



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

**Monday, February 8, 2021 - 7:00 PM**



The Mayor and other City Councilmembers may 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, 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/webinar/register/WN\\_bsKQJcEaQdus\\_QQQQT3NiQ](https://us02web.zoom.us/webinar/register/WN_bsKQJcEaQdus_QQQQT3NiQ)

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

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

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

**CALL TO ORDER**

**INVOCATION:** Ministerial Alliance

**PLEDGE OF ALLEGIANCE:** Mayor Pro Tem Racheal Hill

**RECOGNITION:** J. Nino De Guzman

**PUBLIC TESTIMONY:**

At this time citizens who have pre-registered before the call to order will be allowed to speak on consent or action items 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 approval of minutes from the City Council Special Meeting held on December 15, 2020, and Regular Meeting held on January 11, 2021.
2. Consider a resolution authorizing the purchase of one thousand three hundred fourteen (1,314) water meters and the installation of one thousand one hundred fourteen (1,114) water meters from HydroPro Solutions through an Interlocal agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed four hundred ninety-eight thousand nine hundred fifty-four dollars and zero cents (\$498,954.00).
3. Consider a resolution approving the terms and conditions of an agreement with C&M Concrete for the reconstruction of nine hundred seventy-seven (977) feet of alley behind 603 Willow Wood Lane from Dallas Avenue to Dewberry Boulevard in an amount not to exceed one hundred seventy-four thousand three hundred seventy dollars and ninety cents (\$174,370.90).

**ACTION:**

4. Discuss and consider a resolution ordering a General Election to be held on Saturday, May 1, 2021, for the election of a Mayor at-large; providing for the publication and posting of notice; and providing for early voting dates, times and locations.

Considere una resolución que ordena una Elección General que se celebrará el Sábado, 1 de mayo 2021, para la elección general de un alcalde; se dispone la publicación y aviso de notificación, prevea fechas de votación anticipada, horas y lugares.

**ADJOURNMENT**

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

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ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities and 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 Lancaster City Hall on Thursday, February 4, 2021 @ 5:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**

A handwritten signature in blue ink that reads "Carey D. Neal, Jr." with a stylized flourish at the end.

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Carey D. Neal, Jr.  
Assistant City Manager

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

1.

**Meeting Date:** 02/08/2021

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

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#### **Agenda Caption:**

Consider approval of minutes from the City Council Special Meeting held on December 15, 2020, and Regular Meeting held on January 11, 2021.

#### **Background:**

Attached for your review and consideration are minutes from the City Council Special Meeting held on December 15, 2020, and Regular Meeting held on January 11, 2021.

At the request of Councilmember Carol Strain-Burk via the City Attorney, verbatim minutes for items 15, 16, and 17 are attached for Council Review. The policies note that we provide and consider action minutes.

#### **Attachments**

December 15, 2020 Special Meeting Minutes

January 11, 2021 Regular Meeting Minutes

January 11, 2021 Regular Meeting Minutes (Verbatim items 15-17)

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## **MINUTES**

### **LANCASTER CITY COUNCIL SPECIAL MEETING OF DECEMBER 15, 2020**

**The City Council of the City of Lancaster, Texas, met in a called Special Meeting in the Council Chambers of City Hall on December 15, 2020, at 7:00 p.m. with a quorum present to-wit:**

#### **Councilmembers Present (City Hall & Zoom):**

Mayor Clyde C. Hairston  
Carol Strain-Burk  
Deputy Mayor Pro Tem Stanley M. Jaglowski  
Marco Mejia  
Keithsha C. Wheaton  
Mayor Pro Tem Racheal Hill  
Betty Gooden-Davis

#### **City Staff Present (City Hall & Zoom):**

Opal Mauldin-Jones, City Manager  
Fabrice Kabona, Deputy City Manager  
Carey Neal, Assistant to the City Manager  
Keturah Barnett, ICMA Fellow  
David T. Ritter, City Attorney  
Sorangel O. Arenas, City Secretary

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

Mayor Hairston called the meeting to order at 7:00 p.m. on December 15, 2020.

#### **Public Testimony:**

There were no speakers.

#### **Action:**

- 1. M21-04 Discuss and consider an ordinance granting a request for an exception to the Lancaster Development Code (LDC) Article 14.400 Permissible Uses to allow for the placement of one (1) Portable On Demand (POD) and two (2) tents for COVID-19 drive through testing at 1450 W. Pleasant Run Road located at the southwest corner of Pleasant Run and N. Bluegrove Road.**

City Manager Mauldin-Jones shared the applicant is proposing a COVID-19 drive-through testing program which consists of one (1) temporary Portable On Demand (POD) and two (2) tents in the parking lot on 1450 W. Pleasant Run Road.

The site will be open Monday through Friday from 9:00 a.m. to 5:00 p.m. for a duration that will extend through mid-2021. The temporary POD and tents will be utilizing the parking spaces without blocking access to traffic in and out of the strip shopping center. The set-up will be three (3) stations including registration/holding area for non-registered customers, check-in, and testing stations. Signage and traffic cones will be used to direct and block traffic to and from certain drive aisles. The entrance and exit to and from this testing site will be on W. Pleasant Run Road.

The applicant states that there will be no more than five (5) cars in the line and that they will use cones to delineate the ingress and egress of the parking lot with a capacity of 20 cars in line at once. The process itself (registration and swabbing) takes approximately five (5) minutes per vehicle with most vehicles already pre-registered using the WellHealth website. The applicant contends that their proprietary software, GoGetTested.com allows them to put a cap on how many appointments are made in 10-minute time slots. So, if there is ever an issue of traffic control, they can immediately limit the number of patients for given time slots. In addition, the applicant plans to have a Team Lead on site that will help direct traffic flow at all times to ensure that patients will not interfere with the main roads or businesses nearby.

COVID-19 testing is a critical public service during this pandemic. However, staff recommends that the following measures be taken:

1. Structures shall be allowed for a period of six (6) months after which an extension of the said time shall be reassessed and City Council approval required;
2. Testing tents shall be limited to two (2) tents and one (1) POD for storage as shown on the site traffic plan;
3. The days and hours of operation shall be limited to Monday through Friday from 9:00 a.m. to 5:00 p.m.; and
4. An approved traffic mitigation plan that ensures no traffic impacts on the adjacent streets and intersections. The mitigation shall include, but is not limited to, scheduled appointment testing times and hiring police officers to direct traffic both on and off-site.

Mayor Pro Tem Hill shared her support for the item.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Mejia to approve item 1. The vote was cast 7 for, 0 against.

**2. Discuss and consider a resolution authorizing the assignment and assumption of an Economic Development Agreement between the City of Lancaster and Artemis HIP Park 20 LLC to Lex Lancaster L.P.**

City Manager Mauldin-Jones shared On September 12, 2016, City Council approved an Economic Development Agreement with Artemis HIP Park 20 LLC (Park Twenty) to provide an annual grant in an amount equivalent to forty-five percent (45%) of real property taxes assessed against the property for a given tax year for a period of five (5) years. The grant was a contributing factor for Park Twenty to undertake the project and build a 468,300 square foot warehouse-distribution building. The grant will begin the calendar year immediately following March 1, 2020. This building was occupied in 2020 by Petmate. Lex Lancaster, L.P. (Lexington) is under contract to purchase the two properties in Lancaster currently owned by Park Twenty. Lexington has requested the Economic Development Agreement be assigned from Artemis HIP Park 20 to Lex Lancaster, L.P. per Section 6.11 in the Agreement. Park Twenty may not assign the Agreement to a non-subsidiary without the City's prior written consent. The City Attorney has reviewed and

approved as to form the resolution and agreement. Staff recommends approval of the resolution, as presented.

**MOTION:** Councilmember Mejia made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve item 2. The vote was cast 7 for, 0 against.

- 3. M21-03 Discuss and consider an ordinance granting an exception to the Code of Ordinances Chapter 6 Fence Regulations Sec 6.07.008 to allow the use of a vinyl coated chain link fence on the properties addressed as 1720 and 2300 East Belt Line Road, and 900 South Sunrise Road; four (4) tracts of land totaling approximately 292 acres of land in the City of Lancaster, Dallas County Texas.**

City Manager Mauldin-Jones shared this is a request granting an exception to the Code of Ordinances, Chapter 6 Fence Regulations, Sec 6.07.008 to allow the use of a vinyl coated chain link fence on the properties addressed as 1720 and 2300 East Belt Line Road, and 900 South Sunrise Road, four (4) tracts of land totaling approximately 292 acres of land. The applicant contends that the fencing will not be visible from rights-of-way (ROW) as it will be screened with a living screen of dense evergreen trees, as shown on the attached plans. The fencing only abuts portions of the rights-of-way and is a minimum of 50-feet from the rights-of-way. Staff recommends approval of the exception request as presented with the installation of dense evergreen plantings to provide screening.

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

- 4. M21- 01 Discuss and consider an ordinance granting an exception to the Logistics Port Planned Development regulations for: (1) maximum building height (2) rooftop screening (3) dumpster and compactor screening and (4) an exception to the City's Code of Ordinances Chapter 6 Fence Regulations Sec 6.07.008 to allow the use of a vinyl coated chain link fence on the property addressed as 901 Greene Road and described as being a 161.967 acre tract of land situated in the Samuel Keller Survey Abstract No. 720 City of Lancaster, Dallas County.**

City Manager Mauldin-Jones shared this is a request for three (3) exceptions to the Logistics Port Planned Development (LP PD) regarding (1) maximum building height, (2) rooftop screening (3) dumpster and compactor screening and an exception to the Code of Ordinances, Chapter 6 Fence Regulations, Sec 6.07.008 to allow a vinyl coated chain link on the property addressed as 901 Greene Road.

(1) Maximum Building Height, LP PD limits the building height to seventy-five (75) feet as measured from average elevation of the finished grade along the front of the building to the highest point of the roof of the building if it is a flat, mansard, or shed roof; or the midpoint of the roof if it is a gable, hip or gambrel roof. The applicant states that the cold storage requires a maximum height of one hundred fifteen (115) feet to support the high

demand and future growth of the market via a high throughput distribution center with automation and technology building design. Maximizing the efficiency of the building and automation systems require the interior clear height of the building to be seventy-five (75) feet. The penthouses and rooftop mounted equipment, take portions of the building up to the requested one hundred fifteen (115) feet above the average grade at the docks. Additionally, the automation within the building increases efficiency and reliability in servicing customers but also allows for the greater throughput required by the market served.

(2) Rooftop screening, LP PD states that "For Buildings within the Logistics Port A (LPA), Logistics Port B (LPB), and Port Industrial (PI) Subdistrict, all rooftop-mounted mechanical, air conditioning, electrical and satellite dish equipment shall be completely screened from ground and street-level view with parapets, or other architectural design features constructed of the same materials used on the exterior walls". The applicant is seeking for exception from the screening requirements contending that screening ammonia based refrigeration mechanical systems is not recommended. The applicant states that Occupational Safety and Health Administration (OSHA) claims, ammonia exposure in close proximity, and in appropriate concentrations can be considered a high health hazard because it is corrosive to the skin, eyes and lungs. Adding screens around ammonia based equipment reduces workers ability to safely assess equipment from a safe distance in the unlikely event of equipment failure. Additionally, screens reduce three hundred sixty degrees (360°) access around the equipment should the wind be blowing the gas in the direction of work space areas, potentially increasing response times to repair events. The applicant's rooftop refrigeration equipment will be screened by several fifteen (15) foot high rooftop penthouses, and a four foot high earth berm, and enhanced vegetative buffer zone along the property perimeter to obscure the open air rooftop (ammonia based) refrigeration equipment. The rooftop refrigeration equipment is a minimum of one thousand (1,000) feet from the public rights-of-way and a minimum of six hundred ninety 690 feet from the residential property line.

(3) Dumpster and Compactor Screening. The LP PD states that "All dumpsters and compactors visible from public rights-of-way and/or abutting residential, commercial, public, or civic property shall be screened with a consistent six foot opaque screening wall with a solid metal gate. Chain link fences or wooden fences are not acceptable. Dumpsters shall be set back a minimum of twenty-five (25) feet from adjacent residential uses". The applicant is requesting an exception to the required six foot opaque screening wall, to screen the dumpster/compactor area located along the north elevation, noting that the proposed perimeter four inch earth berm, densely populated vegetative buffer zone ('living plant material'), proposed outbuildings, and trailers parking area, will all serve to screen the dumpster/ compactor areas from public rights-of-way view. Additionally, the dumpster/compactor area is located approximately 1,080 feet from the public rights-of-way making rendering any detail or view of this area non-existent. Furthermore, there is additional vegetation added to the vegetative buffer zone to block the view of dumpsters and compactors from the public rights-of-way view.



(4) Vinyl Coated Chain Link Fence

Section 6.07.008 Fence Construction, Materials, and Setback of the fence ordinance states that (a) "All fences, unless prohibited elsewhere in this Article, shall be constructed or maintained with wood, brick, stone, concrete, vinyl, ornamental iron, or other materials as approved by the City Manager or his/her designee. Fence posts shall be constructed or made of metal, brick, stone, concrete, fiberglass, or other material as approved by the City Manager or his/her designee. All fence posts must be placed at a depth of at least twenty-four (24) inches into the ground, filled and anchored with concrete footers or encasement". The applicant contends that the vinyl coated chain link fence will be used for security purposes on site. That the fencing will not be visible from rights-of-way as it will be screened with a landscaped berm and living screen, or existing plant material along Pleasant Run Road, Cornell Road, and Green Road. The fencing is set back well into the site to provide security for the facility.

Staff recommends approval of the one hundred fifteen (115) foot maximum building height, roof top screening, and dumpster and compactor exceptions as presented. Staff recommends approval of the exception request to allow a vinyl coated chain link fence on the condition that evergreen plantings are installed and maintained to screen the entire fencing.

Councilmember Mejia shared his support for this item, and welcomed this development.

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

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Mejia to adjourn. The vote was cast 7 for, 0 against.

The meeting was adjourned at 7:23 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Clyde C. Hairston, Mayor

## **MINUTES**

### **LANCASTER CITY COUNCIL REGULAR MEETING OF JANUARY 11, 2021**

**The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the Council Chambers of City Hall on January 11, 2021, at 7:00 p.m. with a quorum present to-wit:**

#### **Councilmembers Present (City Hall & Zoom):**

Mayor Clyde C. Hairston  
Carol Strain-Burk (left on item 15)  
Deputy Mayor Pro Tem Stanley M. Jaglowski  
Marco Mejia (arrived on Item 1)  
Keithsha C. Wheaton  
Mayor Pro Tem Racheal Hill  
Betty Gooden-Davis

#### **City Staff Present (City Hall & Zoom):**

Opal Mauldin-Jones, City Manager  
Fabrice Kabona, Deputy City Manager  
Carey Neal, Assistant to the City Manager  
Keturah Barnett, ICMA Fellow  
Cheryl Womble, Administrative & Community Relations Supervisor  
Ron Gleaves, Information Technology Manager  
Shane Shepard, Economic Development Director  
Vicki Coleman, Director of Development Services  
Dori Lee, Director of Human Resources  
David T. Ritter, City Attorney  
Sorangel O. Arenas, City Secretary

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

Mayor Hairston called the meeting to order at 7:01 p.m. on January 11, 2021.

#### **Invocation:**

Bishop Clyde C. Hairston of Miracle Temple Fellowship Church gave the invocation.

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

Councilmember Wheaton led the pledge of allegiance.

#### **Citizens Comments:**

Paul L. Wiseman, 329 S. Dallas Avenue, shared with Council his interest in being reconsidered to the Historic Landmark Preservation Committee (HLPC).

Bobby Anderson, 2713 Juniper Drive, Red Oak, Texas requested Council to consider a food truck on Pleasant Run Road.

#### **Consent Agenda:**

City Secretary Arenas read the consent agenda.

- 1. Consider a resolution authorizing the purchase of four (4) 2020-21 Chevrolet 1500 regular cab work trucks from Freedom Chevrolet through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed eighty-two thousand dollars (\$82,000).**
- 2. Consider a resolution authorizing the purchase of a Ford F-350 Crane Truck and a Ford F-350 Dump Truck from Rush Truck Centers, through an interlocal agreement with Buyboard, in an amount not to exceed one hundred twenty-seven thousand two hundred fifty-five dollars (\$127,255).**

3. Consider a resolution authorizing the purchase of a 2021 (HV607) SBA International 12 yard dump truck from Southwest International Trucks, Inc. through an Interlocal Agreement with the City of Dallas, in an amount not to exceed one hundred nineteen thousand dollars (\$119,000).
4. Consider a resolution authorizing the purchase of a 2021 Braun Dodge Ram 4500 Type 1 Ambulance from Siddons Martin Emergency Group, LLC in an amount not to exceed three hundred eighty-five thousand nine hundred twenty-three dollars and fifty-four cents (\$385,923.54).
5. Consider a resolution authorizing the purchase of a Case 590SN 4WD Backhoe from Associated Supply Company, Inc. through an interlocal agreement with Houston-Galveston Area Council (HGAC) in an amount not to exceed one hundred thirteen thousand seven hundred fifty dollars (\$113,750).
6. Consider a resolution authorizing the purchase of eight (8) 2021 Dodge Charger patrol vehicles from Freedom Dodge through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed four hundred three thousand two hundred twenty-four dollars (\$403,224).
7. Consider a resolution authorizing the City Manager to enter into a ten-year Interlocal Master Agreement with Dallas County for participation in the Major Capital Improvement Program (MCIP) for the purpose of transportation improvements on roads within the City of Lancaster that are inside Dallas County and that are on the North Central Texas Council of Government's (NCTCOG) regional Thoroughfare Plan.
8. Consider an ordinance amending the Pleasant Run Estates Public Improvement District (PID) Five Year Service Plan, adopted by Ordinance No. 2020-09-28, as hereby amended by increasing the Pleasant Run Estates PID Five Year Service Plan for fiscal year 2020/2021 by a total of five thousand dollars (\$5,000).

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve consent items 1 through 8. The vote was cast 7 for, 0 against.

**Public Hearing:**

9. M21-06 Conduct a public hearing and consider a request to repeal Ordinance 2011-02-04 that granted a Specific Use Permit (SUP) for an aerial park commercial amusement facility on the property located approximately 3,250 feet west of the intersection of West Belt Line Road and South Dallas Avenue. The property is addressed as 660 West Belt Line Road and is described as a being a 19.839 acres tract of land situated in the Adam C. Haugh Survey, Abstract No. 593, in the City of Lancaster, Dallas County, Texas.

City Manager Mauldin-Jones shared this is a request to rescind the SUP for an aerial park commercial amusement facility that was approved in 2011 on the subject site. The purpose of repealing this ordinance is the owner no longer intends to develop the site as a commercial amusement facility. The applicant intends to develop estate homes in the future. Zoning case Z21-01 is an accompanying item and is intended to rezone the property to Single-Family Estate (SF-E) for the development of one dwelling unit per acre. On November 15, 2020, a notice for this public hearing appeared in the Focus Daily Newspaper.

Staff mailed six notifications of this public hearing to property owners within two hundred (200) feet of the subject site, and zoning signs were placed on the property. There were no letters received in support or opposition of this zoning change request. On December 1, 2020, the Planning and Zoning Commission (P&Z) recommended approval of the request to rescind the SUP for an aerial park commercial amusement facility. Staff concurs with the P&Z's recommendation.

Mayor Hairston opened the public hearing.

There were no speakers.

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

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

**10. Z21-01 Conduct a public hearing and consider a zoning change from Light Industrial (LI) with a Specific Use Permit (SUP) for an aerial park commercial amusement facility to Single-Family Estate (SF-E) for the property located approximately 3,250 feet west of the intersection of West Belt Line Road and South Dallas Avenue. The property is addressed as 660 West Belt Line Road, and is described as being a 19.839 acres tract of land situated in the Adam C. Haugh Survey, Abstract No. 593, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this is a request to change the zoning on the property from LI with an SUP for an aerial park commercial amusement facility to SF-E for the purpose of developing a community of estate homes in the future. The current zoning only allows for commercial amusement park. The proposed zoning change would allow for one dwelling unit per acre. This is a companion item to M21-06 to rescind Ordinance 2011-02-04 for an aerial park commercial amusement facility. Section 14.1101 of the Lancaster Development Code (LDC), states when reviewing a zoning change application, there are five considerations that must be made when deciding on a zoning change application. On November 15, 2020, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff mailed six notifications of this public hearing to property owners within two hundred (200) feet of the subject site, and zoning signs were placed on the property. There were no letters received in support or opposition of this zoning change request. Based on the above five considerations, staff recommends approval of the zoning change request as it is in compliance with the Future Land Use Plan and the proposed development is compatible with the surrounding areas.

Councilmember Mejia shared his support for this item.

Deputy Mayor Pro Tem Jaglowski asked to hear from the developer.

Deric Salser, 129 North Collins Road, Sunnyvale shared the owners intentions for the property, to build his single family home on this property and to have an estate subdivision where his home is the model home.

Mayor Hairston opened the public hearing.

There were no speakers.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Strain-Burk to close the public hearing. The vote was cast 7 for, 0 against.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Strain-Burk to approve item 10. The vote was cast 7 for, 0 against.

**11. M21-05 Conduct a public hearing and consider a request to repeal Ordinance No. 01-94 a Specific Use Permit (SUP) for indoor amusement on the properties addressed as 723 and 727 West Pleasant Run Road. The properties are 1.65 acres and are described as Lots 3A and 3B Block A in the Bellaire Acres Addition, M.M. Miller Survey, Abstract No. 874, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this is a request to rescind the SUP for indoor amusement on the subject site. The purpose of repealing this ordinance is the owner does not intend to use these properties for indoor amusement purposes but intends to add 3,928 square feet of retail to the existing laundromat at 727 West Pleasant Run Road. On November 15, 2020, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff mailed twelve notifications of this public hearing to property owners within two hundred (200) feet of the subject site and zoning signs were placed on the property. There were no letters received in support or opposition of this zoning change request. On December 1, 2020 the Planning and Zoning Commission (P&Z) recommended approval of the request to rescind the SUP for an indoor amusement use. Staff concurs with the P&Z's recommendation.

Mayor Hairston opened the public hearing.

There were no speakers.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Gooden-Davis to close the public hearing. The vote was cast 7 for, 0 against.

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

**Action:**

**12. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between Dallas College and the Lancaster Economic Development Corporation (LEDC) authorizing an Economic Development Performance Agreement and providing an effective date.**

City Manager Mauldin-Jones shared that Dallas College, formerly Cedar Valley College (CVC), submitted a request for matching funds to enable the college to purchase a fifty three (53) foot customized Mobile Training Unit (MTU) trailer to deliver training at various employer locations. Dallas College intends to use the trailer to provide certificate programs for Industrial Maintenance Technician, Electrical Technician, Mechatronics Technician and Logistics and promote programs in Automotive, Diesel, Heating, Ventilation, and Air Conditioning (HVAC). The total estimated cost of the project is five hundred fifteen thousand two hundred ninety-five dollars (\$515,295). Dallas College is requesting fifty thousand one dollars (\$50,001) from the Lancaster Economic Development Corporation. This amount represents 9.7% of total project cost. Dallas College requested the City and Economic Development Corporation (EDC) to participate by allocating funds to assist with real and business personal property to be utilized for the program. The total match for the grant is fifty thousand one dollars (\$50,001). Other entities requested to participate include: Cedar Hill Economic Development Corporation, DeSoto Economic Development Corporation, Hutchins Economic Development Corporation and the City of Dallas. In order to be eligible for the grant, Dallas College will be required to meet the following obligations:

1. Grant Payment Draw Down - Recipient shall draw down the funds made available by Grantor no later than January 31, 2023;

2. MTU Program Inception - Recipient shall complete the MTU vehicle and begin instruction or training no later than December 31, 2021;
3. Lancaster Resident Training - During the first three years of MTU program operation, Recipient will use the MTU program to provide training to at least twenty-five (25) City of Lancaster residents and/or persons employed within the City of Lancaster, Texas in work fields that pay at least forty-five thousand dollars (\$45,000) annually, as determined by U.S. Department of Labor Statistics or other metrics acceptable to Grantor;
4. Lancaster Site Visits - During the first three years of MTU program operation, Recipient will use the MTU program to visit at least fifteen (15) industrial, distribution, or other commercial sites within the City of Lancaster to offer training and/or marketing of the MTU program;
5. Lancaster Resident Contact – Recipient will make contact with at least one thousand (1,000) Lancaster residents annually regarding the program;
6. Special Events – Recipient will participate in, or host at least five special events during each calendar year. The special events can be City-sponsored events such as parades, National Night Out, etc., or a stand-alone event hosted by Recipient;
7. Lancaster ISD Outreach Program – Recipient will conduct at least two annual outreach programs using the MTU in conjunction with Lancaster ISD;
8. Annual Reports – Recipient will provide City with an Annual Report within thirty (30) days of the anniversary of the Effective Date of this Agreement, containing the following information:
  - a. Total number of outreach events (and number conducted in the City of Lancaster); Total number of participants in the program and number of participants who are City residents and/or are employed in the City;
  - b. Total number of participants enrolled in MTU programs, including breakdowns showing number of Lancaster residents and workers;
  - c. Total number of participants completing a program or obtaining a certificate, including breakdowns showing number of Lancaster residents and workers; and
9. Marketing – Recipient agrees to include favorable mentions of the City in its MTU-related Facebook, Twitter, website and other social media marketing efforts and agrees that the City of Lancaster logo or other marketing will be the most prominent marketing on the MTU. Understanding and meeting the needs of Lancaster and the labor market, Dallas College will provide a comprehensive technical training program that will prepare students for careers in Industrial Maintenance, Electrical, Mechatronics, Logistics, Automotive, and Diesel positions in the north Texas service area and beyond. These programs will allow students to obtain marketable skills in order to make an above-average salary in high demand industries. Allocated funds must be used for real or business personal property purchases. Receipts totaling an amount not to exceed fifty thousand one dollars (\$50,001) for said purchases must be submitted to the City of Lancaster, Economic Development Department.

Deputy Mayor Pro Tem Jaglowski shared his support for item 12.

Councilmember Strain-Burk also shared her support for item 12.

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

**13. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between Kodiak Robotics, Inc. and the Lancaster Economic Development Corporation (LEDC) authorizing an Economic Development Performance Agreement and providing an effective date.**

City Manager Mauldin Jones shared Kodiak Robotics, Inc. (Kodiak), submitted a request for seventy-seven thousand nine hundred dollars (\$77,900) in matching funds to offset the cost of HVAC improvements to their existing facility located at 3901 Corporate Drive. The HVAC improvements are part of comprehensive site improvements needed to allow Kodiak to remain in their existing facility through the

end of December 2023. The total estimated cost of the project is three hundred twenty five thousand dollars (\$325,000). Kodiak is requesting seventy-seven thousand nine hundred dollars (\$77,900) from the Lancaster Economic Development Corporation. This amount represents 24.0% of the total project cost. Staff recommends approval of original agreement and the resolution as presented.

Deputy Mayor Pro Tem Jaglowski shared his support for item 13 as staff recommends.

Councilmember Mejia shared his support for item 13 with Lancaster Economic Development Corporation conditions.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk to approve item 13. The vote was cast 6 for, 1 against [Mejia].

**14. Discuss and consider a resolution to authorize the assignment and assumption of an Economic Development Agreement between the City of Lancaster and Global Longhorn Center, L.P. to the City of Lancaster and NP Longhorn, LLC.**

City Manager Mauldin-Jones shared On March 26, 2018, Council approved an Economic Development Agreement between the City of Lancaster and Global Longhorn Center, L.P. (Global Holt Lunsford) to provide an annual grant in an amount equivalent to forty-five percent (45%) of real property taxes assessed against the property for a given tax year for a period of five years. The grant was a contributing factor for Global Holt Lunsford to undertake the project and build a warehouse-distribution building containing four hundred four thousand one hundred seventy-five (404,175) square feet. Global Fulfillment and Boise Cascade currently lease space in the building. Rebate payments related to the grant are expected to begin next year. AEW is under contract to purchase the property currently owned by Global Holt Lunsford. Global Holt Lunsford requested the Economic Development Agreement for this project/property be assigned from Global Longhorn Center, L.P. to NP Longhorn, LLC, a Delaware limited liability company. NP Longhorn, LLC is the ownership entity for AEW. Per Section 10(o) in the Agreement, Global Holt Lunsford may not assign the Agreement to a non-subsidiary without the City's prior written consent. Staff recommends approval of resolution, as presented.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk to approve item 14. The vote was cast 7 for, 0 against.

**Executive Session:**

**15. The City Council shall convene into a closed executive session pursuant to Section § 551.071 (a) of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, re: Councilmember, District 1.**

City Attorney Ritter shared on January 4, Councilmember Strain-Burk delivered a letter to the City Secretary's office apologizing for actions and indicating she would not oppose the censure on two of the three grounds. These were violations of the Code of Conduct number 5, which says: "once a decision is made, support the City Council decision but state your reservation" and on the Code of Ethics section G, which states: "recognize the public and political policy decisions are ultimately the responsibility of the City Council." Councilmember Strain-Burk did oppose the center for House rules Code of Conduct item number 13. So, currently there is a record before the City Council which consists of the initial notice of censure, Council member Strain-Burk's response and supplemental response, and this letter. So, at this time if Council has any questions that they would like to ask in executive session that is available as an option. If no one has any questions that they would like to answer in executive questions then I can proceed to the next stage of this procedure, which would be deciding whether to except the Councilmembers letter on the January 4 and vote solely on those two grounds

or whether additional discussion is needed on the third ground and, if so, then the Councilmember bringing the complaint would be able to present argument and evidence on that issue. Following this, there will be a public hearing, which is required by the rules of procedure, and then there will be a roll call vote which will be taken either on the two charges that she has agreed upon the two censure basis and if councils pleasure is such on the third basis. So, there would be two different votes. One on the first two that she's agreed to and then if Council desires on the third ground. Each of those votes will be a roll call vote with a majority of five needed to sustain the censure. That's in your rules and policies as well and also according to the city charter if there is an abstention on these votes the abstention will go to the side that has the most votes. So, for example, if the majority votes to censure, the abstention would count as a vote for the censure if the majority is not to censure than that abstention would go as a vote against the censure. So, if that is sufficient for Council they can proceed to the next motion. If executive session is desired that is available.

Mayor Hairston asked Council if they needed to go into executive session. Councilmember Mejia, Councilmember Gooden-Davis and Mayor Pro Tem Hill responded they would like to go into executive session

**16. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.**

The City Council recessed for Executive Session at 8:03 p.m. and reconvened into open session at 8:29 p.m.

No action taken.

**Public Hearing:**

**17. Conduct a public hearing and roll-call vote considering a resolution regarding censure of Councilmember Strain-Burk.**

City Attorney Ritter shared on December 28, 2020 Mayor Pro Tem Hill and Councilmember Mejia filed a written notice of censure against Councilmember Strain-Burk with the City Secretary's office pursuant to the censure policy of the City of Lancaster alleging violations of City Council's rules and procedures, Code of Conduct, sections five and thirteen and Code of Ethics, section G. Councilmember Strain-Burk then filled written response to the notice of censure with the City Secretary's office on November 9, and filed a supplemental response on December 9, 2020. The Council, in accordance with the central policy, the notice, the censure, and the written responses were read into the record at the December 14, 2020 regular council meeting. Following a hearing, the Council took a vote and determined that a majority of the City Council found good cause existed to set a formal hearing on the merits of the notice of censure which is what the Council is here for today. On January 4, 2021, Councilmember Strain-Burk delivered a letter to the City Secretary's office apologizing for certain actions that she took and accepting responsibility. She indicated she was not contesting the charges of censure regarding the City Council Code of Conduct section five and City Council Code of Ethics section G, which state, respectively, (Code of Conduct, section five) once a decision is made, to support the Council decision but state your reservation; and Code of Ethics section G, recognize the public and political policy decisions are ultimately the responsibility of City Council and we are now about to open a public hearing on this item. The floor will be open for any Councilmember and it is my understanding that Council wishes to proceed on the two matters that she has accepted responsibility for and that she's indicating she is not contesting. At this time, it would be proper for any Councilmembers who wish to introduce any other documents into the record to be considered or if any Councilmember has a statement or any comment they would like to make at the conclusion of the public hearing. At the completion of the public hearing, a roll call vote will be taken. If five or more Councilmembers vote in the affirmative then Councilmember Strain-Burk will be censored and a resolution of censure will issue in accordance with the City Council rules and procedures.



Councilmember Wheaton shared, even though the Council has chosen to move forward on only two other charges, the third charge stating a Councilmember is to be a positive ambassador for the City. If we think about an ambassador, an ambassador is a representative or promoter for a specific activity. So, if we're saying that Councilmember Strain-Burk was being a positive promoter for the City by going behind the Council's back after the Council made a determination then it's just wrong, and it is unethical, and very disrespectful, and that is my only comment.

Mayor Pro Tem Hill read her letter sent to the Texas Historical Commission:

Greetings,

As you are aware, the Lancaster City Council recently voted 6-1 to formally request that the Texas Historical Commission remove the Confederate Arms Factory monument, sited at 220 W. Main Street. As Mayor Pro Tem and District 5 Council Member, I am writing to you to express the intensity and seriousness of this request.

Lancaster is a 2019 recipient of the National Civic League's All-America City Award, an award that recognizes inclusive civic engagement. The existence of this monument is a hypocritical mockery of the spirit of this award and is a personal affront to myself and my constituents. The factory memorialized in this monument produced weaponry to support hostile acts of oppression and it literally derived economic benefit from armed insurrection against the federal government. This would be called terrorism today. Moreover, the purpose of this active rebellion against the United States of America was to ensure the continued enslavement of African Americans. With a 67.75% African American population, two-thirds of the city of Lancaster would be enslaved under Article I Section 9(4) and Article IV Sections 2(3) and 3(3) of the Constitution of the Confederate States of America.

While the Confederate Arms Factory is further debased by suspected unethical business practices, the far more serious issue is the fact that it supported the oppression of the majority of the people who today call Lancaster home.

This was a factory whose very business plan sought to propagate the twisted mentality expressed by the Texas delegation just over a year prior to the factory's establishment: "She [Texas] was received as a commonwealth holding, maintaining and protecting the institution known as negro slavery—the servitude of the African to the white race within her limits a relation that had existed from the first settlement of her wilderness by the white race, and which her people intended should continue to exist in all future time." – Texas Declaration of Causes, February 2, 1861 There is no educational value in supporting a marker to a factory dedicated to the causes of the Confederacy. It is simply intolerable to honor the deplorable legacy of such a factory. It is reprehensible that any community leaders today would seek to align themselves with a monument such as this. It has no place in our city and I trust that you will see to its removal and disposal in the most expedient fashion possible.

Regards,

Racheal Hill, M.B.A.  
The City of Lancaster, TX  
Mayor Pro Tem  
Councilmember, District 5  
Certified Municipal Official

Deputy Mayor Pro Tem read his statement:

For those that are listening near or far it is the citizens that support and determine who fills these seats. This Council has rules and procedures that guide us as individuals, and, as a body, Council reviews and approves these rules and procedures annually to remain updated and current with the times. This council

must hold each other accountable for our actions no matter how uncomfortable or embarrassing the situation may be. I use them at times for reference, and as a lane check of responsibilities between Council and staff, and we as leaders give the direction to staff, and respectfully we should follow up in a timely manner on our request for clarity.

Our team is equipped with an extremely knowledgeable talented and award-winning, recognized staff from the executive team to the part time, and I rely and trust them for their daily operations that keep Lancaster moving forward. I understand and I accept Councilmember Strain Burk's information, and I accept her apology to Council but in addition, I think that it is fitting that a formal apology be made by Councilmember Strain-Burk to include the citizens of Lancaster and to the staff, and thus I feel with that we will emerge and be a stronger and more resilient City.

Councilmember Mejia shared, this is not an easy thing to do, as far as I know, probably the first Councilmember to ever be censured in the City of Lancaster so this is not something that we take lightly. The actions of Councilmember Carol, she has been doing things like this, it is just a history of doing these kinds of actions. I am very proud of this Council for finally standing up and saying that "you cannot do that, you cannot continue the actions or the way you have been doing it." We have rules, we have procedures, and we cannot break them up. We are all equal to each other and we all have the same rules and we have to respect each other's vote. Tonight, as a matter of fact, I was on the losing side of a six to one vote and I accept it. I have accepted many times in the past a six to one vote, with me being on the losing side. Funny Carol picked this issue to be the sword she said she falls on. I think it says a lot about the character of her and I think she would have gotten a lot further with this issue if it was not for the fact that she got caught in the middle of it, meaning she almost got caught with a hand in the cookie jar, in other words.

I think I would not accept an apology, because, to me, actions are more important than a verbal apology. Her apology to me and the constituents of Lancaster should be her actions moving forward. If she corrects her actions and she learn from this, now that will be the apology that I can accept. I am proud of this Council. You stood strong when they tried to intimidate us throughout the course of this but you stood strong. You never showed weakness. We showed unity, we showed that we are strong together and at times we were weak. We helped each other up at times and then amongst ourselves we showed courage and I applaud you for that. You stood up for your citizenship, you stood up for your constituents, and you stood up for the rules and procedures for the City of Lancaster. I commend you for that, what was done was very disrespectful to all of us, to all of our constituents because Carol felt like she was bigger than us. She felt like she had the right to go above us and that is complete disrespect to us and to our constituents and in the power that her constituents gave us to know that we are all equal to each other in power and nobody should go above anybody else to talk for the Council or for the City Lancaster. Carol knows this. This is nothing new to her. She has helped make these rules. We talk about these rules every year so for her there is no ignorance. Every year during strategic planning Council talks about these rules, and redlined the rules so there is no ignorance on Carol's part on this. She knew what she was doing when she did it. And this is it this is the consequence of her actions. I just think enough is enough. Those actions will no longer be tolerated for this Council and I commend Council for standing strong so I do not know, we will see how the vote goes and hopefully it goes in the way of censuring Carol. Thank you

Mayor Hairston opened the public hearing.

There were no speakers.

**MOTION:** Mayor Pro Tem Hill made a motion, seconded by Councilmember Wheaton to close the public hearing. The vote was cast 6 for, 0 against. [Strain-Burk absent]

The roll call vote was cast 6 for, 0 against [Strain-Burk absent] to censure Councilmember Strain-Burk, District 1.

The meeting was adjourned at 8:47 p.m.

**ATTEST:**

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Sorangel O. Arenas, City Secretary

**APPROVED:**

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Clyde C. Hairston, Mayor

## **MINUTES**

### **LANCASTER CITY COUNCIL REGULAR MEETING OF JANUARY 11, 2021**

**The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the Council Chambers of City Hall on January 11, 2021, at 7:00 p.m. with a quorum present to-wit:**

#### **Councilmembers Present (City Hall & Zoom):**

Mayor Clyde C. Hairston  
Carol Strain-Burk (left on item 15)  
Deputy Mayor Pro Tem Stanley M. Jaglowski  
Marco Mejia (arrived on item 1)  
Keithsha C. Wheaton  
Mayor Pro Tem Racheal Hill  
Betty Gooden-Davis

#### **City Staff Present (City Hall & Zoom):**

Opal Mauldin-Jones, City Manager  
Fabrice Kabona, Deputy City Manager  
Carey Neal, Assistant to the City Manager  
Keturah Barnett, ICMA Fellow  
Cheryl Womble, Administrative & Community Relations Supervisor  
Ron Gleaves, Information Technology Manager  
Shane Shepard, Economic Development Director  
Vicki Coleman, Director of Development Services  
Dori Lee, Director of Human Resources  
David T. Ritter, City Attorney  
Sorangel O. Arenas, City Secretary

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

Mayor Hairston called the meeting to order at 7:01 p.m. on January 11, 2021.

#### **Invocation:**

Bishop Clyde C. Hairston of Miracle Temple Fellowship Church gave the invocation.

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

Councilmember Wheaton led the pledge of allegiance.

#### **Citizens Comments:**

Paul L. Wiseman, 329 S. Dallas Ave., shared with Council his interest in being reconsidered to HLPC.

Bobby Anderson, 2713 Juniper Dr. Red Oak, requested Council to consider allowing a food truck to serve on Pleasant Run Road.

#### **Consent Agenda:**

City Secretary Arenas read the consent agenda.

- 1. Consider a resolution authorizing the purchase of four (4) 2020-21 Chevrolet 1500 regular cab work trucks from Freedom Chevrolet through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed eighty-two thousand dollars (\$82,000).**
- 2. Consider a resolution authorizing the purchase of a Ford F-350 Crane Truck and a Ford F-350 Dump Truck from Rush Truck Centers, through an interlocal agreement with Buyboard, in an amount not to exceed one hundred twenty-seven thousand two hundred fifty-five dollars (\$127,255).**

3. Consider a resolution authorizing the purchase of a 2021 (HV607) SBA International 12 yard dump truck from Southwest International Trucks, Inc. through an Interlocal Agreement with the City of Dallas, in an amount not to exceed one hundred nineteen thousand dollars (\$119,000).
4. Consider a resolution authorizing the purchase of a 2021 Braun Dodge Ram 4500 Type 1 Ambulance from Siddons Martin Emergency Group, LLC in an amount not to exceed three hundred eighty-five thousand nine hundred twenty-three dollars and fifty-four cents (\$385,923.54).
5. Consider a resolution authorizing the purchase of a Case 590SN 4WD Backhoe from Associated Supply Company, Inc. through an interlocal agreement with Houston-Galveston Area Council (HGAC) in an amount not to exceed one hundred thirteen thousand seven hundred fifty dollars (\$113,750).
6. Consider a resolution authorizing the purchase of eight (8) 2021 Dodge Charger patrol vehicles from Freedom Dodge through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed four hundred three thousand two hundred twenty-four dollars (\$403,224).
7. Consider a resolution authorizing the City Manager to enter into a ten-year Interlocal Master Agreement with Dallas County for participation in the Major Capital Improvement Program (MCIP) for the purpose of transportation improvements on roads within the City of Lancaster that are inside Dallas County and that are on the North Central Texas Council of Government's (NCTCOG) regional Thoroughfare Plan.
8. Consider an ordinance amending the Pleasant Run Estates Public Improvement District (PID) Five Year Service Plan, adopted by Ordinance No. 2020-09-28, as hereby amended by increasing the Pleasant Run Estates PID Five Year Service Plan for fiscal year 2020/2021 by a total of five thousand dollars (\$5,000).

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve consent items 1 through 8. The vote was 7 for, 0 against.

**Public Hearing:**

9. **M21-06 Conduct a public hearing and consider a request to repeal Ordinance 2011-02-04 that granted a Specific Use Permit (SUP) for an aerial park commercial amusement facility on the property located approximately 3,250 feet west of the intersection of West Belt Line Road and South Dallas Avenue. The property is addressed as 660 West Belt Line Road and is described as a being a 19.839 acres tract of land situated in the Adam C. Haugh Survey, Abstract No. 593, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this is a request to rescind the SUP for an aerial park commercial amusement facility that was approved in 2011 on the subject site. The purpose of repealing this ordinance is the owner no longer intends to develop the site as a commercial amusement facility. The applicant intends to develop estate homes in the future. Zoning case Z21-01 is an accompanying item and is intended to rezone the property to Single-Family Estate (SF-E) for the development of one (1) dwelling unit per acre. On November 15, 2020 a notice for this public hearing appeared in the Focus Daily Newspaper. Staff mailed six (6) notifications of this public hearing to property owners within 200-feet of the subject site and zoning signs were placed on the property. There were no letters received in support or opposition of this zoning change request. On December 1, 2020 the Planning and Zoning Commission

(P&Z) recommended approval of the request to rescind the SUP for an aerial park commercial amusement facility. Staff concurs with the P&Z's recommendation.

Mayor Hairston opened the public hearing.

There were no speakers.

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

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

**10. Z21-01 Conduct a public hearing and consider a zoning change from Light Industrial (LI) with a Specific Use Permit (SUP) for an aerial park commercial amusement facility to Single-Family Estate (SF-E) for the property located approximately 3,250 feet west of the intersection of West Belt Line Road and South Dallas Avenue. The property is addressed as 660 West Belt Line Road and is described as being a 19.839 acres tract of land situated in the Adam C. Haugh Survey, Abstract No. 593, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this is a request to change the zoning on the property from LI with an SUP for an aerial park commercial amusement facility to SF-E for the purpose of developing a community of estate homes in the future. The current zoning only allows for a commercial amusement park. The proposed zoning change would allow for one (1) dwelling unit per an acre. This is a companion item to M21-06 to rescind Ordinance 2011-02-04 for an aerial park commercial amusement facility. Section 14.1101 of the LDC, states when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. On November 15, 2020 a notice for this public hearing appeared in the Focus Daily Newspaper. Staff mailed six (6) notifications of this public hearing to property owners within 200-feet of the subject site and zoning signs were placed on the property. There were no letters received in support or opposition of this zoning change request. Based on the above five (5) considerations, staff recommends approval of the zoning change request as it is in compliance with the Future Land Use Plan and the proposed development is compatible with the surrounding areas.

Councilmember Mejia shared his support for this item.

Deputy Mayor Pro Tem Jaglowski asked to hear from the developer.

Deric Salser, 129 N. Collins Rd., Sunnyvale shared the owners intentions for the property, to build his single family home on this property and to have an estate subdivision where his home is the model home.

Mayor Hairston opened the public hearing.

There were no speakers.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Strain-Burk to close the public hearing. The vote was cast 7 for, 0 against.

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Strain-Burk to approve item 10. The vote was cast 7 for, 0 against.

**11. M21-05 Conduct a public hearing and consider a request to repeal Ordinance No. 01-94 a Specific Use Permit (SUP) for indoor amusement on the properties addressed as 723 and 727 West Pleasant Run Road. The properties are 1.65 acres and are described as Lots 3A and 3B Block A in the Bellaire Acres Addition, M.M. Miller Survey, Abstract No. 874, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this is a request to rescind the SUP for indoor amusement on the subject site. The purpose of repealing this ordinance is the owner does not intend to use these properties for indoor amusement purposes but intends to add 3,928 square feet of retail to the existing laundromat at 727 West Pleasant Run Road. On November 15, 2020 a notice for this public hearing appeared in the Focus Daily Newspaper. Staff mailed 12 notifications of this public hearing to property owners within 200-feet of the subject site and zoning signs were placed on the property. There were no letters received in support or opposition of this zoning change request. On December 1, 2020 the Planning and Zoning Commission (P&Z) recommended approval of the request to rescind the SUP for an indoor amusement use. Staff concurs with the P&Z's recommendation.

Mayor Hairston opened the public hearing.

There were no speakers.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Gooden-Davis to close the public hearing. The vote was cast 7 for, 0 against.

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

**Action:**

**12. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between Dallas College and the Lancaster Economic Development Corporation (LEDC) authorizing an Economic Development Performance Agreement and providing an effective date.**

City Manager Mauldin-Jones Dallas College, formerly Cedar Valley College (CVC), submitted a request for matching funds to enable the college to purchase a 53-foot customized Mobile Training Unit (MTU) trailer to deliver training at various employer locations. Dallas College intends to use the trailer to provide certificate programs for Industrial Maintenance Technician, Electrical Technician, Mechatronics Technician and Logistics and promote programs in Automotive, Diesel and Heating, Ventilation, and Air Conditioning (HVAC). The total estimated cost of the project is \$515,295. Dallas College is requesting \$50,001 from the Lancaster Economic Development Corporation. This amount represents 9.7% of total project cost. Dallas College requested the City and Economic Development Corporation (EDC) to participate by allocating funds to assist with real and business personal property to be utilized for the program. The total match for the grant is \$50,001. Other entities requested to participate include: Cedar Hill Economic Development Corporation, DeSoto Economic Development Corporation, Hutchins Economic Development Corporation and the City of Dallas. In order to be eligible for the grant, Dallas College will be required to meet the following obligations:

1. Grant Payment Draw Down - Recipient shall draw down the funds made available by Grantor no later than January 31, 2023; 2. MTU Program Inception - Recipient shall complete the MTU vehicle and begin instruction or training no later than December 31, 2021; 3. Lancaster Resident Training - During the first three (3) years of MTU program operation, Recipient will use the MTU program to provide training to at least twenty-five (25) City of Lancaster residents and/or persons employed within the City of Lancaster, Texas in work fields that pay at least \$45,000 annually, as determined by U.S. Department of Labor Statistics or other metrics acceptable to Grantor; 4. Lancaster Site Visits - During the first three (3) years

of MTU program operation, Recipient will use the MTU program to visit at least fifteen (15) industrial, distribution, or other commercial sites within the City of Lancaster to offer training and/or marketing of the MTU program; 5. Lancaster Resident Contact – Recipient will make contact with at least 1,000 Lancaster residents annually regarding the program; 6. Special Events – Recipient will participate in, or host at least five (5) special events during each calendar year. The special events can be City-sponsored events such as parades, National Night Out, etc., or a stand-alone event hosted by Recipient; 7. Lancaster ISD Outreach Program – Recipient will conduct at least two (2) annual outreach programs using the MTU in conjunction with Lancaster ISD; 8. Annual Reports – Recipient will provide City with an Annual Report within thirty (30) days of the anniversary of the Effective Date of this Agreement, containing the following information: a. Total number of outreach events (and number conducted in the City of Lancaster); Total number of participants in the program and number of participants who are City residents and/or are employed in the City; b. Total number of participants enrolled in MTU programs, including breakdowns showing number of Lancaster residents and workers; c. Total number of participants completing a program or obtaining a certificate, including breakdowns showing number of Lancaster residents and workers; and 9. Marketing – Recipient agrees to include favorable mentions of the City in its MTU-related Facebook, Twitter, website and other social media marketing efforts and agrees that the City of Lancaster logo or other marketing will be the most prominent marketing on the MTU. Understanding and meeting the needs of Lancaster and the labor market, Dallas College will provide a comprehensive technical training program that will prepare students for careers in Industrial Maintenance, Electrical, Mechatronics, Logistics, Automotive, and Diesel positions in the north Texas service area and beyond. These programs will allow students to obtain marketable skills in order to make an above-average salary in high demand industries. Allocated funds must be used for real or business personal property purchases. Receipts totaling an amount not to exceed \$50,001 for said purchases must be submitted to the City of Lancaster, Economic Development Department.

Deputy Mayor Pro Tem Jaglowski shared his support for item 12

Councilmember Strain-Burk also shared her support for item 12

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

**13. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between Kodiak Robotics, Inc. and the Lancaster Economic Development Corporation (LEDC) authorizing an Economic Development Performance Agreement and providing an effective date.**

City Manager Mauldin Jones shared Kodiak Robotics, Inc. (Kodiak), submitted a request for \$77,900 in matching funds to offset the cost of HVAC improvements to their existing facility located at 3901 Corporate Drive. The HVAC improvements are part of comprehensive site improvements needed to allow Kodiak to remain in their existing facility through the end of December 2023. The total estimated cost of the project is \$325,000. Kodiak is requesting \$77,900 from the Lancaster Economic Development Corporation. This amount represents 24.0% of total project cost. Staff recommends approval of original agreement and the resolution as presented.

Deputy Mayor Pro Tem Jaglowski shared his support for item 13 as staff recommends.

Councilmember Mejia shared his support for item 13 with Lancaster Economic Development Corporation conditions.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk to approve item 13. The vote was 6 for, 1 against [Mejia].



**14. Discuss and consider a resolution to authorize the assignment and assumption of an Economic Development Agreement between the City of Lancaster and Global Longhorn Center, L.P. to the City of Lancaster and NP Longhorn, LLC.**

City Manager Mauldin-Jones shared On March 26, 2018, Council approved an Economic Development Agreement between the City of Lancaster and Global Longhorn Center, L.P. (Global Holt Lunsford) to provide an annual grant in an amount equivalent to forty-five percent (45%) of real property taxes assessed against the property for a given tax year for a period of five (5) years. The grant was a contributing factor for Global Holt Lunsford to undertake the project and build a warehouse-distribution building containing 404,175 square feet. Global Fulfillment and Boise Cascade currently lease space in the building. Rebate payments related to the grant are expected to begin next year. AEW is under contract to purchase the property currently owned by Global Holt Lunsford. Global Holt Lunsford requested the Economic Development Agreement for this project/property be assigned from Global Longhorn Center, L.P. to NP Longhorn, LLC, a Delaware limited liability company. NP Longhorn, LLC is the ownership entity for AEW. Per Section 10(o) in the Agreement, Global Holt Lunsford may not assign the Agreement to a non-subsidiary without the City's prior written consent. Staff recommends approval of resolution, as presented.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk to approve item 14. The vote was 7 for, 0 against.

**Executive Session:**

- 15. The City Council shall convene into a closed executive session pursuant to Section § 551.071**  
**(a) of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, re: Councilmember, District 1.**

Mayor Hairston: The City Attorney will provide comments at this time.

City Attorney Ritter: Good evening Mayor and Council. This item and the next several items are available to you should you wish to have any questions answered in an executive session format. As you know, since our last meeting on January 4 Councilmember Strain-Burk delivered a letter to the City Secretary's office apologizing for actions and indicating she would not oppose the censure on two of the three grounds. These were violations of the Code of Conduct number five, which says: "once a decision is made, support the City Council decision but state your reservation" and on the Code of Ethics section G, which states: "recognize the public and political policy decisions are ultimately the responsibility of the City Council." Councilmember Strain-Burk did oppose the center for House rules Code of Conduct item number 13. So, currently there is a record before the City Council which consists of the initial notice of censure, Council member Strain-Burk's response and supplemental response and this letter. So, at this time if Council has any questions that they would like to ask in executive session that is available as an option. If no one has any questions that they would like to answer in executive questions then I can proceed to the next stage of this procedure which would be deciding whether to except the Councilmembers letter on the January 4 and vote solely on those two grounds or whether additional discussion is needed on the third ground and, if so, then the Councilmember bringing the complaint would be able to present argument and evidence on that issue. Following this, there will be a public hearing which is required by the rules of procedure and then there will be a roll call vote which will be taken either on the two charges that she has agreed upon the two censure basis and if councils pleasure is such on the third basis. So, there would be two different votes. One on the first two that she's agreed to and then if Council desires on the third ground. Each of those votes will be a roll call vote with a majority of five needed to sustain the censure. That's in your rules and policies as well and also according to the city charter if there is an abstention on these votes the abstention will go to the side that has the most votes. So, for example, if the majority votes to censure,

the abstention would count as a vote for the censure if the majority is not to censure than that abstention would go as a vote against the censure. So, if that is sufficient for Council they can proceed to the next motion. If executive session is desired that is available.

Mayor Hairston: Actually, saying we have the option to go into the executive session if they have any questions concerning the third censure in the letter.

Councilmember Mejia: I got some questions so I do not know if anybody else does?

Mayor Hairston: So, you need it. So, what we are trying to see here City Council see if we need to go into an executive session. If you have questions again she has already admitted to two but the one she is denying so do you think we need to go into Executive session and ask the City Attorney those questions?

Councilmember Mejia: I would you like to go into an executive session, I have question on exactly what status we are at, I do not know about the rest of Council and how to proceed forward or not proceed and what do since she is accepting two out of three.

Mayor Hairston: do we need to go into executive session or can you ask the question now.

Councilmember Gooden-David: Yes, we do need to go into executive session.

Mayor Hairston: that is two.

Mayor Pro Tem Hill: Hi Mayor yes, I can align to that so we can have the discussion.

Mayor Hairston: Oh, okay. That is three. So, I think we need to go into the executive session so we can clear the air on our questions. Alright Council join me in the breakout room.

**16. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.**

The City Council recessed for Executive Session at 8:03 p.m. and reconvened into open session at 8:29 p.m.

No action taken.

**Public Hearing:**

**17. Conduct a public hearing and roll-call vote considering a resolution regarding censure of Councilmember Strain-Burk.**

Mayor Hairston: City Attorney is that where you come in?

City Attorney Ritter: Just to recount how the Council got here: On December 28, 2020 Mayor Pro Tem Hill and Councilmember Mejia filed a written notice of censure against Councilmember Strain-Burk with the City Secretary's office pursuant to the censure policy of the City of Lancaster alleging violations of City Council's rules and procedures, Code of Conduct, sections five and 13 and Code of Ethics, section G. Councilmember Strain-Burk then filled written response to the notice of censure with the City Secretary's office on November 9, and filed a supplemental response on December 9, 2020. The Council, in accordance with the central policy, the notice, the censure, and the written responses were read into the record at the December 14, 2020 regular council meeting. Following a hearing, the Council took a vote and determined that a majority of the City Council found good cause existed to set a formal hearing on the merits of the notice of censure which is what the Council is here for today. On January 4, 2021, Councilmember Strain-Burk delivered a letter to the City Secretary's office apologizing for certain actions

that she took and accepting responsibility. She indicated she was not contesting the charges of censure regarding the City Council Code of Conduct section five and City Council Code of Ethics section G, which state, respectively, (Code of Conduct, section five) once a decision is made, to support the Council decision but state your reservation; and Code of Ethics section G, recognize the public and political policy decisions are ultimately the responsibility of City Council and we are now about to open a public hearing on this item. The floor will be open for any Councilmember and it is my understanding that Council wishes to proceed on the two matters that she is accepted responsibility for and that she's indicating she is not contesting. At this time, it would be proper for any Councilmembers who wish to introduce any other documents into the record to be considered or if any Councilmember has a statement or any comment they would like to make at the conclusion of the public hearing. At the completion of the public hearing, a roll call vote will be taken. If five or more Councilmembers vote in the affirmative then Councilmember Strain-Burk will be censored and a resolution of censure will issue in accordance with the City Council rules and procedures.

Mayor Hairston: All right City Council you heard the attorney briefing. So, if you have any other comments or any questions you can ask them now, if your devices are not working you can raise your hand and I will acknowledge you.

Councilmember Wheaton: OK I just wanted to make a statement. Even though the Council has chosen to move forward on only two other charges, the third charge stating a Councilmember is to be a positive ambassador for the City, if we think about an ambassador, an ambassador is a representative or promoter for a specific activity. So, if we were saying that Councilmember Strain-Burk was being a positive promoter for the City by going behind the Council's back after the Council made a determination then it's just wrong and it is unethical and very disrespectful and that is my only comment. Thank you.

Mayor Hairston: Thank you I believe Mayor Pro Tem Hill.

Mayor Pro Tem Hill: Hello I just want to ask the city attorney is it okay if I go on a record and share my letter that was sent to the Texas Historical Commission?

City Attorney Ritter: Absolutely. That would be evidence that has been previously admitted before the Council and that would be relevant here today so absolutely.

Mayor Pro Tem Hill: OK, so I'm just going to recite the letter that was sent.  
Greetings,

As you are aware, the Lancaster City Council recently voted 6-1 to formally request that the Texas Historical Commission remove the Confederate Arms Factory monument, sited at 220 W. Main Street. As Mayor Pro Tem and District 5 Council Member, I am writing to you to express the intensity and seriousness of this request.

Lancaster is a 2019 recipient of the National Civic League's All-America City Award, an award that recognizes inclusive civic engagement. The existence of this monument is a hypocritical mockery of the spirit of this award and is a personal affront to myself and my constituents. The factory memorialized in this monument produced weaponry to support hostile acts of oppression and it literally derived economic benefit from armed insurrection against the federal government. This would be called terrorism today. Moreover, the purpose of this active rebellion against the United States of America was to ensure the continued enslavement of African Americans. With a 67.75% African American population, two-thirds of the city of Lancaster would be enslaved under Article I Section 9(4) and Article IV Sections 2(3) and 3(3) of the Constitution of the Confederate States of America.

While the Confederate Arms Factory is further debased by suspected unethical business practices, the far more serious issue is the fact that it supported the oppression of the majority of the people who today call Lancaster home.

This was a factory whose very business plan sought to propagate the twisted mentality expressed by the Texas delegation just over a year prior to the factory's establishment: "She [Texas] was received as a commonwealth holding, maintaining and protecting the institution known as negro slavery—the servitude of the African to the white race within her limits a relation that had existed from the first settlement of her wilderness by the white race, and which her people intended should continue to exist in all future time." – Texas Declaration of Causes, February 2, 1861 There is no educational value in supporting a marker to a factory dedicated to the causes of the Confederacy. It is simply intolerable to honor the deplorable legacy of such a factory. It is reprehensible that any community leaders today would seek to align themselves with a monument such as this. It has no place in our city and I trust that you will see to its removal and disposal in the most expedient fashion possible.

Regards,

Racheal Hill, M.B.A.  
The City of Lancaster, TX  
Mayor Pro Tem  
Councilmember, District 5  
Certified Municipal Official  
Thank you.

Mayor Hairston: Alright, Deputy Mayor Pro Tem Stanley Jaglowski.

Deputy Mayor Pro Tem Jaglowski: David you said this is the time for statements or personal thoughts?

City Attorney Ritter: Yes, sir. Any Councilmember can comment or can produce addition documents like what you had from Mayor Pro Tem and share your thought on the matter before you.

Deputy Mayor Pro Tem Jaglowski: If I may, I have prepared a written statement that I would like to read regarding my thoughts on this situation and I will read.

For those that are listening near or far it is the citizens that support and determine who fills these seats. This Council has rules and procedures that guide us as individuals, and, as a body, Council reviews and approves these rules and procedures annually to remain updated and current with the times. This council must hold each other accountable for our actions no matter how uncomfortable or embarrassing the situation may be. I use them at times for reference and as a lane check of responsibilities between Council and staff and we as leaders give the direction to staff and respectfully we should follow up in a timely manner on our request for clarity.

Our team is equipped with an extremely knowledgeable talented and award-winning, recognized staff from the executive team to the part time and I rely and trust them for their daily operations that keep Lancaster moving forward. I understand and I accept Councilmember Strain Burk's information and I accept her apology to Council but in addition I think that it is fitting that a formal apology be made by Councilmember Strain-Burk to include the citizens of Lancaster and to the staff and thus I feel with that we will emerge and be a stronger and more resilient City. Thank you

Mayor Hairston: All right, Any other statements or comments? OK, Councilmember Mejia.

Councilmember Mejia: This is not an easy thing to do, as far as I know, probably the first Councilmember to ever be censured in the City of Lancaster so this is not something that we take lightly. The actions of Councilmember Carol, she has been doing things like this, it is just a history of doing these kinds of actions. I am very proud of this Council for finally standing up and saying that "you cannot do that, you cannot continue the actions or the way you have been doing it." We have rules, we have procedures, and we cannot break them up. We are all equal to each other and we all have the same rules and we have to respect each other's vote. Tonight, as a matter of fact, I was on the losing side of a six to one vote and I accept it. I have accepted many times in the past a six to one vote, with me being on the losing side. Funny Carol picked this issue to be the the sword she said she falls on. I think it says a lot about the

character of her and I think she would have gotten a lot further with this issue if it was not for the fact that she got caught in the middle of it, meaning she almost got caught with a hand in the cookie jar, in other words.

I think I would not accept an apology, because, to me, actions are more important than a verbal apology. Her apology to me and the constituents of Lancaster should be her actions moving forward. If she corrects her actions and she learn from this, now that will be the apology that I can accept. I am proud of this Council. You stood strong when they tried to intimidate us throughout the course of this but you stood strong. You never showed weakness. We showed unity, we showed that we are strong together and at times we were weak. We helped each other up at times and then amongst ourselves we showed courage and I applaud you for that. You stood up for your citizenship, you stood up for your constituents, and you stood up for the rules and procedures for the City of Lancaster. I commend you for that, what was done was very disrespectful to all of us, to all of our constituents because Carol felt like she was bigger than us. She felt like she had the right to go above us and that is complete disrespect to us and to our constituent and in the power that her constituents gave us to know that we are all equal to each other in power and nobody should go above anybody else to talk for the Council or for the City Lancaster. Carol knows this. This is nothing new to her. She has helped make these rules. We talk about these rules every year so for her there is no ignorance. Every year during strategic planning Council talks about these rules, and redlined the rules so there is no ignorance on Carol's part on this. She knew what she was doing when she did it. And this is it this is the consequence of her actions. I just think enough is enough. Those actions will no longer be tolerated for this Council and I commend Council for standing strong so I do not know we will see how the vote goes and hopefully it goes in the way of censuring Carol. Thank you

Mayor Hairston: All right, I just want to ask Council one question. How many of you received my memo and my letter and how many of you read it? Let me see your hands. Just wave your hands. Okay, if you have not read it, I did send a memo out in reference to the rules and procedures and all that and if I had it before me I would read it into the record. But that is all right. And if you read, you would see that our rules and procedures are put in place to govern and to help us govern our City and our Districts and I can go on but at this time we will open up the public portion of this meeting.

Mayor Hairston opened the public hearing.

There were no speakers.

**MOTION:** Mayor Pro Tem Hill made a motion, seconded by Councilmember Wheaton to close the public hearing. The vote was cast 6 for, 0 against. [Strain-Burk absent]

The roll call vote was cast 6 for, 0 against [Strain-Burk absent] to censure Councilmember Strain-Burk, District 1.

The meeting was adjourned at 8:47 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Clyde C. Hairston, Mayor

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

2.

**Meeting Date:** 02/08/2021

**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 authorizing the purchase of one thousand three hundred fourteen (1,314) water meters and the installation of one thousand one hundred fourteen (1,114) water meters from HydroPro Solutions through an Interlocal agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed four hundred ninety-eight thousand nine hundred fifty-four dollars and zero cents (\$498,954.00).

#### **Background:**

The City water meter replacement program in 2015 replaced our registers with upgraded technology. Staff focused on replacing the residential water meter/registers first and have completed all residential water meter/registers. These new water meter/registers have a life expectancy of 10 years. Staff is currently focusing on replacing water meter/registers for commercial and multi family accounts in a phased approach. There are a total of 1,004 commercial meters and 1,108 multi-family meters. Staff is proposing to replace all 1,004 commercial and 110 multi-family meters this fiscal year, and replace the remaining 998 multi-family meters in the next fiscal year.

Two hundred (200) of the water meters will be available for purchase by developers for new construction.

#### **Operational Considerations:**

Interlocal Agreements allow staff to utilize other agencies' formal bid contracts. Each entity's formal bid process meets the requirements set forth in the statutes, including advertising, 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 and joint bidding opportunities.

Replacement of the current water meter/registers will continue our replacement program and reduce maintenance cost and improve meter accuracy. The water meter/registers will be purchased and installed by Hydro Pro Solutions and will adhere to City of Lancaster Standard Details.

#### **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 regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

**Fiscal Impact:**

Funds are available in the FY 20/21 Water Division budget.

**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, AUTHORIZING THE PURCHASE OF 1,314 WATER METERS AND THE INSTALLATION OF 1,114 WATER METERS THROUGH AN INTERLOCAL AGREEMENT WITH HOUSTON GALVESTON AREA COUNCIL (HGAC) IN AN AMOUNT NOT TO EXCEED FOUR HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED FIFTY-FOUR DOLLARS AND ZERO CENTS (\$498,954.00) TO ACQUIRE THE WATER METER REGISTERS AND INSTALLATION THEREOF; EXECUTING SUCH PURCHASE ORDERS AND NECESSARY DOCUMENTS; 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 Lancaster, Texas, desires to authorize the purchase and installation of water meters through an Interlocal Agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed four hundred ninety-eight thousand nine hundred fifty-four dollars and zero cents (\$498,954.00); and

**WHEREAS**, the City's water meters were replaced in 2006 with life expectancy of five years; and

**WHEREAS**, the City began its annual replacement program in January 2015; and

**WHEREAS**, the amount of meters that need to be replaced exceeds staff capability at this time; and

**WHEREAS**, the City of Lancaster maintains an executed Interlocal Agreement with Houston Galveston Area Council (HGAC), a cooperative agency which authorizes cooperative agreements to help save time in developing specification and duplication during the bid process.

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

**SECTION 1.** The City Council hereby authorizes, approves, accepts, and awards the bid to HydroPro Solutions in an amount not to exceed four hundred ninety-eight thousand nine hundred fifty-four dollars and zero cents (\$498,954.00) to purchase 1,314 water meters and install 1,114 water meters, as set forth in Exhibit "A," and;

**SECTION 2.** That the City Manager is hereby authorized to issue purchase order and execute said agreement.

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

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

**SECTION 5.** This Resolution shall become effective immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of February, 2021.



**ATTEST:**

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Sorangel O. Arenas, City Secretary

**APPROVED:**

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Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

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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 HydroPro Solutions, (hereinafter referred to as the "Contractor") for the purchase of 1,314 water meters and the installation of 1,114 water meters; (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 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 four hundred ninety-eight thousand nine hundred fifty-four dollars and zero cents (\$498,954.00).

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>Hydro Pro Solution</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:

<b><u>Type of Insurance</u></b>	<b><u>Amount</u></b>
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 25th day of January, 2021.

CITY OF LANCASTER

Company Name

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

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

ATTEST:

Address

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





**CONTRACT PRICING WORKSHEET**  
For Catalog & Price Sheet Type Purchases

Contract  
No.:

WM09-20

Date  
Prepared:

1/4/2021

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents **MUST** be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Lancaster, TX	Contractor:	HydroPro Solutions
Contact Person:	Andrew Waits	Prepared By:	
Phone:	972.218.2326	Phone:	512-996-8944
Fax:		Fax:	512-996-8938
Email:	await@lancaster-tx.com	Email:	

Catalog / Price Sheet Name:	HydroPro Solutions
General Description of Product:	Software Management

**A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary**

Quan	Description	Unit Pr	Total
1068	3/4 Inch 3G Meter BB	414.13	442290.84
868	Installation of 3/4 inch Meters	95.00	82460
136	1 inch 3G Meter BB	530.45	72141.2
136	Installation of 1 inch Meters	95.00	12920
30	2 inch SS Octave Meter (15 inches long)/encoder module/XTR 3G transmitter	2802.3	84069
80	2 inch Polymer Octave Meter (17 inches long)/encoder module/XTR 3G transmitter	1602	128160
110	Installation of 2 inch meters	570	62700
			0
			0
			0
			0
			0
Total From Other Sheets, If Any:			
Subtotal A:			884741.04

**B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary**  
(Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)

Quan	Description	Unit Pr	Total
			0
			0
			0
			0
Total From Other Sheets, If Any:			
Subtotal B:			0
Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).		For this transaction the percentage is:	0%

**C. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

Discounts	-385787
Freight	
Subtotal C:	-385787
Delivery Date:	3/1/2021
D. Total Purchase Price (A+B+C):	498954.04

## LANCASTER CITY COUNCIL

### City Council Regular Meeting

3.

**Meeting Date:** 02/08/2021

**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 C&M Concrete for the reconstruction of nine hundred seventy-seven (977) feet of alley behind 603 Willow Wood Lane from Dallas Avenue to Dewberry Boulevard in an amount not to exceed one hundred seventy-four thousand three hundred seventy dollars and ninety cents (\$174,370.90).

#### **Background:**

Sound Infrastructure has been identified as a key performance objective for the City Council. The City has a pavement management program which has rated the roadways within the City and recommended maintenance based upon the condition. Staff has been completing infrastructure projects annually to realize the goal of having a preventative maintenance program and well maintained streets. The completion of these projects will continue to show Council's dedication and commitment towards achieving this goal.

#### **Operational Considerations:**

This project includes removing the existing concrete pavement, compaction of the subgrade will be performed prior to replacement of nine hundred seventy-seven (977) feet of concrete as identified on the attached submittal labeled Exhibit "A". This will provide for a smoother driving experience for residents and a more sustained roadway for solid waste trucks that utilize the alley's to service residents. City of Lancaster staff will serve as the project manager and will coordinate with C&M Concrete to ensure the pavement replacement is in accordance with the City of Lancaster's general design manual specifications.

#### **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 regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

#### **Fiscal Impact:**

Funding is available in the FY2020/2021 Street division budget and Sanitation budget. Expenditures will not exceed one-hundred seventy-four thousand three hundred seventy dollars and ninety cents (\$174,370.90).

**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

Map

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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 C&M CONCRETE AND THE CITY OF LANCASTER FOR THE RECONSTRUCTION OF NINE HUNDRED SEVENTY-SEVEN (977) FEET OF ALLEY BEHIND 603 WILLOW WOOD LANE BETWEEN DALLAS AVENUE AND DEWBERRY BOULEVARD IN AN AMOUNT NOT TO EXCEED ONE HUNDRED SEVENTY-FOUR THOUSAND THREE HUNDRED SEVENTY DOLLARS AND NINETY CENTS (\$174,370.90); 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 C&M Concrete for the reconstruction of nine hundred seventy-seven (977) feet of concrete alley behind 603 Willow Wood Lane.

**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 C&M Concrete, attached hereto and incorporated herein by reference as: Exhibit "A" - roadway reconstruction contract with cost estimates.

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

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

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

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 8th day of February, 2021.

**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 C&M Concrete, (hereinafter referred to as the "Contractor") for construction of a portion of the alley behind 603 Willow Wood Lane between Dallas Avenue and Dewberry Boulevard, (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 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, privacy 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 fifty-eight thousand five hundred nineteen dollars and zero cents. (158,519.00). 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>C&amp;M Concrete</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 8th day of February, 2021.**

CITY OF LANCASTER

Company Name

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

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

ATTEST:

Address

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



**C&M Concrete**  
362 Linkview Drive  
Duncanville, TX 75137  
(972) 965-4781  
chris@concretepaving.net

Number: ENH-4679

Date: 5/6/2020

Bill To:

Jason Branch  
City Of Lancaster

Ship To:

Willow Wood  
North Dallas to dewberry

PO Number	Terms	Customer #	Project
			Ally

Description	Quantity	Rate	Amount
977' x 10' x 8"	1087.00	\$125.00	\$135,875.00
17 drive tie ins 144 sq' per drive	2448.00	\$9.25	\$22,644.00

SubTotal	\$158,519.00
0.00% on \$0.00	\$0.00
0.00% on \$0.00	\$0.00
<b>Total</b>	<b>\$158,519.00</b>

Line Items

Line 1

Name

C&M Concrete

Project

Alley behind 603 Willowwood Lane  
Between Dallas Ave. & Dewberry Blvd.

Price

\$158,519.00

\$15,851.90

10% Contingency

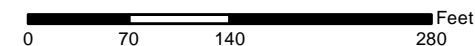
Total Project Cost

\$174,370.90





City of Lancaster  
Willow Wood Ln/Colgate Dr Alley  
from Dallas Ave to Dewberry Blvd  
Approx. 1,000 feet



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

4.

**Meeting Date:** 02/08/2021

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

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

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

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### **Agenda Caption:**

Discuss and consider a resolution ordering a General Election to be held on Saturday, May 1, 2021, for the election of a Mayor at-large; providing for the publication and posting of notice; and providing for early voting dates, times and locations.

Considere una resolución que ordena una Elección General que se celebrará el Sábado, 1 de mayo 2021, para la elección general de un alcalde; se dispone la publicación y aviso de notificación, prevea fechas de votación anticipada, horas y lugares.

### **Background:**

The municipal General Election for City officers this year is the mayoral position, an at-large position. The designated uniform Election Day is Saturday, May 1, 2021.

### **Operational Considerations:**

To conduct the election, the City of Lancaster will participate in a joint election with other governing entities in Dallas County administered by Dallas County Elections. Participating in a joint election with other cities and school districts greatly reduces election costs for all participants. The Joint Election Agreement will be provided at the next scheduled Council meeting.

Early voting will be held at the Lancaster Veterans Memorial Library. This location best serves the election process by offering sufficient space for the voters, easy entry/exit from the room (without entering the Library itself) and offers the necessary technology access for use by Dallas County Elections personnel. This location is familiar to our voters and has consistently been used in recent elections for early voting as well as for Election Day voting. During early voting, registered voters may vote at any Dallas County early voting polling location.

Election day voting for the joint election will be held on May 1, 2021, and will be conducted at various branch voting polling locations. A list of all Dallas County Voting Polling locations is available at [www.dallascountyvotes.org](http://www.dallascountyvotes.org).

### **Legal Considerations:**

The City Attorney has reviewed the resolution ordering the election. The statutory last day for City Council to order the election is February 12, 2021.

Pursuant to state and federal laws, the resolution (Election Order) is provided in English and Spanish. In addition, the caption on the City's agenda for this meeting for the election order is in English and Spanish.

The 82nd Texas Legislature revised the requirements for notice of early voting locations contained in the



election order. Election law only requires the main early voting location to be listed in the election order. The main early voting location (Dallas County Records Building) and the Lancaster early voting location (Veterans Memorial Library) are included in the election order.

**Public Information Considerations:**

All requirements for the posting and publishing of the election order will be completed as outlined in the election order. This resolution is being considered at a regular meeting of the City Council noticed in accordance with the Texas Open Meeting Act.

**Fiscal Impact:**

The City's cost will depend on the number of entities contracting with Dallas County for election services. There will be further details regarding estimated election costs in the future agenda item on the joint election agreement. If a run-off election is required, the City will incur additional costs.

**Options/Alternatives:**

1. City Council may approve the resolution as presented
2. City Council may deny the resolution requiring the City to incur full cost and responsibility of conducting a standalone election.

**Recommendation:**

Staff recommends approval of the resolution, as presented, ordering the General Election for a municipal officer Mayor at-large on Saturday, May 1, 2021.

**Attachments**

Resolution-Election Order

Resolution-Election Order Spanish

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## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ORDERING A GENERAL ELECTION TO BE HELD ON MAY 1, 2021 FOR THE ELECTION OF A MAYOR AT-LARGE FOR A THREE-YEAR TERM; PROVIDING FOR THE PUBLICATION AND POSTING OF NOTICE; PROVIDING FOR EARLY VOTING DATES, TIMES AND LOCATIONS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Charter requires that a Mayor shall be elected this year at a General Election to be held on May 1, 2021, under the TEXAS ELECTION CODE and the City's Home Rule Charter; and

**WHEREAS**, by law it becomes the ministerial duty of the City Council to call for such municipal election;

**NOW, THEREFORE, BE IT REMEMBERED THAT** on this the 8<sup>th</sup> day of February, 2021, at a duly convened meeting of the City Council of the City of Lancaster, Texas, a quorum being present, the Council issued the following order:

**IT IS HEREBY ORDERED** that a General Election be held in the City of Lancaster, Texas, on the 1<sup>st</sup> day of May, 2021, the same being the first Saturday of the month, 7:00 a.m. to 7:00 p.m., for the purpose of electing one Mayor at-large for a three (3) year term; and,

**IT IS FURTHER ORDERED** That such general election shall be held as a Joint Election administered by the Dallas County Elections Administrator in accordance with the provisions of the TEXAS ELECTION CODE and a Joint Election Agreement; and,

None but legally qualified voters of the City of Lancaster, shall be entitled to vote for a Mayor; and,

The candidate for each such office receiving a majority of all votes cast for all candidates for such office shall be elected to serve such term or until his or her successor is duly elected and qualified; and,

In the event any candidate for any one of said offices fails to receive a majority of all votes cast for all the candidates for such office, a run-off election shall be held. If a run-off election becomes necessary, the run-off election shall be held on Saturday, June 5, 2021. The Dallas County Elections Administrator will conduct the run-off election; and,

A Presiding Election Judge and an Alternate Presiding Election Judge shall be appointed in accordance with the Joint Election Agreement; and,

Notice of said election shall be published once in the official newspaper of the City not earlier than April 1, 2021 the 30<sup>th</sup> day before Election Day, and not later than April 21, 2021, the 10<sup>th</sup> day before Election Day. Such notice shall also be posted on the Bulletin Board used to publish notice of City Council Meetings not later than April 10, 2021, the last business day prior to the 21<sup>st</sup> day before Election Day; and,

A copy of the published notice that contains the name of the newspaper and the date of publication shall be retained as a record of such notice, and the person posting the notice shall make a record at the time of posting stating the date and place of posting and deliver a copy of said notice posted to the Mayor of the City of Lancaster after the posting is made; and,

### **EARLY VOTING**

Michael Scarpello, Dallas County Elections Administrator, is the appointed early voting clerk in compliance with Section 271.006 of the Texas Election Code. Other deputy early voting clerks will be appointed as needed to process early voting mail and to conduct early voting at the branch locations.

Early voting by personal appearance will be conducted at the main and branch locations beginning Monday, April 19, 2021 through Friday, April 23, 2021, between 8:00 a.m. to 5:00 p.m.; Saturday, April 24, 2021, between 8:00 a.m. to 5:00 p.m.; Sunday, April 25, 2021, between 1:00 p.m. to 6:00 p.m.; and Monday, April 26, 2021 through Tuesday, April 27, 2021, between 7:00 a.m. to 7:00 p.m.; and,

Any qualified voter of Lancaster may vote early for the Joint Election by personal appearance at either the main early voting location or at any Dallas County Branch Early Voting location;

**MAIN EARLY VOTING POLLING PLACE:** Dallas County Records Building

### **BRANCH EARLY VOTING POLLING PLACE**

Branch early voting for the joint election to be held on May 1, 2021, will be conducted at various branch early voting polling locations including the Lancaster Veterans Memorial Library at 1600 Veterans Memorial Parkway, Lancaster, Texas 75134. A list of all Dallas County Early Voting Polling locations is available at [www.dallascountyvotes.org](http://www.dallascountyvotes.org).

### **EARLY VOTING BY MAIL**

Application for a ballot by mail shall be mailed to:  
Michael Scarpello - Early Voting Clerk  
Office of the Elections Department  
1520 Round Table Drive  
Dallas, Texas 75247

Application for ballot by mail must be received no later than the close of business on April 26, 2021; and,

### **BRANCH ELECTION DAY VOTING POLLING PLACES:**

Branch voting for the joint election to be held on May 1, 2021, will be conducted at various branch voting polling locations. A list of all Dallas County Voting Polling locations is available at [www.dallascountyvotes.org](http://www.dallascountyvotes.org).

The City Secretary shall present such returns to the City Council for the canvassing of said elections; and,

The canvass of said election returns for the election of officers shall be conducted by the City Council not earlier than the 3<sup>rd</sup> day nor later than the 11<sup>th</sup> day after the election.

**DULY ORDERED** by the City Council of the City of Lancaster, Texas on this the 8<sup>th</sup> day of February, 2021.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

## RESOLUCIÓN NO.

**RESOLUCIÓN DEL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS, QUE ORDENA UNA ELECCIÓN GENERAL QUE SE CELEBRARA EL 1 DE MAYO DE 2021, PARA LA ELECCIÓN DE UN ALCALDE EN GENERAL PARA UN TÉRMINO DE TRES AÑOS; QUE CONTEMPLA LA PUBLICACIÓN Y PUBLICACIÓN DEL AVISO, LA PRESTACIÓN PARA VOTACIÓN TEMPRANA FECHAS, HORAS Y LUGARES; Y PROPORCIONAR UNA FECHA DE VIGENCIA.**

**CONSIDERANDO**, que la Carta exige que un alcalde de la ciudad será elegidos este año en una elección general que se celebrará el 1 de Mayo de 2021, en el marco del Código Electoral de Texas y

**CONSIDERANDO**, que, por ley se convierte en el deber ministerial del Consejo de la Ciudad para solicitar tales elecciones municipales

**AHORA, POR LO TANTO**, debe recordarse que en este día el 8 de febrero de 2021, en una reunión debidamente convocada del Consejo Municipal de la Ciudad de Lancaster, Texas, el quórum está presente, el Consejo emitió el siguiente orden:

**SE ORDENA** que las elecciones generales se celebrarán en la ciudad de Lancaster, Texas, el día 1 de Mayo de 2021, el mismo ser el primer sábado del mes, de 7:00 a.m. - 7:00 p.m. con el fin de elegir a un alcalde, para un período de tres (3) años y,

**SE ORDENA ADEMÁS** Que las elecciones generales se llevará a cabo como una elección conjunta administrado por el Administrador de Elecciones del Condado de Dallas, de conformidad con las disposiciones del Código Electoral de Texas y un acuerdo electoral mixto y,

Ninguno pero legalmente calificados votantes de la ciudad de Lancaster, Texas, tendrán derecho a votar por un alcalde; y

El candidato para cada oficina, que recibe la mayoría de los votos emitidos para todos los candidatos a cargos serán elegidos para servir a dicho término o hasta que su sucesor sea debidamente elegido y calificado y,

En el caso de que cualquier candidato a cualquiera de dichos oficios no recibe una mayoría de los votos emitidos a favor de todos los candidatos a dicho cargo, una vuelta de las elecciones se celebrarán. Si una segunda vuelta de las elecciones se hace necesario, la vuelta de las elecciones se celebrará el Sábado, 5 de junio 2021. El Administrador de Elecciones del Condado de Dallas llevará a cabo la segunda vuelta electoral y,

Un Juez de Elección Presidente y un Suplente Elección Juez Presidente será nombrado de conformidad con el acuerdo electoral mixto y,

Aviso de dicha elección se publicará una vez en el periódico oficial de la ciudad no antes del 1 de Abril de 2021, 30 días antes de las elecciones, ya más tardar el 21 de Abril de 2021, el día 10 antes de las elecciones. Dicho aviso también se publicará en el tablón de anuncios utilizado para publicar un anuncio de reuniones del Concejo Municipal a más tardar el 10 de Abril de 2021, el último día hábil antes del día 21 antes de las elecciones y,

Una copia del anuncio publicado que contenga el nombre del periódico y la fecha de publicación se mantiene como un registro de tal notificación, y la persona que envía el anuncio deberá hacer un registro en el momento del anuncio indicando la fecha y lugar de envío y entregar una copia de dicho aviso enviado a el Alcalde de la ciudad de Lancaster, después de que se haga la publicación y,

### **VOTACIÓN TEMPRANA**

Michael Scarpello, Dallas County Elections Administrator, es el designado secretario de votación anticipada en cumplimiento con la Sección 271.006 del Código Electoral de Texas. Otros empleados de la votación anticipada Adjunto será designado como sea necesario para el proceso electrónico de votación temprana y llevar a cabo la votación anticipada en las sucursales.

La votación anticipada en persona se llevará a cabo a partir Lunes, 19 de Abril de 2021 hasta el Viernes, 23 de Abril de 2021, entre 8:00 a.m. - 5:00 p.m.; Sábado, 24 de Abril de 2021, entre las 8:00 a.m. - 5:00 p.m., Domingo, 25 de Abril de 2021, entre las 1:00 p.m. - 6:00 p.m., y 26 de Abril de 2021 hasta el Martes, 27 de Abril de 2021, entre las 7:00 a.m. - 7:00 p.m. y,

Cualquier votante calificado de Lancaster puede votar por adelantado para la elección conjunta de comparecencia personal en cualquier lugar principal de votación anticipada o en cualquier lugar del condado de Dallas lugar de votación temprana:

### **LUGARE PRINCIPAL DE VOTACIÓN TEMPRANA ELECTORAL:**

#### **LUGARES DE VOTACIÓN TEMPRANA**

Lugares de votación temprana para la elección conjunta que se celebrará el 1 de Mayo de 2021, se llevará a cabo en varios lugares de votación temprana, incluyendo la Biblioteca Lancaster Veterans Memorial Library at 1600 Veterans Memorial Parkway, Lancaster, Texas 75134. Una lista de todos los lugares del condado de Dallas votación temprana están disponible en [www.dallascountyvotes.org](http://www.dallascountyvotes.org).

#### **VOTACIÓN TEMPRANA POR CORREO**

Solicitud para votar por correo deberán enviarse a:  
Michael Scarpello - De votación anticipada Oficina del  
Departamento de Elecciones  
1520 Round Table Drive  
Dallas, Texas 75247

Solicitud de boleta por correo deberán recibirse a más tardar al cierre de actividades el 26 de Abril de 2021 y,

**LUGARES DE VOTACIÓN:**

Los lugares de votación para los votantes el día de elecciones conjunta que se celebrará el 1 de Mayo de 2021, llevará a cabo en varios lugares de votación. Una lista de todos los lugares del condado de Dallas votación están disponible en [www.dallascountyvotes.org](http://www.dallascountyvotes.org).

El Secretario de la Ciudad deberá presentar estas declaraciones al Ayuntamiento para la captación de dicha elección y,

El escrutinio de los resultados de las elecciones dijo que para la elección de la Mesa se llevará a cabo por el Ayuntamiento no antes del día 3, ni a más tardar el día 11 después de las elecciones.

**DEBIDAMENTE ORDENADAS** por el Consejo Municipal de la Ciudad de Lancaster, Texas, en este día el 8 de Febrero de 2021.

**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