUITE	\$39,572.00
<u>RICHARDSON</u>	<u>\$10,700.00</u>
<b>TOTAL</b>	<b>\$916,404.00</b>



## **SECTION 5. AMOUNT OF INITIAL ALLOCATIONS TO BE TRANSFERRED FROM THE CITIES TO THE COUNTY**

The Cities shall transfer a portion of their Initial Allocations of JAG Funds to the County pursuant to this Agreement as follows:

THE COUNTY	\$0.00
BALCH SPRINGS	\$3,302.70
CARROLLTON	\$3,826.80
DALLAS	\$204,912.30
DESOTO	\$3,800.10
DUNCANVILLE	\$3,999.30
GARLAND	\$14,418.30
GRAND PRAIRIE	\$10,890.00
IRVING	\$10,478.70
LANCASTER	\$4,211.40
MESQUITE	\$11,871.60
<u>RICHARDSON</u>	<u>\$10,700.00</u>
<b>TOTAL</b>	<b>\$282,411.20</b>

## **SECTION 6. ADJUSTED ALLOCATIONS**

After the transfer of a portion of the Cities' Initial Allocations of JAG Funds to the County, the County and the Cities' Adjusted Allocations of JAG Funds are as follows:

THE COUNTY	\$282,411.20
BALCH SPRINGS	\$7,706.30
CARROLLTON	\$8,929.20



DALLAS	\$478,128.70
DESOTO	\$8,866.90
DUNCANVILLE	\$9,331.70
GARLAND	\$33,642.70
GRAND PRAIRIE	\$25,410.00
IRVING	\$24,450.30
LANCASTER	\$9,826.60
MESQUITE	\$27,700.40
<u>RICHARDSON</u>	<u>\$0.00</u>
<b>TOTAL</b>	<b>\$916,404.00</b>

#### **SECTION 7. FISCAL AGENT GRANT ADMINISTRATION FEES**

The County and the Cities other than Dallas agree to transfer grant administration fees equal to seven percent (7%) of each party's Adjusted Allocation of JAG Funds to Dallas, as fiscal agent for the County and the Cities and Dallas shall allocate greater than seven percent (7%) of its Adjusted Allocation toward administration as shown below. The total contribution of Adjusted Allocations toward grant administration, including Dallas' contribution, does not exceed ten percent (10%) of the total allocation to the parties' disparate jurisdiction

THE COUNTY	\$19,768.78
BALCH SPRINGS	\$539.44
CARROLLTON	\$625.04
DALLAS	\$60,961.14
DESOTO	\$620.68



DUNCANVILLE	\$653.22
GARLAND	\$2,354.99
GRAND PRAIRIE	\$1,778.70
IRVING	\$1,711.52
LANCASTER	\$687.86
MESQUITE	\$1,939.03
<u>RICHARDSON</u>	<u>\$0.00</u>
<b>TOTAL</b>	<b>\$91,640.40</b>

## **SECTION 8. FINAL ALLOCATIONS**

The Final Allocations of JAG Funds are the Initial Allocations (1) less the transfer of a portion of the Cities' Initial Allocations of JAG Funds to the County, which are the Adjusted Allocations and (2) less the transfer of the grant administration fees of the Adjusted Allocations to Dallas. Each jurisdiction shall include in its JAG Program application the following Final Allocations of JAG Funds:

THE COUNTY	\$262,642.42
BALCH SPRINGS	\$7,166.86
CARROLLTON	\$8,304.16
DALLAS	\$508,807.96
DESOTO	\$8,246.22
DUNCANVILLE	\$8,678.48
GARLAND	\$31,287.71
GRAND PRAIRIE	\$23,631.30
IRVING	\$22,738.78



LANCASTER	\$9,138.74
MESQUITE	\$25,761.37
<u>RICHARDSON</u>	<u>\$0.00</u>
<b>TOTAL</b>	<b>\$916,404.00</b>

## **SECTION 9. APPLICATION OF COUNTY FUNDS**

The County agrees to prioritize the expenditure of its Final Allocation of Two Hundred Sixty-Two Thousand, Six Hundred Forty-Two Dollars and Forty-Two Cents (\$262,642.42) to continue the development and implementation of improvements to the criminal justice system. The Cities agree that the County has no obligation to provide any additional funds under this Agreement, even if the 2020 JAG Funds are insufficient to fully develop or implement the County's chosen improvements to the criminal justice system. In the event any JAG Funds remain upon completion of the development and implementation of improvements to the criminal justice, the County may expend such funds on other eligible projects under the grant at the County's discretion, subject to the approval of the BJA, as required under the JAG Program.

## **SECTION 10. TERM**

The term of this Agreement shall begin on the date the last signature of either the County or the Cities authorizing approving this Agreement is obtained and shall terminate upon final expenditure of the funds in accordance with the JAG Program.

## **SECTION 11. AGENCY**

The County and the Cities agree and acknowledge that, except to the extent specified in Section 2 of this Agreement, each entity is not an agent of any other entity and that each entity is responsible for its acts, forbearance, negligence, and deeds and each entity is responsible for those acts, forbearance, negligence, and deeds of its agents or employees in conjunction with performance under this Agreement.

## **SECTION 12. FORMAL APPROVAL**

This Agreement is expressly subject to and contingent upon formal approval by the governing bodies of the County and the Cities.



### **SECTION 13. NO THIRD-PARTY BENEFICIARY ENFORCEMENT**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and any right of action relating to such enforcement shall be strictly reserved to the Cities and the County and nothing contained in this Agreement shall be construed to create any rights for any third parties.

### **SECTION 14. NON-ASSIGNMENT**

The parties shall not sell, assign, transfer, or convey this Agreement, in whole or in part, without the prior written consent of the parties.

### **SECTION 15. NOTICE OF CONTRACT CLAIM**

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement. County and Cities shall fully comply with the requirements of this ordinance as a condition precedent to any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims. This Agreement is also subject to the provisions of TEX. LOC. GOV'T CODE § 89.0041 (Notice of Suit Against County).

### **SECTION 16. RESPONSIBILITY**

Dallas, the County, and the Cities shall each be responsible for the sole negligent acts of their officers, agents, employees, or separate contractors. In the event of joint and concurrent negligence of the parties to this Agreement, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the parties under Texas law and without waiving any defenses of the parties under Texas law.

### **SECTION 17. NOTICE**

Any notice, payment, statement, communication, report, or demand required or permitted to be given under this Agreement by any party to another may be affected by personal delivery in writing or deposited in the U.S. mail by certified letter, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

To the County:

Dir. of Criminal Justice, Charlene Randolph



Dallas County – Administration Building  
411 Elm Street, 2<sup>nd</sup> Floor  
Dallas, Texas 75202

To Balch Springs:

Chief of Police, Jonathan Haber  
Balch Springs Police Department  
12500 Elam Road  
Balch Springs, Texas 75180

To Carrollton:

Chief of Police, Derick Miller  
Carrollton Police Department  
2025 East Jackson Road  
Carrollton, Texas 75006

To Dallas:

City Manager, T.C. Broadnax  
Dallas City Hall  
1500 Marilla, 4EN  
Dallas, Texas 75201

To DeSoto:

Chief of Police, Joseph Costa  
DeSoto Police Department  
714 East Belt Line Road  
DeSoto, Texas 75115

To Duncanville:

Chief of Police, Robert D. Brown, Jr.  
Duncanville Police Department  
203 East Wheatland Rd.  
Duncanville, Texas 75116

To Garland:

Chief of Police, Jeff Bryan  
Garland Police Department  
1891 Forest Lane  
Garland, Texas 75042

To Grand Prairie:

Chief of Police, Daniel Scesney  
Police Department  
1525 Arkansas Lane  
Grand Prairie, Texas 75052

To Irving:

Chief of Police, Jeff Spivey  
Irving Police Department  
P. O. Box 152288  
Irving, Texas 75015



To Lancaster: Chief of Police, Samuel Urbanski  
Lancaster Police Department  
100 Craig Shaw Memorial Pkwy.  
Lancaster, Texas 75134

To Mesquite: Chief of Police, Charles Cato  
Mesquite Police Department  
PO Box 850137  
Mesquite, Texas 75185-0137

To Richardson: Chief of Police, Jimmy L. Spivey  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083

## **SECTION 18. GOVERNING LAW AND VENUE**

The obligations of the parties to this Agreement shall be performed in Dallas County, Texas, and venue for any legal action under this Agreement shall lie exclusively in Dallas County, Texas. In construing this Agreement, the laws and court decisions of the State of Texas shall control.

## **SECTION 19. LEGAL CONSTRUCTION**

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

## **SECTION 20. COUNTERPARTS**

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

## **SECTION 21. CAPTIONS**



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

## **SECTION 22. AMENDMENTS; ENTIRE AGREEMENT**

This Agreement (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of all of the parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. This Agreement may be modified or amended only by written agreement of all of the parties, to be attached to and made a part of this Agreement.

**IN WITNESS WHEREOF**, by their signatures hereon, each of the undersigned represents and warrants that they are the duly authorized agents of each entity and have full right and authority to enter into this Agreement. This Agreement is to be effective upon the signature of both County and the Cities.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]



The County of Dallas, State of Texas, has executed this Agreement pursuant to Commissioners Court Order Number\_\_\_\_\_and passed on the\_\_\_\_day of\_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE COUNTY OF DALLAS:**

\_\_\_\_\_  
Clay Lewis Jenkins, County Judge

APPROVED AS TO FORM\*:

JOHN CREUZOT  
DISTRICT ATTORNEY

\_\_\_\_\_  
Randall Miller, Assistant District Attorney

\*BY LAW, THE DISTRICT ATTORNEY’S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).



The City of Balch Springs, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated \_\_\_\_\_ the day of \_\_\_\_\_.

**APPROVED BY THE  
CITY OF BALCH SPRINGS:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Susan Cluse, City Manager

\_\_\_\_\_  
Jonathan Haber, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Amanda Davis, City Attorney



The City of Carrollton, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated \_\_\_\_\_ the day of \_\_\_\_\_, \_\_\_\_\_.

**APPROVED BY THE  
CITY OF CARROLLTON:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Erin Rinehart, City Manager

\_\_\_\_\_  
Derick Miller, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Meredith A. Ladd, City Attorney



EXECUTED by the City of Dallas, signing by and through its City Manager, duly authorized to execute same by Resolution No. 20-1460, adopted by the City Council on September 23, 2020.

Acceptance of FY 2020 JAG awards by U.S. Conference of Mayors members (as designated in *Evanston v. Barr*) shall not be construed as acceptance of Special Conditions 31 through 41 of the FY 2020 grants, or similar conditions. Nor, given the injunction, currently in effect, in the litigation, against inclusion of those conditions in FY 2020 JAG awards, shall Special Conditions 31-41 be enforced against the foregoing jurisdictions while that ruling is in effect.

RECOMMENDED

\_\_\_\_\_  
U. RENÉE HALL, Chief of Police

APPROVED AS TO FORM  
CHRISTOPHER J. CASO  
CITY ATTORNEY

CITY OF DALLAS  
T. C. BROADNAX  
CITY MANAGER

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
City Manager



The City of DeSoto, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated the\_\_\_\_ day of \_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE CITY OF DESOTO:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Brandon Wright, City Manager

\_\_\_\_\_  
Joseph W. Costa, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Joseph J. Gorfida, Jr, City Attorney



The City of Duncanville, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated \_\_\_\_\_ the day of \_\_\_\_\_, \_\_\_\_\_.

**APPROVED BY THE  
CITY OF DUNCANVILLE:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Paul Frederiksen, Interim City Manager

\_\_\_\_\_  
Robert D. Brown, Jr., Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Robert Hager, City Attorney



The City of Garland, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated the\_\_\_\_\_day of\_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE  
CITY OF GARLAND:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Bryan Bradford, City Manager

\_\_\_\_\_  
Jeff Bryan, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Brad Neighbor, City Attorney



The City of Grand Prairie, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated the\_\_\_\_\_day of \_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE  
CITY OF GRAND PRAIRIE:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Steve Dye, Chief Operating Officer

\_\_\_\_\_  
Daniel Scesney, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Megan Mahan, City Attorney



The City of Irving, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE CITY OF IRVING:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Richard H. Stopfer, Mayor

\_\_\_\_\_  
Jeff Spivey, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Kuruvilla Oommen, City Attorney



The City of Lancaster, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated the\_\_\_\_\_day of \_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE  
CITY OF LANCASTER:**

**RECOMMENDED BY:**

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

\_\_\_\_\_  
Samuel Urbanski, Chief of Police

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David Ritter, City Attorney



The City of Mesquite, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution\_\_\_\_\_, Minutes\_\_\_\_\_Dated the\_\_\_\_\_day of \_\_\_\_\_,\_\_\_\_\_.

**APPROVED BY THE  
CITY OF MESQUITE:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Cliff Keheley, City Manager

\_\_\_\_\_  
Charles Cato, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
David L. Paschall, City Attorney



The City Manager for the City of Richardson, State of Texas, has executed the Agreement pursuant to Section 2-52 of the Richardson Code of Ordinances Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**APPROVED BY THE  
CITY OF RICHARDSON:**

\_\_\_\_\_  
Dan Johnson, City Manager

**RECOMMENDED BY:**

\_\_\_\_\_  
Jimmy L. Spivey, Chief of Police

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney



## LANCASTER CITY COUNCIL

### City Council Special Meeting

3.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Sound Infrastructure

**Submitted by:** Andrew Waits, Director of Public Works

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#### **Agenda Caption:**

Consider a resolution approving payment to QKB Inc. in the amount of three hundred thousand dollars and zero cents (\$300,000.00) for the provision of emergency sewer & water line repair services for an eight-inch (8") sanitary sewer line repair and eight-inch (8") water main repair.

#### **Background:**

On October 1, 2020, staff investigation revealed the eight-inch sanitary sewer line crossing over the creek between Riverdell Court and Riverdell South Mews had collapsed into the creek. Due to the size and location, the contractor, QKB Inc., was hired to complete the repair. While the contractor, QKB Inc., was onsite it was determined the eight-inch water main located next to the sewer main was exposed and in immediate need of repair to prevent it from rupturing.

#### **Operational Considerations:**

The Water/Wastewater Division is responsible for the ongoing maintenance of water and wastewater services. This project is being inspected by the City's Engineering Department.

#### **Legal Considerations:**

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

#### **Public Information Considerations:**

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

#### **Fiscal Impact:**

Funding is available in the water and wastewater fund and will not exceed three hundred thousand dollars and zero cents (\$300,000.00).

#### **Options/Alternatives:**

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



**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING PAYMENT NOT TO EXCEED THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00), FOR THE PROVISION OF EMERGENCY SEWER AND WATER LINE REPAIR SERVICES FOR A EIGHT INCH SANITARY SEWER LINE REPAIR AND A 8 INCH WATER LINE REPAIR; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY NECESSARY PAYMENT ORDERS FOR THE PROJECT, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lancaster, Texas sustained a failure of an eight (8) inch sanitary sewer aerial crossing which resulted in an emergency repair.

**WHEREAS**, Due to the complexity of the repairs caused by the creek crossing location and the total failure of the line caused by erosion, the City needed to engage third-party emergency repair services to repair the sewer line and restore it to regular service; and

**WHEREAS**, QKB Inc. was able to provide an immediate response and complete the needed repairs on behalf of the City of Lancaster, Texas; and

**WHEREAS**, Upon onsite investigation the 8 inch water line next to the eight (8) inch sewer line was exposed and would require immediate repairs to prevent it for rupturing.

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

**SECTION 1.** The City Council hereby finds that the erosion of the creek comprised an emergency event that required immediate response to restore sewer service and repair the exposed water main in order to protect public health and safety.

**SECTION 2.** The City Council hereby approves the payment not to exceed three hundred thousand dollars and zero cents (\$300,000.00)

**SECTION 3.** The City Council hereby authorizes the City Manager to pay, or direct to be paid by her designee(s), QKB Inc. for the emergency services.

**SECTION 4.** This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of November, 2020.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, 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 QKB Inc. (hereinafter referred to as the "Contractor") for repair of Sewer and Water Mains located between Riverdell Ct. and Riverdell South Mews, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

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**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 Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, the pricing documents and map attached hereto; 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 sufficient opportunity to inspect the Project site and assumes any 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:

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 ninety (90) 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 delay or 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 up to three hundred thousand dollars and zero cents (\$300,000.00).

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 pay the 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:

<b>NAME</b>	<b>FUNCTION</b>
<u>QKB Inc.</u>	<u>on-site Foreman</u>

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, AND THAT THE CONTRACTOR IS SOLELY RESPONSIBLE FOR THE INDEMNIFICATION OF OWNER AND DEFENSE OF ANY CLAIMS AGAINST CONTRACTOR AND/OR OWNER ARISING FROM THE WORK PERFORMED UNDER THIS AGREEMENT.

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 paid to 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 event or 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 and 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 notice 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 claims 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 be 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 19th day of November, 2020.**

CITY OF LANCASTER

Company Name

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

\_\_\_\_\_  
Type/Print Name and Title

ATTEST:

Address

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

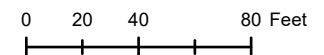




# City of Lancaster Creek Crossing at Riverdale Ct & Riverdale South Mews

- Hydrants
- Sewer Lines
- Storm Lines
- Water Lines
- Railroads
- Parcels
- City Limits
- 100 Year Floodplain

**DISCLAIMER / LIMITATION OF LIABILITY**  
The information on this map is provided by the City of as a public service. We are continually updating the data in order to provide the most accurate information possible. Such information is intended for reference only. The City of Lancaster does not guarantee the accuracy of the information, data or maps. All information is provided "As-Is" without warranty of any kind.



date: 11/02/2020

GeoEye, Maxar, Microsoft







## QKB Inc.

Quinn Huynh

**Business Number** M-41216

444 E fm 1382 #D Cedar Hill TX 75104

Texas state Board of Plumbing Examiners 929

East 41st Austin TX 78765 p.5129365200

1-682-551-8876

Prepared For : City Of Lancaster PO Box 940

Lancaster, TX 75146

qkbinc@yahoo.com

**ESTIMATE**

EST0065

**DATE**

11/03/2020

**TOTAL**

USD \$300,000.00

TO

### Whom It May Concern.

DESCRIPTION	RATE	QTY	AMOUNT
Remove approximately 100 feet of 8" PVC Sanitary Sewer pipe and replaced with approximately 100 feet of 8" Ductile Iron pipe.	\$300,000.00	1	\$300,000.00

Remove approximately 100 feet of 8" PVC water pipe and replace with approximately 100 feet of 8" Ductile Iron pipe.

Install 8 concrete piers, located in the creek. The piers will be drilled down into the bedrock (approximately 40 feet each).

Install approximately 75 feet of 24" concrete storm drain pipe.

Perform erosion control approximately 50 feet on both sides of the new water and sanitary sewer pipe.

All work performed will be in accordance with the City of Lancaster Standard Details and will not exceed \$300,000.00.

Thanks

Not To Exceed

<b>SUBTOTAL</b>	\$300,000.00
<b>TAX (0%)</b>	\$0.00
<b>TOTAL</b>	USD \$300,000.00



## LANCASTER CITY COUNCIL

### City Council Special Meeting

4.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Sound Infrastructure

**Submitted by:** Andrew Waits, Director of Public Works

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#### **Agenda Caption:**

Consider a resolution approving the terms and conditions of an agreement with Reynolds Asphalt & Construction Company through the utilization of an Interlocal Agreement with the City of Grand Prairie for the reconstruction of Bear Creek Road between South Houston School Road and Bluegrove Road (Phase II) in an amount not to exceed nine hundred five thousand eight hundred ninety-six dollars and zero cents (\$905,896.00).

#### **Background:**

Sound Infrastructure has been identified as a Key Performance Objective by the City Council. The City has a pavement management program that has rated the roadways within the City and recommended maintenance based upon the conditions. Staff has been completing infrastructure projects annually to realize the goal of having a preventative maintenance program and well-maintained streets. The completion of this project will continue to advance Council's objective in this area. Phase II of the project will begin at South Houston School Road and conclude at Bluegrove Road. The contractor will remove the existing asphalt pavement and perform compaction of the subgrade prior to the installation of new asphalt pavement as identified on the attached labeled Exhibit "A". This will provide for a smoother driving experience for vehicles that travel the roadway. City staff will serve as the project manager and will coordinate with Reynolds Asphalt & Construction Company to ensure the pavement replacement is in accordance with the City of Lancaster design manual specifications.

#### **Operational Considerations:**

The Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform governmental functions and services. The use of Interlocal Agreements allow staff to utilize other agencies' formal bid contracts. Each entity's formal bid process must meet the requirements set forth in the statutes, including advertising, Minority and Women-Owned Business Enterprise (M/WBE) participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirements. Use of Interlocal Agreements allow the City to address the operation needs in a timely manner. Additionally, savings are achieved through aggregate volumes.

#### **Legal Considerations:**

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

#### **Public Information Considerations:**

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

#### **Fiscal Impact:**



This project was included in the FY 2020/2021 budget and will not exceed nine hundred five thousand eight hundred ninety-six dollars and zero cents (\$905,896.00). Funds for this project are available in the Street Maintenance Fund and the Sanitation Fund.

**Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN REYNOLDS ASPHALT & CONSTRUCTION COMPANY AND THE CITY OF LANCASTER FOR THE RECONSTRUCTION OF A PORTION OF BEAR CREEK ROAD BETWEEN SOUTH HOUSTON ROAD AND BLUEGROVE ROAD IN AN AMOUNT NOT TO EXCEED NINE HUNDRED FIVE THOUSAND EIGHT HUNDRED NINETY SIX DOLLARS AND ZER CENTS (\$905,896) AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interest of the City to execute the Agreement ("Agreement") with Reynolds Asphalt & Construction Company for the reconstruction of a portion of Bear Creek Road between Houston School Road and Bluegrove Road; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform governmental functions and services through the utilization of an Interlocal Agreement with the City of Grand Prairie, Texas.

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

**SECTION 1.** That the City Council hereby approves and accepts the terms and conditions of the Agreement with Reynolds Asphalt & Construction Company, attached hereto and incorporated herein by reference as Exhibit "A" (standard fixed price construction agreement with attachments) for reconstruction of Bear Creek Road between Houston School Road and Bluegrove Road (Phase II).

**SECTION 2.** That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreement attached as Exhibit "A".

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

**SECTION 4.** Should any part of the 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.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of November, 2020.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

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



**City of Lancaster, Texas**  
**Standard Fixed Price Construction Agreement**

**Exhibit A**

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and Reynolds Asphalt & Construction Company, (hereinafter referred to as the "Contractor") for construction of Bear Creek Road between South Houston School Road and Bluegrove Road, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

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**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 inter-local agreement between the City of Grand Prairie and the City of Lancaster, the pavement resurfacing services contract between the City of Grand Prairie and Reynolds Asphalt & Construction Company, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, the pricing documents and map attached hereto; 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 sufficient opportunity to inspect the Project site and assumes any 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:

### ***Cost estimate and Scope of Work labeled Exhibit A***

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 ninety (90) 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 delay or



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 up to one million forty-eight thousand four hundred ninety dollars and zero cents (\$1,048,490.00).

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 pay the



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
Reynolds Asphalt & Construction Company's on-site Foreman	

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, AND THAT THE CONTRACTOR IS SOLELY RESPONSIBLE FOR THE INDEMNIFICATION OF OWNER AND DEFENSE OF ANY CLAIMS AGAINST CONTRACTOR AND/OR OWNER ARISING FROM THE WORK PERFORMED UNDER THIS AGREEMENT.

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 paid to 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 event or 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 and 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 notice 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 claims 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 be 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 19th day of November, 2020.**

CITY OF LANCASTER

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

ATTEST:

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

Company Name

\_\_\_\_\_  
Type/Print Name and Title

Address



## Project Specifications

### CITY OF LANCASTER

Bear Creek - Houston School Road to Blue Grove Road

		UNIT PRICE		TOTAL	TOTAL
		BID		QUANTITY	COMPLETED TO DATE
1	HMAC Type D Delivered more than 1500 tons	TONS	\$ 85.60		\$ -
2	HMAC Type D Delivered 500 to 1499 tons	TONS	\$ 91.90		\$ -
3	HMAC Type D Delivered less than 499 tons	TONS	\$ 105.70		\$ -
4	HMAC Type C Delivered more than 1500 tons	TONS	\$ 85.00	1,600.00	\$ 136,000.00
5	HMAC Type C Delivered 500 to 1499 tons	TONS	\$ 89.90		\$ -
6	HMAC Type C Delivered less than 499 tons	TONS	\$ 105.70		\$ -
7	HMAC Type B Delivered more than 1500 tons	TONS	\$ 84.40	3,110.00	\$ 262,484.00
8	HMAC Type B Delivered 500 to 1499 tons	TONS	\$ 88.40		\$ -
9	HMAC Type B Delivered less than 499 tons	TONS	\$ 104.50		\$ -
10	Additional Mileage Hauled beyond the first 10 from bidders plant items# 1-9 Per Ton Per Mile	EACH PER TON MILE	\$ 13.80	4,710.00	\$ 64,998.00
**NOTE \$0.60 per mile @ 23 miles**					
11	Move In/Out Charge for projects under 499 tons	EACH	\$ 1,200.00		\$ -
12	Thoroughfare Traffic Control Charges Per street	EACH	\$ 2,400.00	1.00	\$ 2,400.00
13	Manhole Ring Riser Adjustment/Placement Ring	EACH	\$ 250.00		\$ -
14	Valve Ring Riser Adjustment/Placement Ring	EACH	\$ 150.00		\$ -
15	Base Repair - Flex Base	SY	\$ 79.70		\$ -
16	Flex Base furnish and install	TONS	\$ 38.30	3,200.00	\$ 122,560.00
17	8" Cement Slab Existing - more than 3000 sy	SY	\$ 9.00	14,730.00	\$ 132,570.00
18	8" Cement Slab Existing - 1400 to 2999 sy	SY	\$ 10.30		\$ -
19	8" Cement Slab Existing - less than 1399 sy	SY	\$ 18.90		\$ -
20	Hauling Excessive Material more than 101 cy	CY	\$ 23.00	4,500.00	\$ 103,500.00
21	Hauling Excessive Material 51 to 100 cy	CY	\$ 25.90		\$ -
22	Hauling Excessive Material less than 50 cy	CY	\$ 37.00		\$ -
23	Wedge Mill	LF	\$ 4.40		\$ -
24	Full Depth Milling 0-4"	SY	\$ 5.20		\$ -
25	Full Depth Milling Each Additional Inch	SY	\$ 0.73		\$ -
26	Backfill Shoulders	LF	\$ 1.40	10,200.00	\$ 14,280.00
27	8" Pulverization	SY	\$ 4.45		\$ -
28	Petromat less than 2500 SY	SY	\$ 5.35		\$ -
29	Petromat 2500 - 4999 SY	SY	\$ 3.15		\$ -
30	Petromat more 5000 SY	SY	\$ 2.60		\$ -

TOTAL FOR PAGE

\$ 838,792.00



Line Items

Line 1

<u>Name</u>	<u>Project</u>	<u>Price</u>
Reynolds Asphalt & Construction Company	Bear Creek Road Phase II between S. Houston School Rd. & Bluegrove Rd.	\$ 838,792.00
	8% contingency:	\$ 67,104.00
	<b>Total Project Cost</b>	<b>\$ 905,896.00</b>



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

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

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

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

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

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

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

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

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

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



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

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



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

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

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

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

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



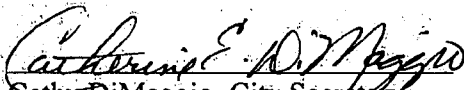
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby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

**CITY OF GRAND PRAIRIE**


  
Tom Cox, Deputy City Manager

DATE: 01-18-2011

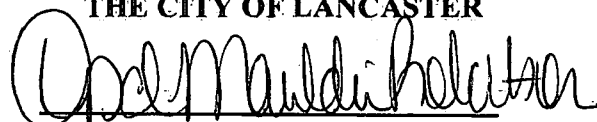
ATTEST:

  
Cathy DiMaggio, City Secretary

APPROVED AS TO FORM:

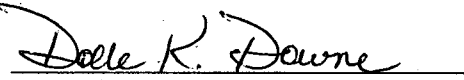
  
Donald R. Postell, City Attorney

**THE CITY OF LANCASTER**


  
Opal Mauldin Robertson, City Manager

DATE: 03/15/2011

ATTEST:

  
Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

  
Robert E. Hager, City Attorney

**RECEIVED**

APR 05 2011

CITY OF GRAND PRAIRIE  
PURCHASING



AMENDMENT TO PRICE AGREEMENT  
CITY OF GRAND PRAIRIE

STATE OF TEXAS           §  
                                      §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS       §

**THIS AMENDMENT** is made and entered into this date by and between the **CITY OF GRAND PRAIRIE**, a Texas municipal corporation (hereinafter referred to as the "CITY", and **REYNOLDS ASPHALT & CONSTRUCTION CO.** (hereinafter referred to as "VENDOR").

WHEREAS, the CITY and VENDOR have entered into a price agreement to provide Pavement Resurfacing per bid award resulting from vendor's response to RFB #16112, submitted by Ned Tankersley, on July 26, 2016; and

WHEREAS, the above referenced agreement was for an initial term of one year with the option to renew for four additional one year periods, totaling up to \$22,024,375.00 if all extensions were exercised. This Contract was effective as of August 17, 2016, and was to terminate at midnight on August 16, 2017, unless the parties mutually agreed in writing to extend the term of the Contract through an allowable renewal option, or, unless otherwise terminated as provided in provided in paragraph XVI of the original contract; and

WHEREAS, the first of four available renewal options was executed on July 12, 2017 and extended the term of the contract through August 31, 2018; and the second of four available renewal options was executed on July 20, 2018 and extended the term of the contract through August 31, 2019; and the third of four available renewal options was executed on August 12, 2019 and extended the term of the contract through August 31, 2020.

NOW, THEREFORE, for and in consideration of the mutual acts and covenants set out herein, the CITY and VENDOR agree as follows:

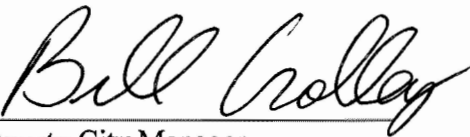
1. The CITY agrees that the price redetermination is acceptable and in the best interest of the CITY and such price increase, which is attached hereto and incorporated herein as Exhibit A; and
2. The parties mutually agree to extend the term of the contract and execute the final of the four available renewal options and extend the contract expiration to midnight on August 31, 2021 at which time all of the work called for under this Contract must be completed unless the parties mutually agree in writing to extend the term of the Contract through an additional allowable renewal option, or, unless otherwise terminated as provided in provided in paragraph XVI of the original contract; and



3. The estimated annual amount to be paid to VENDOR under such contract shall remain the sum of \$4,013,790.00, to reflect the contract renewal; and
4. This shall constitute an Authorization for extension of price agreement as set out in the agreement between the parties, and an amendment to such contract. All of the terms and conditions of the original contract shall remain in full force and effect, as amended hereto, unless set out otherwise herein.

EXECUTED this the \_\_\_\_\_ day of 7/17/2020, 20\_\_\_\_.

**CITY OF GRAND PRAIRIE, TEXAS**

By:   
Deputy City Manager


ATTEST:

  
For Cathy E. DiMaggio, City Secretary

APPROVED AS TO FORM:

  
Megan Mahan, City Attorney

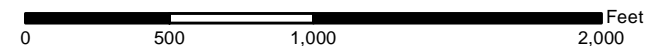
**REYNOLDS ASPHALT &  
CONSTRUCTION CO.**

By:   
Printed \_\_\_\_\_  
Name: Ned Tankersley  
Title: Vice President





City of Lancaster  
Bear Creek Road Repairs  
from Houston School Rd  
to Bluegrove Rd





## LANCASTER CITY COUNCIL

### City Council Special Meeting

5.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Sound Infrastructure

**Submitted by:** Andrew Waits, Director of Public Works

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#### **Agenda Caption:**

Consider a resolution approving the terms and conditions of an agreement with Reynolds Asphalt & Construction Company through the utilization of an Interlocal Agreement with the City of Grand Prairie for the reconstruction of West Main Street between North Houston School Road and South Houston School Road Phase II in an amount not to exceed three hundred sixty-six thousand ninety-seven dollars and thirty-two cents (\$366,097.32).

#### **Background:**

In July 2020, City Council approved an agreement with Reynolds Asphalt & Construction Company through the Interlocal Agreement with the City of Grand Prairie for the reconstruction of West Main Street between Beltline Road and Houston School Road (Phase I). Phase I construction began at the end of October 2020. If approved Phase II construction (West Main Street between North Houston School Road and South Houston School Road) will begin immediately after completion of Phase I.

Sound Infrastructure has been identified as a Key Performance Objective by the City Council. The City has a pavement management program that has rated the roadways within the City and recommended maintenance based upon the conditions. Staff has been completing infrastructure projects annually to realize the goal of having a preventative maintenance program and well-maintained streets. The completion of this project will continue to advance Council's objective in this area.

This phase of the project will begin on West Main Street at North Houston School Road and conclude at South Houston School Road. The contractor will remove the existing asphalt pavement and perform compaction of the subgrade prior to the installation of new asphalt pavement as identified on the attached submittal labeled Exhibit "A". This will provide for a smoother driving experience for vehicles that travel the roadway. City staff will serve as the project manager and will coordinate with Reynolds Asphalt & Construction Company to ensure the pavement replacement is in accordance with the City of Lancaster design manual specifications.

#### **Operational Considerations:**

The Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform governmental functions and services. The use of Interlocal Agreements allow staff to utilize other agencies' formal bid contracts. Each entity's formal bid process must meet the requirements set forth in the statutes, including advertising, Minority and Women-Owned Business Enterprise (M/WBE) participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirements. Use of Interlocal Agreements allows the City to address the operational needs in a timely manner. Additionally, savings are achieved through aggregate volumes.

#### **Legal Considerations:**



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

**Public Information Considerations:**

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

**Fiscal Impact:**

This project was included in the FY 2020/2021 budget and will not exceed three hundred sixty-six thousand ninety-seven dollars and thirty-two cents (\$366,097.32).

**Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN REYNOLDS ASPHALT & CONSTRUCTION COMPANY AND THE CITY OF LANCASTER FOR THE RECONSTRUCTION OF A PORTION OF WEST MAIN STREET BETWEEN NORTH HOUSTON SCHOOL ROAD AND SOUTH HOUSTON SCHOOL ROAD IN AN AMOUNT NOT TO EXCEED THREE HUNDRED SIXTY-SIX THOUSAND NINETY SEVEN DOLLARS AND THIRTY-TWO CENTS (\$366,097.00); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interest of the City to execute the Agreement ("Agreement") with Reynolds Asphalt & Construction Company for the reconstruction of a portion of West Main Street between North Houston School Road and South Houston School Road; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform governmental functions and services through the utilization of an Interlocal Agreement with the City of Grand Prairie, Texas.

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

**SECTION 1.** That the City Council hereby approves and accepts the terms and conditions of the Agreement with Reynolds Asphalt & Construction Company, attached hereto and incorporated herein by reference as Exhibit "A" (standard fixed price construction agreement with attachments) for reconstruction of West Main Street between North Houston School Road and South Houston School Road.

**SECTION 2.** That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreement attached as Exhibit "A".

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

**SECTION 4.** Should any part of the 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.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of November, 2020.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

---

Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

---

David T. Ritter, 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 Reynolds Asphalt & Construction Company, (hereinafter referred to as the "Contractor") for construction of West Main Street between North Houston School Road and South Houston School Road, (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 inter-local agreement between the City of Grand Prairie and the City of Lancaster, the pavement resurfacing services contract between the City of Grand Prairie and Reynolds Asphalt & Construction Company, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, the pricing documents and map attached hereto; 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 sufficient opportunity to inspect the Project site and assumes any 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:

### ***Cost estimate and Scope of Work labeled Exhibit A***

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 ninety (90) 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 delay or



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 up to three hundred sixty-six thousand ninety-seven dollars and thirty-two cents (\$366,097.32).

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 pay the



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
Reynolds Asphalt & Construction Company's on-site Foreman	

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, AND THAT THE CONTRACTOR IS SOLELY RESPONSIBLE FOR THE INDEMNIFICATION OF OWNER AND DEFENSE OF ANY CLAIMS AGAINST CONTRACTOR AND/OR OWNER ARISING FROM THE WORK PERFORMED UNDER THIS AGREEMENT.

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 paid to 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 event or 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 and 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 notice 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 claims 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 be 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 19th day of November, 2020.**

CITY OF LANCASTER

Company Name

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

\_\_\_\_\_  
Type/Print Name and Title

ATTEST:

Address

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



## Project Specifications

### CITY OF LANCASTER

W. Main Street - S. Houston School Rd to N. Houston School Rd

		UNIT PRICE		TOTAL	TOTAL
		BID		QUANTITY	COMPLETED TO DATE
1	HMAC Type D Delivered more than 1500 tons	TONS	\$ 85.60		\$ -
2	HMAC Type D Delivered 500 to 1499 tons	TONS	\$ 91.90		\$ -
3	HMAC Type D Delivered less than 499 tons	TONS	\$ 105.70		\$ -
4	HMAC Type C Delivered more than 1500 tons	TONS	\$ 85.00	835.00	\$ 53,975.00
5	HMAC Type C Delivered 500 to 1499 tons	TONS	\$ 89.90		\$ -
6	HMAC Type C Delivered less than 499 tons	TONS	\$ 105.70		\$ -
7	HMAC Type B Delivered more than 1500 tons	TONS	\$ 84.40	1,220.00	\$ 102,968.00
8	HMAC Type B Delivered 500 to 1499 tons	TONS	\$ 88.40		\$ -
9	HMAC Type B Delivered less than 499 tons	TONS	\$ 104.50		\$ -
10	Additional Mileage Hauled beyond the first 10 from bidders plant Items# 1-9 Per Ton Per Mile	EACH PER TON MILE	\$ 12.60	1,855.00	\$ 23,373.00
	**NOTE: \$0.60 per mile @ 21 miles **				
11	Move In/Out Charge for projects under 499 tons	EACH	\$ 1,200.00		\$ -
12	Thoroughfare Traffic Control Charges Per street	EACH	\$ 2,400.00	1.00	\$ 2,400.00
13	Manhole Ring Riser Adjustment/Placement Ring	EACH	\$ 250.00	5.00	\$ 1,250.00
14	Valve Ring Riser Adjustment/Placement Ring	EACH	\$ 150.00	3.00	\$ 450.00
15	Base Repair - Flex Base	SY	\$ 79.70		\$ -
16	Flex Base furnish and install	TONS	\$ 38.30	1,250.00	\$ 47,875.00
17	8" Cement Slab Existing - more than 3000 sy	SY	\$ 9.00	5,700.00	\$ 51,300.00
18	8" Cement Slab Existing - 1400 to 2999 sy	SY	\$ 10.30		\$ -
19	8" Cement Slab Existing - less than 1399 sy	SY	\$ 18.90		\$ -
20	Hauling Excessive Material more than 101 cy	CY	\$ 23.00	1,580.00	\$ 36,340.00
21	Hauling Excessive Material 51 to 100 cy	CY	\$ 25.90		\$ -
22	Hauling Excessive Material less than 50 cy	CY	\$ 37.00		\$ -
23	Wedge Mill	LF	\$ 4.40		\$ -
24	Full Depth Milling 0-4"	SY	\$ 5.20		\$ -
25	Full Depth Milling Each Additional Inch	SY	\$ 0.75		\$ -
26	Backfill Shoulders	LF	\$ 1.40	3,800.00	\$ 5,320.00
27	8" Pulverization	SY	\$ 4.45		\$ -
28	Petromat less than 2500 SY	SY	\$ 5.35		\$ -
29	Petromat 2500 - 4999 SY	SY	\$ 3.15		\$ -
30	Petromat more 5000 SY	SY	\$ 2.60	5,280.00	\$ 13,728.00

TOTAL FOR PAGE

\$ 338,979.00



Line Items

Line 1

Name

Project

Price

Reynolds Asphalt Company

W. Main Street

\$338,979.00

Between N. Houston School Rd. & S. Houston School Rd.

8% Contingency

\$27,118.32

Total Project Cost

\$366,097.32



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

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

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

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

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

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

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

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

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

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



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

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



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

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

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

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

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



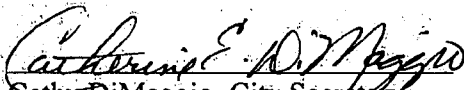
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby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

**CITY OF GRAND PRAIRIE**


  
Tom Cox, Deputy City Manager

DATE: 01-18-2011

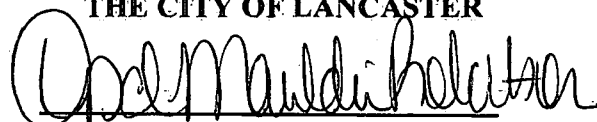
ATTEST:

  
Cathy DiMaggio, City Secretary

APPROVED AS TO FORM:

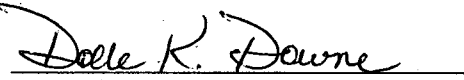
  
Donald R. Postell, City Attorney

**THE CITY OF LANCASTER**


  
Opal Mauldin Robertson, City Manager

DATE: 03/15/2011

ATTEST:

  
Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

  
Robert E. Hager, City Attorney

**RECEIVED**

APR 05 2011

CITY OF GRAND PRAIRIE  
PURCHASING



AMENDMENT TO PRICE AGREEMENT  
CITY OF GRAND PRAIRIE

STATE OF TEXAS           §  
                                      §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS       §

**THIS AMENDMENT** is made and entered into this date by and between the **CITY OF GRAND PRAIRIE**, a Texas municipal corporation (hereinafter referred to as the "CITY", and **REYNOLDS ASPHALT & CONSTRUCTION CO.** (hereinafter referred to as "VENDOR").

WHEREAS, the CITY and VENDOR have entered into a price agreement to provide Pavement Resurfacing per bid award resulting from vendor's response to RFB #16112, submitted by Ned Tankersley, on July 26, 2016; and

WHEREAS, the above referenced agreement was for an initial term of one year with the option to renew for four additional one year periods, totaling up to \$22,024,375.00 if all extensions were exercised. This Contract was effective as of August 17, 2016, and was to terminate at midnight on August 16, 2017, unless the parties mutually agreed in writing to extend the term of the Contract through an allowable renewal option, or, unless otherwise terminated as provided in provided in paragraph XVI of the original contract; and

WHEREAS, the first of four available renewal options was executed on July 12, 2017 and extended the term of the contract through August 31, 2018; and the second of four available renewal options was executed on July 20, 2018 and extended the term of the contract through August 31, 2019; and the third of four available renewal options was executed on August 12, 2019 and extended the term of the contract through August 31, 2020.

NOW, THEREFORE, for and in consideration of the mutual acts and covenants set out herein, the CITY and VENDOR agree as follows:

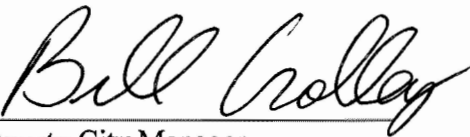
1. The CITY agrees that the price redetermination is acceptable and in the best interest of the CITY and such price increase, which is attached hereto and incorporated herein as Exhibit A; and
2. The parties mutually agree to extend the term of the contract and execute the final of the four available renewal options and extend the contract expiration to midnight on August 31, 2021 at which time all of the work called for under this Contract must be completed unless the parties mutually agree in writing to extend the term of the Contract through an additional allowable renewal option, or, unless otherwise terminated as provided in provided in paragraph XVI of the original contract; and



3. The estimated annual amount to be paid to VENDOR under such contract shall remain the sum of \$4,013,790.00, to reflect the contract renewal; and
4. This shall constitute an Authorization for extension of price agreement as set out in the agreement between the parties, and an amendment to such contract. All of the terms and conditions of the original contract shall remain in full force and effect, as amended hereto, unless set out otherwise herein.

EXECUTED this the \_\_\_\_\_ day of 7/17/2020, 20\_\_\_\_.

**CITY OF GRAND PRAIRIE, TEXAS**

By:   
Deputy City Manager


ATTEST:

  
For Cathy E. DiMaggio, City Secretary

APPROVED AS TO FORM:

  
Megan Mahan, City Attorney

**REYNOLDS ASPHALT &  
CONSTRUCTION CO.**

By:   
Printed \_\_\_\_\_  
Name: Ned Tankersley  
Title: Vice President





0 150 300 600 Feet

City of Lancaster  
Proposed Street Reconstruction  
W Main St - N Houston School Rd to  
S Houston School Rd

date: 10/26/2020



## LANCASTER CITY COUNCIL

### City Council Special Meeting

6.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Sound Infrastructure

**Submitted by:** Andrew Waits, Director of Public Works

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#### **Agenda Caption:**

Consider a resolution approving the terms and conditions of an agreement with Reynolds Asphalt Company through the utilization of an Interlocal Agreement with the City of Grand Prairie for the reconstruction of East 5th Street between North Dallas Avenue and Jefferson Street in an amount not to exceed one hundred twenty thousand twenty-seven dollars and ninety-six cents (\$120,027.96).

#### **Background:**

Sound Infrastructure has been identified as a Key Performance Objective by the City Council. The City has a pavement management program that has rated the roadways within the City and recommended maintenance based upon the conditions. Staff has been completing infrastructure projects annually to realize the goal of having a preventative maintenance program and well-maintained streets. The completion of this project will continue to advance Council's objective in this area.

The project will begin on East 5th Street at North Dallas Avenue and conclude at Jefferson Street. The contractor will remove the existing asphalt pavement and perform compaction of the subgrade prior to the installation of new asphalt pavement as identified on the attached submittal labeled Exhibit "A". This will provide for a smoother driving experience for vehicles that travel the roadway. City staff will serve as the project manager and will coordinate with Reynolds Asphalt & Construction Company to ensure the pavement replacement is in accordance with the City of Lancaster design manual specifications.

#### **Operational Considerations:**

The Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform governmental functions and services. The use of Interlocal Agreements allow staff to utilize other agencies' formal bid contracts. Each entity's formal bid process must meet the requirements set forth in the statutes, including advertising, Minority and Women-Owned Business Enterprise (M/WBE) participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirements. Use of Interlocal Agreements allow the City to address the operation needs in a timely manner. Additionally, savings are achieved through aggregate volumes.

#### **Legal Considerations:**

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

#### **Public Information Considerations:**

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

#### **Fiscal Impact:**



This project was included in the FY 2020/2021 budget and will not exceed one hundred twenty thousand twenty-seven dollars and ninety-six cents (\$120,027.96).

**Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN REYNOLDS ASPHALT & CONSTRUCTION COMPANY AND THE CITY OF LANCASTER FOR THE RECONSTRUCTION OF EAST 5TH STREET FROM DALLAS AVENUE TO JEFFERSON STREET IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TWENTY THOUSAND TWENTY-SEVEN DOLLARS AND NINETY-SIX CENTS (\$120,027.96); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interest of the City to execute the Agreement ("Agreement") with Reynolds Asphalt & Construction Company for the reconstruction of East 5th Street between North Dallas Avenue and Jefferson Street; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes units of local government to contract with one or more units of local government to perform governmental functions and services through the utilization of an Interlocal Agreement with the City of Grand Prairie, Texas.

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

**SECTION 1.** That the City Council hereby approves and accepts the terms and conditions of the Agreement with Reynolds Asphalt & Construction Company, attached hereto and incorporated herein by reference as Exhibit "A" (standard fixed price construction agreement with attachments) for reconstruction of East 5th Street between North Dallas Avenue and Jefferson Street.

**SECTION 2.** That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreement attached as Exhibit "A".

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

**SECTION 4.** Should any part of the 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.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of November, 2020.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David T. Ritter, 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 Reynolds Asphalt & Construction Company, (hereinafter referred to as the "Contractor") for reconstruction of East 5<sup>th</sup> Street between Dallas Avenue and Jefferson Street 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 inter-local agreement between the City of Grand Prairie and the City of Lancaster, the pavement resurfacing services contract between the City of Grand Prairie and Reynolds Asphalt & Construction Company, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, the pricing documents and map attached hereto; any other amendments hereto executed by the parties hereafter, together with the following (if any): Attached price quote and map, and City of Lancaster General Design Manual.

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 sufficient opportunity to inspect the Project site and assumes any 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:

#### ***Cost estimate and Scope of Work labeled Exhibit A***

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 ninety (90) 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 delay or



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 up to one hundred twenty thousand twenty-seven dollars and ninety-six cents (\$120,027.96).

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 pay the



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
<u>Reynolds Asphalt &amp; Construction Company's on-site Forman</u>	

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, AND THAT THE CONTRACTOR IS SOLELY RESPONSIBLE FOR THE INDEMNIFICATION OF OWNER AND DEFENSE OF ANY CLAIMS AGAINST CONTRACTOR AND/OR OWNER ARISING FROM THE WORK PERFORMED UNDER THIS AGREEMENT.**

**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 paid to



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 event or



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 and



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 notice



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 claims



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 19th day of November, 2020.**

CITY OF LANCASTER

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

ATTEST:

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

Company Name

\_\_\_\_\_  
Type/Print Name and Title

Address



# Project Specifications

## CITY OF LANCASTER

E. Fifth Street - Dallas to Jefferson

			UNIT PRICE BID	TOTAL QUANTITY	TOTAL COMPLETED TO DATE
1	HMAC Type D Delivered more than 1500 tons	TONS	\$ 85.60		\$ -
2	HMAC Type D Delivered 500 to 1499 tons	TONS	\$ 91.90		\$ -
3	HMAC Type D Delivered less than 499 tons	TONS	\$ 105.70		\$ -
4	HMAC Type C Delivered more than 1500 tons	TONS	\$ 85.00	210.00	\$ 17,850.00
5	HMAC Type C Delivered 500 to 1499 tons	TONS	\$ 89.90		\$ -
6	HMAC Type C Delivered less than 499 tons	TONS	\$ 105.70		\$ -
7	HMAC Type B Delivered more than 1500 tons	TONS	\$ 84.40	400.00	\$ 33,760.00
8	HMAC Type B Delivered 500 to 1499 tons	TONS	\$ 88.40		\$ -
9	HMAC Type B Delivered less than 499 tons	TONS	\$ 104.50		\$ -
10	Additional Mileage Hauled beyond the first 10 from bidders plant Items# 1-9 Per Ton Per Mile	EACH PER TON MILE	\$ 12.60	610.00	\$ 7,886.00
	**NOTE: \$0.60 per mile @ 21 miles**				
11	Move In/Out Charge for projects under 499 tons	EACH	\$ 1,200.00		\$ -
12	Thoroughfare Traffic Control Charges Per street	EACH	\$ 2,400.00		\$ -
13	Manhole Ring Riser Adjustment/Placement Ring	EACH	\$ 250.00		\$ -
14	Valve Ring Riser Adjustment/Placement Ring	EACH	\$ 150.00		\$ -
15	Base Repair - Flex Base	SY	\$ 79.70		\$ -
16	Flex Base furnish and install	TONS	\$ 38.30	420.00	\$ 16,086.00
17	8" Cement Stab Existing - more than 3000 sy	SY	\$ 9.00	1,850.00	\$ 16,650.00
18	8" Cement Stab Existing - 1400 to 2999 sy	SY	\$ 10.30		\$ -
19	8" Cement Stab Existing - less than 1399 sy	SY	\$ 18.90		\$ -
20	Hauling Excessive Material more than 101 cy	CY	\$ 23.00	515.00	\$ 11,845.00
21	Hauling Excessive Material 51 to 100 cy	CY	\$ 25.90		\$ -
22	Hauling Excessive Material less than 50 cy	CY	\$ 37.00		\$ -
23	Wedge Mill	LF	\$ 4.40		\$ -
24	Full Depth Milling 0-4"	SY	\$ 5.20		\$ -
25	Full Depth Milling Each Additional Inch	SY	\$ 0.75		\$ -
26	Backfill Shoulders	LF	\$ 1.40	1,750.00	\$ 2,450.00
27	8" Pulverization	SY	\$ 4.45		\$ -
28	Petromat less than 2500 SY	SY	\$ 5.35		\$ -
29	Petromat 2500 - 4999 SY	SY	\$ 3.15		\$ -
30	Petromat more 5000 SY	SY	\$ 2.60	1,850.00	\$ 4,810.00

TOTAL FOR PAGE

\$ 111,137.00



Line Items

Line 1

<u>Name</u>	<u>Project</u>	<u>Price</u>
Reynolds Asphalt Company	E. 5th Street	\$111,137.00
	Between Dallas Avenue & Jefferson Street	8% Contingency \$8,890.96
		Total Project Cost \$120,027.96



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

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

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

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

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

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

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

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

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

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



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

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



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

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

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

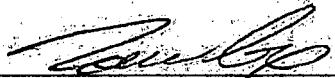
**City of Lancaster:** Purchasing Department  
Attn: Dawn Berry, Purchasing Agent  
City of Lancaster  
PO Box 940  
Lancaster, TX 75146  
972-218-1329 ph ~ main fax # fax  
[purchasing@lancaster-tx.com](mailto:purchasing@lancaster-tx.com)

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



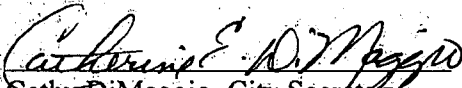
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby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

**CITY OF GRAND PRAIRIE**

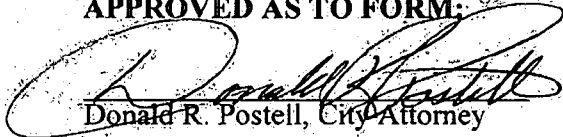
  
Tom Cox, Deputy City Manager

DATE: 01-18-2011

ATTEST:

  
Cathy DiMaggio, City Secretary

APPROVED AS TO FORM:

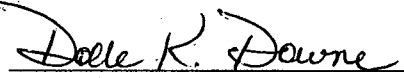
  
Donald R. Postell, City Attorney

**THE CITY OF LANCASTER**

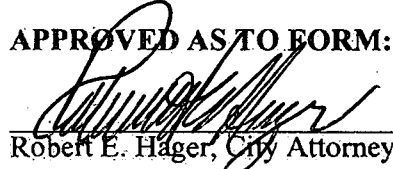
  
Opal Mauldin Robertson, City Manager

DATE: 03/15/2011

ATTEST:

  
Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

  
Robert E. Hager, City Attorney

**RECEIVED**

APR 05 2011

CITY OF GRAND PRAIRIE  
PURCHASING



AMENDMENT TO PRICE AGREEMENT  
CITY OF GRAND PRAIRIE

STATE OF TEXAS           §  
                                     §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DALLAS       §

**THIS AMENDMENT** is made and entered into this date by and between the **CITY OF GRAND PRAIRIE**, a Texas municipal corporation (hereinafter referred to as the "CITY", and **REYNOLDS ASPHALT & CONSTRUCTION CO.** (hereinafter referred to as "VENDOR").

WHEREAS, the CITY and VENDOR have entered into a price agreement to provide Pavement Resurfacing per bid award resulting from vendor's response to RFB #16112, submitted by Ned Tankersley, on July 26, 2016; and

WHEREAS, the above referenced agreement was for an initial term of one year with the option to renew for four additional one year periods, totaling up to \$22,024,375.00 if all extensions were exercised. This Contract was effective as of August 17, 2016, and was to terminate at midnight on August 16, 2017, unless the parties mutually agreed in writing to extend the term of the Contract through an allowable renewal option, or, unless otherwise terminated as provided in provided in paragraph XVI of the original contract; and

WHEREAS, the first of four available renewal options was executed on July 12, 2017 and extended the term of the contract through August 31, 2018; and the second of four available renewal options was executed on July 20, 2018 and extended the term of the contract through August 31, 2019; and the third of four available renewal options was executed on August 12, 2019 and extended the term of the contract through August 31, 2020.

NOW, THEREFORE, for and in consideration of the mutual acts and covenants set out herein, the CITY and VENDOR agree as follows:

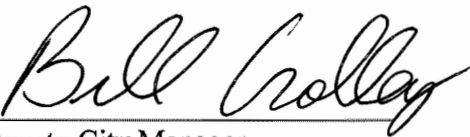
1. The CITY agrees that the price redetermination is acceptable and in the best interest of the CITY and such price increase, which is attached hereto and incorporated herein as Exhibit A; and
2. The parties mutually agree to extend the term of the contract and execute the final of the four available renewal options and extend the contract expiration to midnight on August 31, 2021 at which time all of the work called for under this Contract must be completed unless the parties mutually agree in writing to extend the term of the Contract through an additional allowable renewal option, or, unless otherwise terminated as provided in provided in paragraph XVI of the original contract; and



3. The estimated annual amount to be paid to VENDOR under such contract shall remain the sum of \$4,013,790.00, to reflect the contract renewal; and
4. This shall constitute an Authorization for extension of price agreement as set out in the agreement between the parties, and an amendment to such contract. All of the terms and conditions of the original contract shall remain in full force and effect, as amended hereto, unless set out otherwise herein.

EXECUTED this the \_\_\_\_\_ day of 7/17/2020, 20\_\_\_\_.

**CITY OF GRAND PRAIRIE, TEXAS**

By:   
Deputy City Manager


ATTEST:

  
For Cathy E. DiMaggio, City Secretary

APPROVED AS TO FORM:

  
Megan Mahan, City Attorney

**REYNOLDS ASPHALT &  
CONSTRUCTION CO.**

By:   
Printed \_\_\_\_\_  
Name: Ned Tankersley  
Title: Vice President





City of Lancaster  
2020 Proposed Street Reconstruction  
East Fifth Street - Dallas Ave to Jefferson St

0 100 200 400 Feet



date: 10/26/2020



## LANCASTER CITY COUNCIL

### City Council Special Work Session

1.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

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

**Submitted by:** Carey Neal, Assistant to the City Manager

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#### **Agenda Caption:**

Receive a presentation from a representative of Texas Coalition for Affordable Power, Inc. (TCAP).

#### **Background:**

The Texas Legislature deregulated the state's electricity market in 2001. The Cities Aggregation Power Project (CAPP) and the South Texas Aggregation Project (STAP) was formed to buy power in blocks for governmental entities. In 2010, CAPP and STAP merged to form the Texas Coalition for Affordable Power (TCAP). TCAP is a non-profit organization committed to providing electricity at the lowest possible cost to its members.

The City of Lancaster, along with 170 cities and political subdivisions, is a member of TCAP. TCAP is a non-profit corporation that leverages aggregate members' power needs to negotiate competitive electric prices for its members. TCAP has procured electricity for its members since the beginning of retail electric deregulation in Texas in 2002.

TCAP has recently introduced a new program, Strategic Hedging Program (SHP). SHP was designed as new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of the participating member cities. The program will involve a series of monthly competitive auctions.

The City of Lancaster executed a fixed rate, five-year electricity supply agreement with GEXA Energy for City facilities effective January 1, 2018, through December 31, 2022. In recent years, the electric market and the mix of available sources and supplies has changed dramatically. In order to procure electricity at a more competitive value, TCAP is offering members the opportunity to participate in a strategic hedging program (SHP).

Under this program, one-twelfth (1/12) of the annual electricity supply would be procured each month, two years forward year-to-year. In turn, this provides the lowest market pricing to reduce charges and premiums longer-term contracts must charge. SHP features a highly competitive RFP process of more than 20 vetted creditworthy suppliers. At least 4 suppliers will be in each TCAP portfolio at all times. Prices will be known to members well prior to fiscal year budgeting needs. Additionally, members will be provided with twice a year periodic off-ramps if a member desires to revert to a traditional fixed price/fixed term contract.

In order to prepare for the electric supply contract beyond 2022, the City Council may approve a professional services agreement and commercial electricity services agreement. This would authorize TCAP to function as a procurer of energy in addition to serving as an agent in negotiating contracts. If approved by City Council, the City will execute a professional services agreement between the City of Lancaster and TCAP and a commercial electricity service agreement between the City of Lancaster and GEXA Energy, LP to provide power on and after January 1, 2023. The City Council will receive a presentation.



## CITY OF LANCASTER CITY COUNCIL

### City Council Special Work Session

2.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government  
Sound Infrastructure

**Submitted by:** Opal Mauldin-Jones, City Manager

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### **Agenda Caption:**

Receive a presentation regarding the FY 2020/2021 One-Time Expenditures for city facilities and equipment.

### **Background:**

The City of Lancaster has an Equipment Replacement Schedule that was re-established in 2012 and is updated annually based on use, maintenance, age, and other criteria established by the Equipment and Facilities Department. City Council annually receives an update regarding the plan for the upcoming fiscal year.

In 2016, City Council received a facility assessment regarding the condition of all facilities. The report focused on areas that were considered major deficiencies. Annually, Council receives a report regarding proposed facility improvements based on the assessment, maintenance, and any needed major repairs.

The City council will receive a presentation regarding the proposed FY 2020/2021 Equipment Replacement and facility improvement plans.



## CITY OF LANCASTER CITY COUNCIL

### City Council Special Work Session

3.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):**  
Effective Municipal Operations  
Financially Sound City Government  
Sound Infrastructure  
Quality Development

**Submitted by:** Vicki Coleman, Development Services Director

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#### **Agenda Caption:**

Discuss the Code of Ordinances Article 6 Building Regulations, Sec. 6.03.002 Commencing work without permit and requirements used to remove work constructed without a permit.

#### **Background:**

As prescribed in the City Council Rules and Procedures, amended August 2019, Section D. City Council Agenda Process, Subsection 1.b., Council Member Carol Strain-Burk requested that an item be included on a City Council Work Session for the purpose of discussing the City of Lancaster adopted code of ordinances regarding penalties assessed for residents who repeatedly receive violations under Code of Ordinances, Building Regulations Section 6.03.002. Additionally, Council Member Carol Strain-Burk requested information on the criteria used to have work performed without a permit removed.

During the October 19, 2020, work session meeting, the City Council discussed a desire to implement a penalty fee for property owners that habitually violate the requirement to obtain a permit prior to commencing work. Currently, the Code of Ordinances provides for the collection of double fees when work is performed without a permit. Additionally, the Code of Ordinances provides for the collection of an investigation fee equal to the permit fee.

Attached is language for City Council review and discussion related to imposing an escalated penalty at the third occurrence of commencing work without a permit.

When addressing property owners for working without a permit, the enforcement process includes issuing a Stop Work Order and a Notice of Violation. With the Notice of Violation, a property owner is informed of the ordinances violated and provided time frames to correct the violation by complying with one of the following: 1) Submitting an application for review and permit approval or 2) Removing the improvement and restoring the site/structure to its original condition. Failure to comply with the Notice of Violation results in the property owner being issued a citation that is to municipal court for a hearing. Subsequently, the City's Court Administrator issues the property owner a letter with a date and time to appear in municipal court. Once the property owner appears, they have the opportunity to 1) Request additional time, 2) Request a jury trial, or the court may issue an Order.

#### **Attachments**

Code of Ordinances, Building Regulation 6.03.002

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### Adopted code

#### Sec. 6.03.002 Commencing work without permit

Where work for which a permit is required is started or preceded prior to obtaining said permit, the fees above shall be doubled. The payment of a double fee shall not relieve any persons from fully complying with the regulations prescribed in this article in the execution of the work or from any other penalties prescribed herein.

### Proposed code

#### Sec. 6.03.002 Commencing work without permit

Where work for which a permit is required is started or preceded prior to obtaining said permit, the fees above shall be doubled. **Where a property owner habitually fails to obtain a permit prior to commencing work at the same address, with or without a contractor, the penalty fee after the second occurrence of the failure to obtain a permit shall be tripled.** The payment of a ~~double fee~~ **penalty fee** shall not relieve any persons from fully complying with the regulations prescribed in this article in the execution of the work or from any other penalties prescribed herein.



## LANCASTER CITY COUNCIL

### City Council Special Work Session

4.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):**

- Effective Municipal Operations
- Financially Sound City Government
- Healthy, Safe & Engaged Community
- Sound Infrastructure
- Quality Development
- Professional and Committed City Workforce

**Submitted by:** Opal Mauldin-Jones, City Manager

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### **Agenda Caption:**

Receive a presentation and discuss establishing the City of Lancaster Legislative Priorities for the 87th Session of the Texas Legislature.

### **Background:**

The Texas Legislature meets in a regular session every two years, convening on the second Tuesday in January of every odd-numbered year. These biennial sessions are limited to 140 days. The governor can also call additional special sessions as necessary, which cannot exceed 30 days. The 87th Legislative Session is scheduled for January 12 through May 31, 2021.

Bill filing for the 87th legislative session began on November 12, 2020. Prior to the start of each legislative session, the City Council establishes legislative priorities that it considers of great importance and relevance to the City.

The following priority items are being proposed based on review by staff, the regional advocate affiliations such as the Best Southwest Partnership, North Texas Commission, Dallas Regional Chamber, and Texas Municipal League as having the potential to impact our organization if passed:

### **LOCAL GOVERNMENT ACCOUNTABILITY:**

- **Support legislation that provides for enhanced local decision-making of local government including increasing the 3.5% revenue cap imposed on cities and counties to 6% or higher.**
    - Legislation in relation to Senate Bill 2 (S.B.2), is the Texas Property Tax Reform and Transparency Act of 2019, which was passed by the Texas Legislature in 2019. S.B.2 reforms the system of property taxation in three primary ways: (1) lowering the tax rate a taxing unit can adopt without voter approval and requiring a mandatory election to go above the lowered rate; (2) changes to the procedure by which a city adopts a tax rate; and (3) making several changes to the property tax appraisal process.
  - Prior to S.B.2, the term “effective tax rate” referred to the benchmark tax rate needed to raise the same amount of maintenance and operations property taxes on existing property as the previous year, after considering changes in appraised values. S.B.2 changed the terms “effective tax rate” and “effective maintenance and operations tax rate” to “no-new-revenue tax rate” and “no-new-revenue maintenance and operations tax rate,” respectively.
-



- Under pre-S.B.2 law, a city's rollback rate was the rate necessary to raise precisely eight percent more maintenance and operations tax revenue than the year before after taking into account appraisal fluctuations. The debt service component of the tax rate is then added to the product of the effective maintenance and operations rate and 1.08. In addition to changing the terminology from "rollback rate" to "voter-approval rate," S.B.2 lowers the multiplier used in the rate calculation from 8 percent to 3.5 percent for cities that aren't considered to be "special taxing units," which is nearly every Texas city. Additionally, the term "rollback tax rate" was changed to "voter-approval tax rate."
- 

- **Support legislation repealing HB 2439, which unnecessarily prohibited cities from regulating building products, materials, or methods used in the construction of residential or commercial structures.**

- This legislation became effective on September 1, 2019. HB 2439 relates to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction or renovation of residential or commercial buildings. HB 2439 prevents local governments from regulating the materials used for new construction, maintenance, and renovations. Instead of localized rules regarding building products and methods, the new law sets nationally accepted codes as the only standards for cities to regulate construction within their boundaries. For cities, this regulation has the potential of causing long-term effects on the value of homes within the community. Builders and Developers are only required to use materials and products approved under the Model National Standards Code. (Example prohibits requiring masonry materials for residential properties).
- 

- **Support repealing portions of HB 3167, to provide that the governing body may delegate to one or more officers or employees of the municipality to approve, deny, or conditionally approve plans and to allow for an applicant at their discretion to waive the deadline for a response, including allowing the applicant to request an extension on a plat application for greater than 30 days, not exceeding 90 days, to be accepted/approved by the municipality.**

- HB 3167 became effective September 1, 2019, and relates to the county and municipal approval procedure for land development applications.
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- This bill relates to county and municipal approval procedures for land development applications, known as the 30-day shot clock.
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- The bill amends Local Government Code Chapter 212, which relates to subdivision platting. The bill seems to insert a "site plan" and "site development plan" into the subdivision plat approval process.
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- Prior to the bill cities and developers could work together to ensure plans were in compliance with local regulations and vision.
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- The process was regulated to thirty (30) days unless the developer voluntarily without an inquiry requested to delay the project. Currently, this legislation will cost developers more in fees, because without the ability to review and work with developer plans must be denied & resubmitted if they don't adhere to regulations.
- 

- **Support legislation which would provide an expedited process for voluntary annexations by petition between municipalities and property owners, as well as legislation that would provide a path to involuntarily annexation of property for a city.**

- Before the approval of S.B.6, December 2017, Texas granted broad annexation power to all of its home-rule cities.
- 

- S.B.6 required landowner or voter approval of annexations in the state's largest counties



(those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process.

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- In 2019, H.B. 347 completely closed the book on unilateral annexations in every county. The bill ends most unilateral annexations by any city, regardless of population or location. Specifically, the bill makes most annexations subject to the three consent annexation procedures that allow for annexation: (a) on request of each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, the petition of landowners; and (3) authorizes certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure.
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- The loss of planning and financial control may bring massive problems to transportation, utilities, and land use planning.
- 

- Property to be annexed must be in a city's extraterritorial jurisdiction and must touch the existing city limits. Most agree that a city may not annex "islands" of municipal territory. It is very common that a petitioner's property is across a road or a short distance from the existing city limits.
- 

- Historically, that's never been a problem. A home rule city could have included the road pursuant to the unilateral annexation authority granted by its charter, and a general law city had a statute (Local Government Code Sec. 43.103) allowing it to include the road. However, H.B. 347 took both away.
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- Local Gov't Code Sec. 43.1055. Annexation of Roads and Rights-of-Way: "Notwithstanding any other law, a municipality may by ordinance annex a road or the right-of-way of a road on request of the owner of the road or right-of-way or the governing body of the political subdivision that maintains the road or right-of-way under the procedures prescribed by Subchapter C-1."
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- **Support legislation to provide additional funding through the Municipal Court Building and Security Fund and Municipal Court Technology Fund, Support legislation to impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state, and allow a more equitable way of distributing court fines that would result in a higher percentage of fines being kept local, where the laws are enforced, the court is held, and the fines collected.**

- The Texas Code of Criminal Procedures requires funding programs for municipalities under 850,000 population that are covered through fees collected by the municipal court.
- 

- **Municipal Court Building and Security Fund: Art. 102.017. Court Costs; Courthouse Security Fund; Municipal Court Building Security Fund; Justice Court Building Security Fund.**

- (a) A defendant convicted of a felony offense in a district court shall pay a \$5 security fee as a cost of court. (b) A defendant convicted of a misdemeanor offense in a county court, county court at law, or district court shall pay a \$3 security fee as a cost of court. A defendant convicted of a misdemeanor offense in a justice court shall pay a \$4 security fee as a cost of court. The governing body of a municipality by ordinance may create a municipal court building security fund and may require a defendant convicted of a misdemeanor offense in a municipal court to pay a \$3 security fee as a cost of court.
- 

- **Municipal Court Technology Fund: Art. 102.0172. Court Costs; Municipal Court Technology Fund:**



- The governing body of a municipality by ordinance may create a municipal court technology fund and may require a defendant convicted of a misdemeanor offense in a municipal court or municipal court of record to pay a technology fee not to exceed \$4 as a cost of court.
- 

- **Support legislation that would impact local sourcing of sales and use taxes for internet orders and support legislation that would help increase revenue sources for cities.**

- H.B. 1525 and H.B. 2153, passed in the 2019 legislative session, raise concern for cities regarding sourcing of sales and use taxes for online orders. H.B. 1525 requires online marketplaces, such as eBay, Amazon, or Etsy, to collect sales taxes on marketplace sales, instead of potentially requiring each individual seller on that marketplace to bear the burden of collecting the sales tax. Additionally, it requires the sales taxes associated with marketplace sales to be sourced to the destination to which the marketplace goods are shipped.
- 

- H.B. 2153 gave remote sellers the option to either collect and remit the actual sales taxes owed based upon the rate at the shipping destination or instead collect a simplified “single local use tax rate” of roughly 1.75 percent on all sales.
- 

- In 2020 the comptroller proposed amendments to the administrative rules pertaining to local sales and use tax collection in order to harmonize the rules and the statute following the passage of H.B. 1525 and H.B. 2153. Under the proposed rules, sales taxes on intrastate internet orders wouldn’t automatically be sourced to the community where the place of business receiving the order is located. Instead, the rules provided that an internet order would not be received at a place of business of the seller, meaning that sales taxes on those orders instead were sourced either to the location where the order was fulfilled, or the location where the purchased items were delivered to the consumer.
- 

- The adopted rule provides that orders received via a shopping website or software application are received at a location that is not a place of business in the state. The ultimate impact on cities where orders are sourced are, under the provisions governing where a sale is consummated, certain internet purchases may change from being sourced to the location where the order was deemed to have been received. The new rule provides that orders are sourced to the location where the order is fulfilled or the location where the order is received by the purchaser, depending on the exact circumstances. By comparison, nothing in the rule changes the sourcing of orders placed in person in Texas; in-person orders at a place of business in Texas are consummated at the place of business, regardless of where the order is fulfilled. We have been working with other cities in North Texas that may be impacted by the comptroller’s rule change.
- 

- **Support legislation that could assist cities with additional sources of revenue due to the effects of COVID-19.**

- Hotel/Motel Tax: The City’s hotel occupancy tax is 7%; which covers hotels, motels, and bed and breakfasts, as well as condominiums, apartments and houses rented for less than 30 consecutive days. Due to the health pandemic, the hotel/motel industry has seen a decrease in occupancy; which decreases revenue collected by cities. Legislation is expected to be presented to amend the Tax Code Chapter 351 to recognize the impact of COVID-19 to possibly increase or adjust municipal tax rates during a state or national disaster.
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- Legislation to increase individual item tax; such as beer or cigarettes are other options for municipalities to gain additional revenue.
- 

- **Support legislation to amend SB295/HB940 to further define unlawful tethering of dogs and implement a more enforceable penalty that does not limit an officer’s ability to enforce the law.**

- Texas Health and Safety code, § 821.077, “Unlawful Restraint of Dogs”, was created in 2007,



to establish requirements for restraining a dog to ensure the safety and health of the animal and community. The Texas Animal Control Association, LEO's, and prosecutors maintain the law is unenforceable due to confusing language and a mandatory 24-hour warning period that limits officers immediate enforcement of this statute, thereby preventing them from intervening in a critically unsafe situation. This bill will address the following changes:

- (a) The tethering device must allow the dog access to a shelter of adequate size to allow the dog to stand erect, to turn easily and to sit and lay down in a comfortable and normal position and constructed in such a manner as to keep the dog dry and protected from exposure to extreme temperatures. (b) The tethering device must allow the dog access to shade from direct sunlight and potable drinking water. (c) The length of the tethering device must be at least five times the length of the dog as measured from the tip of the dog's nose to the base of the dog's tail or twelve feet whichever is greater. (d) The tethering device must be attached to a collar or harness constructed of nylon, leather, or similar material properly fitted to the dog. (e) The tethering device must have swivels on both ends to prevent the dog from becoming entangled. (f) The tethering device cannot be made of metal chain links more than a quarter of an inch thick or have any weights attached to it. (g) The tethering device must be capable of keeping the dog from: (i) leaving the owner's property; (ii) entering within six feet of a public sidewalk, road, or highway; or (iii) reaching an object or hazard that poses a risk of injury or strangulation to the dog.
- 
- **Support legislation relating to limit the governor's power to control the sale, transportation, and use of weapons and ammunition during a declared state of disaster or state of emergency.**
    - H.B. 26 : Weapons: This legislation would eliminate the governor's authority to: (1) limit the sale, dispensing, or transportation of firearms during a state of disaster; and (2) issue directives on the control of the sale, transportation, and use of weapons during a state of emergency.
- 
- **Support legislation to include a positive diagnosis of SARS-CoV-2 or COVID-19 to workers' compensation statute.**
    - H.B. 34– Disease Presumption: This legislation would, among other things, add a diagnosis of SARS-CoV-2 or COVID-19 by a test approved by the CDC to the workers' compensation disease presumption statute.
- 
- **Support legislation to exempt emergency preparation items from sales and use tax.**
    - H.B. 89– Sales Tax Exemption: This legislation would exempt the following from sales and use taxes as "emergency preparation items": (1) medical or other face masks used to protect the nose and mouth of a person wearing the mask from potential contaminants, or from transmission of particles from the person wearing the mask; (2) disposable gloves the primary purpose of which is to act as a protective barrier to prevent the possible transmission of disease; and (3) disinfectant cleaning supplies, including bleach products and sanitizing wipes.
- 
- **Support Legislation to establish an Emergency Powers Board during a declared state of disaster or public health disaster.**
    - H.B. 173– Emergency Powers Board: would: (1) establish the Emergency Powers Board to provide oversight during a declared state of disaster, including a declared public health disaster; (2) provide that the Board is made up of the governor, lieutenant governor, the speaker of the house, the chair of the Senate State Affairs Committee; and the chair of the House State Affairs Committee; (3) provide that after the eighth day after the date the governor issues an executive order, proclamation, or regulation related to a declared state of disaster or public health disaster, the Board, by a majority vote, may set an expiration date for the order, proclamation, or regulation; (4) the board may meet by telephone conference, video conference, or other similar telecommunication method provided that the requirements



of the Open Meetings Act are met; and (5) if an executive order, proclamation, or regulation issued by the governor has an expiration date set by the governor and not modified by the Board that is on or after the 22nd day after the date the order, proclamation, or regulation is issued, the governor shall convene a special legislative session to determine whether any legislation is necessary to implement, modify, or repeal the order, proclamation, or regulation.

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- **Support legislation that repeals the provision that prohibits cities from adopting a requirement that establishes a maximum sales price for privately produced housing.**

- H.B. 84 Home and Residential Lot Sales Price: would repeal the provision in current state law that prohibits a city from adopting a requirement that establishes a maximum sales price for a privately produced housing unit or residential building lot.
- 

## **WATER AND INFRASTRUCTURE**

- **Support legislation continuing to implement and adequately fund the Texas State Water Plan to meet the water supply needs associated with future population growth and the economic development of the State.**

- The Texas Water Plan is based on future conditions that would exist in the recurrence of a drought. During the regional water planning process, regional water planning groups estimate the costs of water management strategies such as conservation, groundwater development, and new reservoirs that, in the event of a recurrence of a drought of record, would need to be implemented to meet the needs of their region. Once the planning groups have recommended water management strategies, they administer a survey to estimate the amount of state financial assistance that local and regional water providers will require implementing projects associated with those strategies.
- 

- Local governments have traditionally provided the majority of the financing for water-related infrastructure projects. Water providers finance projects primarily through municipal debt on the open bond market and less frequently with cash or private equity sources such as banks. While the traditional funding mechanisms will continue to assist with the financing of water projects, additional means are necessary to meet Texas' water needs.
- 

## **TRANSPORTATION**

- **Support legislation maintaining existing law relating to eminent domain authority to allow planning and development of new and/or expanded transportation corridors including highways, high-speed rail, commuter rail, freight rail, and transit.**

- The current **Texas Government Code: Chapter 2206 Eminent Domain**: Limitations on Purpose and Use of Property Acquired Through Eminent Domain. Sec. 2206.001. Limitation on Eminent Domain for Private Parties or Economic Development states in Sec. 2206.001 (c)(1)-(3) "This section does not affect entities authorized by law to take private property through the use of eminent domain for transportation projects, including but not limited to, railroads, airports, or public roads or highways. (3) water supply, wastewater, flood control, and drainage projects".
- 

- Currently, the law protects cities from taking eminent domain of property for the use of transportation projects. Accordingly, if a city requires a property for a transportation project, the City is constrained only by the statutory provisions that grant it condemnation authority (and any other relevant statutes) and the limitations imposed by the constitution and case law. A city is free of the additional limitations imposed by section 2206.001(b).
- 

- **Support legislation reinstituting and implementing all transportation "tools" necessary for the Texas Department of Transportation (TxDOT) to stimulate the economy and create jobs**



through planning, design, and construction of transportation projects including toll roads, tolled managed lanes, and facilitate the funding of these projects via concessions and any other financing avenues available, including public-private partnerships (P3s) and Comprehensive Development Agreements (CDA).

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- **Support legislation continuing efforts to recapture all of Texas' federal transportation tax dollars that are currently disbursed to other states, and provide additional funding to the Texas Department of Transportation (TxDOT) for transportation projects that would support regionally appropriate highway improvement and rail as components.**
    - TxDOT is seeking legislation to address fair share for federal funding for the state of Texas in regard to the Federal Highway Trust Fund. Texas congressional leaders are urging fellow congressional lawmakers to address a longstanding inequity in the share of federal transportation funding Texans receive compared to what the state contributes in federal fuel taxes. According to the Federal Highway Administration, in fiscal year 2019 Texas will receive only 95 cents in transportation funding for every dollar Texans paid directly into the Highway Trust Fund. Texas contributes more to the Federal Highway Trust Fund than any other state and received proportionately less than any other state. Texas also is the only state that effectively received none of the multi-billion-dollar general fund transfer provided to the Highway Trust Fund in fiscal year 2019.
  - **Support legislation to allow a city to lower prima facie speed limits from 30 to 25 miles per hour without the need for a traffic study**
    - A city may lower the state-mandated speed limit by performing an engineering and traffic investigation and determining that the prima facie speed limit is unreasonable or unsafe for that road. TEX. TRASP, CODE § 545.353. If requested by the school, the city must hold a public hearing at least once each calendar year to consider prima facie speed limits on a highway in the city, including a state highway, near the school or institution of higher education. TEX. TRASP, CODE § 545.357.
    - Before lowering the speed limit, the city must follow the "Procedures for Establishing Speed Zones," and consider width and condition of the pavement, the usual traffic at the affected area, and other circumstances. The only instance in which a city may lower a speed limit without a traffic study, to as low as 25 miles per hour, is if the road is in an urban district, is less than four lanes, and is not a state highway.
  - **Support legislation allowing for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments are unable or willing to address.**
- 

## **SOCIAL JUSTICE**

- **Support legislation that provides funding for training programs for local police departments to be administered locally including certification opportunities for first responders to improve criminal justice and responses to adverse situations.**
- **Support BO's LAW- Botham Jean Act (Bo's Law):** This legislation is aimed to close the loophole in the Mistake of Fact Law (Section 8.02 of the Texas Penal Code) which provides a loophole for defendant to commit an act due to a mistaken belief in fact and not be convicted for that act. The law allows for a defense to kill another individual and not be charged for their murder. Bo's Law would also, amend the Castle Doctrine (SB 378) to protect the victim, not the perpetrator. The current law is subjective.
  - (S. B.158): Body Camera Law-Currently, body camera law defines a Private Space- a location where a person has a reasonable expectation of privacy which includes a person's



(victim's) home. Officers can use their discretion to turn off their camera when in a domestic violence victim's home or an abuse incident at home where a child is present. This also excludes the information from an open records request. Make amendments to S.B. 158, and the ability for law enforcement to turn off their camera in a private space; what constitutes a private space.

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- Police in-car video falls under the current law as a public place. The continuous recording of a video is critical for context and evidentiary purposes. If passed, the bill will prevent an officer from turning off a camera unless it is seized as evidence. This will allow courts to review the uninterrupted footage during an investigation and will allow the Judicial Court to make a determination of what is critical and what is not allowed by law enforcement when on a scene. A penalty for law enforcement will be allocated for officers who intentionally turn their body cameras off; this should be considered as tampering with evidence.
- 

• **Support the George Floyd Act-Texas Legislative Black Caucus (TLBC):** The George Floyd Act was introduced by the Texas Legislative Black Caucus. A comprehensive piece of criminal justice legislation named in honor of George Floyd, a native of Houston who died by a police officer's use of unnecessary force this past May. The George Floyd Act is the product of a series of town halls the TLBC held following Floyd's tragic death to discuss dismantling any systemic racism written into our state laws and policies.

- The legislation is authored by Rep. Senfronia Thompson and will be sponsored in the Senate by our Senator, Senator Royce West. The legislation aims at eliminating the no-knock warrants and limit the use of force by officers requiring them to attempt to de-escalate the situation. The bill will aim to build on the Sandra Bland Act passed by the Legislation in 2017.
- 

- The legislation will consist of banning chokeholds across the state and require law enforcement officers to intervene or render aid if another officer is using excessive force while on the job.
- 

- The following provisions are related to the legislation's impact on cities:
- 

◦ **With respect to officer liability:**

- (a ) provide that a person may bring an action for any appropriate relief against a peace officer who, under the color of law, deprived the person or caused the person to be deprived of any rights under the Texas Constitution, provided that such action is brought not later than two years after the day the cause of action accrues; (b) provide that statutory immunity or a limitation on liability, damages, or attorney's fees does not apply to the action described in (1)(a), above, and a court shall award reasonable attorney's fees and court costs to a prevailing plaintiff and if judgment is entered in favor of the defendant, the court may award reasonable attorney's fees and costs to the defendant only for defending claims the court finds frivolous; (c) provide that qualified immunity or the defendant's good faith but erroneous belief in the lawfulness of the defendant's conduct is not a defense to an action brought under (1)(a), above; and (d) require a public entity, including a city, to indemnify a peace officer employed by the entity for liability incurred by and a judgment imposed against the officer in an action brought under (1)(a), above, except that the entity shall not be required to indemnify the peace officer if the officer was convicted for the conduct that is the basis for the action;
- 

◦ **With respect to the duties and powers of a peace officer:**

- (a) amend current law to provide that a peace officer has the discretion on whether or not, if authorized, to: (i). interfere without a warrant to prevent or suppress a crime; or (ii). arrest offenders without warrant so that they may be taken before the proper magistrate or court and be tried; (b) provide that a peace officer shall: (i) identify as a peace officer before taking any action within the course and scope of the officer's official



duties unless the identification would render the action impracticable;(ii) intervene if the use of force by another peace officer: 1. violates state or federal law or a policy of any entity service by the other officer; 2. puts any person at risk of bodily injury, unless the officer reasonably believes that the other officer's use of force is immediately necessary to avoid imminent harm to a peace officer or other person; or 3.is not required to apprehend or complete the apprehension of a suspect; and 4. shall provide aid immediately to any person who needs medical attention, including a person who needs medical attention as a result of the use of force by a peace officer; (c) provide that a defendant may not be convicted of an offense related to controlled substances on the testimony of person acting covertly on behalf of a law enforcement agency unless the testimony is corroborated by evidence tending to connect the defendant with the offense committed;

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◦ **With respect to issuing citations in lieu of arrest for misdemeanor offenses:**

- (a) provide that the Texas Southern University, in consultation with other law enforcement organizations, shall publish a model policy related to the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only, that includes the procedure for a peace officer, upon a person's presentation of appropriate identification, to verify the person's identity and issue a citation to the person; (b) provide that each law enforcement agency shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only, provided that such policy meets the requirements of the model policy described in (3)(a), above; (c) provide that a law enforcement agency may adopt the model policy developed under (3)(a), above; (d) provide that, with the exception of certain assault offenses and for the offense of public intoxication, a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only or arrest a person who commits one or more offenses punishable by fine only; (e) provide that a peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor punishable by fine only, other than an offense of public intoxication, shall, instead of taking the person before a magistrate, issue a citation to the person; (f) provide that a peace officer who is charging a person, including a child, with committing certain assault offenses that are a misdemeanor, punishable by fine only, may, instead of taking the person before a magistrate, issue a citation to the person; (g) provide that a peace officer may not arrest, without warrant, a person found only committing one or more misdemeanors related to certain traffic offenses that are punishable by fine only, and in such instances shall issue a written notice to appear to the person; (4) With respect to de-escalation and proportionate response: (a) provide that a law enforcement agency shall adopt a detailed written policy regarding the use of force by peace officers that must: (i) emphasize the use of force in a manner proportionate to the threat posed and to the seriousness of the alleged offense; (ii) mandate that deadly force is only to be used by peace officers as a last resort; and (iii) affirm the sanctity of human life and the importance of treating all persons with dignity and respect; (b) provide that a law enforcement agency may adopt the model policy on use of force developed by the Texas Commission on Law Enforcement and described in (6)(a), below;
- 

◦ **With respect to disciplinary procedures in certain cities:**

- (a) require a civil service commission to implement a progressive disciplinary matrix for infractions committed by police officers that consists of a range of progressive disciplinary actions applied in a standardized way based on the nature of the infraction and the officer's prior conduct record, and such matrix must include: (i) standards for disciplinary actions related to use of force against another person, including the failure to de-escalate force incidents in accordance with departmental policy; (ii) standards for evaluating the level of discipline appropriate for uncommon infractions; and (iii) presumptive actions to be taken for each type of infraction and any adjustment to be



made based on a police officer's previous disciplinary action; (b) make changes to the meet and confer provisions applicable to police officers to provide that certain cities that have adopted a meet and confer agreement but are not subject to civil service rules or collective bargaining shall implement a progressive disciplinary matrix as described in (5)(a), above, for its police officers, and that such agreement may not conflict or supersede a rule concerning the disciplinary actions that may be imposed under the disciplinary matrix; (c) provide that a hearing examiner in a city subject to civil service rules must presume a disciplinary action applied to a police officer under a progressive disciplinary matrix is reasonable unless the facts indicate that the department inappropriately applied a category of offense to the particular violation; and (d) make changes to the collective bargaining statute to provide that a city that has adopted a collective bargaining agreement but is not subject to civil service rules shall implement a progressive disciplinary matrix as described in (5)(a), above, for its police officers, and that such agreement may not conflict with an ordinance, order, statute, or rule related to disciplinary actions that may be imposed on its police officers under a disciplinary matrix implemented by the city;

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◦ **With respect to use of force:**

- (a) provide that the Texas Commission on Law Enforcement shall develop and make available to all law enforcement agencies a model policy and associated training materials regarding the use of force by peace officers; (b) make changes to the instances in which a person, including a peace officer and a person in the presence of and at the direction of a peace officer, may be justified in using nonlethal force in connection with making or assisting in making an arrest or search, or preventing or assisting in preventing escape after an arrest, (c) make changes to instances in which a peace officer or a person in the presence of and at the direction of a peace officer may be justified in using deadly force in connection to making an arrest or preventing escape after an arrest; (d) provide that the use of force against a person in connection with making or assisting in making an arrest or search, or preventing or assisting in preventing an escape after an arrest, is not justified if the force is used in a manner that impedes the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth; and (e) repeal the Penal Code provision that provides that a peace officer or a person other than a peace officer acting in the officer's presence and direction has no duty to retreat before using deadly force in connection with making an arrest or preventing escape after arrest.
- 

## **OTHER INFRASTRUCTURE**

• **SUPPORT: Developing plans and compiling resources needed for greater broadband connectivity to enhance access to public education, healthcare, employment, news, and information.**

- In Texas, new laws from the 2019 legislative session will bring further attention to the digital divide. House Bill 1960 establishes the Governor's Broadband Development Council, whose members will represent various stakeholders and areas of expertise, to research the progress of broadband development and identify barriers to deployment in underserved areas. HB 2422 requires the Texas Department of Transportation to provide online notice of certain highway construction projects so broadband providers can explore joint trenching opportunities, and Senate Bill 14 allows electric coops to use existing easements for broadband and fiber.
- 
- The Classroom Connectivity Initiative—a public-private partnership seeking to increase access to affordable broadband for Texas public schools; nearly 275,000 Texas students need more bandwidth for digital learning.
-



- **Support legislation making beneficial amendments to the equity appraisal statute; close the “dark store” theory of appraisal loophole, and require mandatory disclosure of real estate sale prices. Texas Tax Code Sec. 23.01.**

- This issue has become problematic for Texas cities in recent years is the shift from appraisal based on a market approach to appraisals based on an equity approach. County appraisal districts have typically relied on a market approach to appraisals which is primarily based on actual sales prices. Commercial property owners are challenging this by filing lawsuits, based on S.B. 841, stating their properties should be appraised based on how similar properties are valued. S.B. 1342 and S.B.240 were filed in the past to address issues related to equity appraisal.
- 

- Even though property tax appraisals must, by law, be based on market value, and even though sales price is arguably the best evidence of market price, appraisal districts are prevented by current law from having easy access to sales price data. Sales price disclosure legislation is generally defeated because the sales price is frequently opposed by real estate interest on various grounds. One argument using sales price disclosure for appraisal purposes is that actual sale price often reflects ancillary financial deals between buyer and seller.
- 

- Mandated sales price disclosure could be beneficial to cities if it made appraisals more accurate, thus taking some ammunition away from property tax critics who claim that the entire property taxing system is flawed.
- 

- Mandatory sales disclosure might be beneficial to cities if it made appraisals more accurate. Big Box Store Retailers have attracted the attention for arguably their stores should be appraised based on the “dark store” theory of property valuation. The “dark store” theory is that store should be appraised as if they were “dark” or shuttered; as the properties would be difficult to sell because big box store designs likely would not appeal to a prospective purchaser.
- 

- **Support legislation authorizing a City Council to opt-in to requiring residential fire sprinklers in newly constructed single-family dwelling.**

- Mandatory installation has significant developer cost impacts. Allowing a city to "opt-in" creates opportunity.
- 

## **BUSINESS COMPETITIVENESS**

- **Support legislation to maintain funding for the Skills Development Fund grants to improve workforce training including 60X30TX, 300X300, and continuing investment in Small Business Development Centers (SBDC) to support small businesses.**

- The 60x30TX was launched in 2015 with a clear and bold vision to be among the highest-achieving states in the country. 60x30TX is a roadmap to help Texas reach that future through higher education. The strategic plan contains four broad goals; each goal contains a set of targets that will move the state toward reaching one or more goals.
  - The Overarching Goal:60x30-By 2030, at least 60 percent of Texans ages 25-34 will have a certificate or degree.
  - The Completion Goal-By 2030, at least 500,000 students in that year will complete a certificate, associate, bachelor's, or master's from an institution of higher education in Texas.
  - Marketable Goal-By 2030, all graduates from Texas public institutions of higher education will have completed programs with identified marketable skills.
  - Student Debt Goal-By 2030, undergraduate student loan debt will not exceed 60 percent for first-year graduates of Texas public institutions.

The following is legislation that we recommend for Council to oppose:



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## **OTHER INFRASTRUCTURE**

- **Oppose legislation that limits or eliminates the current flexibility of the Major Events Reimbursement Program as a tool for the cities to attract or host major events and conventions.**
    - The Major Reimbursement Program formally known as Major Events Trust Fund permits local governments to apply to the State for the establishment of a Major Events Reimbursement Fund to help pay for certain eligible cost associated with conducting specifically-named major events if all statutory and administrative requirements are met pursuant to Article 5190.14, Section 5A, Vernon's Texas Civil Statutes. The legislation transformed the administration of the program from the Texas Comptroller of Public Accounts to the Economic Development and Tourism Office within the Office of the Governor (OOG) during the 84<sup>th</sup> Legislation Session with the effective date of September 1, 2015.
  - **Oppose legislation that limits the Type of incentives available to a city or that would limit any use of incentives by a City.**
  - **Oppose legislation that would increase the cost or slow the delivery of materials needed for public and critical infrastructure projects.**
- 

## **LOCAL GOVERNMENT ACCOUNTABILITY**

- **Oppose legislation that further erodes local control as it pertains to retirement issues.**
- **Oppose legislation that requires candidates for a city office to declare party affiliation in order to run for office.**
  - A new effort to politicize the non-partisan nature of city government in Texas. H.B. 2919 by Sanford. H.B. 2919 would have required candidates for mayor and city council to declare a party affiliation and run as partisans in their elections. Representative Sanford refiled his bill in 2019, but the bill (H.B. 3432) once again did not receive a committee hearing.
- **Oppose legislation that eliminates any of the current uniform election dates.**
  - Prior to 2005, most city elections had to be held on one of four uniform election dates. In 2005, the legislature passed H.B. 57, which deleted the February and September election dates, leaving only two uniform election dates: (1) the second Saturday in May and (2) the first Tuesday after the first Monday in November.
  - S.B. 100, implemented the federal Military and Overseas Voter Empowerment (MOVE) Act of 2009. The MOVE Act, among other things, requires that ballots be transmitted to military and overseas voters 45 days prior to an election held in conjunction with a federal election to ensure that military and overseas voters would have ample time to return their ballots.
- **Oppose legislation that imposes additional state fees or costs on Municipal court convictions or require municipal courts to collect fine revenue for the state.**
- **Oppose legislation that imposes new property tax or sales tax exemptions that substantially erode tax base.**



- **Oppose legislation attempts by the state legislature to further preempt cities' or counties' ability to govern and raise funds as determined necessary (i.e., revenue caps), or penalize municipalities who increased taxes above the existing cap due to COVID-19 expenses.**
  
- **Oppose legislation for Unfunded mandates placed on our local municipalities that are veiled as solutions for education funding.**
  
- **Oppose legislation that attempts to limit or prohibit the authority of city, county, and/or school district officials to use public funds to communicate with legislators and state agencies, as well as pay membership dues to organizations that hire lobbyists.**
  - Senate Bill 29: A reform measure that would prohibit any political subdivision including cities, counties, school districts, and transportation authorities from hiring contract lobbyists to influence legislation specifically related to taxation, bond elections, tax-supported debt, and ethics or receives money from the state of Texas from paying for lobbyists. It also blocks payments to people closely connected to lobbyists through business or by relation. Further, state contractors are also banned from using state dollars to pay for lobbying.

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  - S.B.29 enforces limitations for cities from advocating to elected officials or lobbyists. Local government lobbyists often protect the interests of residents against private lobbyists. If local governments could not lobby the Legislature, future legislation that constituted an unfunded mandate could further cost taxpayer money.

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- **Oppose legislation that increases revenues paid to the State of Texas by local governments as a result of the State of Texas increasing fines, fees, or charges to local governments including, but not limited to, the 2% administrative fee all municipalities pay to the state for the collection and distribution of local sales taxes and municipal court fees.**
  
- **Oppose legislation that would erode the authority of a city to be adequately compensated for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.**
  
- **Oppose legislation that increases revenues paid to the State of Texas by local governments as a result of the State of Texas increasing fines, fees, or charges to local governments including, but not limited to, the 2% administrative fee all municipalities pay to the state for the collection and distribution of local sales taxes and municipal court fees.**
  
- **Oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: annexation, eminent domain, public right-of-way, zoning, and building codes.**
  
- **Oppose legislation that imposes additional state fees or costs on Municipal court convictions or require municipal courts to collect fine revenue for the state.**
  
- **Oppose legislation that would eliminate any of the current uniform election dates.**



## **TRANSPORTATION, BUSINESS COMPETITIVENESS, AND EDUCATION**

- **Oppose legislation that attempts to impose a state tax on jet fuel.**
- **Oppose legislation that impairs the flexibility of local government to utilize all economic development tools currently available.**
- **Oppose legislation that would be discriminatory or otherwise damage Texas as a business-friendly state.**
- **Oppose legislation of unfunded mandates placed on our local municipalities that are veiled as solutions for education funding.**

### **Operational Considerations:**

Staff will coordinate with similarly situated municipalities to advocate the position of the city related to the legislative priorities.



## CITY OF LANCASTER CITY COUNCIL

### City Council Special Work Session

5.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government

**Submitted by:** Carey Neal, Assistant to the City Manager

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#### **Agenda Caption:**

Discuss and receive an update on the fourth quarter of Fiscal Year (FY) 2019/2020 operations and management of Countryview Golf Course.

#### **Background:**

On November 1, 2017, the City entered into a short-term management agreement (November 1, 2017, through December 31, 2017) with Touchstone Golf, LLC to oversee the operations at the Country View Golf Course. During this time, Touchstone evaluated operations, the facility, and other items based upon their industry experience to determine next steps.

On January 8, 2018, City Council received a presentation on findings of operations. Staff recommended the City extend the term of the Touchstone Golf, LLC agreement to provide a more comprehensive plan following a full season of golf.

On January 29, 2018, the City Council approved the extended management agreement with Touchstone Golf, LLC and directed staff to provide an update on golf course operations quarterly.

On January 13, 2020, the City Council approved a 3-year management agreement extension with Touchstone Golf, LLC from January 2020 through January 2023.

This is the requested quarterly update for the fourth quarter of FY 2019/2020 for the period of July 1, 2020, through September 30, 2020.

#### **Attachments**

Golf 4th Quarterly Update

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# Country View Golf Club

## Fourth Quarter Update

### July 1, 2020 – September 30, 2020

#### Summary

Country View Golf Club experienced an exciting amount of growth in golfers this quarter despite the pandemic. According to the leading online golf review site, GolfAdvisor.com, the golf course has received a 4.1 Star rating and a 90.9% recommendation rate in the last 6 months. The site also listed Country View as #8 of the top 25 Most Improved golf courses for 2019.

#### COVID-19 Impact

- The golf course was closed on Monday and Tuesday during the 4<sup>th</sup> quarter to decrease expenditures and payroll cost during our busiest days.
- Due to gathering restrictions, several tournaments and private events were cancelled or postponed.
- Restaurant restrictions and social distancing practices remain in effect throughout the clubhouse.

#### The Golf Course

- Due to constant rain during the 3<sup>rd</sup> Quarter, the golf course remained healthy during the 4<sup>th</sup> quarter.

#### Golf Operations

- Rounds of golf recorded were 6143 for FY 2019/2020 4<sup>th</sup> quarter compared to last FY 2018/2019 rounds of golf recorded at 5451. An increase of 692 rounds driven by email specials and online promotions.
- Green Fee & Cart Fee revenues for the quarter ended at \$125,739 compared to \$98,066 in 2019. An increase of \$27,673.
- There was an increase in the total number of members. Country View Golf Club has 84 members.

#### Food & Beverage

- Food and Beverage area can occupy 75% or 80 people. We have begun scheduling private events and have begun our Holiday Campaign.

#### Staffing

- The course will maintain the current minimum staffing levels during the COVID-19 restrictions and guidelines to ensure events over 10 people are vetted and approved by the Mayor.
- Jonathan Nash was promoted to General Manager. Jonathan was previously the Assistant General Manager and Food & Beverage Manager/Sales Director.



## CITY OF LANCASTER CITY COUNCIL

### City Council Special Work Session

6.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):** Financially Sound City Government

**Submitted by:** Kim Hall, Director of Finance

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#### **Agenda Caption:**

Receive a presentation and discuss the Quarterly Financial Report for the fourth quarter of FY 2019/2020 for the period ending September 30, 2020.

#### **Background:**

The broad purpose of the City's Financial and Investment policy statements is to enable the City to achieve and maintain a long-term stable and positive financial position, and provide guidelines for the day to day planning and operations of the City's financial affairs. The following information is representative of the fourth quarter of fiscal year 2019/2020; July 1, 2020 through September 30, 2020. All figures are preliminary/unaudited and will change as the Comprehensive Annual Financial Report (CAFR) is finalized.

#### **Attachments**

Quarterly Financials and Investment Reports

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**City of Lancaster  
Quarterly  
Investment and Financial  
Reports  
Fourth Quarter FY2020**





# City of Lancaster

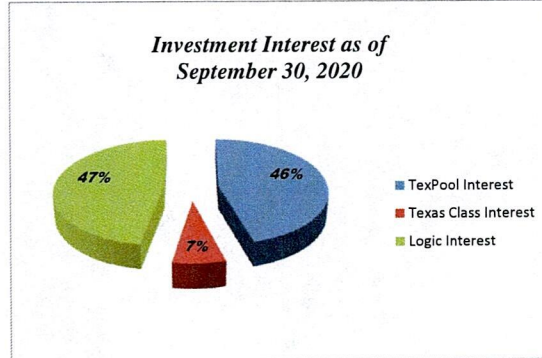
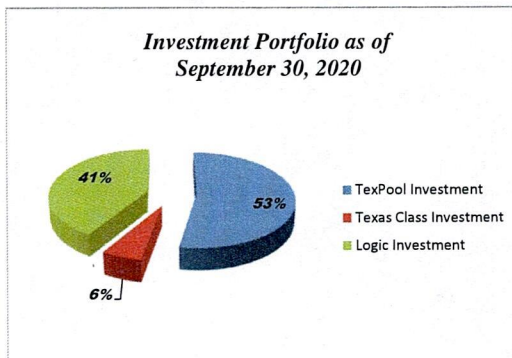
## Investment Portfolio Summary - As of September 30, 2020

Investment Types	% of Total Investments	End of Quarter Balance
<b>TexPool Investment</b>		
TexPool	55.65%	\$ 43,787,615
<b>Texpool Total</b>	55.65%	\$ 43,787,615
<b>Texas Class Investment</b>		
Texas Class	6.14%	\$ 4,828,068
<b>Texas Class Total</b>	6.14%	\$ 4,828,068
<b>Logic Investment</b>		
Logic -01	34.88%	\$ 27,442,868
Logic -02	0.00%	\$ -
Logic -04	1.79%	\$ 1,406,738
Logic -06	1.55%	\$ 1,221,222
<b>Logic Total</b>	38.22%	\$ 30,070,828
<b>Total Investment</b>	100.00%	\$ 78,686,510

Investment Interest Types	% of Total Interest	Quarter Interest Earned
<b>TexPool Interest</b>		
TexPool	38.99%	\$ 20,758
<b>TexPool Qtr. Interest Total</b>	38.99%	\$ 20,758
<b>Texas Class Interest</b>		
Texas Class	7.80%	\$ 4,154
<b>Texas Class Qtr. Interest Total</b>	7.80%	\$ 4,154
<b>Logic Interest</b>		
Logic -01	43.05%	\$ 22,920
Logic -02	2.07%	\$ 1,100
Logic -04	2.21%	\$ 1,175
Logic -06	5.89%	\$ 3,137
<b>Logic Quarterly Interest Total</b>	53.21%	\$ 28,332
<b>Total Quarterly Interest</b>	100.00%	\$ 53,243

Investment Types	% of Total Investments	End of Quarter Balance
TexPool Investment	55.65%	\$ 43,787,615
Texas Class Investment	6.14%	\$ 4,828,068
Logic Investment	38.22%	\$ 30,070,828
<b>Total Investment</b>	100.00%	\$ 78,686,510

Investment Interest Types	% of Total Interest	Quarter Interest Earned
TexPool Interest	38.99%	\$ 20,757.95
Texas Class Interest	7.80%	\$ 4,153.53
Logic Interest	53.21%	\$ 28,331.90
<b>Total Interest</b>	100.00%	\$ 53,243.38



### COMPLIANCE STATEMENT

The investment portfolio presented in these reports conforms in all respects to the investment policies of the City of Lancaster, Texas; and is being managed under the investment strategy developed and approved by the Lancaster City Council.

*Kim Hall*  
Kim Hall - Finance Director

*Opal Mauldin-Jones*  
Opal Mauldin-Jones, City Manager

*11/11/2020*  
Date

*11/11/2020*  
Date



# Authorization Statement

**This is to acknowledge that I have reviewed and approved the City of  
Lancaster's Quarterly Financial Report  
for the Fourth Quarter FY2020 ending September 30, 2020**

Reviewed By: Christina Thomas  
Chief Accountant

Date: 11/11/2020

Approved By: Kim Hall  
Director of Finance

Date: 11/11/2020

Approved and Authorized to Present to City Council:

Opal Mauldin-Gunn  
City Manager

Date: 11/11/2020





**GENERAL FUND**  
 Unaudited Revenues and Expenditures  
 Fourth Quarter FY2020  
 July thru September 2020  
 100% Optimal Expenditure Rate



						
REVENUES	2019	2019	2020	2020	2020	2020
	Qtr. Ending 09/2019	Actual To Date	Qtr. Ending 09/2020	Actual To Date	Revised Budget	% of Budget Used
PROPERTY TAX	85,035	15,624,202	130,905	17,411,740	17,670,906	99%
SALES TAX	2,921,003	6,869,083	1,678,475	5,426,940	6,200,000	88%
FRANCHISE TAX	894,493	2,086,698	695,936	1,752,669	1,723,467	102%
LICENSES AND PERMITS	403,435	1,332,616	395,084	1,192,560	1,339,300	89%
INTERGOVERNMENTAL	2,500	21,688	5,000	15,000	7,500	200%
CHARGES FOR SERVICES	1,586,570	2,277,420	612,323	1,580,127	920,078	172%
FINES AND FORFEITURES	214,784	944,581	192,899	906,804	865,864	105%
INTEREST	82,706	282,573	8,731	133,525	129,000	104%
MISCELLANEOUS	47,994	137,744	28,059	115,942	41,884	277%
OPERATING TRANSFERS IN	517,706	2,070,824	572,186	2,288,742	2,288,742	100%
GRANT & Other Income	29,471	71,298	26,433	82,689	-	0%
<b>Total</b>	<b>\$ 6,802,533</b>	<b>\$ 31,753,265</b>	<b>\$ 4,355,260</b>	<b>\$ 30,922,945</b>	<b>\$ 31,206,246</b>	<b>99%</b>

EXPENDITURES	2019	2019	2020	2020	2020	2020
	Qtr. Ending 09/2019	Actual To Date	Qtr. Ending 09/2020	Actual To Date	Revised Budget Budget	% of Budget Used
1 City Council	41,371	106,214	45,353	91,524	145,073	63%
2 City Manager's Office	245,003	855,309	231,728	903,834	938,653	96%
5 Legal	87,401	301,296	58,566	216,445	250,000	87%
6 Building Services	351,835	1,117,194	296,111	1,197,269	1,110,881	108%
8 Municipal Court	126,952	472,845	128,087	451,761	454,424	99%
9 Building Inspections	72,116	331,309	79,264	292,651	293,653	100%
10 Fleet Maintenance	176,209	658,496	169,304	633,379	637,891	99%
12 Streets Operations	128,782	457,115	221,732	556,989	1,220,841	46%
13 Parks	146,948	609,612	183,116	629,653	775,476	81%
14 Police	2,000,390	7,561,827	2,019,805	7,432,130	7,523,508	99%
15 Fire	2,172,979	7,815,671	2,169,281	7,795,465	7,576,900	103%
16 Non-Departmental	989,677	2,156,839	1,088,342	2,734,846	4,426,423	62%
17 Planning	222,914	700,078	354,826	748,660	932,840	80%
18 City Secretary	111,979	410,192	48,816	255,565	265,706	96%
19 Finance	97,751	677,932	158,314	690,900	768,965	90%
20 Emergency Management	46,754	112,432	14,495	67,304	112,676	60%
24 Animal Services	34,413	158,098	35,137	174,552	230,590	76%
29 Purchasing	26,296	112,391	25,803	111,625	123,177	91%
31 Human Resources	164,083	569,058	177,905	607,934	614,480	99%
32 Civil Service	275	9,673	480	6,294	7,550	83%
34 Emergency Communications	223,978	907,341	261,775	887,010	1,073,800	83%
35 Code Compliance	133,182	417,995	126,304	481,826	547,158	88%
37 Information Technology	172,372	553,244	80,951	597,669	638,682	94%
38 Fire Marshal	160,733	251,392	52,322	188,931	229,483	82%
39 City Marshal	49,059	183,135	46,383	175,192	200,309	87%
40 Records	293	293	47,386	136,948	174,659	78%
52 Vending Contracts	1,695	1,992	-	75	-	0%
55 Public Relations	35,577	143,537	4,961	110,187	147,584	75%
<b>Total</b>	<b>\$ 8,021,017</b>	<b>\$ 27,652,507</b>	<b>\$ 8,126,547</b>	<b>\$ 28,176,617</b>	<b>\$ 31,421,383</b>	<b>90%</b>





# CITY-WIDE OPERATING FUND TOTALS




Unaudited Revenues and Expenditures

Fourth Quarter FY2020

July thru September 2020

100% Optimal Expenditure Rate



  						
TOTAL REVENUES	2019	2019	2020	2020	2020	2020
	Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
	09/2019	To Date	09/2020	To Date	Budget	Used
1 General Fund	6,802,533	31,753,265	4,355,260	30,922,945	31,206,246	99%
2 G.O. Debt Service	97,228	7,181,903	57,200	7,533,076	7,632,626	99%
4 Street Maintenance	-	-	2,150	752,732	765,122	98%
5 WaterWastewater	5,160,590	18,584,218	3,952,428	17,698,348	17,598,657	101%
9 Airport	39,617	436,754	125,961	438,356	565,700	77%
14 HotelMotel	123,530	211,829	115,518	255,706	183,429	139%
16 LEDC/4A	602,671	1,515,093	344,340	1,168,039	1,476,902	79%
17 LRDC/4B	1,229,736	3,447,063	700,926	2,422,930	3,670,906	66%
18 Golf Course	165,464	528,776	168,088	531,776	646,977	82%
19 Sanitation	724,380	2,728,817	573,941	2,604,548	2,512,355	104%
21 E911	103,667	298,120	98,020	365,104	239,985	152%
53 Stormwater	481,356	1,858,415	390,306	1,839,846	1,642,000	112%
Total	\$ 15,648,373	\$ 68,661,852	\$ 10,884,137	\$ 66,533,406	\$ 68,140,906	98%


TOTAL EXPENDITURES	2019	2019	2020	2020	2020	2020
	Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
	09/2019	To Date	09/2020	To Date	Budget	Used
1 General Fund	8,021,017	27,652,507	8,126,547	28,176,617	31,421,383	90%
2 G.O. Debt Service	1,401,092	5,885,786	1,189,948	5,460,742	5,591,820	98%
4 Street Maintenance	-	-	1,237,326	293,326	944,000	31%
5 WaterWastewater	4,871,952	15,665,328	3,684,348	17,108,807	17,183,639	100%
9 Airport	218,398	502,276	113,893	445,025	498,857	89%
14 HotelMotel	8,469	56,720	8,705	20,423	40,750	50%
16 LEDC/4A	408,969	1,236,801	141,767	698,451	1,465,916	48%
17 LRDC/4B	1,089,493	3,481,574	593,350	3,091,430	3,729,699	83%
18 Golf Course	444,948	1,100,143	190,533	884,038	802,628	110%
19 Sanitation	571,229	1,720,872	903,160	1,974,434	2,041,738	97%
21 E911	19,228	221,917	13,863	201,343	287,227	70%
53 Stormwater	417,480	1,284,386	805,727	1,277,674	2,067,511	62%
Total	\$ 17,472,276	\$ 58,808,312	\$ 17,009,168	\$ 59,632,310	\$ 66,075,168	90%





**WATER AND SEWER FUND**  
 Unaudited Revenues and Expenditures  
 Fourth Quarter FY2020  
 July thru September 2020  
 100% Optimal Expenditure Rate



							
REVENUES		2019	2019	2020	2020	2020	2020
		Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
		09/2019	To Date	09/2020	To Date	Budget	Used
	Water	2,287,810	7,728,507	1,910,098	7,874,311	7,552,718	104%
	Wastewater	2,164,900	8,166,171	1,741,780	7,913,783	7,955,781	99%
	Fees	168,267	1,027,467	232,409	1,098,643	719,538	153%
	Impact Fees	260,077	542,988	46,522	314,451	311,000	101%
	Other Revenue	102,006	336,225	1,085	157,553	293,000	54%
	Interest	177,530	782,860	20,534	339,608	766,620	44%
Total		\$ 5,160,590	\$ 18,584,218	\$ 3,952,428	\$ 17,698,348	\$ 17,598,657	101%

EXPENDITURES		2019	2019	2020	2020	2020	2020
		Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
		09/2019	To Date	09/2020	To Date	Budget	Used
2	Public Works Administration	1,356,159	1,785,113	165,221	621,054	676,678	92%
20	Utility Billing	158,035	598,422	169,319	597,081	631,373	95%
21	Water Operations	846,423	1,457,616	(78,256)	1,878,632	1,942,614	97%
22	Non-Departmental	100,517	199,111	10,093	48,125	82,211	59%
27	Meter Reading	131,647	255,219	46,096	281,084	363,372	77%
30	Wastewater Operations	(1,145,444)	77,430	292,070	1,848,692	2,594,075	71%
42	Wholesale Costs	2,601,446	9,060,765	2,227,317	9,507,339	8,566,515	111%
50	Debt Service	438,883	694,506	442,765	687,906	687,907	100%
80	Transfers Out	384,287	1,537,146	409,724	1,638,894	1,638,894	100%
Total		\$ 4,871,952	\$ 15,665,328	\$ 3,684,348	\$ 17,108,807	\$ 17,183,639	100%





# SALES TAX 4A-ECONOMIC DEVELOPMENT

Unaudited Revenues and Expenditures

Fourth Quarter FY2020  
July thru September 2020

100% Optimal Expenditure Rate



		2019	2019	2020	2020	2020	
		Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
REVENUE		09/2019	To Date	09/2020	To Date	Budget	Used
	SALES TAXES	584,201	1,373,817	335,695	1,085,388	1,323,571	82%
	INTEREST	32,532	141,276	3,958	63,901	134,581	47%
	Operating Transfers In	(14,063)	-	4,688	18,750	18,750	100%
Total		\$ 602,671	\$ 1,515,093	\$ 344,340	\$ 1,168,039	\$ 1,476,902	79%

		2019	2019	2020	2020	2020	2020
		Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
EXPENDITURES		09/2019	To Date	09/2020	To Date	Budget	Used
2	ECONOMIC DEV/ADMINISTRATION	94,239	299,697	86,068	344,973	390,312	88%
50	4A DEBT SERVICE	57,238	227,750	30,390	212,350	212,350	100%
60	MARKETING AND ADVERTISING	17,790	93,063	4,875	47,062	74,970	63%
63	INCENTIVE PROGRAMS	225,583	559,811	5,890	35,890	730,109	5%
80	TRANSFERS OUT	14,120	56,480	14,544	58,175	58,175	100%
Total		\$ 408,969	\$ 1,236,801	\$ 141,767	\$ 698,451	\$ 1,465,916	48%





**4B - LRDC FUND**  
**Unaudited Revenues and Expenditures**  
**Fourth Quarter FY2020**  
**July thru September 2020**  
 100% Optimal Expenditure Rate



TOTAL REVENUE		2019	2019	2020	2020	2020	2020
		Qtr. Ending 09/2019	Actual To Date	Qtr. Ending 09/2020	Actual To Date	Revised Budget	% of Budget Used
0	REVENUE	1,062,500	2,798,962	672,412	2,191,306	3,046,195	72%
7	LIBRARY	8,520	32,458	11,594	23,522	34,892	67%
54	SENIOR LIFE CENTER	34,983	132,606	13,056	72,350	100,736	72%
56	RECREATION CENTER	123,733	483,037	3,863	135,752	489,084	28%
Total		\$ 1,229,736	\$ 3,447,063	\$ 700,926	\$ 2,422,930	\$ 3,670,906	66%

TOTAL EXPENDITURES		2019	2019	2020	2020	2020	2020
		Qtr. Ending 09/2019	Actual To Date	Qtr. Ending 09/2020	Actual To Date	Revised Budget	% of Budget Used
2	REC ADMINISTRATION	77,861	254,235	77,338	272,389	257,363	106%
7	LIBRARY	135,295	445,084	99,687	418,115	537,796	78%
16	NON-DEPARTMENTAL	20,236	51,306	21,614	63,084	77,557	81%
50	4B DEBT SERVICE	94,644	924,150	75,747	921,000	921,000	100%
54	SENIOR LIFE CENTER	78,280	264,083	32,108	231,498	299,714	77%
56	RECREATION CENTER	381,433	1,065,000	196,548	834,357	1,273,736	66%
57	COMMUNITY PARK	7,248	9,229	4,247	6,647	18,192	37%
80	TRANSFERS OUT	294,497	468,488	86,085	344,340	344,340	100%
Total		\$ 1,089,493	\$ 3,481,574	\$ 593,350	\$ 3,091,430	\$ 3,729,699	83%





**GOLF COURSE FUND**  
 Unaudited Revenues and Expenditures  
 Fourth Quarter FY2020  
 July thru September 2020  
 100% Optimal Expenditure Rate



		2019	2019	2020	2020	2020	2020
		Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
		09/2019	To Date	09/2020	To Date	Budget	Used
<b>TOTAL REVENUE</b>							
	<b>GOLF COURSE REVENUE</b>	165,464	528,776	168,088	531,776	646,977	82%
<b>Total</b>		\$ 165,464	\$ 528,776	\$ 168,088	\$ 531,776	\$ 646,977	82%

		2019	2019	2020	2020	2020	2020
		Qtr. Ending	Actual	Qtr. Ending	Actual	Revised	% of Budget
		09/2019	To Date	09/2020	To Date	Budget	Used
<b>TOTAL EXPENDITURES</b>							
39	<b>GOLF COURSE</b>	443,198	1,093,143	188,783	877,038	795,628	110%
80	<b>TRANSFERS OUT</b>	1,750	7,000	1,750	7,000	7,000	100%
<b>Total</b>		444,948	1,100,143	190,533	884,038	802,628	110%



## CITY OF LANCASTER CITY COUNCIL

### City Council Special Work Session

7.

**Meeting Date:** 11/19/2020

**Policy Statement:** This request supports the City Council 2020-2021 Policy Agenda

**Goal(s):**

- Effective Municipal Operations
- Financially Sound City Government
- Healthy, Safe & Engaged Community
- Sound Infrastructure
- Quality Development
- Professional and Committed City Workforce

**Submitted by:** Opal Mauldin-Jones, City Manager

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#### **Agenda Caption:**

Discuss the report of City Council Five-Year Goals and Strategies established during the annual City Council Strategic Planning Session June 14 and June 15, 2019, for the fourth quarter of Fiscal Year 2019/2020.

#### **Background:**

City Council conducted an annual Strategic Planning Session on June 14 and June 15, 2019. This report represents activity for the fourth quarter of fiscal year 2019/2020 (July 1, 2020, through September 30, 2020). This is a review of the implementation and progress on strategies and initiatives outlined in the 2019/2020 strategic plan and how said strategies connect to continued progress toward the realization of the Vision.

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# **Fiscal Year 2019-2020**

## **Fourth Quarter Update**

### **July, 2020 – September 30, 2020**

#### **Financially Sound Government**

***The City has a long-range financial plan and prudent fiscal policies and processes. Appropriate reserve levels and a competitive tax rate ensures the needs of the community and responsibly manages its debt.***

#### **Purpose and Vision**

1. Prudent fiscal policies and processes:

The City has received the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Finance for the fourth consecutive year.

The City is also the recipient of all five transparency stars from the Texas Comptroller's Office for Traditional Finances, Contracts & Procurement, Economic Development, Public Pensions, and Debt Obligations.

When refunding the 2010 bonds, staff met with the rating agencies and our ratings have been affirmed as "Aa3" from Moody's and AA- from Standard and Poors.

January 27, 2020, City Council authorized the issuance of City of Lancaster, Texas, General Obligation Refunding Bonds, Series 2020 in an amount of \$25,080,000 for refunding a portion of the City's outstanding debt. This resulted in a debt service savings of \$5,715,639.40.

September 29, 2020, City Council approved a Capital Lease for a new ladder truck.

The Finance department has implemented detail procedures to track and report COVID19 expenses and maximize reimbursement for Grantors.

#### **Planning and Oversight**

2. City policy stipulates a reserve fund balance at year end with a minimum of 12%, a target of 18% and a maximum of 25%. On September 30, 2019 the reserve fund balance exceeded 17%.

During the September 29, 2020 City Council meeting, Council adopted resolutions to update the Debt Management Policy, Investment Policy, and Financial Policy for FY 2021.

#### **Purpose and Vision**

3. Competitive tax rate:

For fiscal year 2019/2020, the tax rate was reduced from the prior year of \$0.8675 to \$0.840925 to be in line with the rules and restrictions of SB2. With the reduction of the tax rate, Council also established a street maintenance fund. The street maintenance fund is \$0.25, operations and maintenance rate is \$0.547757 and the interest and sinking rate is \$0.245725.

For fiscal year 2020/2021, the tax rate was reduced from the prior year of \$0.840925 to \$0.819736. The street maintenance fund is \$0.25, operations and maintenance rate is \$0.5952 and the interest and sinking rate is \$0.245725.



## **Healthy, Safe, & Engaged Community**

***Lancaster is a place where we embrace public safety and compassionate enforcement in our neighborhoods to sustain vibrant residential and business communities. The community celebrates unity and participates in citywide events, recreational and cultural activities. Residents have opportunities for involvement in civic life through boards and commissions, youth and parent volunteer opportunities in recreation, sports teams, City elections, Civic Academies, Schools and citywide celebrations.***

### **Priority Action Items**

1. Ensure update of Parks Recreation and Open Space Master Plan:  
This quarter, the masterplan was adopted and placed on file with the Texas Parks and Wildlife Development Board (TPWDB). This allows the City of Lancaster to compete for additional grant opportunities. This updated masterplan was also the final piece of completing the required self - assessment in becoming an accredited parks and recreation agency through National Recreation and Park Association (NRPA).

### **Planning and Oversight**

2. Continue the Business Retention and Expansion Program (BREP):  
The BREP program officially engages six businesses annually. In an effort to keep the BREP visits a priority of businesses, staff is scheduling the visits within 30 days from initial contact with the business. During the first quarter of FY2020, BREP visits were conducted with Super Walmart, Neighborhood Walmart, and Oncor. During the second quarter, BREP visits were conducted with Consolidated Mail Outpatient Pharmacy (CMOP), and Crescent Medical Center. COVID-19 has impacted our ability to conduct in-person BREP visits for this quarter. However staff has been in constant communication with our businesses regarding various opportunities provided via the federal and state government as well as assistance with grant information. The United States Treasury reported the names of companies that received at least \$150,000 in federal assistance. 34 Lancaster businesses were reported to receive funds in this amount with a total of \$9,750,000 - \$24,250,000 allocated. More businesses are known to have received assistance, however, did not reach the \$150,000 threshold. In addition, staff hand delivered applications for the funds allotted for businesses through the County. Thirty - three (33) businesses in Lancaster applied for \$595,534.24. Status of approval is currently pending.

### **Purpose and Vision**

3. Senior Cares Initiative:  
At the October 14, 2019 Council meeting, Council approved a resolution authorizing the submission of an application for the American Association of Retired Persons (AARP) Age-Friendly Livable Communities Program, and supporting the initiatives and opportunities of said program. On December 21, 2019, Council received the AARP distinction as an Age Friendly Community. Staff submitted a grant application to AARP for programming and services to further support of Age-Friendly community designation, while not awarded during this fiscal year, plans are underway to apply for FY 2020/21.



## **Code Compliance**

### **Illegal Dumping Cases by the Code Compliance Team**

0-04088	1400 N DALLAS Ave.	07/01/2020	20-04783	1801 JEFFERSON St.	07/30/2020
20-04162	341 TELEPHONE Rd.	07/07/2020	20-04784	1000 E WINTERGREEN Rd.	07/30/2020
20-04163	223 OAK St.	07/07/2020	20-04819	955 TEN MILE Rd.	07/31/2020
20-04166	2300 SUNNY MEADOW Dr.	07/07/2020	20-04820	1431 N BLUEGROVE Rd.	07/31/2020
20-04218	1003 APRIL SHOWERS Ln.	07/09/2020	20-04866	3861 N DALLAS Ave.	08/04/2020
20-04219	1908 FREDERICK St.	07/09/2020	20-04867	660 W WINTERGREEN Rd.	08/04/2020
20-04220	4201 DANIEL Ln.	07/09/2020	20-04873	1000 BEAR CREEK Rd.	08/05/2020
20-04221	629 W PLEASANT RUN Rd.	07/09/2020	20-04874	600 S BLUEGROVE Rd.	08/05/2020
20-04222	100 E WINTERGREEN Rd.	07/09/2020	20-04875	102 S BLUEGROVE Rd.	08/05/2020
20-04223	2409 W REINDEER Rd.	07/09/2020	20-04876	1003 N DALLAS Ave.	08/05/2020
20-04236	2500 S DALLAS Ave.	07/10/2020	20-04948	1003 S DALLAS Ave.	08/06/2020
20-04272	412 OLD RED OAK Rd.	07/10/2020	20-04950	337 REA Ave.	08/07/2020
20-04273	500 OLD RED OAK Rd.	07/10/2020	20-04951	1301 N ELM St.	08/07/2020
20-04275	359 OLD RED OAK Rd.	07/10/2020	20-04952	2008 CEDARDALE Rd.	08/07/2020
20-04327	3401 N DALLAS Ave.	07/13/2020	20-04964	400 SADDLEBROOK Dr.	08/07/2020
20-04328	235 REA Ave.	07/13/2020	20-04965	543 SADDLEBROOK Dr.	08/07/2020
20-04363	600 JEFFERSON St.	07/15/2020	20-04966	529 SADDLEBROOK Dr.	08/07/2020
20-04364	500 JEFFERSON St.	07/15/2020	20-04967	1400 BEAR CREEK Rd.	08/07/2020
20-04365	3401 N DALLAS Ave.	07/15/2020	20-04968	643 W WINTERGREEN Rd.	08/07/2020
20-04366	235 REA Ave.	07/15/2020	20-05064	2700 W WINTERGREEN Rd.	08/13/2020
20-04416	830 FOX GLEN Cir.	07/16/2020	20-05065	3335 SPRINGFIELD Ave.	08/13/2020
20-04417	4300 BOARDWALK Ave.	07/16/2020	20-05066	200 E WINTERGREEN Rd.	08/13/2020
20-04418	2401 W BELT LINE Rd.	07/16/2020	20-05067	1908 FREDERICK St.	08/13/2020
20-04419	2700 W WINTERGREEN Rd.	07/16/2020	20-05068	1912 FREDERICK St.	08/13/2020
20-04420	1302 PENNSYLVANIA Ave.	07/16/2020	20-05090	1151 CEDARDALE Rd.	08/14/2020
20-04436	3701 N DALLAS Ave.	07/16/2020	20-05096	100 CRAIG SHAW MEMORIAL Pkwy.	08/14/2020
20-04476	307 E CEDAR St.	07/20/2020	20-05097	1000 BEAR CREEK Rd.	08/14/2020
20-04544	1001 OLD RED OAK Rd.	07/21/2020	20-05098	600 S BLUEGROVE Rd.	08/14/2020
20-04586	1400 BEAR CREEK Rd.	07/22/2020	20-05099	1400 BEAR CREEK Rd.	08/14/2020
20-04587	1580 W MAIN St.	07/22/2020	20-05100	2021 BEAR CREEK Rd.	08/14/2020
20-04588	615 N DALLAS Ave.	07/22/2020	20-05148	1840 W REINDEER Rd.	08/19/2020
20-04650	3130 PARKERVILLE Rd. Suite # 38	07/24/2020	20-05149	1546 ABERDEEN Dr.	08/19/2020
20-04711	101 N HOUSTON SCHOOL Rd.	07/27/2020	20-05188	3000 S HOUSTON SCHOOL Rd.	08/21/2020
20-04712	654 PIERSON St.	07/27/2020	20-05189	1840 W REINDEER Rd.	08/21/2020
20-04713	3324 SHERWOOD Ave.	07/27/2020	20-05190	3335 SPRINGFIELD Ave.	08/21/2020
20-04714	2826 DANIELDALE Rd.	07/27/2020	20-05191	3156 SPRINGFIELD Ave.	08/21/2020
20-04718	1425 N BLUEGROVE Rd.	07/27/2020	20-05192	966 N BLUEGROVE Rd.	08/21/2020
20-04731	1200 BEAR CREEK Rd.	07/28/2020	20-05200	500 JEFFERSON St.	08/21/2020
20-04732	1080 BEAR CREEK Rd.	07/28/2020	20-05201	2300 SUNNY MEADOW Dr.	08/21/2020
20-04733	107 TEXAS St.	07/28/2020	20-05263	511 REA Ave.	08/26/2020
20-04781	956 TRUMAN Cir.	07/30/2020	20-05301	921 WOODCREST Dr.	08/27/2020
20-04782	1059 TEN MILE Rd.	07/30/2020	20-05318	1100 JEFFERSON St.	08/27/2020



20-05319	1001 OLD RED OAK Rd.	08/28/2020
20-05320	500 OLD RED OAK Rd.	08/28/2020
20-05321	1331 N HOUSTON SCHOOL Rd.	08/28/2020
20-05351	180 S BLUEGROVE Rd.	08/28/2020
20-05405	100 E WINTERGREEN Rd.	09/01/2020
20-05406	1601 W WINTERGREEN Rd.	09/01/2020
20-05407	202 S HOUSTON SCHOOL Rd.	09/01/2020
20-05408	1200 BEAR CREEK Rd.	09/01/2020
20-05409	500 OLD RED OAK Rd.	09/01/2020
20-05410	222 S HOUSTON SCHOOL Rd.	09/01/2020
20-05452	1213 S HOUSTON SCHOOL Rd.	09/03/2020
20-05453	3105 BALOMEDE Ave.	09/03/2020
20-05454	1234 RIVER OAKS Cir.	09/03/2020
20-05494	500 OLD RED OAK Rd.	09/03/2020

20-05531	500 OLD RED OAK Rd.	09/04/2020
20-05532	100 N HENRY St.	09/04/2020
20-05549	113 OLD RED OAK Rd.	09/09/2020
20-05565	1200 SPRING CREEK Dr.	09/09/2020
20-05566	425 CHESHIRE Rd.	09/09/2020
20-05567	600 S BLUEGROVE Rd.	09/09/2020
20-05604	211 N HENRY St.	09/11/2020
20-05606	3110 SHERWOOD Ave.	09/11/2020
20-05607	3000 W BELT LINE Rd.	09/11/2020
20-05608	703 S BLUEGROVE Rd.	09/11/2020
20-05609	600 S BLUEGROVE Rd.	09/11/2020
20-05612	956 TRUMAN Cir.	09/11/2020
20-05613	1059 TEN MILE Rd.	09/11/2020
20-05663	3119 BALOMEDE Ave.	09/11/2020
20-05734	411 CHESHIRE Rd.	09/15/2020
20-05735	820 W WINTERGREEN Rd.	09/15/2020
20-05736	387 CHESHIRE Rd.	09/15/2020

### Commercial Code Compliance Cases

Business/Owner	Address	Violation	Action Taken	Status
AMS COMMUNICATIONS INC ZURRA ENTERPRISES INC VALERO	3160 W PLEASANT RUN Rd.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-15-20
ZAKIR SAKINA	2542 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated contractor 08-24-20
CT BECKHAM % CLYDE L HARGROVE	1362 W BELT LINE Rd.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-15-20
LUTHER THOMAS A % RUBY LUTHER	3349 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-16-20
ZAKIR SAKINA	2542 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-16-20
LTX PROPERTIES LLC	1400 BEAR CREEK Rd.	No Sign Perm	Notification Letter 07/09/20	Abated owner 07-16-20
COLE LR LANCASTER TX LLC, LOGAN'S ROADHOUSE	700 N I-35E	grass and weeds - Commercial	Notification Letter 07/09/20	Abated owner 07-18-20
BROWN BETTINA	1616 W MAIN St.	grass and weeds - Commercial	Notification Letter 07/09/20	Abated owner 07-18-20
BROWN BETTINA L	1624 W MAIN St.	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 07/16/20
BROWN BETTINA L	1630 W MAIN St	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 07-20-20
TRUJILLO YADIRA E	3210 N HOUSTON SCHOOL Rd	Certificate of Occupancy Violation	Notification Letter 07/16/20	Abated owner 07-20-20
PHINISEE CLARENCE	3132 SHERWOOD Ave	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 07-20-20
PHINISEE CLARENCE	3128 SHERWOOD Ave.	grass and weeds - Commercial	Notification Letter	Abated owner 07-20-20
DLH LOGISTICS	1421 N LANCASTER HUTCHINS Rd.	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 08-15-20
SMITH GRACE O ,- Lancaster Realty -	721 DONLEE Rd. 4301 Connecticut	grass and weeds - Commercial, Dumpster Violation	Notification Letter 07-10-20 Notification Letter 07-10-20	Abated owner 07/20/20 Abated contractor 07/16/20
ZAPATA MELANIE	2624 HULETTE Ave	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALG TRANSPORT	2534 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20



ALG TRANSPORT	2530 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
WALDROP CHARLES W III & CINDY L	2281 W PLEASANT RUN Rd	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
SAI REED PROPERTIES INC DREAM NAILS	1405 N DALLAS Ave	Commercial Dumpster Violation	Notification Letter 07-29-20	Abated owner 08-15-20
ZAPATA MELANIE	2624 HULETTE Ave	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALG TRANSPORT	2534 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALG TRANSPORT	2530 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
WALDROP CHARLES W III & CINDY L	2281 W PLEASANT RUN Rd.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALDRIDGE ORVILLE	1611 IDLEWILD Ln.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-20-20
TEXAS STATE OF	2540 SHERWOOD Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
CHASE FINANCIAL SERVICES LLC	1701 N LANCASTER HUTCHINS Rd.	grass and weeds - Commercial	Notification Letter 08-30-20	Abated owner 08-15-20
SEGMENTAL INVESTMENTS	3117 BELVEDERE Dr.	grass and weeds - Commercial	Notification Letter 08-30-20	Abated contractor 09-14-20
ANCIRA JESSE	1456 PARK CIRCLE Dr.	grass and weeds - Commercial	Notification Letter 08-30-20	Abated contractor 09-14-20
SANTANA GUZMAN SANTANA &	3119 SHERWOOD Ave.	High grass and weeds - Commercial	Notification Letter 08-30-20	Abated owner 09-14-20
FISK FRANCES M	3325 SHERWOOD Ave.	High grass and weeds - Commercial	Notification Letter 08-30-20	Abated owner 09-14-20
SMITH JENNIFER	912 NORWOOD Ln	Minor Auto Repair	Notification Letter 08-20-20	Abated owner 08-30-20
LANCASTER CITY OF OWNER OF PROPERTY	3351 BALOMEDE Ave.	High grass and weeds - Commercial	Notification Letter 08-20-20	Abated owner 08-30-20
SOLARES NEFTALY & UMILDAD	3307 SHERWOOD Ave.	High grass and weeds - Commercial	Notification Letter 08-20-20	Abated owner 08-30-20
BLACK LABEL PROPERTIES LLC	3302 BALOMEDE Ave.	High grass and weeds - Commercial	Notification Letter 08-20-20	Abated owner 08-30-20
VELAZQUEZ DANIEL	3250 SHASTA D	High grass and weeds - Commercial	Notification letter 09/11/2020	Abated contractor 09/21/2020
MARTINEZ JOE JR	3324 BALOMEDE Av	High grass and weeds - Commercial	Notification letter 09/11/2020	Abated contractor 09/21/2020
MONTERO JUAN S MONTERO MIREYA	3331 BALOMEDE Av	High grass and weeds - Commercial	Notification letter 09/11/2020	Abated contractor 09/21/2020
INDUSTRIAL DEV INTL TX LP % IDIG TEXAS LP	3800 N I-35E	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration
SCHLACHTER REALTY LTD	3100 W PLEASANT RUN Rd	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration
BELLARON PROPERTIES INC	4125 N DALLAS Ave	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration
LANCASTER LTD	4201 N DALLAS Ave.	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration

### **Animal Shelter Update**

Staff continues to work with various rescue groups throughout the region in an effort to increase rescue rates. In addition to Petfinder, staff has been posting photos of animals at the shelter and on the City's Facebook page to attract more local adopters. Due to the COVID-19 pandemic, low cost veterinary events have been suspended until further notice.

The Lancaster Animal Shelter has recorded a total of 88 rescues, 18 adoptions, 14 redeemed, and no euthanasias were performed for the period of July 1, 2020 to September 30, 2020.



### **Police Department Update**

Crime prevention and deterrence is a primary objective of the police department. Overall, we are seeing decreases in several offense categories that we believe is a result of some aggressive proactive measures including a robbery detail, increased traffic enforcement, and officer initiated close patrol of neighborhoods based on visible activity.

COVID-19 drastically skewed the numbers for this quarter. Overall, there were fewer calls for service, but more close patrols of neighborhoods by officers.

OFFENSES			
	4Q 2019	4Q 2020	UP/DOWN
Assault	99	120	21
Burglary Building	17	19	2
Burglary Habitation	29	10	-19
Burglary Vehicle	35	47	12
Criminal Mischief	62	66	4
Drug Crimes	48	30	-18
DWI	21	20	-1
Financial Crimes	26	39	13
Information Report	439	373	-66
Mental Evaluations	36	37	1
Murder	0	0	0
Robbery	14	6	-8
Runaways	16	22	6
Sex Assault	4	7	3
Theft	130	138	8
UUMV	52	52	0

ARREST			
	4Q 2019	4Q 2020	UP/DOWN
Arrest	578	269	-309

CALLS FOR SERVICE			
	4Q 2019	4Q 2020	UP/DOWN
Total Calls	22630	18069	-4561
Close Patrols	6865	11241	4376
House Check Request	20	4	-16
House Check Calls	141	16	-125

PATROL			
	4Q 2019	4Q 2020	UP/DOWN
Traffic Stops	7474	987	-6487
Field Contacts	110	67	-43



<b>WARRANTS</b>			
	<b>4Q 2019</b>	<b>4Q 2020</b>	<b>UP/DOWN</b>
<b>New Felony</b>	30	49	19
<b>New Misdemeanor</b>	43	50	7
<b>New Warrants Total</b>	73	99	26
<b>Warrants Served</b>	24	31	7

<b>ACCIDENTS</b>			
	<b>4Q 2019</b>	<b>4Q 2020</b>	<b>UP/DOWN</b>
<b>Total Accidents</b>	221	200	-21

### **Fire Department Update**

The Fire Department's primary focus, this quarter, has been directed towards the COVID-19 pandemic. The department has taken many proactive measures in attempt to prevent or slow the spread of COVID-19, not only within the department but within the community. We have been able to accomplish these goals while responding to calls for service, participating birthday parades, demonstrating show and tell while maintain social distancing.

This quarter the new Incident Command Vehicle was placed in service. Also, this quarter our new ambulance remount M351 was placed into service at Station One.

COVID-19 has presented some challenges with paramedic school; however, we had three of our members complete the paramedic program and become certified. These members are Justin Cope, Thomas Vanover, and Braden Nolen.

### **Municipal Court Update**

The fourth quarter of FY 2019/2020 the Municipal Court collected revenues of \$325,833.00. This is an increase of \$190,369.00 from the same period last year of \$135,464. Warrants issued for the third quarter were 2,159 and 441 were served/recalled during the same period. The number of cases filed totaled 879, 2,285 trials/hearings held, and 2,252 dispositions for the fourth quarter of FY 2019/2020.

### **Quality of Life and Cultural Services Update**

#### **CAPRA Milestones**

Throughout the quarter, Quality of Life and Cultural Services (QLCS) staff finalized tasks associated with the National Recreation and Park Association's (NRPA) Commission for Accreditation of Park and Recreation Agencies (CAPRA) Accreditation Standards. NRPA's Accreditation provides quality assurance and quality improvement of accredited park and recreation agencies throughout the United States by providing agencies with a management system of best practices.

The virtual site visit took place September 14-18, 2020. During that week, the CAPRA visitors asked questions regarding our initial submissions. At the end of the week, the visitation team gave staff their final thoughts and evaluation. Out of 151, fundamental standards, Lancaster only missed 5 non-fundamental standards. Based on NRPA Accreditation standards, the QLCS department has met all qualifications to receive accreditation.



Our CAPRA Hearing is scheduled for Monday, October 19, 2020, where CAPRA commissioners will give their final thoughts and decision on agency accreditation. The awards ceremony will be conducted virtually where they announce all agencies that have acquired accreditation.

### **Recreation Division Update**

#### **Virtual Programs and Social Media**

The QLCS Department initiated the July Parks and Recreation Month on Wednesday, July 1, 2020. The team developed content for daily posts on the City Facebook page. Content included the “We are Parks and Recreation” flyer, the NRPA “National Recreation Professional Thank a Park and Rec Pro” contest nominee information, and photos of the new park amenities for community enjoyment.

The department also shared “Did You Know” facts which included pertinent information regarding the benefits of physical fitness and mental health. Collectively, the July Parks and Recreation content reached 6,000 Facebook users, generated 559 engagements and 89 reactions.

The QLCS team continued the Health and Wellness initiative and finalized the “Health and Wellness Series” videos for September. On September 1, 2020, the team shared the “Diabetes Type-1 and 2” video to FB and YouTube. The video reached 272 Facebook users, received 67 views, 4 engagements, and 2 reactions. The team initiated filming for the new “Virtual Essentials” and “Sports One-on-One” series which will demonstrate basic survival and life essential skills for all ages. The series will premiere October 2020.

On Tuesday, September 9, 2020, the department premiered the Lancaster Virtual Competitions to create community interaction and promote the health and wellness initiative. The September competition challenged community members to complete a minimum of 25 sit-ups, push-ups, and squats. The department developed a schedule to premiere the new virtual challenge the second Tuesday of each month.

The weekly virtual program posts (i.e. yoga boot camp, Red Light Green Light, daily exercise, and weight training) reached over 8,600 Facebook users, generated 789 engagements, and 125 reactions during the fourth quarter.

#### **Athletics**

This quarter the Athletics Division re-opened Athletic fields and continued athletic contracts in September 2020 under the “Assumption of the Risk and Waiver of Liability” form.

Community pass was utilized as a pathway for patrons to reserve a spot to utilize the fitness atrium or walking track. This quarter, the recreation center accumulated 1,890 membership scans.

#### **S.T.A.R. Afterschool Program/ Lancaster Virtual Summer Camp**

The S.T.A.R. After School Program created the STEAM Lancaster Virtual Summer Camp in June 15, 2020 to last until July 31, 2020. Weekly, the staff shared 8-10 daily posts which included the 8:00am Daily Exercise, 9:00am Life Skills (Project Still I Rise), 1:00pm Creative Activities, and 3:00pm Extended Learning programs.

The Daily Exercise videos demonstrated youth-friendly stretching and total body workout techniques. The DIY Creative Activities included bath bombs, catapults, crayon on canvas art, crystal shapes, and origami animals. Daily Extended Learning videos included state facts, ASL lessons.

The Virtual Summer Camp content reached a total of 1,569 Facebook users. The virtual content remained archived on the City’s Parks and Recreation webpage until August 2020. The virtual programs are currently archived in the “Lancaster Virtual Camp” playlist on the City’s YouTube page for continued enjoyment.



## **Senior Life Center**

### **COVID-19 Updates and Milestones**

This quarter, the Senior Life Center remained closed to the public in an effort to protect the senior members and staff continued the Home Meal Delivery Program. The Home Meal Delivery Program served approximately 80 registered participants per day. Senior participants received daily hot and cold meals between the hours of 10:00 a.m. and 2:00 p.m.

On July 30, 2020, the Senior Life Center team initiated a Coloring Page/Book contest for the National Coloring Day on August 2, 2020. The senior participants shared numerous pictures of their colorful creations. The winner's, Mrs. Mary White, artwork was featured on the City's Senior Spotlight webpage on Monday, August 3, 2020.

On July 16, 2020, the Senior Life Center participants received an in-kind care package donation from the Lancaster Lion's Club and Judge Valencia Nash. The care packages were distributed to senior members on Friday, July 17, 2020 during the Home Meal Delivery Program. On July 29, 2020, the team delivered 80 masks from State Rep. Carl Sherman to senior participants during the Home Meal Delivery Program. The team also distributed the "Side Arm" and the "Chronic Disease What You Need to Know about Nutrition" educational handouts on July 31, 2020.

On August 20, 2020, the Dallas Area Agency on Aging donated 500 masks to the Senior Life Center members. The team distributed the masks to members during the home meal deliveries.

The Senior Life Center distributes at home fitness exercise monthly handouts to participants during meal delivery. In home exercises allow participants to build their strength, balance and flexibility from the comfort of their own home. This quarter, the team distributed the "Easy Chair Exercises" handouts.

On Saturday July 19 and July 27, 2020, the City of Lancaster hosted a free testing event at the Senior Life Center. The Texas Military Department conducted 200 free COVID-19 tests for Lancaster residents. The Lancaster Recreation Center staff registered 32 Lancaster seniors for the event.

### **Home Meal Delivery Program**

Senior Life Center delivered approximately 4,788 meals to registered participants. In an effort to keep participants abreast of current changes, the Senior Life Center provided information updates during wellness checks. The department completed approximately 1,560 wellness checks this quarter.

### **Activities**

The Senior Life Center volunteer partners also provided the "Kenne Wayne" virtual line dancing course via YouTube on Thursday, July 30, 2020. The video received 59 YouTube views. Senior participants also participated in distant program activities which included card-making and creative coloring designs. The Senior Life Center re-vamped the "Legacies of Life" initiative in July 2020 to celebrate the birthdays of senior members each month. Approximately, 25 senior members received birthday cards. Birthday cards were distributed on the second Thursday of each month during the Home Meal Delivery Program. The center also re-vamped the "PuzzleRama" program and distributed monthly word puzzles to senior members.

### **Parks Division**

This quarter the Parks Division continued working on One Time projects. Projects initiated and completed include items listed below.



- Opened park restrooms, pavilions and dog park to public (August 10, 2020)
- Meadow Creek flex court repairs. Worked on getting the basketball court secured (August 22, 2020)
- Granite sidewalk install at Kids Square and City Park (August 2020)
- Concrete Sidewalk being poured at Kids Square (August 2020)
- Basketball backboards painted at City Park (September 20, 2020)
- Trash cans painted at Dewberry and Rocky Crest Park (September 20, 2020)

### **Library Services Division Update**

#### **July 2020**

July continued the Virtual Summer Reading Club “Imagine Your Story” with an action-packed month of virtual programming for all ages. Patrons had to complete reading logs by July 25<sup>th</sup> and a virtual awards ceremony was posted on Facebook and the Library’s webpage to celebrate summer readers. Top readers received prizes and all kids who read 1000 minutes or more received a certificate and trophy.

#### **August 2020**

The Library jumped back into fall programming with Online Toddler Storytime for ages 3 months – 2-years on Tuesdays and Online Family Storytime for ages 3 – 5 years on Wednesdays. Storytimes were available to view on Facebook and the Library’s webpage. Teen Club resumed on the first Thursday of the month with a Hamilton themed Virtual Escape Room for teens in grades 7 – 12. Family Craft Club allowed families to pick up postcard craft kits to take home, decorate, and mail together. Computer classes were also available online 24/7 on the Library’s webpage.

#### **September 2020**

September is Library Card Sign Up Month and this year’s theme and slogan was Wonder Woman “Libraries are WONDERful”. To celebrate, we gave away super grab bags for kids who signed up for their first library card. Adults signing up for the first time were entered into a drawing for a \$5 Starbucks gift card. Online storytimes and fall programming continued virtually and supported social distancing. Teen Club allowed teens to enter letters, photographs, social media posts, art work, and even small objects into a 2020-time capsule to be quarantined until 2030. September 15<sup>th</sup> kicked off Hispanic Heritage Month and was celebrated with a special week of Bilingual story times. Banned Books Week, September 27 – October 3, challenged readers to find their freedom to read. Family Craft Club allowed families to pick up a take-home comic book kit to design together.

### **Sound Infrastructure**

***The City has preventative maintenance programs to ensure well-maintained infrastructure, including streets, water, stormwater, wastewater and other assets.***

#### **Purpose and Vision**

1. Implement a Street Maintenance Fund:  
Council approved and implemented the Street Maintenance Fund effective October 1, 2019 (\$0.025/\$100 assessed value). Bear Creek Road phase I from I-35E to Houston School Road was the first project completed with Street Maintenance Funding.

#### **Planning and Oversight**

2. Complete the update of the Pavement Management Plan and implement the Pavement Management Plan:



The Pavement Management Plan update was completed in January 2020. We are currently focusing on major thoroughfares. Bridal Path & Millbrook Road extension was completed in the 4th quarter.

Loop 9 & I-35E Corridor Studies and make Implementation Decisions:

Halff Associates kicked off the I-35E and Loop 9 Overlay District Corridor Studies in August 2020; gathering pertinent data from Staff to perform analysis. On September 22, 2020, Halff Associates held meetings with stakeholders, allied organizations, heads of City Departments culminating with a Planning & Zoning Commission and City Council joint meeting. The studies will be completed in 12 months.

### Purpose and Vision

3. Implement Water/Wastewater Master Plan and Stormwater Master Plan to include flood plain reclamation study for Country View Golf Course:  
The report is scheduled to be finalized in the fourth quarter of FY 2020.

### Planning and Oversight

4. Continue Infrastructure Implementation Project - Pleasant Run Road Phases 3 & 4  
Pleasant Run Road Construction Phase 3 from Bluegrove Road to Dallas Avenue is complete.

Pleasant Run Road Reconstruction (Pleasant Run Phase 4) from Lancaster Hutchins Road to City limits is managed by Dallas County and include road improvements and other infrastructure improvements including water, sewer and drainage. Estimated completion date is December 2020.

### Strategic Objectives

5. Continue the Facilities Assessment Implementation:  
At the August 5, 2019 Special Work Session, Council received a presentation regarding the FY 2018/2019 Facilities Assessment. The following table illustrates the budgeted FY19/20 facilities improvements, the status, and the tentative completion timeline.

Facility	Assessment	Budgeted Cost	Actual Cost	Status/Estimated Completion
<b>Animal Shelter</b>	Flooring	\$9,500	\$6,000	Completed
	Kennels	\$38,000	\$41,988	Completed
	Exterior Painting	\$11,100	\$6,988	Completed
	Stainless Steel Doors (3)	\$4,500		Postponed due to actual cost being higher than budgeted amount
	Compartment Sinks (3) w/Faucets \$1,400	\$1,400	\$1,400	Completed
<b>City Hall</b>	Breakroom	\$8,000	\$1,500	Completed
	Utility Billing Cameras	\$3,700	\$3,700	Completed
	Voting Monitor (Council Chambers)	\$1,000	\$1,000	Completed
	Voting Board- Swagit	\$154,549	\$154,549	Completed



<b>700 E Main St.</b>	Exterior Painting	\$16,850	\$6,988	Completed
<b>Community House</b>	Exterior Repair & Painting	\$18,500	\$10,500	Completed
	Strip & Refinish floors	\$5,500	\$ 5,500	Completed
<b>Golf Course</b>	Exterior Painting	\$17,875		In progress, Q1 FY20/21
	Replacing Awnings	\$9,000		In progress, Q1 FY20/21
	A/C	\$47,465	\$67,000	Completed
<b>Fire Station 3</b>	Exterior Painting & Trim Replacement	\$15,000	\$15,000	Completed
	Solar Screens	\$2,500	\$360	Completed
<b>Pump Station</b>	A/C	\$43,452	\$43,452	Completed
<b>Library</b>	Roof	\$96,000		Q1/Q2 FY 20/21
	A/C	\$90,301	\$90,301	Completed
<b>Airport</b>	Camera System	\$20,000	\$20,000	Completed
<b>Public Safety</b>	Camera System	\$22,000	\$20,000	Completed
	Roof	\$40,000		Q1/Q2 FY 20/21
	Floors	\$20,000		Q1/Q2 FY 20/21
<b>Rec Center</b>	Exterior Camera System	\$22,000	\$22,000	Completed
	Kalwall	\$18,000		Q1/Q2 FY 20/21
	Interior Repaint	\$10,000	\$10,000	Completed
	Roof Entryway	\$20,000		Q1/Q2 FY 20/21
	Refinish Gym Floor	\$13,000	\$13,000	Completed
	Strip & Wax Floors	\$3,000	\$3,000	Completed
<b>Visitors Center</b>	Exterior window & trim repair & painting	\$18,500	\$18,500	Completed

### Planning and Oversight

- Complete Loop 9 Corridor Study and make implementation decisions:  
Halff Associates kicked off the I-35E and Loop 9 Overlay District Corridor Studies in August 2020; gathering pertinent data from Staff to perform analysis. On September 22, 2020, Halff Associates held meetings with stakeholders, allied organizations, heads of City Departments culminating



with a Planning & Zoning Commission and City Council joint meeting. The studies will be completed in 12 months.

### **Strategic Objectives**

7. Work with Best Southwest Partnership to implement public transportation options:  
On July 7, 2020 NCTCOG, Dallas County, and the BSW Cities of Duncanville, Cedar Hill, DeSoto and Lancaster along with consultant (Half and Associates) held a kickoff virtual meeting to discuss the entire scope of work regarding the Regional Veloweb Trail Study Corridors within each City.

On July 8, 2020 NCTCOG held a virtual meeting marking the kickoff of the Southern Dallas County Transit Study that is funded by the Regional Transportation Council (RTC). On April 15, 2019, City Council received a presentation and directed staff to participate in this public transit study. The study will focus on developing a plan for strategic implementation of transit and mobility services in the southern Dallas County region. An RFP was issued and a consultant has been selected to begin the study, which should take approximately a year to complete.

Additionally, the Inland Port Transportation Management Association (IPTMA) formed in 2018 to provide transportation opportunities throughout the Inland Port has begun the first phase of implementation of their program (transit, ridesharing, walking, and biking). IPTMA is partially funded by NCTCOG to cover the first two years of expenses, the remaining is covered by a 20% local match. An Interlocal agreement authorizing the City's membership in IPTMA which facilitated access to IPTMA services was approved at a Special Meeting on August 31, 2020.

### **Planning and Oversight**

8. Complete Airport terminal:  
Denco Construction Specialists abandoned the project in early January 2020. TXDOT Aviation has worked with the bond surety company to secure a new contractor. The new contractor, Jax's Construction Services, resumed work in May 2020. Jax's Construction Services had to rectify many construction errors. Jax's Construction Services has estimated completion in December 2020. A final inspection and any resulting punch-list items will follow.

### **Streets and Stormwater**

Staff completed a number of asphalt section street repairs and continue to train to ensure work is completed to obtain sustainable results.

- Overlay Sections (Asphalt) on Greene Road
- Street Sign Replacement Program - 214 signs replaced in the 4th quarter

### **Streets and Stormwater Special Projects**

- Completed Road Restriping: Rolling Hills, Bear Creek, E. Daniieldale Road
- Completed Alley Reconstruction: Arcady Lane and Stanford

### **Water/Wastewater**

1. Staff continues to maintain a superior water rating for quality and inventory water quality by conducting 90 samples this quarter.
2. Staff continues conducting camera inspections within manholes to ensure quality of public sewer lines within the City.
3. 258 Fire Hydrants Serviced



## **Water and Wastewater Special Projects**

Katy St. sewer pipe bursting – Complete  
Lindenwood from Dewberry to Lindenwood - Complete  
Edwards Street from Cedardale to Taylor Street - Complete  
Redbud from Stewart Street to Main Street - 90% complete  
Crest Street from Francis Street to Main Street - 90% complete

## **Professional & Committed Workforce**

***Lancaster City government is an employer of choice with competitive pay that attracts an engaged, responsive, customer-oriented, innovative, and effective workforce. Some employees live in the City and all have a sense of ownership of the community. City employees feel needed and appreciated by elected officials, residents and businesses and are respectful to and appreciative of their customers and the City's governing body. The City's executive staff is engaged with residents and attends community events, upholds strong customer service, and uses technology to aid them in working smarter.***

### **Purpose and Vision**

1. Continue annual City Council strategic planning and team building exercises:  
At the 2019 Annual Strategic Planning Session held on June 14-15, 2020, Council requested to have quarterly sessions with the facilitators. The first quarterly session was held on November 2, 2019 and included team building at Group Dynamix. The next quarterly strategic planning session was held on Saturday, January 25, 2020 at the Community House. When Council met on January 25, 2020 they decided to only do twice per year, instead of four times per year. The annual Strategic planning session was scheduled with the consultant, chosen by City Council, on June 26-27, 2020. The next session will be a mid-year update in January 2021.
2. Review Specialty Incentive Pay Program:  
City Council received a presentation during the 2020/2021 fiscal year budget presentation regarding compensation and incentive pay in comparison to the market. In fiscal year 2017/2018, a hiring incentive pay was added for Certified Police Officers and Dual Certified Fire Fighter/Paramedics. In fiscal year 2018/2019 Language Skills Pay was added for all full-time employees who successfully completed testing. Testing opportunities continue to be available to all employees upon request.

### **Priority Action Items**

3. Evaluate compensation to address compression:  
City Council received a presentation during the 2020/2021 fiscal year budget presentation regarding compensation and incentive pay in comparison to the market.

City Council has worked collaboratively and strategically regarding employee compensation and retention. Compensation has remained an objective of the Council for the past six years. While we still have progress to make, we have accomplished milestones with compensation, equipment replacement, comparable benefits, incentive pay and creating opportunities for career progression.

In FY 2013/2014, City Council approved a 3% increase to the pay plan. In FY 2014/2015, City Council approved a 5% increase to the pay plan. In FY 2015/2016 City Council approved a 2% increase to the pay plan. In FY 2016/2017, City Council approved a 5% increase to the pay plan.



In FY 2017/2018 City Council approved a 3% increase to the pay plan. In FY 2018/2019, City Council approved a 3% increase to the pay plan. The fiscal year 2019/2020 provided for a 3% increase for general government and 4% of minimum increase to the civil service pay plan, which provides for a dollar increase of \$2,099.89 for each step in the police pay plan; and \$2,058.13 for each step in the fire pay plan. The fiscal year 2020/2021 budget provided for a 2% increase to the pay plans. Overall, this is a 26% increase to the pay plan for the past seven years. While this is substantial improvement, we still remain in the lower tier of our comparable cities.

### **Strategic Objectives**

4. Continue Lancaster University:  
In January 2020, supervisors across all departments were provided an interactive training on “How to Overcome Unconscious Bias in Decision Making” by LaTonya J. Pegues with BOAZ Enterprises, Austin, Texas.

Lancaster University was scheduled to be held on March 13, 2020 at Cedar Valley Community College. Unfortunately, due to COVID-19 the event was postponed. The next Lancaster University is scheduled for March 12, 2021.

### **Planning and Oversight**

5. Develop options for a Council-level employee recognition program:  
You may now share and receive recognition through the employee brag button on the City Website at <http://www.lancaster-tx.com/177/Human-Resources>. The employee brag button on the City website is an external means for the public to recognize city staff as a whole, a specific department, or individual employees citywide contributing to a city council goal and objective.

Approved applications will receive recognition at a future City Council meeting during public comments, have a copy of the recognition mailed to the employees’ home, and have a copy placed in their personnel file.

Our first recognition was delivered on June 22, 2020 to City Council during citizens comments by Human Resources Director, Dori Lee. This quarter City Council has recognized one employee through this process.

### **Quality Development**

***The City encourages high quality, diverse housing, Commercial and retail development and public facilities. Policies encourage sustainable building practices, conservation and the use of alternative energy sources.***

### **Priority Action Items**

1. Continue revitalization incentives for Commercial and retail centers:  
Staff completed an analysis of the effects of more assertive redevelopment incentives. Staff is working interdepartmentally in regards to providing resources to help property owners improve their properties if and when they have code issues.

### **Strategic Objectives**

2. Continue implementation of the Comprehensive Plan:  
Progress has been made through ordinance, development code and master plan updates, and amendments. Staff continues to work with multiple consultants on several master plan updates that will be used to implement the Comprehensive Plan Update. This quarter Council approved the updated Streetscape Master Plan, Hike and Bike Trails Master Plan, Parks and Open Space Master Plan, and the Master Thoroughfare Plan.



### **Priority Action Items**

3. Continue Economic Development Strategic Plan - Incentive Policy Update; Retail Recruitment Strategy:

In light of SB2 Implementation, staff is researching and monitoring the external to see how the legislation may impact the availability and opportunities to leverage incentives.

Staff received incentive information and agreements in regards to mid to upper scale hotel projects. Staff is working with local Commercial realtors by providing contacts for vacant retail centers and conducting research on specific retailers including finding national and regional contacts, traffic needed, and common neighbors, to improve brick and motor options.

Staff identified industrial trade shows focusing on industrial sectors recommended in the plan. Staff attended an Artificial Intelligence, Data Center, and two Hotelier Conferences in the first quarter in an effort to connect with key companies in industries targeted in the Economic Development Strategic Plan. Staff also attended the Texas Downtown Association conference in an effort to connect with smaller developers. Attended Red River ICSC Conference and met with twelve developers regarding retail in Lancaster. Councilmembers Strain-Burk and Jaglowski also attended. Met with three hotel developers in-person regarding potential sites and incentives in Lancaster.

Lancaster was the featured sponsor to the January Bisnow event. The event brought about awareness of the community and placed the community in a positive perspective to 400+ Commercial developers.

A hotel feasibility study was conducted and presented to City Council at the July 15, 2019 Work Session. The study details the hospitality market in Lancaster and recommends focusing recruitment efforts on upper/mid-level hotels including Wyndam, Hilton Garden Inn, Fairfield Inn by Marriot, Cambria, Courtyard by Marriot, or Signia. Staff reconnected with Springhill Suites and met with the franchisee and his banker.

Direct contact is being made to targeted businesses and industries. 600,000 s/f of warehouse space was leased. Red Roof Inn Plus received their building permit in April and broke ground in mid-June.

Staff assisted smaller businesses regarding the SBA emergency pandemic loan and made sure that every business that qualifies for County assistance was made aware that the assistance / grant / loan was available.

Fisher & Paykel expanded their footprint in Lancaster and Inmar T.I. located into a facility. Swift transportation invested in a minor office remodel.

### **Planning and Oversight**

4. Continue the review and update various City plans.

The City Council adopted the update to the Parks, Recreation & Open Space, Hike & Bike Trails, the Streetscape and Thoroughfare master plans ensuring alignment with the 2016 adopted Comprehensive Plan. Staff is currently working with a consultants on I-35E and Loop 9 studies and the Downtown and Campus Districts TIRZs. The following table summarizes the Master Plans that have been updated and adopted, the current status and the tentative time line of the remaining projects.



<b><u>PROJECT NAME</u></b>	<b><u>STATUS</u></b>	<b><u>COMPLETION TIME LINE</u></b>
Parks, Recreation & Open Space Master Plan Update	Adopted	June 22, 2020
Hike & Bike Master Plan Update	Adopted	August 31, 2020
Streetscape Master Plan Update	Adopted	September 28, 2020
Master Thoroughfare Plan Update	Adopted	September 28, 2020
Downtown District & Campus TIFs	Freese & Nichols completed and provided the infrastructure cost estimates and Insight Research Corporation is currently working on financial modeling tests to see what works best for these districts. Upon completion staff will make a presentation to Council in October and/or November at the latest.	1st Quarter 2021 (Completion)
Loop 9 Corridor & I-35E Studies	Halff Associates kicked off I-35E and Loop 9 Overlay District Corridor Studies in August 2020; gathering data from Staff. Community engagement began September 22, 2020. Halff Associates held visioning meetings with resident stakeholders, allied organizations, heads of City Departments culminating with a Planning & Zoning Commission and City Council joint meeting.	3 <sup>rd</sup> Quarter 2021 (Completion)
Water/Wastewater Master Plan Update	Freese and Nichols, Inc. is currently working on the wastewater modeling component of this study. Once complete, the draft report will then be submitted for staff review, CIAC review/recommendations, and approval from city council for adoption.	3 <sup>rd</sup> Quarter 2021
Stormwater Master Plan Update	Pacheco Koch is currently working on the hydrology component of this study for completion of the draft report for staff review.	4 <sup>th</sup> Quarter 2021

## **Purpose and Vision**

### **5. Revitalize Downtown - Downtown TIF**

Freese & Nichols Inc. completed and provided the infrastructure cost estimates and Insight Research Corporation is currently working on financial modeling tests to evaluate best uses for the Downtown and Campus districts. Upon completion, staff will make a presentation to Council in October and/or November at the latest.



### **Effective Municipal Operations**

***The City delivers financial sustainability and quality services utilizing delivery methods that engages residents to take pride in our City.***

#### **Priority Action Items**

1. At the 2019 Annual Strategic Planning Session held on June 14-15, 2019, Council requested to have quarterly sessions with the facilitators. The first quarterly session was held on November 2, 2019 and included team building at Group Dynamix. The next quarterly strategic planning session was held on Saturday, January 25, 2020, at the Community House. When Council met on January 25, 2020, they decided to only have strategic planning session to twice per year, instead of four times per year. The next Strategic planning session will be in January 2021.
1. Strengthen the performance review process for Council-Appointed officials:  
In September 2019, City Council selected an appointed position performance review process tailored to the individual appointed position versus the use of a generic evaluation process. In the following months of October and November City Council meet with each individual in an appointed position to provide feedback. In turn, an opportunity was provided to the appointed official as well to submit feedback and accomplishments for consideration in the review process. All appointed positions have evaluations scheduled for October and November 2020.

#### **Purpose and Vision**

2. Review City Charter amendment process options:  
The City Attorney and staff reviewed the Charter to ensure no conflict exists since the 86<sup>th</sup> Legislative Session. No conflicts were noted. Council determined no additional action is required.



# **Fiscal Year 2019-2020**

## **Fourth Quarter Update**

### **July, 2020 – September 30, 2020**

#### **Financially Sound Government**

***The City has a long-range financial plan and prudent fiscal policies and processes. Appropriate reserve levels and a competitive tax rate ensures the needs of the community and responsibly manages its debt.***

#### **Purpose and Vision**

1. Prudent fiscal policies and processes:

The City has received the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Finance for the fourth consecutive year.

The City is also the recipient of all five transparency stars from the Texas Comptroller's Office for Traditional Finances, Contracts & Procurement, Economic Development, Public Pensions, and Debt Obligations.

When refunding the 2010 bonds, staff met with the rating agencies and our ratings have been affirmed as "Aa3" from Moody's and AA- from Standard and Poors.

January 27, 2020, City Council authorized the issuance of City of Lancaster, Texas, General Obligation Refunding Bonds, Series 2020 in an amount of \$25,080,000 for refunding a portion of the City's outstanding debt. This resulted in a debt service savings of \$5,715,639.40.

September 29, 2020, City Council approved a Capital Lease for a new ladder truck.

The Finance department has implemented detail procedures to track and report COVID19 expenses and maximize reimbursement for Grantors.

#### **Planning and Oversight**

2. City policy stipulates a reserve fund balance at year end with a minimum of 12%, a target of 18% and a maximum of 25%. On September 30, 2019 the reserve fund balance exceeded 17%.

During the September 29, 2020 City Council meeting, Council adopted resolutions to update the Debt Management Policy, Investment Policy, and Financial Policy for FY 2021.

#### **Purpose and Vision**

3. Competitive tax rate:

For fiscal year 2019/2020, the tax rate was reduced from the prior year of \$0.8675 to \$0.840925 to be in line with the rules and restrictions of SB2. With the reduction of the tax rate, Council also established a street maintenance fund. The street maintenance fund is \$0.25, operations and maintenance rate is \$0.547757 and the interest and sinking rate is \$0.245725.

For fiscal year 2020/2021, the tax rate was reduced from the prior year of \$0.840925 to \$0.819736. The street maintenance fund is \$0.25, operations and maintenance rate is \$0.5952 and the interest and sinking rate is \$0.245725.



## **Healthy, Safe, & Engaged Community**

***Lancaster is a place where we embrace public safety and compassionate enforcement in our neighborhoods to sustain vibrant residential and business communities. The community celebrates unity and participates in citywide events, recreational and cultural activities. Residents have opportunities for involvement in civic life through boards and commissions, youth and parent volunteer opportunities in recreation, sports teams, City elections, Civic Academies, Schools and citywide celebrations.***

### **Priority Action Items**

1. Ensure update of Parks Recreation and Open Space Master Plan:  
This quarter, the masterplan was adopted and placed on file with the Texas Parks and Wildlife Development Board (TPWDB). This allows the City of Lancaster to compete for additional grant opportunities. This updated masterplan was also the final piece of completing the required self - assessment in becoming an accredited parks and recreation agency through National Recreation and Park Association (NRPA).

### **Planning and Oversight**

2. Continue the Business Retention and Expansion Program (BREP):  
The BREP program officially engages six businesses annually. In an effort to keep the BREP visits a priority of businesses, staff is scheduling the visits within 30 days from initial contact with the business. During the first quarter of FY2020, BREP visits were conducted with Super Walmart, Neighborhood Walmart, and Oncor. During the second quarter, BREP visits were conducted with Consolidated Mail Outpatient Pharmacy (CMOP), and Crescent Medical Center. COVID-19 has impacted our ability to conduct in-person BREP visits for this quarter. However staff has been in constant communication with our businesses regarding various opportunities provided via the federal and state government as well as assistance with grant information. The United States Treasury reported the names of companies that received at least \$150,000 in federal assistance. 34 Lancaster businesses were reported to receive funds in this amount with a total of \$9,750,000 - \$24,250,000 allocated. More businesses are known to have received assistance, however, did not reach the \$150,000 threshold. In addition, staff hand delivered applications for the funds allotted for businesses through the County. Thirty - three (33) businesses in Lancaster applied for \$595,534.24. Status of approval is currently pending.

### **Purpose and Vision**

3. Senior Cares Initiative:  
At the October 14, 2019 Council meeting, Council approved a resolution authorizing the submission of an application for the American Association of Retired Persons (AARP) Age-Friendly Livable Communities Program, and supporting the initiatives and opportunities of said program. On December 21, 2019, Council received the AARP distinction as an Age Friendly Community. Staff submitted a grant application to AARP for programming and services to further support of Age-Friendly community designation, while not awarded during this fiscal year, plans are underway to apply for FY 2020/21.



## **Code Compliance**

### **Illegal Dumping Cases by the Code Compliance Team**

0-04088	1400 N DALLAS Ave.	07/01/2020
20-04162	341 TELEPHONE Rd.	07/07/2020
20-04163	223 OAK St.	07/07/2020
20-04166	2300 SUNNY MEADOW Dr.	07/07/2020
20-04218	1003 APRIL SHOWERS Ln.	07/09/2020
20-04219	1908 FREDERICK St.	07/09/2020
20-04220	4201 DANIEL Ln.	07/09/2020
20-04221	629 W PLEASANT RUN Rd.	07/09/2020
20-04222	100 E WINTERGREEN Rd.	07/09/2020
20-04223	2409 W REINDEER Rd.	07/09/2020
20-04236	2500 S DALLAS Ave.	07/10/2020
20-04272	412 OLD RED OAK Rd.	07/10/2020
20-04273	500 OLD RED OAK Rd.	07/10/2020
20-04275	359 OLD RED OAK Rd.	07/10/2020
20-04327	3401 N DALLAS Ave.	07/13/2020
20-04328	235 REA Ave.	07/13/2020
20-04363	600 JEFFERSON St.	07/15/2020
20-04364	500 JEFFERSON St.	07/15/2020
20-04365	3401 N DALLAS Ave.	07/15/2020
20-04366	235 REA Ave.	07/15/2020
20-04416	830 FOX GLEN Cir.	07/16/2020
20-04417	4300 BOARDWALK Ave.	07/16/2020
20-04418	2401 W BELT LINE Rd.	07/16/2020
20-04419	2700 W WINTERGREEN Rd.	07/16/2020
20-04420	1302 PENNSYLVANIA Ave.	07/16/2020
20-04436	3701 N DALLAS Ave.	07/16/2020
20-04476	307 E CEDAR St.	07/20/2020
20-04544	1001 OLD RED OAK Rd.	07/21/2020
20-04586	1400 BEAR CREEK Rd.	07/22/2020
20-04587	1580 W MAIN St.	07/22/2020
20-04588	615 N DALLAS Ave.	07/22/2020
20-04650	3130 PARKERVILLE Rd. Suite # 38	07/24/2020
20-04711	101 N HOUSTON SCHOOL Rd.	07/27/2020
20-04712	654 PIERSON St.	07/27/2020
20-04713	3324 SHERWOOD Ave.	07/27/2020
20-04714	2826 DANIELDALE Rd.	07/27/2020
20-04718	1425 N BLUEGROVE Rd.	07/27/2020
20-04731	1200 BEAR CREEK Rd.	07/28/2020
20-04732	1080 BEAR CREEK Rd.	07/28/2020
20-04733	107 TEXAS St.	07/28/2020
20-04781	956 TRUMAN Cir.	07/30/2020
20-04782	1059 TEN MILE Rd.	07/30/2020

20-04783	1801 JEFFERSON St.	07/30/2020
20-04784	1000 E WINTERGREEN Rd.	07/30/2020
20-04819	955 TEN MILE Rd.	07/31/2020
20-04820	1431 N BLUEGROVE Rd.	07/31/2020
20-04866	3861 N DALLAS Ave.	08/04/2020
20-04867	660 W WINTERGREEN Rd.	08/04/2020
20-04873	1000 BEAR CREEK Rd.	08/05/2020
20-04874	600 S BLUEGROVE Rd.	08/05/2020
20-04875	102 S BLUEGROVE Rd.	08/05/2020
20-04876	1003 N DALLAS Ave.	08/05/2020
20-04948	1003 S DALLAS Ave.	08/06/2020
20-04950	337 REA Ave.	08/07/2020
20-04951	1301 N ELM St.	08/07/2020
20-04952	2008 CEDARDALE Rd.	08/07/2020
20-04964	400 SADDLEBROOK Dr.	08/07/2020
20-04965	543 SADDLEBROOK Dr.	08/07/2020
20-04966	529 SADDLEBROOK Dr.	08/07/2020
20-04967	1400 BEAR CREEK Rd.	08/07/2020
20-04968	643 W WINTERGREEN Rd.	08/07/2020
20-05064	2700 W WINTERGREEN Rd.	08/13/2020
20-05065	3335 SPRINGFIELD Ave.	08/13/2020
20-05066	200 E WINTERGREEN Rd.	08/13/2020
20-05067	1908 FREDERICK St.	08/13/2020
20-05068	1912 FREDERICK St.	08/13/2020
20-05090	1151 CEDARDALE Rd.	08/14/2020
20-05096	100 CRAIG SHAW MEMORIAL Pkwy.	08/14/2020
20-05097	1000 BEAR CREEK Rd.	08/14/2020
20-05098	600 S BLUEGROVE Rd.	08/14/2020
20-05099	1400 BEAR CREEK Rd.	08/14/2020
20-05100	2021 BEAR CREEK Rd.	08/14/2020
20-05148	1840 W REINDEER Rd.	08/19/2020
20-05149	1546 ABERDEEN Dr.	08/19/2020
20-05188	3000 S HOUSTON SCHOOL Rd.	08/21/2020
20-05189	1840 W REINDEER Rd.	08/21/2020
20-05190	3335 SPRINGFIELD Ave.	08/21/2020
20-05191	3156 SPRINGFIELD Ave.	08/21/2020
20-05192	966 N BLUEGROVE Rd.	08/21/2020
20-05200	500 JEFFERSON St.	08/21/2020
20-05201	2300 SUNNY MEADOW Dr.	08/21/2020
20-05263	511 REA Ave.	08/26/2020
20-05301	921 WOODCREST Dr.	08/27/2020
20-05318	1100 JEFFERSON St.	08/27/2020



20-05319	1001 OLD RED OAK Rd.	08/28/2020
20-05320	500 OLD RED OAK Rd.	08/28/2020
20-05321	1331 N HOUSTON SCHOOL Rd.	08/28/2020
20-05351	180 S BLUEGROVE Rd.	08/28/2020
20-05405	100 E WINTERGREEN Rd.	09/01/2020
20-05406	1601 W WINTERGREEN Rd.	09/01/2020
20-05407	202 S HOUSTON SCHOOL Rd.	09/01/2020
20-05408	1200 BEAR CREEK Rd.	09/01/2020
20-05409	500 OLD RED OAK Rd.	09/01/2020
20-05410	222 S HOUSTON SCHOOL Rd.	09/01/2020
20-05452	1213 S HOUSTON SCHOOL Rd.	09/03/2020
20-05453	3105 BALOMEDE Ave.	09/03/2020
20-05454	1234 RIVER OAKS Cir.	09/03/2020
20-05494	500 OLD RED OAK Rd.	09/03/2020

20-05531	500 OLD RED OAK Rd.	09/04/2020
20-05532	100 N HENRY St.	09/04/2020
20-05549	113 OLD RED OAK Rd.	09/09/2020
20-05565	1200 SPRING CREEK Dr.	09/09/2020
20-05566	425 CHESHIRE Rd.	09/09/2020
20-05567	600 S BLUEGROVE Rd.	09/09/2020
20-05604	211 N HENRY St.	09/11/2020
20-05606	3110 SHERWOOD Ave.	09/11/2020
20-05607	3000 W BELT LINE Rd.	09/11/2020
20-05608	703 S BLUEGROVE Rd.	09/11/2020
20-05609	600 S BLUEGROVE Rd.	09/11/2020
20-05612	956 TRUMAN Cir.	09/11/2020
20-05613	1059 TEN MILE Rd.	09/11/2020
20-05663	3119 BALOMEDE Ave.	09/11/2020
20-05734	411 CHESHIRE Rd.	09/15/2020
20-05735	820 W WINTERGREEN Rd.	09/15/2020
20-05736	387 CHESHIRE Rd.	09/15/2020

### Commercial Code Compliance Cases

Business/Owner	Address	Violation	Action Taken	Status
AMS COMMUNICATIONS INC ZURRA ENTERPRISES INC VALERO	3160 W PLEASANT RUN Rd.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-15-20
ZAKIR SAKINA	2542 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated contractor 08-24-20
CT BECKHAM % CLYDE L HARGROVE	1362 W BELT LINE Rd.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-15-20
LUTHER THOMAS A % RUBY LUTHER	3349 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-16-20
ZAKIR SAKINA	2542 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07/01/2020	Abated owner 07-16-20
LTX PROPERTIES LLC	1400 BEAR CREEK Rd.	No Sign Perm	Notification Letter 07/09/20	Abated owner 07-16-20
COLE LR LANCASTER TX LLC, LOGAN'S ROADHOUSE	700 N I-35E	grass and weeds - Commercial	Notification Letter 07/09/20	Abated owner 07-18-20
BROWN BETTINA	1616 W MAIN St.	grass and weeds - Commercial	Notification Letter 07/09/20	Abated owner 07-18-20
BROWN BETTINA L	1624 W MAIN St.	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 07/16/20
BROWN BETTINA L	1630 W MAIN St	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 07-20-20
TRUJILLO YADIRA E	3210 N HOUSTON SCHOOL Rd	Certificate of Occupancy Violation	Notification Letter 07/16/20	Abated owner 07-20-20
PHINISEE CLARENCE	3132 SHERWOOD Ave	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 07-20-20
PHINISEE CLARENCE	3128 SHERWOOD Ave.	grass and weeds - Commercial	Notification Letter	Abated owner 07-20-20
DLH LOGISTICS	1421 N LANCASTER HUTCHINS Rd.	grass and weeds - Commercial	Notification Letter 07/16/20	Abated owner 08-15-20
SMITH GRACE O ,- Lancaster Realty -	721 DONLEE Rd. 4301 Connecticut	grass and weeds - Commercial, Dumpster Violation	Notification Letter 07-10-20 Notification Letter 07-10-20	Abated owner 07/20/20 Abated contractor 07/16/20
ZAPATA MELANIE	2624 HULETTE Ave	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALG TRANSPORT	2534 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20



ALG TRANSPORT	2530 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
WALDROP CHARLES W III & CINDY L	2281 W PLEASANT RUN Rd	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
SAI REED PROPERTIES INC DREAM NAILS	1405 N DALLAS Ave	Commercial Dumpster Violation	Notification Letter 07-29-20	Abated owner 08-15-20
ZAPATA MELANIE	2624 HULETTE Ave	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALG TRANSPORT	2534 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALG TRANSPORT	2530 BALOMEDE Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
WALDROP CHARLES W III & CINDY L	2281 W PLEASANT RUN Rd.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
ALDRIDGE ORVILLE	1611 IDLEWILD Ln.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-20-20
TEXAS STATE OF	2540 SHERWOOD Ave.	grass and weeds - Commercial	Notification Letter 07-29-20	Abated owner 08-15-20
CHASE FINANCIAL SERVICES LLC	1701 N LANCASTER HUTCHINS Rd.	grass and weeds - Commercial	Notification Letter 08-30-20	Abated owner 08-15-20
SEGMENTAL INVESTMENTS	3117 BELVEDERE Dr.	grass and weeds - Commercial	Notification Letter 08-30-20	Abated contractor 09-14-20
ANCIRA JESSE	1456 PARK CIRCLE Dr.	grass and weeds - Commercial	Notification Letter 08-30-20	Abated contractor 09-14-20
SANTANA GUZMAN SANTANA &	3119 SHERWOOD Ave.	High grass and weeds - Commercial	Notification Letter 08-30-20	Abated owner 09-14-20
FISK FRANCES M	3325 SHERWOOD Ave.	High grass and weeds - Commercial	Notification Letter 08-30-20	Abated owner 09-14-20
SMITH JENNIFER	912 NORWOOD Ln	Minor Auto Repair	Notification Letter 08-20-20	Abated owner 08-30-20
LANCASTER CITY OF OWNER OF PROPERTY	3351 BALOMEDE Ave.	High grass and weeds - Commercial	Notification Letter 08-20-20	Abated owner 08-30-20
SOLARES NEFTALY & UMILDAD	3307 SHERWOOD Ave.	High grass and weeds - Commercial	Notification Letter 08-20-20	Abated owner 08-30-20
BLACK LABEL PROPERTIES LLC	3302 BALOMEDE Ave.	High grass and weeds - Commercial	Notification Letter 08-20-20	Abated owner 08-30-20
VELAZQUEZ DANIEL	3250 SHASTA D	High grass and weeds - Commercial	Notification letter 09/11/2020	Abated contractor 09/21/2020
MARTINEZ JOE JR	3324 BALOMEDE Av	High grass and weeds - Commercial	Notification letter 09/11/2020	Abated contractor 09/21/2020
MONTERO JUAN S MONTERO MIREYA	3331 BALOMEDE Av	High grass and weeds - Commercial	Notification letter 09/11/2020	Abated contractor 09/21/2020
INDUSTRIAL DEV INTL TX LP % IDIG TEXAS LP	3800 N I-35E	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration
SCHLACHTER REALTY LTD	3100 W PLEASANT RUN Rd	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration
BELLARON PROPERTIES INC	4125 N DALLAS Ave	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration
LANCASTER LTD	4201 N DALLAS Ave.	High grass and weeds - Commercial	Notification letter 09/21/2020	Pending notice expiration

### **Animal Shelter Update**

Staff continues to work with various rescue groups throughout the region in an effort to increase rescue rates. In addition to Petfinder, staff has been posting photos of animals at the shelter and on the City's Facebook page to attract more local adopters. Due to the COVID-19 pandemic, low cost veterinary events have been suspended until further notice.

The Lancaster Animal Shelter has recorded a total of 88 rescues, 18 adoptions, 14 redeemed, and no euthanasians were performed for the period of July 1, 2020 to September 30, 2020.



### **Police Department Update**

Crime prevention and deterrence is a primary objective of the police department. Overall, we are seeing decreases in several offense categories that we believe is a result of some aggressive proactive measures including a robbery detail, increased traffic enforcement, and officer initiated close patrol of neighborhoods based on visible activity.

COVID-19 drastically skewed the numbers for this quarter. Overall, there were fewer calls for service, but more close patrols of neighborhoods by officers.

OFFENSES			
	4Q 2019	4Q 2020	UP/DOWN
Assault	99	120	21
Burglary Building	17	19	2
Burglary Habitation	29	10	-19
Burglary Vehicle	35	47	12
Criminal Mischief	62	66	4
Drug Crimes	48	30	-18
DWI	21	20	-1
Financial Crimes	26	39	13
Information Report	439	373	-66
Mental Evaluations	36	37	1
Murder	0	0	0
Robbery	14	6	-8
Runaways	16	22	6
Sex Assault	4	7	3
Theft	130	138	8
UUMV	52	52	0

ARREST			
	4Q 2019	4Q 2020	UP/DOWN
Arrest	578	269	-309

CALLS FOR SERVICE			
	4Q 2019	4Q 2020	UP/DOWN
Total Calls	22630	18069	-4561
Close Patrols	6865	11241	4376
House Check Request	20	4	-16
House Check Calls	141	16	-125

PATROL			
	4Q 2019	4Q 2020	UP/DOWN
Traffic Stops	7474	987	-6487
Field Contacts	110	67	-43



<b>WARRANTS</b>			
	<b>4Q 2019</b>	<b>4Q 2020</b>	<b>UP/DOWN</b>
<b>New Felony</b>	30	49	19
<b>New Misdemeanor</b>	43	50	7
<b>New Warrants Total</b>	73	99	26
<b>Warrants Served</b>	24	31	7

<b>ACCIDENTS</b>			
	<b>4Q 2019</b>	<b>4Q 2020</b>	<b>UP/DOWN</b>
<b>Total Accidents</b>	221	200	-21

### **Fire Department Update**

The Fire Department's primary focus, this quarter, has been directed towards the COVID-19 pandemic. The department has taken many proactive measures in attempt to prevent or slow the spread of COVID-19, not only within the department but within the community. We have been able to accomplish these goals while responding to calls for service, participating birthday parades, demonstrating show and tell while maintain social distancing.

This quarter the new Incident Command Vehicle was placed in service. Also, this quarter our new ambulance remount M351 was placed into service at Station One.

COVID-19 has presented some challenges with paramedic school; however, we had three of our members complete the paramedic program and become certified. These members are Justin Cope, Thomas Vanover, and Braden Nolen.

### **Municipal Court Update**

The fourth quarter of FY 2019/2020 the Municipal Court collected revenues of \$325,833.00. This is an increase of \$190,369.00 from the same period last year of \$135,464. Warrants issued for the third quarter were 2,159 and 441 were served/recalled during the same period. The number of cases filed totaled 879, 2,285 trials/hearings held, and 2,252 dispositions for the fourth quarter of FY 2019/2020.

### **Quality of Life and Cultural Services Update**

#### **CAPRA Milestones**

Throughout the quarter, Quality of Life and Cultural Services (QLCS) staff finalized tasks associated with the National Recreation and Park Association's (NRPA) Commission for Accreditation of Park and Recreation Agencies (CAPRA) Accreditation Standards. NRPA's Accreditation provides quality assurance and quality improvement of accredited park and recreation agencies throughout the United States by providing agencies with a management system of best practices.

The virtual site visit took place September 14-18, 2020. During that week, the CAPRA visitors asked questions regarding our initial submissions. At the end of the week, the visitation team gave staff their final thoughts and evaluation. Out of 151, fundamental standards, Lancaster only missed 5 non-fundamental standards. Based on NRPA Accreditation standards, the QLCS department has met all qualifications to receive accreditation.



Our CAPRA Hearing is scheduled for Monday, October 19, 2020, where CAPRA commissioners will give their final thoughts and decision on agency accreditation. The awards ceremony will be conducted virtually where they announce all agencies that have acquired accreditation.

### **Recreation Division Update**

#### **Virtual Programs and Social Media**

The QLCS Department initiated the July Parks and Recreation Month on Wednesday, July 1, 2020. The team developed content for daily posts on the City Facebook page. Content included the “We are Parks and Recreation” flyer, the NRPA “National Recreation Professional Thank a Park and Rec Pro” contest nominee information, and photos of the new park amenities for community enjoyment.

The department also shared “Did You Know” facts which included pertinent information regarding the benefits of physical fitness and mental health. Collectively, the July Parks and Recreation content reached 6,000 Facebook users, generated 559 engagements and 89 reactions.

The QLCS team continued the Health and Wellness initiative and finalized the “Health and Wellness Series” videos for September. On September 1, 2020, the team shared the “Diabetes Type-1 and 2” video to FB and YouTube. The video reached 272 Facebook users, received 67 views, 4 engagements, and 2 reactions. The team initiated filming for the new “Virtual Essentials” and “Sports One-on-One” series which will demonstrate basic survival and life essential skills for all ages. The series will premiere October 2020.

On Tuesday, September 9, 2020, the department premiered the Lancaster Virtual Competitions to create community interaction and promote the health and wellness initiative. The September competition challenged community members to complete a minimum of 25 sit-ups, push-ups, and squats. The department developed a schedule to premiere the new virtual challenge the second Tuesday of each month.

The weekly virtual program posts (i.e. yoga boot camp, Red Light Green Light, daily exercise, and weight training) reached over 8,600 Facebook users, generated 789 engagements, and 125 reactions during the fourth quarter.

#### **Athletics**

This quarter the Athletics Division re-opened Athletic fields and continued athletic contracts in September 2020 under the “Assumption of the Risk and Waiver of Liability” form.

Community pass was utilized as a pathway for patrons to reserve a spot to utilize the fitness atrium or walking track. This quarter, the recreation center accumulated 1,890 membership scans.

#### **S.T.A.R. Afterschool Program/ Lancaster Virtual Summer Camp**

The S.T.A.R. After School Program created the STEAM Lancaster Virtual Summer Camp in June 15, 2020 to last until July 31, 2020. Weekly, the staff shared 8-10 daily posts which included the 8:00am Daily Exercise, 9:00am Life Skills (Project Still I Rise), 1:00pm Creative Activities, and 3:00pm Extended Learning programs.

The Daily Exercise videos demonstrated youth-friendly stretching and total body workout techniques. The DIY Creative Activities included bath bombs, catapults, crayon on canvas art, crystal shapes, and origami animals. Daily Extended Learning videos included state facts, ASL lessons.

The Virtual Summer Camp content reached a total of 1,569 Facebook users. The virtual content remained archived on the City’s Parks and Recreation webpage until August 2020. The virtual programs are currently archived in the “Lancaster Virtual Camp” playlist on the City’s YouTube page for continued enjoyment.



## **Senior Life Center**

### **COVID-19 Updates and Milestones**

This quarter, the Senior Life Center remained closed to the public in an effort to protect the senior members and staff continued the Home Meal Delivery Program. The Home Meal Delivery Program served approximately 80 registered participants per day. Senior participants received daily hot and cold meals between the hours of 10:00 a.m. and 2:00 p.m.

On July 30, 2020, the Senior Life Center team initiated a Coloring Page/Book contest for the National Coloring Day on August 2, 2020. The senior participants shared numerous pictures of their colorful creations. The winner's, Mrs. Mary White, artwork was featured on the City's Senior Spotlight webpage on Monday, August 3, 2020.

On July 16, 2020, the Senior Life Center participants received an in-kind care package donation from the Lancaster Lion's Club and Judge Valencia Nash. The care packages were distributed to senior members on Friday, July 17, 2020 during the Home Meal Delivery Program. On July 29, 2020, the team delivered 80 masks from State Rep. Carl Sherman to senior participants during the Home Meal Delivery Program. The team also distributed the "Side Arm" and the "Chronic Disease What You Need to Know about Nutrition" educational handouts on July 31, 2020.

On August 20, 2020, the Dallas Area Agency on Aging donated 500 masks to the Senior Life Center members. The team distributed the masks to members during the home meal deliveries.

The Senior Life Center distributes at home fitness exercise monthly handouts to participants during meal delivery. In home exercises allow participants to build their strength, balance and flexibility from the comfort of their own home. This quarter, the team distributed the "Easy Chair Exercises" handouts.

On Saturday July 19 and July 27, 2020, the City of Lancaster hosted a free testing event at the Senior Life Center. The Texas Military Department conducted 200 free COVID-19 tests for Lancaster residents. The Lancaster Recreation Center staff registered 32 Lancaster seniors for the event.

### **Home Meal Delivery Program**

Senior Life Center delivered approximately 4,788 meals to registered participants. In an effort to keep participants abreast of current changes, the Senior Life Center provided information updates during wellness checks. The department completed approximately 1,560 wellness checks this quarter.

### **Activities**

The Senior Life Center volunteer partners also provided the "Kenne Wayne" virtual line dancing course via YouTube on Thursday, July 30, 2020. The video received 59 YouTube views. Senior participants also participated in distant program activities which included card-making and creative coloring designs. The Senior Life Center re-vamped the "Legacies of Life" initiative in July 2020 to celebrate the birthdays of senior members each month. Approximately, 25 senior members received birthday cards. Birthday cards were distributed on the second Thursday of each month during the Home Meal Delivery Program. The center also re-vamped the "PuzzleRama" program and distributed monthly word puzzles to senior members.

### **Parks Division**

This quarter the Parks Division continued working on One Time projects. Projects initiated and completed include items listed below.



- Opened park restrooms, pavilions and dog park to public (August 10, 2020)
- Meadow Creek flex court repairs. Worked on getting the basketball court secured (August 22, 2020)
- Granite sidewalk install at Kids Square and City Park (August 2020)
- Concrete Sidewalk being poured at Kids Square (August 2020)
- Basketball backboards painted at City Park (September 20, 2020)
- Trash cans painted at Dewberry and Rocky Crest Park (September 20, 2020)

### **Library Services Division Update**

#### **July 2020**

July continued the Virtual Summer Reading Club “Imagine Your Story” with an action-packed month of virtual programming for all ages. Patrons had to complete reading logs by July 25<sup>th</sup> and a virtual awards ceremony was posted on Facebook and the Library’s webpage to celebrate summer readers. Top readers received prizes and all kids who read 1000 minutes or more received a certificate and trophy.

#### **August 2020**

The Library jumped back into fall programming with Online Toddler Storytime for ages 3 months – 2-years on Tuesdays and Online Family Storytime for ages 3 – 5 years on Wednesdays. Storytimes were available to view on Facebook and the Library’s webpage. Teen Club resumed on the first Thursday of the month with a Hamilton themed Virtual Escape Room for teens in grades 7 – 12. Family Craft Club allowed families to pick up postcard craft kits to take home, decorate, and mail together. Computer classes were also available online 24/7 on the Library’s webpage.

#### **September 2020**

September is Library Card Sign Up Month and this year’s theme and slogan was Wonder Woman “Libraries are WONDERful”. To celebrate, we gave away super grab bags for kids who signed up for their first library card. Adults signing up for the first time were entered into a drawing for a \$5 Starbucks gift card. Online storytimes and fall programming continued virtually and supported social distancing. Teen Club allowed teens to enter letters, photographs, social media posts, art work, and even small objects into a 2020-time capsule to be quarantined until 2030. September 15<sup>th</sup> kicked off Hispanic Heritage Month and was celebrated with a special week of Bilingual story times. Banned Books Week, September 27 – October 3, challenged readers to find their freedom to read. Family Craft Club allowed families to pick up a take-home comic book kit to design together.

### **Sound Infrastructure**

***The City has preventative maintenance programs to ensure well-maintained infrastructure, including streets, water, stormwater, wastewater and other assets.***

#### **Purpose and Vision**

1. Implement a Street Maintenance Fund:  
Council approved and implemented the Street Maintenance Fund effective October 1, 2019 (\$0.025/\$100 assessed value). Bear Creek Road phase I from I-35E to Houston School Road was the first project completed with Street Maintenance Funding.

#### **Planning and Oversight**

2. Complete the update of the Pavement Management Plan and implement the Pavement Management Plan:



The Pavement Management Plan update was completed in January 2020. We are currently focusing on major thoroughfares. Bridal Path & Millbrook Road extension was completed in the 4th quarter.

Loop 9 & I-35E Corridor Studies and make Implementation Decisions:

Halff Associates kicked off the I-35E and Loop 9 Overlay District Corridor Studies in August 2020; gathering pertinent data from Staff to perform analysis. On September 22, 2020, Halff Associates held meetings with stakeholders, allied organizations, heads of City Departments culminating with a Planning & Zoning Commission and City Council joint meeting. The studies will be completed in 12 months.

### Purpose and Vision

3. Implement Water/Wastewater Master Plan and Stormwater Master Plan to include flood plain reclamation study for Country View Golf Course:  
The report is scheduled to be finalized in the fourth quarter of FY 2020.

### Planning and Oversight

4. Continue Infrastructure Implementation Project - Pleasant Run Road Phases 3 & 4  
Pleasant Run Road Construction Phase 3 from Bluegrove Road to Dallas Avenue is complete.

Pleasant Run Road Reconstruction (Pleasant Run Phase 4) from Lancaster Hutchins Road to City limits is managed by Dallas County and include road improvements and other infrastructure improvements including water, sewer and drainage. Estimated completion date is December 2020.

### Strategic Objectives

5. Continue the Facilities Assessment Implementation:  
At the August 5, 2019 Special Work Session, Council received a presentation regarding the FY 2018/2019 Facilities Assessment. The following table illustrates the budgeted FY19/20 facilities improvements, the status, and the tentative completion timeline.

Facility	Assessment	Budgeted Cost	Actual Cost	Status/Estimated Completion
<b>Animal Shelter</b>	Flooring	\$9,500	\$6,000	Completed
	Kennels	\$38,000	\$41,988	Completed
	Exterior Painting	\$11,100	\$6,988	Completed
	Stainless Steel Doors (3)	\$4,500		Postponed due to actual cost being higher than budgeted amount
	Compartment Sinks (3) w/Faucets \$1,400	\$1,400	\$1,400	Completed
<b>City Hall</b>	Breakroom	\$8,000	\$1,500	Completed
	Utility Billing Cameras	\$3,700	\$3,700	Completed
	Voting Monitor (Council Chambers)	\$1,000	\$1,000	Completed
	Voting Board- Swagit	\$154,549	\$154,549	Completed



<b>700 E Main St.</b>	Exterior Painting	\$16,850	\$6,988	Completed
<b>Community House</b>	Exterior Repair & Painting	\$18,500	\$10,500	Completed
	Strip & Refinish floors	\$5,500	\$ 5,500	Completed
<b>Golf Course</b>	Exterior Painting	\$17,875		In progress, Q1 FY20/21
	Replacing Awnings	\$9,000		In progress, Q1 FY20/21
	A/C	\$47,465	\$67,000	Completed
<b>Fire Station 3</b>	Exterior Painting & Trim Replacement	\$15,000	\$15,000	Completed
	Solar Screens	\$2,500	\$360	Completed
<b>Pump Station</b>	A/C	\$43,452	\$43,452	Completed
<b>Library</b>	Roof	\$96,000		Q1/Q2 FY 20/21
	A/C	\$90,301	\$90,301	Completed
<b>Airport</b>	Camera System	\$20,000	\$20,000	Completed
<b>Public Safety</b>	Camera System	\$22,000	\$20,000	Completed
	Roof	\$40,000		Q1/Q2 FY 20/21
	Floors	\$20,000		Q1/Q2 FY 20/21
<b>Rec Center</b>	Exterior Camera System	\$22,000	\$22,000	Completed
	Kalwall	\$18,000		Q1/Q2 FY 20/21
	Interior Repaint	\$10,000	\$10,000	Completed
	Roof Entryway	\$20,000		Q1/Q2 FY 20/21
	Refinish Gym Floor	\$13,000	\$13,000	Completed
	Strip & Wax Floors	\$3,000	\$3,000	Completed
<b>Visitors Center</b>	Exterior window & trim repair & painting	\$18,500	\$18,500	Completed

### Planning and Oversight

- Complete Loop 9 Corridor Study and make implementation decisions:  
Halff Associates kicked off the I-35E and Loop 9 Overlay District Corridor Studies in August 2020; gathering pertinent data from Staff to perform analysis. On September 22, 2020, Halff Associates held meetings with stakeholders, allied organizations, heads of City Departments culminating



with a Planning & Zoning Commission and City Council joint meeting. The studies will be completed in 12 months.

### **Strategic Objectives**

7. Work with Best Southwest Partnership to implement public transportation options:  
On July 7, 2020 NCTCOG, Dallas County, and the BSW Cities of Duncanville, Cedar Hill, DeSoto and Lancaster along with consultant (Half and Associates) held a kickoff virtual meeting to discuss the entire scope of work regarding the Regional Veloweb Trail Study Corridors within each City.

On July 8, 2020 NCTCOG held a virtual meeting marking the kickoff of the Southern Dallas County Transit Study that is funded by the Regional Transportation Council (RTC). On April 15, 2019, City Council received a presentation and directed staff to participate in this public transit study. The study will focus on developing a plan for strategic implementation of transit and mobility services in the southern Dallas County region. An RFP was issued and a consultant has been selected to begin the study, which should take approximately a year to complete.

Additionally, the Inland Port Transportation Management Association (IPTMA) formed in 2018 to provide transportation opportunities throughout the Inland Port has begun the first phase of implementation of their program (transit, ridesharing, walking, and biking). IPTMA is partially funded by NCTCOG to cover the first two years of expenses, the remaining is covered by a 20% local match. An Interlocal agreement authorizing the City's membership in IPTMA which facilitated access to IPTMA services was approved at a Special Meeting on August 31, 2020.

### **Planning and Oversight**

8. Complete Airport terminal:  
Denco Construction Specialists abandoned the project in early January 2020. TXDOT Aviation has worked with the bond surety company to secure a new contractor. The new contractor, Jax's Construction Services, resumed work in May 2020. Jax's Construction Services had to rectify many construction errors. Jax's Construction Services has estimated completion in December 2020. A final inspection and any resulting punch-list items will follow.

### **Streets and Stormwater**

Staff completed a number of asphalt section street repairs and continue to train to ensure work is completed to obtain sustainable results.

- Overlay Sections (Asphalt) on Greene Road
- Street Sign Replacement Program - 214 signs replaced in the 4th quarter

### **Streets and Stormwater Special Projects**

- Completed Road Restriping: Rolling Hills, Bear Creek, E. Daniieldale Road
- Completed Alley Reconstruction: Arcady Lane and Stanford

### **Water/Wastewater**

1. Staff continues to maintain a superior water rating for quality and inventory water quality by conducting 90 samples this quarter.
2. Staff continues conducting camera inspections within manholes to ensure quality of public sewer lines within the City.
3. 258 Fire Hydrants Serviced



## **Water and Wastewater Special Projects**

Katy St. sewer pipe bursting – Complete  
Lindenwood from Dewberry to Lindenwood - Complete  
Edwards Street from Cedardale to Taylor Street - Complete  
Redbud from Stewart Street to Main Street - 90% complete  
Crest Street from Francis Street to Main Street - 90% complete

## **Professional & Committed Workforce**

***Lancaster City government is an employer of choice with competitive pay that attracts an engaged, responsive, customer-oriented, innovative, and effective workforce. Some employees live in the City and all have a sense of ownership of the community. City employees feel needed and appreciated by elected officials, residents and businesses and are respectful to and appreciative of their customers and the City's governing body. The City's executive staff is engaged with residents and attends community events, upholds strong customer service, and uses technology to aid them in working smarter.***

### **Purpose and Vision**

1. Continue annual City Council strategic planning and team building exercises:  
At the 2019 Annual Strategic Planning Session held on June 14-15, 2020, Council requested to have quarterly sessions with the facilitators. The first quarterly session was held on November 2, 2019 and included team building at Group Dynamix. The next quarterly strategic planning session was held on Saturday, January 25, 2020 at the Community House. When Council met on January 25, 2020 they decided to only do twice per year, instead of four times per year. The annual Strategic planning session was scheduled with the consultant, chosen by City Council, on June 26-27, 2020. The next session will be a mid-year update in January 2021.
2. Review Specialty Incentive Pay Program:  
City Council received a presentation during the 2020/2021 fiscal year budget presentation regarding compensation and incentive pay in comparison to the market. In fiscal year 2017/2018, a hiring incentive pay was added for Certified Police Officers and Dual Certified Fire Fighter/Paramedics. In fiscal year 2018/2019 Language Skills Pay was added for all full-time employees who successfully completed testing. Testing opportunities continue to be available to all employees upon request.

### **Priority Action Items**

3. Evaluate compensation to address compression:  
City Council received a presentation during the 2020/2021 fiscal year budget presentation regarding compensation and incentive pay in comparison to the market.

City Council has worked collaboratively and strategically regarding employee compensation and retention. Compensation has remained an objective of the Council for the past six years. While we still have progress to make, we have accomplished milestones with compensation, equipment replacement, comparable benefits, incentive pay and creating opportunities for career progression.

In FY 2013/2014, City Council approved a 3% increase to the pay plan. In FY 2014/2015, City Council approved a 5% increase to the pay plan. In FY 2015/2016 City Council approved a 2% increase to the pay plan. In FY 2016/2017, City Council approved a 5% increase to the pay plan.



In FY 2017/2018 City Council approved a 3% increase to the pay plan. In FY 2018/2019, City Council approved a 3% increase to the pay plan. The fiscal year 2019/2020 provided for a 3% increase for general government and 4% of minimum increase to the civil service pay plan, which provides for a dollar increase of \$2,099.89 for each step in the police pay plan; and \$2,058.13 for each step in the fire pay plan. The fiscal year 2020/2021 budget provided for a 2% increase to the pay plans. Overall, this is a 26% increase to the pay plan for the past seven years. While this is substantial improvement, we still remain in the lower tier of our comparable cities.

### **Strategic Objectives**

4. Continue Lancaster University:  
In January 2020, supervisors across all departments were provided an interactive training on “How to Overcome Unconscious Bias in Decision Making” by LaTonya J. Pegues with BOAZ Enterprises, Austin, Texas.

Lancaster University was scheduled to be held on March 13, 2020 at Cedar Valley Community College. Unfortunately, due to COVID-19 the event was postponed. The next Lancaster University is scheduled for March 12, 2021.

### **Planning and Oversight**

5. Develop options for a Council-level employee recognition program:  
You may now share and receive recognition through the employee brag button on the City Website at <http://www.lancaster-tx.com/177/Human-Resources>. The employee brag button on the City website is an external means for the public to recognize city staff as a whole, a specific department, or individual employees citywide contributing to a city council goal and objective.

Approved applications will receive recognition at a future City Council meeting during public comments, have a copy of the recognition mailed to the employees’ home, and have a copy placed in their personnel file.

Our first recognition was delivered on June 22, 2020 to City Council during citizens comments by Human Resources Director, Dori Lee. This quarter City Council has recognized one employee through this process.

### **Quality Development**

***The City encourages high quality, diverse housing, Commercial and retail development and public facilities. Policies encourage sustainable building practices, conservation and the use of alternative energy sources.***

### **Priority Action Items**

1. Continue revitalization incentives for Commercial and retail centers:  
Staff completed an analysis of the effects of more assertive redevelopment incentives. Staff is working interdepartmentally in regards to providing resources to help property owners improve their properties if and when they have code issues.

### **Strategic Objectives**

2. Continue implementation of the Comprehensive Plan:  
Progress has been made through ordinance, development code and master plan updates, and amendments. Staff continues to work with multiple consultants on several master plan updates that will be used to implement the Comprehensive Plan Update. This quarter Council approved the updated Streetscape Master Plan, Hike and Bike Trails Master Plan, Parks and Open Space Master Plan, and the Master Thoroughfare Plan.



### **Priority Action Items**

3. Continue Economic Development Strategic Plan - Incentive Policy Update; Retail Recruitment Strategy:

In light of SB2 Implementation, staff is researching and monitoring the external to see how the legislation may impact the availability and opportunities to leverage incentives.

Staff received incentive information and agreements in regards to mid to upper scale hotel projects. Staff is working with local Commercial realtors by providing contacts for vacant retail centers and conducting research on specific retailers including finding national and regional contacts, traffic needed, and common neighbors, to improve brick and motor options.

Staff identified industrial trade shows focusing on industrial sectors recommended in the plan. Staff attended an Artificial Intelligence, Data Center, and two Hotelier Conferences in the first quarter in an effort to connect with key companies in industries targeted in the Economic Development Strategic Plan. Staff also attended the Texas Downtown Association conference in an effort to connect with smaller developers. Attended Red River ICSC Conference and met with twelve developers regarding retail in Lancaster. Councilmembers Strain-Burk and Jaglowski also attended. Met with three hotel developers in-person regarding potential sites and incentives in Lancaster.

Lancaster was the featured sponsor to the January Bisnow event. The event brought about awareness of the community and placed the community in a positive perspective to 400+ Commercial developers.

A hotel feasibility study was conducted and presented to City Council at the July 15, 2019 Work Session. The study details the hospitality market in Lancaster and recommends focusing recruitment efforts on upper/mid-level hotels including Wyndam, Hilton Garden Inn, Fairfield Inn by Marriot, Cambria, Courtyard by Marriot, or Signia. Staff reconnected with Springhill Suites and met with the franchisee and his banker.

Direct contact is being made to targeted businesses and industries. 600,000 s/f of warehouse space was leased. Red Roof Inn Plus received their building permit in April and broke ground in mid-June.

Staff assisted smaller businesses regarding the SBA emergency pandemic loan and made sure that every business that qualifies for County assistance was made aware that the assistance / grant / loan was available.

Fisher & Paykel expanded their footprint in Lancaster and Inmar T.I. located into a facility. Swift transportation invested in a minor office remodel.

### **Planning and Oversight**

4. Continue the review and update various City plans.

The City Council adopted the update to the Parks, Recreation & Open Space, Hike & Bike Trails, the Streetscape and Thoroughfare master plans ensuring alignment with the 2016 adopted Comprehensive Plan. Staff is currently working with a consultants on I-35E and Loop 9 studies and the Downtown and Campus Districts TIRZs. The following table summarizes the Master Plans that have been updated and adopted, the current status and the tentative time line of the remaining projects.



<b><u>PROJECT NAME</u></b>	<b><u>STATUS</u></b>	<b><u>COMPLETION TIME LINE</u></b>
Parks, Recreation & Open Space Master Plan Update	Adopted	June 22, 2020
Hike & Bike Master Plan Update	Adopted	August 31, 2020
Streetscape Master Plan Update	Adopted	September 28, 2020
Master Thoroughfare Plan Update	Adopted	September 28, 2020
Downtown District & Campus TIFs	Freese & Nichols completed and provided the infrastructure cost estimates and Insight Research Corporation is currently working on financial modeling tests to see what works best for these districts. Upon completion staff will make a presentation to Council in October and/or November at the latest.	1st Quarter 2021 (Completion)
Loop 9 Corridor & I-35E Studies	Halff Associates kicked off I-35E and Loop 9 Overlay District Corridor Studies in August 2020; gathering data from Staff. Community engagement began September 22, 2020. Halff Associates held visioning meetings with resident stakeholders, allied organizations, heads of City Departments culminating with a Planning & Zoning Commission and City Council joint meeting.	3 <sup>rd</sup> Quarter 2021 (Completion)
Water/Wastewater Master Plan Update	Freese and Nichols, Inc. is currently working on the wastewater modeling component of this study. Once complete, the draft report will then be submitted for staff review, CIAC review/recommendations, and approval from city council for adoption.	3 <sup>rd</sup> Quarter 2021
Stormwater Master Plan Update	Pacheco Koch is currently working on the hydrology component of this study for completion of the draft report for staff review.	4 <sup>th</sup> Quarter 2021

## **Purpose and Vision**

### **5. Revitalize Downtown - Downtown TIF**

Freese & Nichols Inc. completed and provided the infrastructure cost estimates and Insight Research Corporation is currently working on financial modeling tests to evaluate best uses for the Downtown and Campus districts. Upon completion, staff will make a presentation to Council in October and/or November at the latest.



### **Effective Municipal Operations**

***The City delivers financial sustainability and quality services utilizing delivery methods that engages residents to take pride in our City.***

#### **Priority Action Items**

1. At the 2019 Annual Strategic Planning Session held on June 14-15, 2019, Council requested to have quarterly sessions with the facilitators. The first quarterly session was held on November 2, 2019 and included team building at Group Dynamix. The next quarterly strategic planning session was held on Saturday, January 25, 2020, at the Community House. When Council met on January 25, 2020, they decided to only have strategic planning session to twice per year, instead of four times per year. The next Strategic planning session will be in January 2021.
1. Strengthen the performance review process for Council-Appointed officials:  
In September 2019, City Council selected an appointed position performance review process tailored to the individual appointed position versus the use of a generic evaluation process. In the following months of October and November City Council meet with each individual in an appointed position to provide feedback. In turn, an opportunity was provided to the appointed official as well to submit feedback and accomplishments for consideration in the review process. All appointed positions have evaluations scheduled for October and November 2020.

#### **Purpose and Vision**

2. Review City Charter amendment process options:  
The City Attorney and staff reviewed the Charter to ensure no conflict exists since the 86<sup>th</sup> Legislative Session. No conflicts were noted. Council determined no additional action is required.