



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

Monday, April 11, 2022 - 7:00 PM



While one or more City Council Members may be present via video or audio link, a quorum of the City Council will be at the Municipal Center-City Council Chambers, as required by the Texas Open Meetings Act.

Please click the link below for forms:

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/join/register/tZMudeurD4rG9YzMcNullZuXCNmcaD81Ybp>

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: Bishop Clyde C. Hairston, Miracle Temple Fellowship Church

PLEDGE OF ALLEGIANCE: Deputy Mayor Pro-Tem Stanley Jaglowski

PROCLAMATION: National Public Safety Telecommunication Week, Municipal Clerks Week

PUBLIC TESTIMONY/CITIZENS COMMENTS:

At this time, citizens who have pre-registered before the call to order will be allowed to speak on any matter for a length of time not to exceed three minutes. No Council action or discussion may take place on a matter until such matter has been placed on an agenda and posted in accordance with law. 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 Regular Meetings held on January 24, 2022, February 14, 2022, and February 28, 2022.

2. Consider an ordinance acknowledging the Regional Transportation Council (RTC) of the North Central Texas Council of Governments (NCTCOG) by the revisions to prior resolutions supporting locally enforced motor vehicle idling restrictions adopted by RTC Resolution (R21-06); reaffirming the City of Lancaster's compliance with the previously adopted clean fleet policy which affirms that the City's existing motor vehicle idling restrictions are in compliance with the updated RTC resolution.
3. Consider a resolution approving the terms and conditions of an agreement with C&M Concrete for the repair of alleys behind 1023 Westover Drive, 502 Ash Street and 904 Trinity Drive in an amount not to exceed ninety-four thousand fifty-two dollars and seventeen cents (\$94,052.17).
4. Consider a resolution approving the terms and conditions of a lease agreement and amendment with PNC Equipment Finance, LLC for the lease of equipment from E-Z-GO® for golf cart equipment through an Interlocal Agreement with BuyBoard for an amount not to exceed four hundred forty thousand, three hundred-seventy dollars (\$440,370.00).
5. Consider an Ordinance amending Chapter 14 of the City Code of Ordinances "Offenses and Additional Provisions" by Amending Article 14.10 Abandoned or Junked Vehicles.

ADJOURNMENT

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.

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.

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

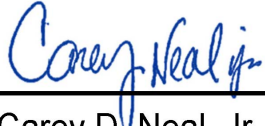
CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

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

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

Certificate

I hereby certify the above Notice of Meeting was posted at Lancaster City Hall on April 7, 2022 @ 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, reading "Carey D. Neal, Jr.", is positioned above a horizontal line.

Carey D. Neal, Jr.

Assistant City Manager

CITY OF LANCASTER CITY COUNCIL

City Council Regular Meeting

1.

Meeting Date: 04/11/2022

Policy Statement: This request supports the City Council 2021-2022 Policy Agenda

Goal(s): Financially Sound Government
Healthy, Safe & Engaged Community
Sound Infrastructure
Quality Development
Professional and Committed City Workforce

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

Consider approval of minutes from the City Council Regular Meetings held on January 24, 2022, February 14, 2022, and February 28, 2022.

Background:

Attached for your review and consideration are minutes from the City Council Regular Meetings held on January 24, 2022, February 14, 2022, and February 28, 2022.

Attachments

January 24, 2022 Draft Minutes
February 14, 2022 Draft Minutes
February 28, 2022 Draft Minutes

MINUTES

LANCASTER CITY COUNCIL REGULAR MEETING OF JANUARY 24, 2022

The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the Council Chambers of City Hall on January 24, 2022, 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
Andrew Waits, Director of Public Works
Carey Neal, Assistant City Manager
Chris Youngman, Emergency Management Chief
Dori Lee, Director of Human Resources
Jermaine Sapp, Director of Equipment and Facility Services
Kenneth Johnson, Fire Chief
Lisa Wube, Director of Parks and Recreation
Mike Delmore, Director of Finance
Sam Urbanski, Police Chief
Shane Shepard, Director of Economic Development
Vicki Coleman, Director of Development Services
Bryce Reed, Communications and Public Relations Coordinator
Cheryl Womble, Purchasing Agent
Cynthia Smith, Administrative and Communications Supervisor
John Melton, Library Manager
Keturah Barnett, Assistant to the City Manager
Kellen Benbrook, Airport Manager
Kimberli Walker, Court Administrator
Ron Gleaves, IT Manager
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 January 24, 2022.

Invocation:

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

Pledge of Allegiance:

Councilmember Marco Mejia led the pledge of allegiance.

Public Testimony/Citizen's Comments:

Jackie Alexander, 476 Sunnyside Dr., shared her concerns with her neighbor and loud music (noise ordinance).
Spencer Hervey, 1525 Aldridge Dr., shared his participation and support in the comprehensive plan, and desire for an entertainment district.

Executive Session:

- 1. Pursuant to Section 551.071(1)(A) and Section 551.071(1)(B) of the Texas Government Code, the City Council shall convene in executive session to confer with the City's attorney to discuss pending, threatened, contemplated or potential related litigation in regard to: DWC Claim/Docket #: 20156233-01-CC-FW.**

2. 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 7:10 p.m. and reconvened into open session at 7:42 p.m.

No action taken.

Consent:

- 3. Consider a resolution adopting a statement of support for the North Central Texas Council of Governments (NCTCOG) Regional Transportation Council (RTC) comprehensive, coordinated, and interagency approach to freeway incident management.**
- 4. Consider a resolution approving a professional services agreement between the City of Lancaster and Dallas College for the Lancaster Fire Department personnel to provide fire and Emergency Medical Services (EMS) instruction at Dallas County on a fee-based basis.**
- 5. Consider a resolution approving the terms and conditions of a professional services agreement with Hardin & Associates Consulting (HAC) to perform Engineering Design services in connection with various water and sewer main replacement projects; in an amount not to exceed \$109,000.00. The project includes the design of approximately 1,100 linear feet (LF) of 8" sewer main and approximately 3,127 LF of 8" polyvinyl chloride (PVC) distribution water main replacement lines.**

Deputy Mayor Pro-Tem Jaglowski pulled item C3 and C4.

MOTION: Councilmember Strain-Burk made a motion, seconded by Mayor Pro Tem Hill to approve consent item 5. The vote was cast 7 for, 0 against.

- 3. Consider a resolution adopting a statement of support for the North Central Texas Council of Governments (NCTCOG) Regional Transportation Council (RTC) comprehensive, coordinated, and interagency approach to freeway incident management.**

Deputy Mayor Pro-Tem Jaglowski asked City Manager Mauldin-Jones to provide information on item C3 and C4.

Mauldin-Jones shared this item is to approve a resolution adopting a statement of support for the North Central Texas Council of Governments (NCTCOG) Regional Transportation Council (RTC) comprehensive, coordinated, and interagency approach to freeway incident management. and, as part of its call for projects for 2021, is offering a grant for Incident Management Freeway Blocking Equipment. The City of Lancaster submitted an application for consideration. The process requires a resolution of the City Council supporting the application. The NCTCOG 2021 incident management Freeway Blocking Equipment Grant requires a twenty (20) percent match of the \$112,217 grant request in the amount of \$22,443.40.

- 4. Consider a resolution approving a professional services agreement between the City of Lancaster and Dallas College for the Lancaster Fire Department personnel to provide fire and Emergency Medical Services (EMS) instruction at Dallas County on a fee-based basis.**

Deputy Mayor Pro-Tem Jaglowski made comments on item 4 acknowledging the relationship and partnership with Dallas College.

MOTION: Deputy Mayor Pro-Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk to approve consent items C3 and C4. The vote was cast 7 for, 0 against.

Action:

- 6. Discuss and consider a resolution authorizing the City Manager to execute a development agreement with Wintergreen Estates, LLC relating to building materials and other site design elements for the development of the Wintergreen Estates property located south of the Anderson Farms Subdivision and north of West Wintergreen Road. The property is approximately 8.892 acres in size; currently addressed as 1801 West Wintergreen Road; more particularly described as a tract of land situated in the W. Fleming Survey, Abstract No. 466, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this item is a companion item to zoning case Z22-03, a zoning change request from AO to SF-2. The property is approximately 8.892 acres in size; currently addressed as 1801 West Wintergreen Road. The purpose of this development agreement is to ensure this property develops utilizing the building materials and site design elements as identified in Exhibit 2 of the attached Development Agreement. On September 1, 2019, the Texas Legislature passed House Bill 2439 which generally prohibits local governments from enforcing local codes concerning building materials on commercial and residential properties. However, developers may enter into agreements with Texas cities to specify building materials; these agreements do not violate H.B. 2439 and are enforceable.

City Attorney Ritter shared he recommends changing the face of the resolution itself and also on exhibit two. Add in a new paragraph three and change the current paragraph three to paragraph four. That would make it clear that the required landscaping and screening would not only be installed but also maintained by both the applicant and any other successors in interest or future owners of the property. If the motion is made with the amendments as presented that would require the applicant to maintain those landscaping and screening as well as installer.

MOTION: Councilmember Strain-Burk made a motion, seconded by Mayor Pro-Tem Hill to approve item 6 with City Attorney requested changes. The vote was cast 7 for, 0 against.

Public Hearing:

- 7. Z22-03 Conduct a public hearing and consider an ordinance for a change in zoning from Agricultural Open District (A-O) to Single-Family Residential District (SF-2) on 8.892 acres. The property addressed as 1801 West Wintergreen Road located south of Anderson Farms Subdivision and north of West Wintergreen Road. The property is a tract of land situated in the W. Fleming Survey, Abstract No. 466, in the City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this is a request to rezone the subject property from Agricultural Open (A-O) to Single-Family Residential District (SF-2). The current zoning only allows for single-family detached homes, farming, and ranching-related activities and accessory uses on five (5) or more acres. The subject property is currently vacant and requires a zoning change from A-O to SF-2 in order to develop 17 single-family homes on the site. Access to the properties will be from Wintergreen Road on the north, Wintergreen Road on the south, and future Chapman Drive on the east of this site. Lots 1-5 Block 2 will have access to future Chapman Drive and Lot 1 Block 1 will have access from Wintergreen Road. Lots 2-7 Block 1 and Lots 6-10 Block 2 will have access from the cul-de-sac. All homes will be front entry. The minimum dwelling size of the homes is 2,100 square feet. There will be one (1) detention pond/open space provided which meets the minimum landscaping requirements of one (1) large tree per 750 square feet of the detention pond's dry land area. The north, south and west part of this site will be screened by a City approved material and landscaping will be added at the entrance of this site and to the surrounding areas of the monument sign. On November 21, 2021, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed 48 notifications of this public hearing to property owners within 200 feet of the subject site. There were five (5) letters received in opposition and one (1) letter received in support of this request. On December 7, 2021 the Planning and Zoning Commission recommended approval of the zoning change request subject to the following conditions: 1. The detention pond/open space shall be landscaped according to City standards. 2. The entrance to this site and areas surrounding the monument sign shall be landscaped. 3. Screening shall be provided per City standards to the north, south and west of this site. 4. No building permits shall be issued along Chapman Road until such time that a public road is fully constructed and accepted by the City. 5. The Development Agreement

be executed. Staff concurs with the Planning and Zoning Commission's recommendation.

Councilmember Mejia shared his support for the item 7.

Deputy Mayor Pro-Tem Jaglowski also shared his support for the item.

Mayor Hairston opened the public hearing.

Kylon Wilson, 1400 Everman Pkwy, Fort Worth spoke in favor of item 7.

Spencer Hervey, 1525 Aldridge Dr., spoke in favor of item 7.

MOTION: Deputy Mayor Pro-Tem Jaglowski 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 Wheaton to approve item 7. The vote was cast 7 for, 0 against.

- 8. Z22-04 Conduct a public hearing and consider a Specific Use Permit (SUP) to install a 125-foot freestanding commercial antenna on the property addressed as 1027 Cedar Valley Drive located on the northwest corner of Cedar Valley Drive and Capitol Drive. The property is approximately .861 acre in size and is described as Lot 1A Block C in the Cedar Valley Industrial Park subdivision in the City of Lancaster, Dallas County Texas.**

City Manager Mauldin-Jones shared this item is to install a 125-foot freestanding commercial antenna on the property addressed as 1027 Cedar Valley Drive located on the northwest corner of Cedar Valley Drive and Capitol Drive. The property is approximately .861 acre in size. According to Ordinance 2021-06-22, an SUP is required when an antenna installation exceeds the height restrictions of the zoning district. This property is within the Light Industrial zoning district and the maximum height in this zoning district is 65 feet. The applicant is requesting an SUP to locate a 125-foot freestanding commercial antenna on the property. The purpose of the equipment is to better serve mobile carriers. On December 19, 2021, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed 3 notifications of this public hearing to property owners within 200 feet of the subject site. There were no letters received in support or opposition to this request. There was a zoning change sign placed on this property. On January 4, 2022, the Planning and Zoning Commission recommended approval of the SUP request as presented. Staff concurs with the Planning and Zoning Commission's recommendation.

Mayor Hairston opened the public hearing.

Peter Cavinal, CTG, 126 Handley Dr. Dallas, shared he represents the applicant and is available to answer any question.

MOTION: Deputy Mayor Pro-Tem Jaglowski 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 Wheaton to approve item 8. The vote was cast 7 for, 0 against.

Deputy Mayor Pro-Tem Jaglowski recued himself from item 9.

- 9. Conduct a public hearing and consider a resolution regarding the expansion of Rolling Meadows Public Improvement District (PID).**

City Manager Mauldin-Jones shared this item is regarding the expansion of Rolling Meadows Public Improvement District. Rolling Meadows is an established subdivision consisting of approximately 38.8 acres generally located on the east and west side of Rolling Hills Place and on the north side of Beltline. The purpose of this item is to expand the boundaries of the district to include phase 3 of the Rolling Meadows Subdivision.

The addition is proposed to include that property owned by Lancaster Rolling Meadows, LTD. The property consists of 21.360 acres of land. The Rolling Meadows PID assessment rate for the maintenance component is to be maintained at its annual assessment of \$0.30 per \$100 assessed value. All costs are proposed to be assumed by the improvement district with no cost apportioned to the City or County as a whole. City Council is required to hold a public hearing to receive comments regarding expansion. The public hearing was posted in the local publication of record on December 31, 2021, and notices were mailed to the property owners of record on January 14, 2022, as required by Local Government Code Chapter 372. Staff recommends conducting the public hearing and approving the resolution as to form.

Mayor Hairston opened the public hearing.

Jim Brown, applicant shared he is available to answer any questions.

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Wheaton to close the public hearing. The vote was cast 6 for, 0 against [Jaglowksi recused].

MOTION: Councilmember Mejia made a motion, seconded by Councilmember Wheaton to approve item 7. The vote was cast 6 for, 0 against [Jaglowksi recused].

10. Z22-02 Conduct a public hearing and consider a rezoning request from Retail (R) to Single-Family Residential (SF-6). The properties are addressed as 221 and 225 Rea Avenue and are located approximately 75 feet west of Randlett Street and north of Rea Avenue. These properties are approximately .16 acre in size each and are within the Interurban Heights Addition Volume 1 Page 461 City of Lancaster, Dallas County, Texas.

City Manager Mauldin-Jones shared the properties are addressed as 221 and 225 Rea Avenue and are located approximately 75 feet west of Randlett Street and north of Rea Avenue. These properties are approximately .16 acre in size. The City's 2016 Comprehensive Plan identifies this site as suitable for Reinvestment Area uses. Reinvestment areas are existing developed or vacant properties that are not performing or are dilapidated or due to market trend could have a better use and would need improvements or an anchor to improve performance. On November 21, 2021 a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed 17 notifications of this public hearing to property owners within 200 feet of the subject site. There were no letters received in support or opposition to this request. The Lancaster Development Code (LDC), Section 14.208 City Council, (d) Council Approval or Denial (3) Denial of an Item., states that "The Council may approve the request or amendment either as requested, or in the form of a more restrictive district, and subject to such appropriate conditions as are allowed by law. However, when a proposed zoning request is heard by the City Council that has been denied by the Planning and Zoning Commission, a three-fourths (3/4) majority vote by the city council shall be required for approval". The Planning and Zoning Commission recommended denial of this item, a super majority (6 of 7 members) is required for approval of this zoning change request. On December 7, 2021 the Planning and Zoning Commission recommended the request be denied without prejudice. Staff recommends denial of the zoning change request.

Mayor Hairston opened the public hearing.

Osio Ozuna, 418 Breezeway Court, Cedar Hill shared his desire to build.

MOTION: Deputy Mayor Pro-Tem Jaglowksi 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 Deputy Mayor Pro-Tem Jaglowksi to deny item 10. The vote was cast 6 for, 1 against [Wheaton against].

11. M22-01 Conduct a public hearing and consider an amendment to the Comprehensive Plan's Future Land Use Map from Suburban Mixed-Use Center to Logistics/Distribution on a portion of property located on the east side of East Longhorn Drive and 1,258 feet south of West Wintergreen Road. It is 14.926 acres of land on a portion of the west side of a property addressed as 2121 N. Houston School Road within the Maraday Parks Survey, Abstract 1120 City of Lancaster, Dallas County, Texas.

City Manager Mauldin-Jones shared the property is located on a portion of property located on the east side of East Longhorn Drive and 1,258 feet south of West Wintergreen Road. It is 14.926 acres of land along the west side of a property addressed as 2121 N. Houston School Road. This is a request to amend a portion the Future Land Use Plan of the Comprehensive Plan from Suburban Mixed-Use Center to Logistics/Distribution. The Suburban Mixed-Use Center is intended to create regional destinations, including entertainment venues, regional oriented retail and lifestyle centers. Suburban Mixed-Use Center primary land uses include regional retail, urban residential, senior housing, hotels, professional office, restaurants, multi-tenant commercial, live/work/shop units with secondary land uses such as civic and institutional uses as well as parks. Therefore, the proposed amendment to the Future Land Use Plan is not consistent with the 2016 Comprehensive Plan. On December 19, 2021, a notice for this public hearing appeared in the Focus Daily Newspaper. There were no letters in opposition or support for this amendment to the Comprehensive Plan. On January 4, 2022, the Planning and Zoning Commission recommended denial of the request to amend the Future Land Use Plan of the 2016 Comprehensive Plan and staff concurs with the Planning and Zoning Commission's recommendation.

Stewart Elliott 5950 Sherry Ln., Dallas gave a presentation on rezoning a portion of 2121 N. Houston School Rd.

City Attorney Ritter shared this item is being brought back because of notice sufficiency concerns. This is just for rezoning a portion of the tract the other part will stay agricultural open under this proposal.

Mayor Hairston opened the public hearing.

Charles Chapman, 600 N. Houston School Rd., does not wish to speak however would like his support recorded for item 11.

Jordan Ryan, 5950 Sherry Ln., spoke in favor of item 11.

Carolyn Morris, 857 Wintergreen Rd. spoke in opposition of item 11.

Spencer Hervey, 1525 Aldridge Dr., spoke in opposition of item 11.

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

Deputy Mayor Pro-Tem Jaglowski shared his support for the comprehensive plan. He shared the need to sometimes reconsider items. He shared his support for item 11.

Mayor Hairston made comments to Council about the promise made to citizens.

MOTION: Mayor Pro-Tem Hill made a motion, second by Councilmember Wheaton to deny item 11.

The roll call vote was cast 4 for, 3 against [Jaglowski, Mejia and Gooden-Davis] to deny item 11.

12. Z22-01 Conduct a public hearing and consider a rezoning request from Agriculture Open (A-O) to Light Industrial (LI) on a portion of property located on the east side of East Longhorn Drive and 1,258 feet south of West Wintergreen Road. It is 14.926 acres of land on the west side of a property addressed as 2121 N. Houston School Road within the Maraday Parks Survey, Abstract 1120 City of Lancaster, Dallas County, Texas.

City Attorney Ritter shared the applicant request to withdraw item 12.

Action:

- 13. M22-07 Discuss and consider an ordinance granting an exception request to the median spacing requirements in Article 3.120 of the General Design Manual on the property located approximately 420 feet west of Cornell Road and north of East Pleasant Run Road. The property is approximately 16.189 acres in size and is addressed as 1001 East Pleasant Run Road, City of Lancaster, Dallas County, Texas.**

City Manager Mauldin-Jones shared this item is for an exception request to the median spacing requirements in Article 3.120 of the General Design Manual on the property located approximately 420 feet west of Cornell Road and north of East Pleasant Run Road. The applicant is requesting an exception on Pleasant Run Road. The proposed median spacing between this site's drive on the west, and the proposed median opening for this site's drive on the east is approximately 552 feet center-to-center. The median spacing distance between this site's drive on the east and the median spacing to the east (serving the Walmart Distribution Center to the south) is approximately 273 feet center-to-center. The site plan proposes only auto parking spaces on the western portion of the site with a driveway that will be dedicated for employee and fire access only. There will be only truck parking spaces on the eastern portion of this site and the driveway will be dedicated for truck use.

MOTION: Councilmember Mejia made a motion, seconded by Councilmember Strain-Burk to approve item 13. The vote was cast 7 for, 0 against.

- 14. Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and White Tract, LLC for Tract 1A.**

Mayor Hairston shared applicant pulled item 14 and 15.

- 15. Discuss and consider a resolution approving a Chapter 380 Economic Development Agreement by and between the City of Lancaster, Texas and White Tract, LLC for Tract 1B.**

Item pulled by applicant.

- 16. Discuss and consider amending the Code of Ordinances, Section 6.07.008 Fence construction, materials and setback.**

City Manager Mauldin-Jones shared as prescribed in the City Council Rules and Procedures as amended August 2021, Section D. City Council Agenda Process, Subsection 1.b, Deputy Mayor Pro-Tem Stanley Jaglowski and Councilmember Marco Mejia requested during the January 10, 2022, City Council Regular Meeting, that an item be placed on the next meeting agenda to consider an amendment to Section 6.07.008 of the Code of Ordinance, chain link fence. During the September 27, 2021, Regular Meeting, City Council discussed holding a Work Session to discuss allowable fence materials. The Work Session was held on November 8, 2021. This item has been brought back at the request of Deputy Mayor Pro-Tem Stanley Jaglowski and Councilmember Marco Mejia.

Councilmember Mejia shared he is requesting for council to approve vinyl chain link fence.

Councilmember Strain-Burk shared her struggle to consider this item as Council would like high end homes and HOA's will not allow chain link fence.

Deputy Mayor Pro-Tem Jaglowski shared he is asking for commercial grade chain link fence.

Councilmember Gooden-Davis shared the need for something different since not everyone can afford cedar fence or iron rod fence.

MOTION: Councilmember Gooden-Davis made a motion, seconded by Councilmember Strain-Burk to table item 16. The vote was cast 5 for, 2 against [Mejia and Wheaton against].

17. Discuss and consider confirmation of an appointment made by the Planning Zoning Commission of one (1) alternate to the Historic Landmark Preservation Committee (HLPC).

City Manager shared this item is for confirmation of an appointment made by the Planning Zoning Commission of one alternate to the Historic Landmark Preservation Committee (HLPC). At its December 7, 2021, meeting, the Planning and Zoning Commission voted to recommend HLPC appointments to the City Council. During its December 13, 2021, meeting, the City Council approved the regular appointments and voted to return the alternate recommendation back to the P&Z to reconsider interviewing. On December 21, 2021, staff received a new application from Mrs. Lena Hatcher through Councilmember Carol Strain-Burk seeking appointment to the alternate position within the HLPC. The Planning and Zoning Commission received a memo, along with a copy of her resume, from staff at their January 4, 2022, meeting explaining why Mrs. Hatcher was added to the list of new applicants. On January 4, 2022, the Planning & Zoning Commission chose not to interview HLPC candidates and voted to reconfirm their original appointment. At the January 4, 2022, Planning and Zoning Commission meeting, the Commission resubmitted Carolyn Morris to fill the alternate position for the HLPC.

The roll call vote was cast 4 for, 3 against [Strain-Burk, Wheaton and Gooden-Davis] to approve item 17.

Mayor Hairston wished Deputy Mayor Pro-Tem Jaglowski a Happy Birthday.

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

The meeting was adjourned at 9:14 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

MINUTES

LANCASTER CITY COUNCIL REGULAR MEETING OF FEBRUARY 14, 2022
The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the
Council Chambers of City Hall on February 14, 2022, 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
Andrew Waits, Director of Public Works
Carey Neal, Assistant City Manager
Chris Youngman, Emergency Management Chief
Dori Lee, Director of Human Resources
Jermaine Sapp, Director of Equipment and Facility Services
Mike Delmore, Director of Finance
Sam Urbanski, Police Chief
Vicki Coleman, Director of Development Services
Keturah Barnett, Assistant to the City Manager
Ron Gleaves, IT Manager
Than Nguyen, City Engineer
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 February 14, 2022.

Invocation:

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

Pledge of Allegiance:

Councilmember Keithsha Wheaton led the pledge of allegiance.

Proclamations:

Mayor Hairston read the National School Week Proclamation.

Public Testimony/Citizen's Comments:

Opal Mauldin-Jones City Manager of Lancaster 211 N. Henry, shared that Texas Municipal League awarded certificate to Mayor Hairston, Deputy Mayor Pro-Tem Jaglowski, Councilmembers Strain-Burk, Councilmember Wheaton and Councilmember Gooden-Davis for achieving their Certified Texas Municipal Destination. In addition, Mayor Hairston was awarded for his excellence for serving for five consecutive years.

Consent:

1. Consider a resolution ratifying the Mayor's Declaration of Local Disaster for the City of Lancaster, Texas; providing for the implementation of the City's Emergency Management Plan and adopting state and county emergency orders regarding severe weather; providing for a disaster period; and providing an effective date.
2. Consider a resolution ordering a General Election to be held on Saturday, May 7, 2022, for the election of one councilmember for District 1, one councilmember for District 3, and one councilmember for District 5 for a three-year term; providing for the publication and posting of notice; and providing for early voting dates, times and locations.

Considerar una resolución ordenando una elección general la cual se llevará a cabo el Sábado, 7 de Mayo del 2022, para la elección de los siguientes: Miembro del consejo del Distrito 1, Miembro del consejo del Distrito 3, y Miembro del consejo del Distrito 5 para un período de tres años; se dispone la publicación de la notificación; y el ofrecimiento de fechas, horarios y locaciones para votar de manera temprana.

3. Consider a resolution approving the terms and conditions of a Joint Election Contract and Election Services Agreement with Dallas County Elections to conduct a municipal General Election for the election of one councilmember for District 1, one councilmember for District 3, and one councilmember for District 5 to be held on Saturday, May 7, 2022.

Considere una resolución aprobando los términos y condiciones del Contrato Elección Conjunta y servicios de la elección con las elecciones del condado de Dallas para llevar a cabo una elección general municipal para la elección de los distritos 1, 3 y 5 que se celebrará el Sábado, 7 de Mayo 2022.

4. Consider a resolution approving the terms and conditions of an agreement with Environmental Reconstruction Services, Inc. (ERS) for relocation of the propane fuel tank in an amount not to exceed fifty-five thousand, eight hundred, seventeen dollars (\$55,817.00).
5. Consider a resolution designating representatives of the City of Lancaster authorized to transmit and withdraw funds and take all other actions deemed necessary or appropriate for the investment of local funds in TexPool/ TexPool Prime; providing for the addition and deletion of an authorized representative.

MOTION: Councilmember Mejia made a motion, seconded by Deputy Mayor Pro-Tem Jaglowski to approve consent items 1 - 5. The vote was cast 7 for, 0 against.

Action:

6. Discuss and consider confirmation of nominations made by the Mayor for appointments to the North Central Texas Housing Finance Corporation Board (NCTHFC).

Mayor Hairston nominated Carey Neal Jr. to the North Central Texas Housing Finance Corporation Board.

MOTION: Mayor Pro-Tem Hill made a motion, seconded by Councilmember Strain-Burk to approve the Mayor's nomination. The vote was cast 7 for, 0 against.

7. Discuss and consider an ordinance approving the updated General Design Manual and Standard Construction Details.

City Manager Mauldin-Jones shared the City's General Design Manual and Standard Construction Details were approved on December 13, 1999, and amended by addendum in April, 2001. The General Design Manual and Standard Construction Details are important construction standards documents, and they describe how infrastructure improvements in the public rights-of-way, such as water, wastewater, and roadways should be designed, engineered, and constructed. Staff recommends the approval of the ordinance, as presented.

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

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

The meeting was adjourned at 7:18 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

MINUTES

LANCASTER CITY COUNCIL REGULAR MEETING OF FEBRUARY 28, 2022

The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the Council Chambers of City Hall on February 28, 2022, 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 (Arrived during Item 4)
Betty Gooden-Davis

City Staff Present (City Hall & Zoom):

Opal Mauldin-Jones, City Manager
Andrew Waits, Director of Public Works
Carey Neal, Assistant City Manager
Chris Youngman, Emergency Management Chief
Dori Lee, Director of Human Resources
Jermaine Sapp, Director of Equipment and Facility Services
Kenneth Johnson, Fire Chief
Mike Delmore, Director of Finance
Sam Urbanski, Police Chief
Vicki Coleman, Director of Development Services
Cheryl Womble, Purchasing Agent
Cynthia Smith, Administrative and Communications Supervisor
John Melton, Library Manager
Keturah Barnett, Assistant to the City Manager
Kellen Benbrook, Airport Manager
Kimberli Walker, Court Administrator
Ron Gleaves, IT Manager
Bester Munyaradzi Senior Planner
Ron Gleaves IT Manager
Crystal Cloud Utility Billing Manager
Todd McGehee Lead Animal Services Officer
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 February 28, 2022.

Invocation:

Rev. Kevin Norvell, Redeemer Missionary Baptist Church gave the invocation.

Pledge of Allegiance:

Councilmember Betty Gooden-Davis led the pledge of allegiance.

Proclamations:

Mayor Hairston read the Severe Weather proclamation.

Public Testimony/Citizen's Comments:

Dori Lee, 211 N. Henry St., shared employee recognition. In regards to the Employee Brag. Listed Paramedic student Riley and Pitman for their great work. Public Works received a Brag as well from resident Clyburn. Clyburn commended Hardmen, Lopez, and Martinez for their diligent work. Clyburn also bragged about City Manager Mauldin- Jones and recognized Council Member Gooden-Davis for the help in her district.

Consent:

- 1. Consider approval of minutes from the City Council Regular Meeting held on October 25, 2021, and November 8, 2021, and Special Meeting held on November 15, 2021.**
- 2. Consider a resolution accepting the 2021 Lancaster Police Department Racial Profiling Analysis Annual Report.**
- 3. Consider a resolution accepting the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2021.**

MOTION: Councilmember Mejia made a motion to approve the consent agenda with the memorandum provided changes to item 1, seconded by Councilmember Strain-Burk. The vote was cast 6 for, 0 against [Hill absent].

Public Hearing:

- 4. M19-07 Conduct a public hearing and consider an ordinance adopting the I-35E and Loop 9 Corridor Studies.**

City Manager Mauldin-Jones shared City Council identified the objective of conducting and completing the Loop 9 and I-35E Corridor Studies and the impact it makes on our community. On January 14, 2021, the first Virtual Open House was held to provide information about the project and input opportunities for the public.

Brennan Kane from Halff Associates gave a presentation on I-35 and Loop 9 Corridor.

Deputy Mayor Pro-Tem Jaglowski stated the catalyst area for I-35 on Pleasant Run seems to be of importance to spin other developments in that area in the presentation by Kane. Loop 9 is the future but it might be a focal point to discuss with Economic Development.

Presenter Kane stated I-35 is a primary Corridor, but there are definitely areas for improvement and new development.

Councilmember Mejia stated it is going to take a lot of effort and that more jobs will need to be created for the residents who have disposable income. Also, that the council has a lot of work to do for this to come present.

Mayor Pro-Tem Hill wanted to know how it will be executed and another layer of information is needed to help understand how to drive the actions presented. She discussed the color scheme and wanting more elaboration.

Mayor Hairston opened the public hearing.

Mike Anderson 615 Creekbin Court, Mesquite Texas, representing FCS Property, which owns approximately 200 acers on the South side of Bear Creek. Anderson commented that he agreed 90% with the presenter. Nevertheless, that the property is in the Rocket Water District. He also stated to remember some residents do not have water and to rethink how to react to this process. Anderson stated flexibility is needed in this design and program. However, the challenge is the Rocket Water District.

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

MOTION: Deputy Mayor Pro-Tem Jaglowski made a motion, seconded by Mayor Pro-Tem Hill to approve item 4. The vote was cast 6 for, 1 against [Mejia].

Action:

- 5. M22-06 Discuss and consider a height exception to the Lancaster Code of Ordinances Chapter 6,**

Fence Regulations, Sec 6.07.005 to allow the use of a six (6) foot ornamental fence on property addressed as 2820 N. I-35E. The property is described as a tract of land situated in the William Howerton Survey, Abstract No. 559, City of Lancaster, Dallas County, Texas.

City Manager Mauldin-Jones shared this is a request to make an exception for applicant located on 2829 N. Interstate 35 to put a fence on their site. Staff recommends that the applicant install a six (6) foot ornamental fence and plant shrubs and trees outside the proposed fence for screening purposes. The shrubs and trees should achieve a minimum of six (6) feet in height at maturity to fully screen the proposed ornamental fence on the property and the applicant concurs with staff's recommendation.

MOTION: Councilmember Mejia made a motion, seconded by Deputy Mayor Pro-Tem Jaglowski to approve item 5. The vote was cast 7 for, 0 against.

- 6. M22-10 Discuss and consider an ordinance granting a height exception to the Lancaster Code of Ordinances Chapter 6, Fence Regulations, Sec 6.07.005 to allow the installed six (6) foot iron ornamental and wood fence on property addressed as 4150 North Dallas Avenue. The property is described as being out of the George Floyd Survey, Abstract No. 463 and Smith Elkins Survey, Abstract No. 430, City of Lancaster and City of Dallas, Dallas County, Texas.**

City Manager Mauldin-Jones shared the applicant submitted a request to install a six (6) foot iron ornamental and wood fence to exceed the maximum fence height by two feet and exceed the maximum allowable visibility along the 4150 North Dallas Avenue frontage. The applicant installed a (6) foot ornamental and wood fence at the front perimeter of the site without a permit. The Code of Ordinances Section 6.07.005 Height Limitation in Front Yards states that "front yard fences shall be constructed within the required front yard according to the following: (1) The fence is forty-eight (48) inches or less in height, and the fence is fifty (50) percent visibility open (no solid fences)". Staff recommends approval of the exception subject to the following conditions: 1. The applicant replacing the wood portion of the installed fence along Dallas Avenue with ornamental fence 2. Planting shrubs and trees outside the installed fence along the entire front yard perimeter of the property for screening purposes; trees and shrubs that will achieve a minimum of six (6) feet in height at maturity 3. A requirement upon the property owner, and any successors-in-interest to both enhance and maintain the shrubs and trees screening the view of the installed fence from Dallas Avenue all year round.

MOTION: Councilmember Mejia made a motion, seconded by Deputy Mayor Pro-Tem Jaglowski to approve item 6. The vote was cast 7 for, 0 against.

- 7. M22-11 Discuss and consider exception requests to Section 14.402 (h)(1)(B) Auto Repair Garage, Major of the Lancaster Development Code (LDC) to allow garage doors to face the street and Section 14.402 (h)(4)(A) to allow entrances and exits of a carwash to directly face a public street. The property is located on the south side of Pleasant Run Road and 251 feet west of Westridge Avenue and is specifically addressed as 720 West Pleasant Run Road, City of Lancaster, Dallas County, Texas.**

Mayor Hairston recused himself. Mayor Pro-Tem Hill to read item 7.

City Manager Mauldin-Jones shared this is a request to consider exception requests to the Lancaster Development Code. She noted the applicant recently had the property rezoned on October 25th 2021 to allow the property owner to expand the garage repair shop. Policy prohibits garage doors from facing a public street or a residential lot. Applicant is adding six (6) bay doors facing W. Pleasant Run Road, a Major Arterial Type A thoroughfare, in addition to a carwash with entrances and exits facing directly to the same public street. Both garage doors and carwash facing public streets are prohibited by the Sections of the LDC as noted. Staff recommends denial of the exception request as presented.

The applicant, Zach, from Lancaster Shop and Auto gave a presentation regarding the expansion.

Councilmember Mejia stated he needed a guarantee that he would update the other building as per the presentation.

Councilmember Gooden-Davis stated that her concern is the traffic it will bring during the day with a school near.

Presenter Zach stated during school hours they do not have any traffic.

Councilmember Strain-Burk asked about landscaping the site and any guarantee the applicant would be updating the existing building and if Council could table it for a better understanding.

Deputy Mayor Pro-Tem Jaglowski shared comments about considering a change in building orientation.

City Attorney stated that Council could table or deny without prejudice.

Councilmember Wheaton stated the expansion of the business would bring more money to the City.

MOTION: Councilmember Mejia made a motion to deny without prejudice, second by Councilmember Gooden-Davis. The vote was cast 5 for 1 against [Hairston recused, Wheaton against].

- 8. M22-12 Discuss and consider a resolution accepting one (1) water easement (a 800 square feet or 0.018 acre) water easement from White Tract Owner, LLC, (Grantor), to the City of Lancaster (City) for the installation, construction, operation, maintenance, replacement, repair, upgrade and/or removal of a waterline and all necessary or desirable structures, facilities and appurtenances necessary to provide a secondary and separate connection to the City water system; establishing conditions, providing for the furnishing of certified copy of this resolution for recording in the property records of Dallas County, Texas as a deed.**

City Manager Mauldin-Jones shared this is a request to accept one (1) water line easement to serve Lot 3, Block 1 for Midpoint Logistics Center. The property to be served by this line consists of 37.086 acres of land located on the northwest corner of Midpoint Drive and North Dallas Avenue.

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

- 9. Consider a resolution for the City of Lancaster to participate in the proposed opioid settlements brought by the state of Texas and other jurisdictions against various pharmaceutical companies for their roles in the national opioid crisis.**

City Manager Mauldin-Jones shared the State of Texas, along with a broad coalition of states and political subdivisions from across the country has sued opioid distributors and opioid manufacturers for their role in the national opioid crisis. Staff recommends approval of the resolution, as presented.

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

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

The meeting was adjourned at 8:42 p.m.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

CITY OF LANCASTER CITY COUNCIL

City Council Regular Meeting

2.

Meeting Date: 04/11/2022

Policy Statement: This request supports the City Council 2021-2022 Policy Agenda

Goal(s): Healthy, Safe & Engaged Community

Submitted by: Opal Mauldin-Jones, City Manager
Jermaine Sapp, Director of Equipment and Facility Services

Agenda Caption:

Consider an ordinance acknowledging the Regional Transportation Council (RTC) of the North Central Texas Council of Governments (NCTCOG) by the revisions to prior resolutions supporting locally enforced motor vehicle idling restrictions adopted by RTC Resolution (R21-06); reaffirming the City of Lancaster's compliance with the previously adopted clean fleet policy which affirms that the City's existing motor vehicle idling restrictions are in compliance with the updated RTC resolution.

Background:

The City of Lancaster was an early leader in prohibiting large vehicle idling, adopting an ordinance in October 2004 that prohibited truck idling within the City limits. The City Council continues to demonstrate its commitment to improved air quality in the region and on January 12, 2009, adopted a resolution supporting locally endorsed motor vehicle idling limitations in North Central Texas as established by the Regional Transportation Council. The resolution also provided for the adoption of the Texas Commission on Environmental Quality's (TCEQ) idling limitations rule.

The Regional Transportation Council (RTC) provided a letter dated February 28, 2022, advising local governments of their approved revisions to the Locally Enforced Motor Vehicle Idling Restrictions Resolution (R21-06). The revised RTC resolution encourages amendments to the idling restrictions to provide more flexibility to address idling and air quality within the North Texas region and the City. This would allow local jurisdictions to implement an idle restriction ordinance without excluding them from competing for idle reduction infrastructure funding from the TCEQ.

Operational Considerations:

The City Council acknowledges the RTC revisions to prior resolutions supporting locally enforced motor vehicle idling restrictions adopted by RTC Resolution (R21-06) and affirm the City's compliance.

Legal Considerations:

The City Attorney has reviewed and approved this ordinance, 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:

By ensuring an idling restriction ordinance is in place, the City is better positioned to comply with the 50 percent policy adoption recommendations of idling restrictions when the time comes to apply for Transportation Development Credits through the Metropolitan Transportation Plan Policy Bundle.

Options/Alternatives:

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

Recommendation:

Staff recommends approval of the ordinance, as presented.

Attachments

Ordinance

Exhibit A

ORD 2009-04-09

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ACKNOWLEDGING THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS (NCTCOG) REGIONAL TRANSPORTATION COUNCIL (RTC) REVISIONS TO PRIOR RESOLUTIONS SUPPORTING LOCALLY ENFORCED MOTOR VEHICLE IDLING RESTRICTIONS ADOPTED BY RTC RESOLUTION (R21-06); REAFFIRMING THE CITY OF LANCASTER'S COMPLIANCE WITH PREVIOUSLY ADOPTED CLEAN FLEET POLICY; FINDING THAT THE CITY'S EXISTING MOTOR VEHICLE IDLING RESTRICTIONS ARE IN COMPLIANCE WITH THE UPDATED RTC RESOLUTION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the North Central Texas Council of Governments ("NCTCOG") has been designated as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law; and

WHEREAS, NCTCOG's Regional Transportation Council ("RTC"), comprised primarily of local elected officials, is the regional transportation policy body associated with NCTCOG and has been and continues to be a forum for cooperative decisions on transportation; and,

WHEREAS, the Dallas-Fort Worth area is a federally designated nonattainment area for the pollutant ozone and air quality impacts the public and economic health of the entire region; and

WHEREAS, approximately fifty percent of the nitrogen oxide (NOx) emissions in the Dallas-Fort Worth nonattainment area come from on-road vehicles; and

WHEREAS, the RTC is responsible for air quality conformity and the Clean Air Act Amendments of 1990 require that in air quality nonattainment areas, transportation plans and improvement programs conform to the applicable air quality and implementation plan; and

WHEREAS, the Regional Transportation Council has no regulatory authority and encourages local government adoption of the revised idling restrictions; and

WHEREAS, the Regional Transportation Council supports the adoption and implementation of a Clean Fleet Vehicle Policy by City of Lancaster which was resolved on October 13, 2005 and further revised by Resolution (R21-06) attached as (Exhibit A); and

WHEREAS, the City of Lancaster wants to set achievable goals and provide workable, cost-effective solutions to improve the Dallas-Fort Worth Metropolitan Area air, and implement those measures as soon as practicable to improve air quality; and,

WHEREAS, the City of Lancaster has previously adopted 30 T.A.C. § 114-compliant motor vehicle idling restrictions through Ordinance No. 2009-04-09 and Ordinance No. 2015-02-09, and finds that these Ordinances are still in full force and effect and that these Ordinances will aid in reducing mobile source emissions and serve as Weight-of-Evidence in the State Implementation Plan pursuant to RTC Resolution (R21-06).

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

SECTION 1. The City Council affirms and acknowledges The Regional Transportation Council's Resolution (R21-06) as passed and approved by the RTC on October 14, 2021, a copy of which is attached as Exhibit "A."

SECTION 2. The City Council finds that its existing Ordinances No. 2009-04-09 and Ordinance NO. 2015-02-09 comply with and accomplish the goals of RTC Resolution (R21-06) and aim to reduce emissions and provide for Clean Fleet practices in compliance with the Texas Clean Air Act and applicable federal law.

SECTION 3. The City Council finds that the vehicle idling restrictions currently codified in Chapter 22.10 of the Lancaster Code of Ordinances remain in full force and effect and comply with both 30 T.A.C. § 114 and RTC Resolution (R21-06).

SECTION 4. This Ordinance shall become effective immediately from and after its passage.

DULY PASSED by the City Council of the City of Lancaster, Texas on this the 11th April, 2022.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

**RESOLUTION SUPPORTING LOCALLY ENFORCED MOTOR VEHICLE IDLING
RESTRICTIONS IN NORTH CENTRAL TEXAS**

(R21-06)

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is designated as the Metropolitan Planning Organization (MPO) for the Dallas-Fort Worth Metropolitan Area by the Governor of Texas in accordance with federal law; and,

WHEREAS, the Regional Transportation Council (RTC), comprised primarily of local elected officials, is the regional transportation policy body associated with the North Central Texas Council of Governments, and has been and continues to be the regional forum for cooperative decisions on transportation; and,

WHEREAS, the Dallas-Fort Worth area is a federally designated nonattainment area for the pollutant ozone and air quality impacts the public and economic health of the entire region; and,

WHEREAS, the Regional Transportation Council is responsible for air quality conformity; and the Clean Air Act Amendments of 1990 require that in air quality nonattainment areas, transportation plans and improvement programs conform to the applicable air quality implementation plan; and,

WHEREAS, Locally Enforced Motor Vehicle Idling Restriction is a commitment that will be documented in the Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration State Implementation Plan (SIP) as Weight-of-Evidence; and,

WHEREAS, the Regional Transportation Council has no regulatory authority to enforce idling restrictions; and recognizes that local governments have such authority by implementing an idling restriction ordinance or resolution, or by entering into a Memorandum of Agreement (MOA) with the Texas Commissions on Environmental Quality (TCEQ).

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Section 1. The Regional Transportation Council endorses the implementation of a locally enforced motor vehicle idling restriction ordinance or resolution to aid in reducing mobile source emissions and as Weight-of-Evidence in the State Implementation Plan.

Section 2. The Regional Transportation Council encourages local government adoption of an idling restriction ordinance or resolution.

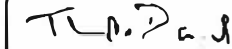
Section 3. The Regional Transportation Council commits to provide local governments assistance with development of applicable enforcement and education programs.

Section 4. The Regional Transportation Council may consider compliance with this resolution when considering future Regional Transportation Council funding action.

Section 5. This resolution will be transmitted to local governments in the ten county ozone nonattainment area.

Section 6. This resolution shall be in effect immediately upon its adoption.

DocuSigned by:

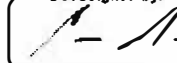


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Theresa M. Daniel, Ph.D., Chair
Regional Transportation Council
Commissioner, Dallas County

I hereby certify that this resolution was adopted by the Regional Transportation Council of the North Central Texas Council of Governments for the Dallas-Fort Worth Metropolitan Area on October 14, 2021.

DocuSigned by:



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Cary Moon, Secretary
Regional Transportation Council
Councilmember, City of Fort Worth

ORDINANCE NO. 2009-04-09

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 12 BY REPEALING ARTICLE 12.2600, TRUCK IDLING PROHIBITED, IN ITS ENTIRETY AND REPLACING THE SAME WITH NEW PROVISIONS TO PROHIBIT THE IDLING OF MOTOR VEHICLES WITH A GROSS VEHICLE RATING IN EXCESS OF 14,000 POUNDS ON PRIVATE PROPERTY OR PARKED; PROVIDING DEFINITIONS; PROVIDING DEFENSES; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster (hereinafter, "City") has previously adopted Ordinance No. 2004-10-35, which provided for the prohibition of idling of commercial vehicles, for the various defenses to such prohibition, and penalties for violations of the ordinance; and,

WHEREAS, said Ordinance was incorporated into the Code of Ordinance under Article 12.2600; and

WHEREAS, since the adoption of the Ordinance, State law has proposed less restrictive laws providing for similar regulations; and

WHEREAS, the City Council has determined that it would be in the best interest of the City to repeal Article 12.2600 of the Code in its entirety and replace the same with new provisions for truck idling as proposed by State law.

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

SECTION 1. That the Lancaster Code of Ordinances be, and the same is hereby repealing the current Article 12.2600 and replacing with a new Article 12.2600 providing new provisions regulating truck idling within the City, which shall read as follows:

"ARTICLE 12.2600 TRUCK IDLING PROHIBITED

Sec. 12.2601 Definitions.

Unless specifically defined herein, the terms used in this article have the meanings commonly ascribed to them in the field of air pollution control, unless the context provides otherwise.

City shall mean the City of Lancaster, Texas.

Idle shall mean the operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released, and there is no load on the engine.

Motor vehicle shall mean any self-propelled device powered by an internal combustion engine and designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code, § 502.002, excluding vehicles registered under § 502.006(c).

Primary propulsion engine shall mean a gasoline or diesel-fueled internal combustion engine attached to a motor vehicle that provides the power to propel the motor vehicle into motion and maintain motion.

Sec. 12.2602 Control Requirements for Motor Vehicle Idling

(a) No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five (5) consecutive minutes when the motor vehicle, as defined herein, is not in motion during the period of April 1 through October 31 of each calendar year.

(b) No driver using the vehicle's sleeper berth may idle the vehicle: (i) in a residential area as defined by the Local Government Code, § 244.001, in a school zone, within 1,000 feet of a hospital, or within 1,000 feet of a public school during operation. An offense under this subsection may be punishable by a fine not to exceed \$500. This subsection expires September 1, 2009.

Sec. 12.2603 Exemptions

It is a defense to the prosecution under Section 12.2602 of this article for any of the following:

- (a) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and does not have a sleeper berth;
- (b) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, after September 1, 2009;
- (c) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;
- (d) a motor vehicle being used by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle;
- (e) the primary propulsion engine of a motor vehicle providing power source necessary for mechanical operation other than propulsion, and/or passenger compartment heating or air conditioning;

- (f) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;
- (g) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort/safety in those vehicles intended for commercial passenger transportation or school buses, or for transit operations in which case idling up to a maximum of thirty (30) minutes is allowed;
- (h) the primary propulsion engine of a motor vehicle that is being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance;
- (i) the primary propulsion engine of a motor vehicle being used as airport ground support equipment;
- (j) the owner of a motor vehicle rented or leased to a person who operates the vehicle and is not employed by the owner; or
- (k) a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using a vehicle's sleeper berth for a government mandated rest period and is not within two (2) miles of a facility offering external heating and air conditioning connections at a time when those connections are available.

Sec. 12.2604 Penalties

An offense under this article is punishable of a fine not to exceed the sum of five hundred dollars (\$500) for each offense."

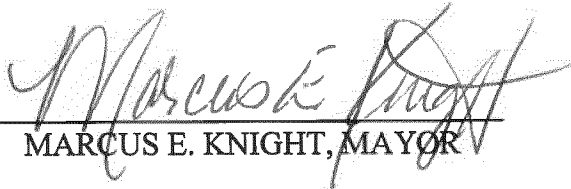
SECTION 2. That all provisions of the Code of Ordinances of the City of Lancaster, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any word, phrase, paragraph, or section of this ordinance or of the Code of Ordinances, as amended hereby, be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Code of Ordinances as a whole.

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

DULY PASSED by the City Council of the City of Lancaster, Texas, this 13th day of April 2009.

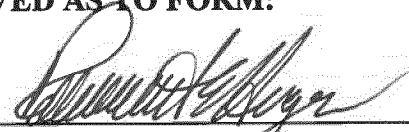
APPROVED:

By: 
MARCUS E. KNIGHT, MAYOR

ATTEST:

By: 
DOLLE K. SHANE, CITY SECRETARY

APPROVED AS TO FORM:

By: 
ROBERT E. HAGER, CITY ATTORNEY
(REH/cdb 4/14/09)

CITY OF LANCASTER CITY COUNCIL

City Council Regular Meeting

3.

Meeting Date: 04/11/2022

Policy Statement: This request supports the City Council 2021-2022 Policy Agenda

Goal(s): Sound Infrastructure

Submitted by: Andrew Waits, Director of Public Works

Agenda Caption:

Consider a resolution approving the terms and conditions of an agreement with C&M Concrete for the repair of alleys behind 1023 Westover Drive, 502 Ash Street and 904 Trinity Drive in an amount not to exceed ninety-four thousand fifty-two dollars and seventeen cents (\$94,052.17).

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. The City of Lancaster has a current contract with C & M Concrete Bid# 2018-10. 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 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 and 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:

Funding is available in the FY2021/2022 Street division budget. Expenditures will not exceed ninety-four thousand fifty-two dollars and seventeen cents (\$94,052.17).

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

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 REPAIR OF CONCRETE ALLEYS BEHIND 1023 WESTOVER DRIVE, 904 TRINITY DRIVE AND 502 ASH LANE IN AN AMOUNT NOT TO EXCEED NINETY-FOUR THOUSAND FIFTY TWO DOLLARS AND SEVENTEEN CENTS (\$94,052.17); 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, found that it is in the best interest of the City to execute an Agreement ("Agreement") with C&M Concrete for the repair of concrete alleys behind 1023 Westover Drive, 904 Trinity Drive and 502 Ash 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".

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.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of April, 2022.

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 1023 Westover Drive, 904 Trinity Drive and 502 Ash Lane, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

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

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of 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 ninety-four thousand fifty-two dollars and seventeen cents (\$94,052.17). The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

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

5.2 PAYMENT PROCEDURE

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

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

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

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

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future

checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

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

5.3 WITHHELD PAYMENT

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

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

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

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner

have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

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

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

5.6 COMPLETION AND FINAL PAYMENT

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

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages

likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

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

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

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

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

ARTICLE VI: THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

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

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

and utility locations (if known), and a legal description of the Project site.

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

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

6.2 RIGHT TO STOP WORK

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

6.3 OWNER'S RIGHT TO PERFORM WORK

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

ARTICLE VII: THE CONTRACTOR

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

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

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

Contractor, its employees and others engaged in the Work on behalf of the Contractor.

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

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

7.4 WARRANTY

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

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
<u>C&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 11th day of April, 2022.

CITY OF LANCASTER

Opal Mauldin-Jones, City Manager

ATTEST:

Sorangel O. Arenas, City Secretary

C & M Concrete Contracting

Chris Bowen, Owner

362 Linkview Drive
Duncanville, TX 75137



C&M Concrete Contracting

362 Linkview Dr
Duncanville, TX 75137

Estimate

Date	Estimate #
12/27/2021	DE-4712

Name / Address
Jason Branch City of Lancaster - Jason Branch 211 N. Henry Street Lancaster, Texas 75134

Ship To
1023 Westover

P.O. No.	Project

Description	Qty	Rate	Total
28' x 10' x 8" = 31.1 SQY	31.1	92.50	2,876.75
21' x 10' x 8" = 23.3 SQY	23.3	92.50	2,155.25
17' x 10' x 8" = 18.8 SQY	18.8	92.50	1,739.00
102' x 16' x 8" = 181.3 SQY	181.3	92.50	16,770.25
27' x 10' x 8" = 30.0 SQY	30	92.50	2,775.00
150' x 2' x 6" drives = 300 sq'	300	9.25	2,775.00
Total			\$29,091.25

Phone #
9729654781

E-mail
chris@concretepaving.net



C&M Concrete Contracting

362 Linkview Dr
Duncanville, TX 75137

Estimate

Date	Estimate #
12/27/2021	DE-4710

Name / Address
Jason Branch City of Lancaster - Jason Branch 211 N. Henry Street Lancaster, Texas 75134

Ship To
904 Trinity

P.O. No.	Project

Description	Qty	Rate	Total
32' x 10' x 8" = 35.55 SQY	35.55	92.50	3,288.38
(2) 15' Radius 19.6 SQY x 2 =	39.2	92.50	3,626.00
154' x 10' x 8" = 171.11 SQY	171.11	92.50	15,827.68
40' x 10' x 8" = 44.44 SQY	44.44	92.50	4,110.70
15' x 4' x 4" sidewalk = 60 sq'	60	9.25	555.00
		Total	\$27,407.76

Phone #
9729654781

E-mail
chris@concretepaving.net



C&M Concrete Contracting

362 Linkview Dr
Duncanville, TX 75137

Estimate

Date	Estimate #
12/27/2021	DE-4711

Name / Address
Jason Branch City of Lancaster - Jason Branch 211 N. Henry Street Lancaster, Texas 75134

Ship To
502 Ash

P.O. No.	Project

Description	Qty	Rate	Total
149' x 10' x 8" = 165.55 SQY	165.55	92.50	15,313.38
95' x 10' x 8" = 105.55 SQY	105.55	92.50	9,763.38
(4) 15' Radius = 58.88 SQY	58.88	92.50	5,446.40
200' x 3' x 6" drive's = 600 sq'	600	9.25	5,550.00
40' x 4' x 4" sidewalk = 160 sq'	160	9.25	1,480.00
Total			\$37,553.16

Phone #
9729654781

E-mail
chris@concretepaving.net

CITY OF LANCASTER CITY COUNCIL

City Council Regular Meeting

4.

Meeting Date: 04/11/2022

Policy Statement: This request supports the City Council 2021-2022 Policy Agenda

Goal(s): Financially Sound Government
Sound Infrastructure

Submitted by: Carey Neal, Assistant City Manager

Agenda Caption:

Consider a resolution approving the terms and conditions of a lease agreement and amendment with PNC Equipment Finance, LLC for the lease of equipment from E-Z-GO® for golf cart equipment through an Interlocal Agreement with BuyBoard for an amount not to exceed four hundred forty thousand, three hundred-seventy dollars (\$440,370.00).

Background:

The Countryview Golf Course is an 18-hole, full service golf course including a range, pro shop, bar and grill, golf carts and golf course maintenance. As a result of the Touchstone Golf, LLC management agreement, staff has secured national accounts to re-stock the golf store, get necessary equipment to maintain the greens at a lower price, receive limited maintenance on the existing carts, and continue to work through an extensive transition list.

When Touchstone Golf, LLC began overseeing the management contract, they were able to negotiate a replacement of gas carts that used electric carts to defray costs that were increasing related to maintenance of the gas carts. The proposed lease agreement and amendment will cover all new electric golf carts, beverage carts, and maintenance vehicles (gators).

The current vendor is E-Z-GO® and they have provided a lease agreement to allow a new fleet of electric carts which they will maintain as part of the lease agreement. This will control the maintenance costs associated with the on-going provision of carts. E-Z-GO® partners with PNC Equipment Finance, LLC to provide the lease to their component partners. The lease agreement and amendment covers the entire term of the agreement (5 years), totaling four hundred forty thousand, three hundred-seventy dollars (\$440,370.00). The annual amount of the lease is eighty-eight thousand, seventy-four dollars (\$88,074.00), which would require approval by the City Council to authorize the City Manager to execute the agreement. The lease payments will be included in the FY 2022-2023 budget. The lease agreement will be billed monthly.

Operational Considerations:

The golf cart package will further provide golf cart services to golf customers at the Countryview Golf Course. Additionally, this fleet will also be available for city-sponsored special events.

Legal Considerations:

Texas law authorizes cooperative agreements to help save time on developing specifications and duplication during the bid process. The use of cooperative agreements is in accordance with Section 791.001 of the Texas Government Code and Section 271.101 of the Texas Local Government Code. The City maintains an executed interlocal agreement with BuyBoard, a cooperative agency. The City Attorney has reviewed and approved the lease agreement, amendment 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:

The lease is funded through the annual operating budget and will not exceed four hundred forty thousand, three hundred-seventy dollars (\$440,370.00) over the five (5) year life of the agreement. The agreement will be invoiced in monthly installments of seven thousand, three hundred thirty-nine dollars and fifty cents (\$7,339.50) and not to exceed eighty-eight thousand, seventy-four dollars (\$88,074) annually.

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

RESOLUTION NO.

A RESOLUTION APPROVING THE TERMS AND CONDITIONS OF A LEASE AGREEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME WITH PNC EQUIPMENT; FINANCE FOR GOLF CART EQUIPMENT FROM EZ GO GOLF CARTS THROUGH AN INTERLOCAL AGREEMENT WITH BUYBOARD IN AN AMOUNT NOT TO EXCEED NOT TO EXCEED FOUR HUNDRED FORTY THOUSAND, THREE HUNDRED-SEVENTY DOLLARS (\$440,370.00). REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to lease new golf cart equipment and utilize the BuyBoard interlocal contract with EZ Go Golf Carts.

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

SECTION 1. The City Council approves the lease agreement and amendment of new golf cart equipment from EZ Go Golf Carts through an interlocal agreement with Buyboard in an amount not to exceed four hundred forty thousand, three hundred-seventy dollars (\$440,370.00), a copy of which is attached hereto and incorporated herein as Exhibit "A".

SECTION 2. The City Manager is authorized to execute the lease agreement, and amendment.

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

SECTION 6. This Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 11, April 2022.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

Lease Agreement

Dated as of December 28, 2021

Lease Number: 98981539-3

Lessor: PNC Equipment Finance, LLC
655 Business Center Drive
Horsham, Pennsylvania 19044

Lessee:	LESSEE FULL LEGAL NAME	FEDERAL TAX ID
	City of Lancaster TX	756000580
	PO Box 940	
	Lancaster, TX 75146	

Equipment Description:

Quantity	Description	Serial No.
70	(70) 2023 E-Z-GO RXV Elite	

Lease Term is for **60** months, with Rent payments due monthly plus applicable tax; each in the amount of **\$7,339.50** beginning

Lessee shall pay Rent payments exclusively from legally available funds in U.S. currency to Lessor in the amounts and on the dates set forth herein, without notice or demand.

TERMS AND CONDITIONS

- LEASE.** Subject to the terms of this Lease, Lessee agrees to lease from Lessor the equipment (the "Equipment") described above when Lessor accepts this Lease. Lessee agrees to be bound by all the terms of this Lease.
- DELIVERY AND ACCEPTANCE OF EQUIPMENT.** Acceptance of the Equipment occurs upon delivery. When Lessee receives the Equipment, Lessee agrees to inspect it and to verify by telephone or in writing such information as Lessor may require. Delivery and installation costs are Lessee's responsibility. If Lessee signed a purchase contract for the Equipment, by signing this Lease Lessee assigns its rights, but none of its obligations under the purchase contract, to Lessor.
- RENT.** Lessee agrees to pay Lessor Rent (plus applicable taxes) in the amount and frequency stated above. If Lessee's Rent payments are due in Advance, Lessee's first Rent payment is due on the date Lessee accepts the Equipment under the Lease. Lessor will advise Lessee as to (a) the due date of each Rent payment, and (b) the address to which Lessee must send payments. Rent is due whether or not Lessee receives an invoice from Lessor. Lessee will pay Lessor any required advance rent when Lessee signs this Lease. Lessee authorizes Lessor to change the Rent by not more than 15% due to changes in the Equipment configuration, which may occur prior to Lessor's acceptance of this Lease. Restrictive endorsements on checks Lessee sends to Lessor will not reduce Lessee's obligations to Lessor.
NON-APPROPRIATION OF FUNDS. Lessee intends to remit all Rent and other payments to Lessor for the full Lease Term if funds are legally available. In the event Lessee is not granted an appropriation of funds at any time during the Lease Term for the Equipment subject to this Lease and operating funds are not otherwise available to Lessee to pay the Rent and other payments due and to become due under this Lease, and there is no other legal procedure or available funds by or with which payment can be made to Lessor, and the non-appropriation did not result from an act or omission by Lessee, Lessee shall have the right to return the Equipment as provided herein and terminate this Lease on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee, except as the portion of Rent for which funds shall have been appropriated and budgeted. At least 30 days prior to the end of Lessee's fiscal year, Lessee's chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the upcoming fiscal period, (b) such non-appropriation did not result from any act or failure to act by Lessee, and (c) Lessee has exhausted all funds legally available for the payment of Rent.
- UNCONDITIONAL OBLIGATION.** LESSEE AGREES THAT IT IS UNCONDITIONALLY OBLIGATED TO PAY ALL RENT AND ANY OTHER AMOUNTS DUE UNDER THIS LEASE IN ALL FISCAL YEARS IN WHICH FUNDS HAVE BEEN APPROPRIATED NO MATTER WHAT HAPPENS, EVEN IF THE EQUIPMENT IS DAMAGED OR DESTROYED, IF IT IS DEFECTIVE OR IF LESSEE HAS TEMPORARY OR PERMANENT LOSS OF ITS USE. LESSEE IS NOT ENTITLED TO ANY REDUCTION OR SET-OFF AGAINST RENT OR OTHER AMOUNTS DUE UNDER THIS LEASE FOR ANY REASON WHATSOEVER.
- DISCLAIMER OF WARRANTIES.** THE EQUIPMENT IS BEING LEASED TO LESSEE IN "AS IS" CONDITION. LESSEE AGREES THAT LESSOR HAS NOT MANUFACTURED THE EQUIPMENT AND THAT LESSEE HAS SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSEE HAS NOT RELIED ON ANY STATEMENTS LESSOR OR ITS EMPLOYEES HAVE MADE. LESSOR HAS NOT MADE AND DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE EQUIPMENT'S MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP, OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW. Lessee is aware of the name of the Equipment manufacturer. If the manufacturer has provided Lessor with a warranty, Lessor assigns its rights to such warranty to Lessee and Lessee may enforce all warranty rights directly against the manufacturer of the Equipment. Lessee agrees to settle any dispute regarding performance of the Equipment directly with the manufacturer of the Equipment.
- TITLE AND SECURITY INTEREST.** Unless otherwise required by the laws of the state where Lessee is located, Lessor shall have title to the Equipment during the Lease Term.

- 7. USE, MAINTENANCE AND REPAIR.** Lessee will not move the Equipment from the Equipment Location without Lessor's advance written consent. Lessee will give Lessor reasonable access to the Equipment Location so that Lessor can check the Equipment's existence, condition and proper maintenance. Lessee will use the Equipment in the manner for which it was intended, as required by all applicable manuals and instructions, and keep it eligible for any manufacturer's certification and/or standard full service maintenance contract. At Lessee's own cost and expense, Lessee will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Lessee will not make any permanent alterations to the Equipment and will remove any alterations or markings from the Equipment before returning to Lessor.
- 8. TAXES.** Unless a proper exemption certificate is provided, applicable sales and use taxes will be added to the Rent. Lessee agrees to pay Lessor, when invoiced, all taxes (including any sales, use and personal property taxes), fines, interest and penalties relating to this Lease and the Equipment (excluding taxes based on Lessor's net income). Lessee agrees to file any required personal property tax returns and, if Lessor asks, Lessee will provide Lessor with proof of payment. Lessor does not have to contest any tax assessments.
- 9. INDEMNITY.** Lessor is not responsible for any injuries, damages, penalties, claims or losses, including legal expenses, incurred by Lessee or any other person caused by the transportation, installation, manufacture, selection, purchase, lease, ownership, possession, modification, maintenance, condition, operation, use, return or disposition of the Equipment. To the extent permitted by law, Lessee agrees to reimburse Lessor for and defend Lessor against any claims for such losses, damages, penalties, claims, injuries, or expenses. This indemnity continues even after this Lease has expired, for acts or omissions that occurred during the Lease Term.
- 10. IDENTIFICATION.** Lessee authorizes Lessor to insert or correct missing information on this Lease, including serial numbers and any other information describing the Equipment.
- 11. LOSS OR DAMAGE.** Lessee is responsible for any loss of the Equipment from any cause at all, whether or not insured, from the time the Equipment is shipped to Lessee until it is returned to Lessor. If any item of Equipment is lost, stolen or damaged, Lessee will promptly notify Lessor of such event. Then, at Lessor's option, Lessee will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay Lessor an amount equal to the Net Book Value (as defined herein) of the lost, stolen or damaged Equipment. If Lessee has satisfied their obligations herein, Lessor will forward to Lessee any insurance proceeds which Lessor receives for lost, damaged, or destroyed Equipment. If Lessee is in default, Lessor will apply any insurance proceeds Lessor receives to reduce Lessee's obligations pursuant to this Lease.
- 12. INSURANCE.** Lessee agrees to (a) keep the Equipment fully insured against loss, naming Lessor as loss payee, and (b) obtain a general public liability insurance policy covering both personal injury and property damage in amounts not less than Lessor may tell Lessee, naming Lessor as additional insured, until Lessee has met all their obligations under this Lease. Lessor is under no duty to tell Lessee if Lessee's insurance coverage is adequate. The policies shall state that Lessor is to be notified of any proposed cancellation at least 30 days prior to the date set for cancellation. Upon Lessor's request, Lessee agrees to provide Lessor with evidence of insurance acceptable to Lessor. If Lessee does not provide Lessor with evidence of proper insurance within ten days of Lessor's request or Lessor receives notice of policy cancellation, Lessor may (but Lessor is not obligated to) obtain insurance on Lessor's interest in the Equipment at Lessee's expense. Lessee will pay all insurance premiums and related charges.
- 13. DEFAULT.** Lessee will be in default under this Lease if any of the following happens: (a) Lessor does not receive any Rent or other payment due under this Lease within ten days after its due date, (b) Lessee fails to perform or observe any other promise or obligation in this Lease and does not correct the default within ten days after Lessor sends Lessee written notice of default, (c) any representation, warranty or statement Lessee has made in this Lease shall prove to have been false or misleading in any material respect, (d) any insurance carrier cancels or threatens to cancel any insurance on the Equipment, (e) the Equipment or any part of it is abused, illegally used, misused, lost, destroyed, or damaged beyond repair, (f) a petition is filed by or against Lessee under any bankruptcy or insolvency laws, or (g) Lessee defaults on any other agreement between it and Lessor (or Lessor's affiliates).
- 14. REMEDIES.** Upon the occurrence of a default, Lessor may, in its sole discretion, do any or all of the following: (a) provide written notice to Lessee of default, (b) as liquidated damages for loss of a bargain and not as a penalty, declare due and payable, the present value of (i) any and all amounts which may be then due and payable by Lessee to Lessor under this Lease, plus (ii) all Rent payments remaining through the end of the then current fiscal year, discounted at the higher of 3% or the lowest rate allowed by law plus the Fair Market Value (as defined herein) of the Equipment (collectively, the "Net Book Value") and (c) require Lessee to immediately return the Equipment to Lessor. Lessor has the right to require Lessee to make the Equipment available to Lessor for repossession during reasonable business hours or Lessor may repossess the Equipment, so long as Lessor does not breach the peace in doing so, or Lessor may use legal process in compliance with applicable law pursuant to court order to have the Equipment repossessed. Lessee will not make any claims against Lessor or the Equipment for trespass, damage or any other reason. If Lessor takes possession of the Equipment Lessor may (a) sell or lease the Equipment at public or private sale or lease without notice, and/or (b) exercise such other rights as may be allowed by applicable law. Although Lessee agrees that Lessor has no obligation to sell the Equipment, if Lessor does sell the Equipment, Lessor will reduce the Net Book Value by the amounts Lessor receives. Lessee will immediately pay Lessor the remaining Net Book Value. Lessee agrees (a) to pay all of the costs Lessor incurs to enforce Lessor's rights against Lessee, including attorney's fees, and (b) that Lessor will retain all of Lessor's rights against Lessee even if Lessor does not choose to enforce them at the time of Lessee's default.
- 15. LESSEE'S OPTION AT END OF LEASE.** Notwithstanding anything contained in the Lease to the contrary, so long as no default shall have occurred and be continuing, Lessee may, at Lessee's option, purchase the Equipment leased pursuant to this Lease on an "as is, where is" basis, without representation or warranty, express or implied, at the end of the Lease Term at a price equal to the Fair Market Value thereof, plus applicable taxes. Fair Market Value shall be the retail in-place value of the Equipment as determined solely by Lessor. This purchase option as applicable shall only be available if Lessee gives Lessor 90 days' prior written notice of Lessee's irrevocable intent to exercise such option and Lessor and Lessee shall have agreed to all terms and conditions of such purchase prior to the expiration date of the Lease Term. Until the Equipment is returned as required below, all terms of the Lease shall remain in full force and effect including the obligation to pay Rent calculated on a monthly basis.
- 16. RETURN OF EQUIPMENT.** If (a) default occurs, (b) a non-appropriation of funds occurs as provided herein, or (c) Lessee does not exercise its purchase option at the end of the Lease Term, Lessee will immediately return the Equipment to any location(s) in the continental United States and aboard any carriers(s) Lessor may designate. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with this Lease, and in "Average Saleable Condition." "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party buyer, user or lessee, other than Lessee named in this Lease, without the need for any repair or refurbishment. Lessee will pay Lessor for any missing or defective parts or accessories. Lessee will continue to pay Rent calculated on a monthly basis until the Equipment is received and accepted by Lessor.

- 17. LESSEE'S REPRESENTATIONS AND WARRANTIES.** Lessee hereby represents and warrants to Lessor that as of the date of this Lease, and throughout the Lease Term: (a) Lessee is the entity indicated in this Lease; (b) Lessee is a state or a fully constituted political subdivision or agency of the State in which Lessee is located; (c) Lessee is duly organized and existing under the constitution and laws of the state in which they are located; (d) Lessee is authorized to enter into and carry out Lessee's obligations under this Lease, any documents relative to the acquisition of the Equipment and any other documents required to be delivered in connection with this Lease (collectively, the "Documents"); (e) the Documents have been duly authorized, executed and delivered by Lessee in accordance with all applicable laws, rules, ordinances, and regulations, the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signature, each of which are genuine; (f) the Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority; (g) Lessee intends to use the Equipment for the entire Lease Term for such function and shall take all necessary action to include in Lessee's annual budget any funds required to fulfill Lessee's obligations for each fiscal year during the Lease Term; (h) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations required in connection with this Lease and the acquisition of the Equipment; (i) Lessee's obligations to remit Rent under this Lease constitutes a current expense and not a debt under applicable state law and no provision of this Lease constitutes a pledge of Lessee's tax or general revenues, and any provision which is so constructed by a court of competent jurisdiction is void from the inception of this lease; and (j) all financial information Lessee has provided to Lessor is true and accurate and provides a good representation of Lessee's financial condition.
- 18. LESSEE'S PROMISES.** In addition to the other provisions of this Lease, Lessee agrees that during the term of this Lease (a) Lessee will promptly notify Lessor in writing if it moves its principal office or changes its name or legal structure, (b) Lessee will provide to Lessor such financial information as may reasonably request from time to time, and (c) Lessee will take any action Lessor reasonably requests to protect Lessor's rights in the Equipment and to meet Lessee's obligations under this Lease.
- 19. ASSIGNMENT. LESSEE WILL NOT SELL, TRANSFER, ASSIGN, PLEDGE, SUB-LEASE OR PART WITH POSSESSION OF THE EQUIPMENT OR FILE OR PERMIT A LIEN TO BE FILED AGAINST THE EQUIPMENT.** Lessee will not attach any of the Equipment to any real estate.
- 20. ASSIGNMENT BY LESSOR.** This Lease, and the rights of Lessor hereunder and in and to the Equipment, may be assigned and reassigned in whole or in part to one or more assignees by Lessor or its assigns at any time without the necessity of obtaining the consent of Lessee. Upon an assignment, Lessee agrees to make all payments as designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Lease or otherwise) that Lessee may from time to time have against Lessor or Lessor's assigns.
- 21. COLLECTION EXPENSES, OVERDUE PAYMENT.** Lessee agrees that Lessor can, but does not have to, take on Lessee's behalf any action which Lessee fails to take as required by this Lease, and Lessor's expenses will be in addition to that of the Rent which Lessee owes Lessor. If Lessor receives any payment from Lessee after the due date, Lessee shall pay Lessor on demand as a late charge 5% of such overdue amount, limited, however, to the maximum amount allowed by law.
- 22. MISCELLANEOUS.** This Lease contains the entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. **TIME IS OF THE ESSENCE IN THIS LEASE.** If a court finds any provision of Lease to be unenforceable, the remaining terms of this Lease shall remain in effect. **THIS LEASE IS A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.** Lessee authorizes Lessor (or Lessor's agent) to (a) obtain credit reports, (b) make such other credit inquiries as Lessor may deem necessary, and (c) furnish payment history information to credit reporting agencies. To the extent permitted by law, Lessor may charge Lessee a fee of \$250.00 to cover Lessor's documentation and investigation costs.
- 23. NOTICES.** All of Lessee's written notices to Lessor must be sent by certified mail or recognized overnight delivery service, postage prepaid, to Lessor at Lessor's address stated in this Lease, or by facsimile transmission to Lessor's facsimile telephone number, with oral confirmation of receipt. All of Lessor's notices to Lessee may be sent first class mail, postage prepaid, to Lessee's address stated in this Lease. At any time after this Lease is signed, Lessee or Lessor may change an address or facsimile telephone number by giving notice to the other of the change.
- 24. ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE COMPLIANCE.** Lessee represents, warrants and covenants to Lessor, as of the date of this Lease, the date of each advance of proceeds under the Lease, the date of any renewal, extension or modification of this Lease, and at all times until this Lease has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of this Lease will not be used to fund any unlawful activity; (c) the funds used to repay the Lease are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws; and (e) no Equipment is or will become Embargoed Property. Lessee covenants and agrees that (a) it shall immediately notify Lessor in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Equipment becomes Embargoed Property, in addition to all other rights and remedies available to Lessor, upon request by Lessor, Lessee shall provide substitute Equipment acceptable to Lessor that is not Embargoed Property.

As used herein: "**Anti-Terrorism Laws**" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; "**Compliance Authority**" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; "**Covered Entity**" means Lessee, its affiliates and subsidiaries, all other obligors, all owners of the foregoing, and all brokers or other agents of Lessee acting in any capacity in connection with this Lease; "**Embargoed Property**" means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by Lessor of any applicable Anti-Terrorism Law if Lessor were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; "**Reportable Compliance Event**" means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that

has caused or may cause Lessor to be in violation of any Anti-Terrorism Laws, including a Covered Entity's use of any proceeds of the Lease to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Equipment becomes Embargoed Property; "**Sanctioned Jurisdiction**" means a country subject to a sanctions program maintained by any Compliance Authority; and "**Sanctioned Person**" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

- 25. USA PATRIOT ACT NOTICE.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each lessee that opens an account. What this means: when the Lessee opens an account, Lessor will ask for the business name, business address, taxpayer identifying number and other information that will allow the Lessor to identify Lessee, such as organizational documents. For some businesses and organizations, Lessor may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.
- 26. WAIVERS. LESSOR AND LESSEE EACH AGREE TO WAIVE, AND TO TAKE ALL REQUIRED STEPS TO WAIVE, ALL RIGHTS TO A JURY TRIAL.** To the extent Lessee is permitted by applicable law, Lessee waives all rights and remedies conferred upon a lessee by Article 2A (Sections 508-522) of the Uniform Commercial Code. To the extent Lessee is permitted by applicable law, Lessee waives any rights they now or later may have under any statute or otherwise which requires Lessor to sell or otherwise use any Equipment to reduce Lessor's damages, which requires Lessor to provide Lessee with notice of default, intent to accelerate amounts becoming due or acceleration of amounts becoming due, intent to sale the Equipment at a public or private sale, or which may otherwise limit or modify any of Lessor's rights or remedies. Lessor will not be liable for specific performance of this Lease or for any losses, damages, delay or failure to deliver Equipment.
- 27. IMPORTANT INFORMATION ABOUT PHONE CALLS.** By providing telephone number(s) to Lessor, now or at any later time, Lessee authorizes Lessor and its affiliates and designees to contact Lessee regarding Lessee account(s) with Lessor or its affiliates, whether such accounts are Lessee individual accounts or business accounts for which Lessee is a contact, at such numbers using any means, including but not limited to placing calls using an automated dialing system to cell, VoIP or other wireless phone number, or leaving prerecorded messages or sending text messages, even if charges may be incurred for the calls or text messages. Lessee consents that any phone call with Lessor may be monitored or recorded by Lessor.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS LEASE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR ORAL PROMISES WHICH ARE NOT CONTAINED IN THIS WRITTEN AGREEMENT MAY NOT BE LEGALLY ENFORCED. THE TERMS OF THIS LEASE MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT BETWEEN LESSEE AND LESSOR. LESSEE AGREES TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS LEASE. LESSEE AGREES THAT THE EQUIPMENT WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

LESSEE CERTIFIES THAT ALL THE INFORMATION GIVEN IN THIS LEASE AND LESSEE'S APPLICATION WAS CORRECT AND COMPLETE WHEN THIS LEASE WAS SIGNED. THIS LEASE IS NOT BINDING UPON LESSOR OR EFFECTIVE UNLESS AND UNTIL LESSOR EXECUTES THIS LEASE. THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF THE LESSEE.

City of Lancaster TX

("Lessee")

X

Authorized Signature

Opal Mauldin-Jones

Print Name

City Manager

Title:

April 11, 2022

Date

PO Box 940

Lancaster, TX 75146

PNC Equipment Finance, LLC

("Lessor")

X

Authorized Signature

Print Name

Title:

655 Business Center Drive

Horsham, PA 19044

OPINION OF COUNSEL

I have acted as counsel to : **City of Lancaster TX** ("Lessee") with respect to this Lease Agreement by and between the Lessee and Lessor (the "Lease"), and in this capacity have reviewed the original or duplicate originals of the Lease and such other documents as I have deemed relevant. Based upon the foregoing, I am of the opinion that: (A) the execution, delivery and performance of the Lease by Lessee has been duly authorized by all necessary action on the part of Lessee; (B) the Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as limited by laws of general application affecting the enforcement of creditors' rights, and does not constitute a debt of Lessee which is prohibited by state law; (C) the authorization, approval and execution of the Lease and all other proceedings of Lessee related to the transactions contemplated thereby have been performed in accordance with all open-meeting laws, public bidding laws, and all other applicable state laws. The undersigned certifies that (s)he is an attorney duly authorized to practice law in the State of Texas.

The foregoing opinions are limited to the laws of such State and federal laws of the United States.

Attorney of Lessee

By: _____

Print Name: David T. Ritter

Law firm: Brown & Hofmeister, L.L.P.

December 28, 2021

City of Lancaster TX**Course Name: Countryview Golf Course**

PO Box 940

Lancaster, TX 75146

Attn:

RE: Insurance Coverage Requirements for Equipment Financing Transaction between
PNC Equipment Finance, LLC and City of Lancaster TX

Before funding your transaction, PNC Equipment Finance, LLC requires evidence of appropriate insurance coverage on the equipment described in your transaction documents. Please forward this request to your insurance company, agent or broker as soon as possible and ask for the evidence of insurance to be sent to the address below.

PNC Equipment Finance, LLC will have an insurable interest in the following equipment:

Quantity	Description	Serial No.
70	(70) 2023 E-Z-GO RXV Elite	

As a condition to entering into the equipment financing transaction, PNC Equipment Finance, LLC requires the following at all times during the term of the transaction:

1. All of the equipment must be insured for its full insurable value on a 100% replacement cost basis.
2. PNC Equipment Finance, LLC must be named as lender loss payee under a property insurance policy insuring all risks to the equipment, including fire, theft, and other customary coverage under an "extended coverage" endorsement.
3. For leases only, PNC Equipment Finance, LLC must receive evidence that a comprehensive general liability insurance policy is in place with a minimum coverage of \$1,000,000. PNC Equipment Finance, LLC must be named as an additional insured under the liability policy.
4. Each property insurance policy must contain a lender's loss payable clause, or special endorsement, in which the insurer agrees that any loss will be payable in accordance with the policy terms, notwithstanding any act or negligence of the insured.
5. Each policy must provide for 30 days' written notice to PNCEF prior to any cancellation, non-renewal or amendment of the policy.
6. If vehicles, please include comprehensive and collision deductible on certificate.

The evidence of insurance can consist of a Certificate of Insurance form, Evidence of Insurance form, Memorandum of Insurance, binder for insurance, declarations page, or the actual policy and endorsements, in each case naming PNC Equipment Finance, LLC as follows:

PNC Equipment Finance, LLC, and its successors and assigns, as lender loss payee

Attn: Insurance Department

655 Business Center Drive, Suite 250

Horsham, PA 19044

When completed, the evidence of insurance should be emailed to: SMEDocs@leaserv.com

CERTIFICATE OF ACCEPTANCE

Lease Number 98981539-3

Quantity	Description	Serial No.
70	(70) 2023 E-Z-GO RXV Elite	

☒ Countryview Golf Course
240 W. Beltline Road
Lancaster, TX 75146

Lessee, through its authorized representative, hereby certifies to Lessor that:

1. The Equipment has been delivered to the location where it will be used, which is the Equipment Location given in the Lease Agreement ("Lease");
2. All of the Equipment has been inspected and is (a) complete, (b) properly installed, (c) functioning, and (d) in good working order;
3. Lessee accepts the Equipment for all purposes under the Lease as of October 1st, 2022 (the "Acceptance Date"), which is the date on which the Equipment was delivered and installed;
4. The Equipment is of a size, design, capacity and manufacture acceptable to Lessee and suitable for Lessee's purposes; and
5. Lessee is not in default under the Lease, no Non-Appropriation of Funds (as described in the Lease) has occurred, and all of Lessee's statements and promises set forth in the Lease are true and correct.

Lessor is hereby authorized to insert serial numbers on the Lease.

THIS CERTIFICATE OF ACCEPTANCE IS SIGNED THIS 11 DAY OF April, 2022

City of Lancaster TX
("Lessee")

X

Authorized Signature

Opal Mauldin-Jones

Print Name

City Manager

Title

April 11, 2022

Date

PO Box 940
Lancaster, TX 75146

RESOLUTION AND CERTIFICATE OF INCUMBENCY

Lease Number 98981539-3

Lessee: City of Lancaster TX

WHEREAS, Lessee, a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State or Commonwealth ("State") is authorized by the laws of the State to purchase, acquire and lease certain equipment and other property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, pursuant to applicable law, the governing body of the Lessee ("Governing Body") is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property, leases and easements necessary to the functions or operations of the Lessee.

WHEREAS, the Governing Body hereby finds and determines that the execution of one or more Lease Agreements or lease schedules ("Leases") in the amount not exceeding the amount stated above for the purpose of acquiring the property ("Equipment") to be described in the Leases is appropriate and necessary to the functions and operations of the Lessee.

WHEREAS, PNC Equipment Finance, LLC ("Lessor") shall act as Lessor under said Leases.

NOW, THEREFORE, Be It Ordained by the Governing Body of the Lessee:

Section 1. Either one of the Opal Mauldin- Jones OR None (each an "Authorized Representative") acting on behalf of the Lessee, is hereby authorized to negotiate, enter into, execute, and deliver one or more Leases in substantially the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Lessee. Each Authorized Representative acting on behalf of the Lessee is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Lease as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Leases are hereby authorized.

Section 2. By a written instrument signed by any Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the Lessee to execute and deliver agreements and documents relating to the Leases on behalf of the Lessee.

Section 3. The Lessee's obligations under the Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Lease and the Lessee's obligations under the Leases shall not constitute general obligations of the Lessee or indebtedness under the Constitution or laws of the State.

Section 4. This resolution shall take effect immediately upon its adoption and approval.

NAMES AND TITLES OF AUTHORIZED REPRESENTATIVES: AUTHORIZED LEASE SIGNORS ONLY

<u>Opal Mauldin-Jones</u>	<u>City Manager</u>
---------------------------	---------------------

Name	Title
------	-------

Name	Title
------	-------

ADOPTED AND APPROVED on this 11th April, 2022

Section 5. I, the undersigned Secretary/Clerk identified below, does hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the above Lessee, a political subdivision duly organized and existing under the laws of the State where Lessee is located, that I have the title stated below, and that, as of the date hereof, the individuals named above are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

The undersigned Secretary/Clerk of the above-named Lessee hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Lessee, that the foregoing resolutions were duly adopted by said Governing Body of the Lessee at a meeting of said Governing Body and that such resolutions have not been amended or altered and are in full force and effect on the date stated below.

LESSEE: City of Lancaster TX

Signature of Secretary/Clerk of Lessee

Print Name: Sorangel O. Arenas

Official Title: City Secretary

Date: April 11, 2022



Lease # 98981539-3

Please provide the following information. By providing such information, you will enable us to ensure prompt payment of your vendor and the correct processing of your lease transaction.

Thank you.

Lessee Information

Full Business Legal Name: City of Lancaster TX *EXEMPT		Federal Tax ID Number: 756000580	
Invoices should be directed to: City of Lancaster		Attention: Finance	
Address	P.O.BOX 970	City: LANCASTER	State: TX Zip: 75146

Preferred Method of Payment: (Please check)

<input checked="" type="checkbox"/> Monthly Invoice (Mail)		
Invoices should be directed to:	Attention:	
Address	City:	
<input type="checkbox"/> Monthly Invoice (Email)		Email:
Billing Contact:		

Contact Information

In order to verify receipt of equipment and review terms and conditions of the lease, please provide contact information for one or more staff that can assist in this process.

Contact 1:	Carey Neal, Assistant City Manager	Phone: 972.218.1305
Email:	cneal@lanaster-tx.com	
Contact 2:	Jonathan Nash, General Manager	Phone: 254.412.8983
Email:	jnash@countryviewgolfcourse.com	

I hereby attest the above information is accurate.

Signature 	Date April 11, 2022
Email: Opal Mauldin-Jones, City Manager, ojones@lanaster-tx.com	

PNC Equipment Finance, LLC a Delaware limited liability company ("**PNC**"), is required to collect and remit sales/use tax in the taxing jurisdiction where your equipment will be located. If you select that you are exempt by marking one of the checkboxes below, you must provide a valid exemption certificate. If you do not provide this certificate *prior* to the booking of your transaction, you will be responsible for sales tax on all accrued payments.

- If tax has been remitted up front and financed into your lease payment, your account will not be marked sales tax exempt if you provide an exemption certificate after your transaction has been booked.
- If your tax is remitted on a monthly basis, your lease may be marked sales tax exempt for the remaining payments left to be invoiced if you provide a valid exemption certificate after your transaction has been booked.
- In the event we do not receive a valid sales tax exemption certificate prior to the date your lease commences, you will be charged sales/use tax.

Personal property tax returns will be filed as required by local law. In the event that any tax abatements or special exemptions are available on the equipment you will be leasing from us, please notify us as soon as possible and forward the related documentation to us. This will ensure that your leased equipment will be reported correctly.

Please indicate below if your lease is subject to tax or whether a valid exemption exists.

Sales Tax

- ☐ I agree that my lease is subject to sales/use tax.
- ☒ I am exempt from sales/use tax and I have attached a completed exemption certificate to PNC.
- ☐ I am claiming a partial exemption from tax. I have attached a completed exemption certificate or other documented proof of this partial exemption.
- ☐ I agree that my business is subject to sales/use tax and I have attached a completed resale certificate. This certificate indicates that I will be responsible for collection and remittance of sales/use tax based on the subsequent re-rental of the property.

If applicable to the tax rates in your state, are you outside the city limits or in an unincorporated area?

- ☐ Inside city limits ☐ Outside city limits ☐ Unincorporated area

Property Tax

- ☐ I have a valid abatement or property tax exemption (documentation attached).
- ☐ Location: State _____
Taxing District _____

Additional comments:

Lease Number 98981539-3

Lessee: City of Lancaster TX

Signature:

X

Print Name:

Opal Mauldin-Jones

Title:

City Manager

Date:

April 11, 2022

PLEASE COMPLETE AND SIGN FORM

Additional State Provisions Rider

This Rider is executed and delivered by the undersigned Lessor and the undersigned Lessee regarding the Customer No 98981539 ("Lease").

If the Lessee is a state government agency or political subdivision of a state listed below, the additional provisions listed below for the respective state apply to the Lease as provided for below:

State	Additional Provisions
Florida	Notwithstanding anything contained in the Lease, the Lessor shall not have title to the Equipment as owner nor be granted a security interest to the extent such a grant or holding title violates Florida law. In addition, any insurance provisions naming Lessor as lender loss payee, loss payee, and/or additional insured shall not be applicable.
Georgia	<p>Notwithstanding anything to the contrary contained in the Lease, the Lease Term commences on, and interest accrues from, the date this Lease is executed by you as set forth on your signature line below, and in accordance with applicable Georgia law, the initial term shall continue in effect until midnight on December 31 of the calendar year in which this Lease is executed. The Lease Term shall automatically renew for each succeeding calendar year for the remaining period of the stated Lease Term, unless you give notice to us by December 1 of a calendar year stating your intention not to renew this Lease for the period after December 31 of such calendar year. If you deliver such notice of nonrenewal of the Lease Term, this Lease shall terminate absolutely and without further obligation on your part, including any obligation to pay Rent payments for the period after termination, at the end of such calendar year. In the event that your governing body does not approve an appropriation of funds at any time during the Lease Term for the payment of Rent payments and other amounts (if any) due and to become due for the succeeding fiscal year during the Lease Term for the Equipment subject to this Lease, you shall have the right to return such Equipment in accordance with the terms hereof, and terminate this Lease on the last day of the fiscal year for which sufficient appropriations were received without penalty or expense to you, except as to the portion of Rent payments for which funds shall have been appropriated and budgeted. At least 15 days prior to the end of your fiscal year in which your governing body shall not have approved an appropriation of funds for the succeeding fiscal year, your chief finance or budgetary official shall certify in writing to us that funds have not been appropriated for the succeeding fiscal year.</p> <p>In addition, Lessee hereby agrees to complete, execute and deliver to Lessor with respect to the Lease, on the date of its execution and delivery, a Certificate of Compliance with Georgia Law in substantially the form attached to this Rider as the "Georgia Exhibit".</p>
Kansas	Lessee hereby agrees to complete, execute and deliver to Lessor with respect to the Lease, on the date of its execution and delivery, a Certificate of Compliance with Kansas Law in substantially the form attached to this Rider as the "Kansas Exhibit".
New York	<p>NOT APPLICABLE FOR NEW YORK STATE GOVERNMENT ENTITIES. APPLICABLE FOR ALL OTHER GOVERNMENT ENTITIES IN NEW YORK.</p> <p>For purposes of Section 109-b(2)(f) of the General Municipal Law of the State of New York, Lessor and Lessee hereby agree that the Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by Lessee beyond the amount of such monies. The Lease is not a general obligation of Lessee. Neither the full faith and credit nor the taxing power of Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.</p> <p>In addition to Lessee's representations, warranties and covenants set forth in the Lease, Lessee hereby further represents to Lessor as follows: (a) the stated full Lease Term of the Lease does not exceed the "period of probable usefulness" prescribed by Section 11.00 of the Local Finance Law of the State of New York for the equipment, machinery or apparatus financed under the Lease; (b) the authorization for the issuance of obligations to finance the equipment, machinery or apparatus to be leased, acquired and financed under the Lease is not required by law to be subject to (i) a permissive or mandatory referendum, (ii) a supermajority vote of Lessee's governing board or (iii) a referendum only if the obligations have a maturity not less than a specified minimum period; and (c) the amount of unpaid periodic payments (excluding interest) proposed to be made under the Lease and those other installment purchase contracts entered into by Lessee pursuant to Section 109-b of the General Municipal Law of the State of New York, together with the amount of outstanding indebtedness, do not exceed 115% of the limit prescribed by Section 104.00 of the Local Finance Law of the State of New York and the total amount of such payments (excluding interest) under the Lease and all such other installment purchase contracts do not exceed 40% of such limit.</p>
Ohio	<p>NOT APPLICABLE FOR OHIO STATE GOVERNMENT ENTITIES. APPLICABLE FOR ALL OTHER GOVERNMENT ENTITIES IN OHIO.</p> <p>Lessee hereby agrees to complete, execute, and deliver to Lessor with respect to the Lease, a Certificate of Adequate Resources in substantially the form attached to this Addendum as the "Ohio Exhibit".</p>
Texas	Pursuant to Section 2270.002 of the Texas Government Code, Lessor hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Lease.

City of Lancaster TX
("Lessee")

X _____
Authorized Signature

Print Name)
Opal Mauldin-Jones

Title
City Manager

Date
PO Box 940
Lancaster, TX 75146

PNC Equipment Finance, LLC
("Lessor")

X _____
Authorized Signature

Print Name

Title:

655 Business Center Drive
Horsham, PA 19044

Return Rider (Cars and Turf)

This Rider is executed and delivered by the undersigned Lessor and the undersigned Lessee regarding the Customer No 98981539 ("Agreement").

Pursuant to the Agreement, Lessee may return all, but not less than all, of the Equipment at the expiration of the lease term with respect thereto, at Lessee's expense to such location as Lessor may designate, in the condition required pursuant to the Agreement and any applicable Rider. If, in the opinion of Lessor, any item of the Equipment fails to meet the standards set forth in the Agreement, any applicable Rider, Lessee agrees to pay on demand all costs and expenses incurred in connection with repairing the Equipment and restoring it to such condition, including its assembly and delivery.

Until Lessee has fully complied with the return requirements set forth herein, Lessee's Rent payment obligation and all other obligations under the Lease shall continue from month to month for a period of not more than sixty (60) days at Lessor's discretion, notwithstanding the expiration or termination of the term of the lease. Lessor may terminate Lessee's right to use the Equipment upon ten days' notice to Lessee.

In addition to the requirements of the Agreement relating to the condition of the Equipment upon return thereof by the Lessee to Lessor, the following return conditions shall apply to the Equipment:

(a) all safety equipment must be in place and meet applicable federal, state and other governmental standards; (b) all covers and guards must be in place with no sheet metal, plastic or cowlage damage; (c) all parts, pieces, components and optional equipment must be present, installed and operational; (d) all accessories shall be returned in proper order; (e) all electronic controls shall operate per manufacturer's specifications and controls which bypass normal operations shall be repaired at Lessee's expense; (f) all electrical systems shall be able to provide electrical output as specified by the manufacturer; (g) all Equipment must have a relatively clean appearance; (h) all Equipment shall be free from excessive wear necessitating major component repair or replacement caused by lack of recommended maintenance as detailed in customer operation/maintenance manuals; (i) all Equipment shall be free from structural damage or bent frames; (j) any usage or metering devices must not have been altered in any way; and (k) all Equipment attachments, if any, must be in good operating condition; (l) all motors shall operate smoothly without overheating and shall have good bearings and bushings; (m) all batteries shall be in good, safe operating condition with no dead cells or cracked cases and all batteries shall hold a charge and provide adequate power to operate the Equipment; (n) all Equipment shall have serviceable tires, with 50% remaining tread, retaining proper air pressure, and without repair patches; (o) all oil and grease seals must contain lubrication in the manufacturers designed reservoir; and (p) all hydraulic cylinders must not be bent, nicked, gouged or leaking. In addition, each item of Equipment regardless of type must be able to complete the following tests: (q) have all functions and controls work in normal manner; and (r) perform its designed functions in a satisfactory manner. In addition, if this Agreement involves the leasing of Turf Equipment, such Equipment must be able to complete the following tests: (s) operate normally in forward and reverse directions through all its speed ranges or gears; (t) steer normally right and left in both forward and reverse; (u) be able to stop with its service brakes in a safe distance in both forward and reverse; (v) operate without leaking any fluids; and (w) all cutting units (if applicable) must be able to lower, turn on, run, raise and shut off as they are designed to do.

In addition, for leases involving Turf Equipment the hours of use of an item of Equipment shall be determined by the hour meter attached to said item of Equipment with usage as is limited to 600 hours per year with a \$10.00 per hour on each item of Equipment for each hour of excess use.

If any item of Equipment is damaged or does not meet the standards set forth above for the return condition of such Equipment or if the Lessee fails to discharge Lessee's obligations set forth above with regard to any item of Equipment, Lessee shall pay to Lessor, immediately upon demand, the Net Book Value of such item of Equipment.

City of Lancaster TX
("Lessee")

X

Authorized Signature

Print Name
Opal Mauldin-Jones

Title:

City Manager

Date

PO Box 940

Lancaster, TX 75146

PNC Equipment Finance, LLC
("Lessor")

X

Authorized Signature

Print Name

Title:

655 Business Center Drive
Horsham, PA 19044

AMENDMENT TO LEASE AGREEMENT #98981539-3

This Amendment ("**Amendment**"), dated and effective as of the 11th day of March 2022, is to that certain Lease Agreement **#98981539-3** dated December 28, 2021 (the "**Lease**") between City of Lancaster, Texas with its principal place of business at 211 N. Henry Street, Lancaster, TX 75146 (the "**Lessee**"), and PNC Equipment Finance, LLC, with an address at 655 Business Center Drive, Horsham, PA 19044 (the "**Lessor**").

In consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties amend the Lease as follows:

1. Section 3. The sixth sentence of Section 3 is deleted in its entirety.
2. Section 9. The second sentence of Section 9 is amended to read as follows: "To the extent permitted by Texas law, and without waiving its governmental immunity from suit and damages, Lessee agrees to reimburse Lessor for and defend Lessor against any claims for such losses, damages, penalties, claims, injuries, or expenses."
3. Section 14. The third sentence of Section 14 is deleted in its entirety.
4. Section 16. The first sentence of Section 16 is modified and amended by replacing it with the following: "If (a) default occurs, (b) a non-appropriation of funds occurs in accordance with Section 3, or (c) Lessee does not purchase the Equipment pursuant to Section 15, Lessee will immediately return the Equipment to a location designated by Lessor within one hundred (100) miles of Lessee's address on this Lease."
5. Section 17. Clause (g) of Section 17 is modified and amended by deleting the rest of the clause starting with the word "and".
6. Section 21. The first sentence of Section 21 is modified and amended by replacing it with the following: "Lessee agrees Lessor shall be entitled to reasonable collection costs associated with the enforcement of this Lease."
7. Section 22. The first sentence of Section 22 is amended by replacing it with the following: "This Lease, and any written Amendment(s) signed by both Parties, contains the entire agreement and supersedes any conflicting provision of any equipment purchase order or other agreement." The last sentence of Section 22 is deleted in its entirety.
8. Section 23. The first sentence of Section 23 is amended by deleting the phrase: "with oral confirmation of receipt." The second sentence of Section 23 is modified and amended by replacing it with the following: "All of Lessor's written notices to Lessee must be sent by certified mail or recognized overnight delivery service, postage prepaid; provided, however, no invoice or bill for payment shall be treated as notice pursuant to this sentence."
9. Section 26. The first sentence of Section 26 is deleted in its entirety.

10. Section 28. The following is added as a new Section 28: **CHOICE OF LAW AND VENUE.** This Agreement shall be governed and construed according to the laws of the state of Texas. Venue for any action or proceeding shall be in a court of competent jurisdiction in Dallas County, Texas.

All other terms and conditions of the Lease shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date above written.

City of Lancaster, Texas (“Lessee”)

PNC Equipment Finance, LLC (“Lessor”)

Opal Mauldin-Jones, City Manager

April 11, 2022

Date

P.O. Box 940
Lancaster, TX 75146

Date

655 Business Center Drive
Horsham, PA 19044

CITY OF LANCASTER CITY COUNCIL

City Council Regular Meeting

5.

Meeting Date: 04/11/2022

Policy Statement: This request supports the City Council 2021-2022 Policy Agenda

Goal(s): Healthy, Safe & Engaged Community
Sound Infrastructure
Quality Development

Submitted by: Opal Mauldin-Jones, City Manager
David Ritter, City Attorney

Agenda Caption:

Consider an Ordinance amending Chapter 14 of the City Code of Ordinances "Offenses and Additional Provisions" by Amending Article 14.10 Abandoned or Junked Vehicles.

Background:

City Council identified the transition from compassionate code compliance to code enforcement as a goal during the Strategic Planning Session for fiscal year 2021/2022. The City Attorney and staff reviewed relevant sections of the Lancaster Code of Ordinances to ensure staff have the tools to improve property standards and maintenance within the community. This is part two of a series of items for City Council consideration. The abandoned or junked vehicles ordinance was last amended/approved by City Council in April of 2015. The City Attorney and staff proposed changes to the ordinance to provide additional clarity and alignment of terms with the Lancaster Development Code.

The abandoned or junked vehicles revisions will re-define Section 14.10.001 Definitions, update Sections 14.10.004 Enforcement and Citations, 14.10.033 Sale at action; disposition of proceeds of sale, and Section 14.10.062 Offense.

At the March 21, 2022, Work Session , Council discussed amendments to the Ordinance.

The revisions are made to: (1) better track the LDC definitions, and (2) provide increased code enforcement tools for concerns related to junk or abandoned vehicles that generate repeated complaints or citations.

Legal Considerations:

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

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.

Options/Alternatives:

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

Recommendation:

Staff recommends approval of the ordinance, as presented.

Attachments

Ordinance

Abandoned and Junk Vehicles 14.10.001- Redline

Abandoned and Junk Vehicles 14.10.001- Clean

ORDINANCE NO.

ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING CHAPTER 14 OF THE LANCASTER CODE OF ORDINANCES, ARTICLE 14.10 "ABANDONED OR JUNKED VEHICLES" TO ALIGN WITH TERMS AND DEFINITIONS IN THE LANCASTER DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALING CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, he City Council finds this amendment to the Lancaster Development Code will serve, protect and enhance the public health, safety and general welfare and to attain to the goals of the City in the area of setting development standards; and

WHEREAS, the City Council of Lancaster has determined it will benefit the citizens of the City of Lancaster to amend the City's Code of Ordinances to maintain consistency with state law, by adopting this provision, as provided for herein; and

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

SECTION 1. That the Code of Ordinances of the City of Lancaster, Texas is amended by amending Chapter 14, "Offenses and Additional Provisions", Article 14.10, "Abandoned or Junked Vehicles", Division 1, "Generally", Section 14.10.001 "Definitions" by amending the definition of junked vehicle, to read as follows:

"ARTICLE 14.10 ABANDONED OR JUNKED VEHICLES

....

Junked vehicle. Any vehicle that is self-propelled and:

....

(B) Ten (10) consecutive days, if the vehicle is on private property.

....

Ordinary public view. The view from private or public property, or public right-of-way from average grade of the surrounding property. A junked vehicle that is covered by a tarp, sheeting, car cover, or other clear or opaque covering that generally conforms to the contours of the vehicle shall be considered to be in ordinary public view.

....

Sec. 14.10.004 Enforcement and Citations issued under this Article may be written by any code enforcement officer or any police officer employed by the City, and code enforcement officers may enforce any portion of this Article unless expressly reserved to the police department.

....

Division 2. Abandoned Vehicles

....

Sec. 14.10.033 Sale at auction; disposition of proceeds of sale

If an abandoned motor vehicle has not been reclaimed as provided above, the police department shall then sell the abandoned motor vehicle at a public auction. Proper notice of

the public auction shall be given. The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and is entitled to register the purchased vehicle and receive a certificate of title from the appropriate authority. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses of the auction, the cost of towing, preserving and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred, if any. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholders for ninety (90) days and then shall be deposited in an account that may be used for the payment of auction, towing, preserving, storage and all notice and publication costs that result from placing another abandoned vehicle into custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these fees. The city may transfer funds in excess of \$1,000 from the account to the city's general revenue account.

....

Division 3. Junked Vehicles

....

Sec. 14.10.062 Offense

(a) A person commits an offense if the person allows or maintains a junked vehicle in any place, whether on private or public property, in ordinary public view.

....

SECTION 2. That all provisions of the ordinances of the City of Lancaster in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Lancaster not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Lancaster, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two hundred dollars (\$200.00) for each offense.

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

DULY PASSED by the City Council of the City of Lancaster, Texas on this the 11th April, 2022.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

ARTICLE 14.10 ABANDONED OR JUNKED VEHICLES*

Division 1. Generally

Sec. 14.10.001 Definitions

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

Abandoned motor vehicle. A motor vehicle that is inoperable and more than five years old and left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours, or a motor vehicle left unattended on the right-of-way of any designated county, state or federal highway within this state or any city street or alley for more than 48 hours or for more than 24 hours on any turnpike project constructed and maintained by the Texas Turnpike Authority.

Antique vehicle. A passenger car or truck that was manufactured in 1925 or before, or a passenger car or truck that is at least thirty-five (35) years old.

Collector. A person who

(A) owns one (1) or more antique or special interest vehicles; and

(B) collects, acquires, or disposes of special interest or antique vehicles or parts of a special interest or antique vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Demolisher. A person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Garagekeeper. An owner or operator of a parking place or establishment, motor vehicle storage facility or establishment for the servicing, repair or maintenance of a motor vehicle.

Junked vehicle. Any vehicle that is self-propelled and:

(1) Does not have lawfully attached to it:

(A) An unexpired license plate; and

(B) A valid motor vehicle inspection certificate;

(2) Is wrecked, dismantled or partially dismantled, or discarded; or

(3) Is inoperable and has remained inoperable for more than:

(A) 72 consecutive hours, if the vehicle is on public property; or

(B) ~~30-Ten (10)~~ consecutive days, if the vehicle is on private property.

Motor vehicle. A motor vehicle subject to registration under the Certificate of Title Act (V.T.C.A., Transportation Code, chapter 501), as amended, except that, for purposes of this article, it shall also mean a motorboat, outboard motor or vessel subject to registration under chapter 31, Texas Parks and Wildlife Code.

Ordinary public view. The view from private or public property, or public right-of-way from average grade of the surrounding property. A junked vehicle that is covered by a tarp, sheeting, car cover, or other clear or opaque covering that generally conforms to the contours of the vehicle shall be considered to be in ordinary public view.

Special interest vehicle. A motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and because of its historic interest is being preserved by hobbyists.

Storage facility. A garage, parking lot or any type of facility or establishment for the servicing, repairing, storing or parking of motor vehicles.

Sec. 14.10.002 Right of entry; court orders

To the extent permitted by law, a person authorized by the city to administer the procedures of this article may enter private property for the purposes specified herein to examine a vehicle or vehicle part, obtain

information as to the identity of the vehicle and remove or cause the removal of a vehicle part that constitutes a nuisance as defined herein. The judge of the municipal court of the city may issue orders necessary to enforce the procedures of this article.

Sec. 14.10.003 Immediate removal of vehicles obstructing traffic

No provision of this article shall affect a law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property.

Sec. 14.10.004 Enforcement and Citations

Citations issued under this Article may be written by any code enforcement officer or any police officer employed by the City, and code enforcement officers may enforce any portion of this Article unless expressly reserved to the police department.

Division 2. Abandoned Vehicles

Sec. 14.10.031 Declaration of nuisance; impoundment by police

An abandoned motor vehicle is hereby declared to be a nuisance, and the police department is hereby authorized to take into custody any such vehicle. The police department may employ its own personnel, equipment and facilities or hire persons, equipment and facilities to remove, preserve and store an abandoned motor vehicle.

Sec. 14.10.032 Notice to owner and lienholders

(a) Upon the impoundment of an abandoned motor vehicle, the police department shall notify within ten (10) days thereof, by certified mail, the last known registered owner of the motor vehicle and all lienholders of record, pursuant to the Certificate of Title Act or Chapter 31, Parks and Wildlife Code, that the vehicle has been taken into custody. The notice shall describe the year, make, model and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle not later than the twentieth day after the date of the notice, on payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, or garagekeeper's charges if notice is under Transportation Code 683.032, as amended. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one (1) publication in one (1) newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this article. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(c) The police department, or in the event the police department hires as its agent persons, equipment and facilities to remove, preserve and store an abandoned motor vehicle it takes into custody, is entitled to reasonable storage fees for a period of not more than ten (10) days, beginning on the date the department takes custody and continuing through the day the department mails notice as provided by this section, and a period beginning on the day after the day the department mails notice and continuing through the day any accrued charges are paid and the vehicle is removed.

Sec. 14.10.033 Sale at auction; disposition of proceeds of sale

If an abandoned motor vehicle has not been reclaimed as provided above, the police department shall then sell the abandoned motor vehicle at a public auction. Proper notice of the public auction shall be given. The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and is entitled to register the purchased vehicle and receive a certificate of title from the appropriate authority. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses

of the auction, the cost of towing, preserving and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred, if any. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholders for ninety (90) days and then shall be deposited in an account that may be used for the payment of auction, towing, preserving, storage and all notice and publication costs that result from placing another abandoned vehicle into custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these fees. The city may transfer funds in excess of \$1,000 from the account to the city's general revenue account ~~to be used by the police department.~~

Sec. 14.10.034 Vehicles abandoned in storage facility

A motor vehicle left for more than ten (10) days in a storage facility operated for commercial purposes after notice is given by registered or certified mail, return receipt requested, to the owner and to any lienholders of record to remove the vehicle, or under any of the other circumstances as set forth in V.T.C.A., Transportation Code, chapter 683, subchapter C, as amended, shall be subject to the provisions of said chapter.

Sec. 14.10.035 Disposal to demolisher

Any person, firm, corporation or unit of government on whose property or in whose possession is found any abandoned motor vehicle, and a person who is the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may apply to the state department of transportation for authority to sell, give away or dispose of the vehicle to a demolisher. The application shall be governed by V.T.C.A., Transportation Code, chapter 683, subchapter D, as amended.

Division 3. Junked Vehicles

Sec. 14.10.061 Declaration of nuisance

A junked vehicle, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates a fire hazard, constitutes an attractive nuisance creating a hazard to the health and safety of minors and is detrimental to the economic welfare of the city by producing urban blight adverse to the maintenance and continuing development of the city, and is a public nuisance.

Sec. 14.10.062 Offense

- (a) A person commits an offense if the person allows or maintains a junked vehicle in any place, whether on private or public property, in ~~view of the public or on a public right-of-way~~ordinary public view.
- (b) An offense under this section is punishable by a fine not to exceed two hundred dollars (\$200.00). A separate offense occurs each and every day the violation described in subsection (a) continues.
- (c) The court shall order abatement and removal of the public nuisance on conviction of this offense.

Sec. 14.10.063 Authority to abate nuisance; procedures

Upon complaint or upon its own initiative, the city may initiate appropriate official action to remove and abate a junked vehicle from any place visible to the public, whether on private or public property.

(a) Notice

- (1) A regularly salaried, full-time employee of the city shall provide notice by:
 - a. Personal delivery, sending by certified mail with a five (5) day return requested, or delivery by the United States Postal Service with signature confirmation service to:
 - 1. the last known registered owner of the nuisance;
 - 2. each lienholder of record of the nuisance; and
 - 3. the owner or occupant of:
 - (A) the property on which the nuisance is located; or
 - (B) if the nuisance is located on a public right-of-way, the property

adjacent to the right-of-way.

- b. Post written notice on the junked vehicle if the address of the last known registered owner of the junked vehicle is unknown.
- (2) The notice must state the nature of the nuisance, and that:
 - a. The junked vehicle must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed; and
 - b. Any request for a hearing must be made in writing and received by the department before that ten (10) day period expires.
- (3) If any notice is returned undelivered, action to abate the nuisance shall continue to a date not earlier than the 11th day after the date of the return.
- (4) No notice is required for issuance of a citation for an offense under this article.
- (c) *Hearing.*
 - (1) The municipal court judge shall conduct hearings relative to the abatement of junked vehicles.
 - (2) A public hearing must be conducted prior to the removal of the public nuisance not earlier than the 11th day after the date of service of notice.
 - (3) If a hearing is requested by a person for whom notice is required, the hearing shall be held not earlier than the 11th day after the date of the service of notice.
 - (4) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
 - (5) If the owner is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:
 - a. Description;
 - b. Vehicle identification number; and
 - c. License plate number.
 - (6) As part of the order authorizing removal or abatement of the public nuisance, the court shall:
 - a. Prohibit a vehicle from being reconstructed or made operable after removal; and
 - b. Require that notice identifying the vehicle or part of the vehicle be given to the department of public safety not later than the fifth day after the date of removal. On receipt of notice of removal, the department shall immediately cancel the certificate of title issued for the vehicle.
 - (7) The municipal court shall have full authority to enforce the abatement procedures, including, but not limited to, issuing all necessary orders.

(e) The provisions of this article shall not apply to a vehicle or a part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, a vehicle or vehicle part that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or an unlicensed operable or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in an orderly manner so that they do not constitute a health hazard and are screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, shrubbery or a car cover the completely covers the motor vehicle.

(f) The procedures of this article shall be carried out and enforced by regularly salaried, full-time employees of the city, except that the removal of vehicles or parts thereof from property may be done by any other duly authorized person, including persons with whom the city may at the time of the passage of this article or hereafter have a valid contract for the removal of such vehicles.

Sec. 14.10.064 Disposal

A junked vehicle or vehicle part may be disposed of by removal to a scrapyard, a motor vehicle demolisher

or any other suitable site for processing scrap or salvage.

ARTICLE 14.10 ABANDONED OR JUNKED VEHICLES*

Division 1. Generally

Sec. 14.10.001 Definitions

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

Abandoned motor vehicle. A motor vehicle that is inoperable and more than five years old and left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours, or a motor vehicle left unattended on the right-of-way of any designated county, state or federal highway within this state or any city street or alley for more than 48 hours or for more than 24 hours on any turnpike project constructed and maintained by the Texas Turnpike Authority.

Antique vehicle. A passenger car or truck that was manufactured in 1925 or before, or a passenger car or truck that is at least thirty-five (35) years old.

Collector. A person who

(A) owns one (1) or more antique or special interest vehicles; and

(B) collects, acquires, or disposes of special interest or antique vehicles or parts of a special interest or antique vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Demolisher. A person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Garagekeeper. An owner or operator of a parking place or establishment, motor vehicle storage facility or establishment for the servicing, repair or maintenance of a motor vehicle.

Junked vehicle. Any vehicle that is self-propelled and:

(1) Does not have lawfully attached to it:

(A) An unexpired license plate; and

(B) A valid motor vehicle inspection certificate;

(2) Is wrecked, dismantled or partially dismantled, or discarded; or

(3) Is inoperable and has remained inoperable for more than:

(A) 72 consecutive hours, if the vehicle is on public property; or

(B) Ten (10) consecutive days, if the vehicle is on private property.

Motor vehicle. A motor vehicle subject to registration under the Certificate of Title Act (V.T.C.A., Transportation Code, chapter 501), as amended, except that, for purposes of this article, it shall also mean a motorboat, outboard motor or vessel subject to registration under chapter 31, Texas Parks and Wildlife Code.

Ordinary public view. The view from private or public property, or public right-of-way from average grade of the surrounding property. A junked vehicle that is covered by a tarp, sheeting, car cover, or other clear or opaque covering that generally conforms to the contours of the vehicle shall be considered to be in ordinary public view.

Special interest vehicle. A motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and because of its historic interest is being preserved by hobbyists.

Storage facility. A garage, parking lot or any type of facility or establishment for the servicing, repairing, storing or parking of motor vehicles.

Sec. 14.10.002 Right of entry; court orders

To the extent permitted by law, a person authorized by the city to administer the procedures of this article may enter private property for the purposes specified herein to examine a vehicle or vehicle part, obtain

information as to the identity of the vehicle and remove or cause the removal of a vehicle part that constitutes a nuisance as defined herein. The judge of the municipal court of the city may issue orders necessary to enforce the procedures of this article.

Sec. 14.10.003 Immediate removal of vehicles obstructing traffic

No provision of this article shall affect a law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property.

Sec. 14.10.004 Enforcement and Citations

Citations issued under this Article may be written by any code enforcement officer or any police officer employed by the City, and code enforcement officers may enforce any portion of this Article unless expressly reserved to the police department.

Division 2. Abandoned Vehicles

Sec. 14.10.031 Declaration of nuisance; impoundment by police

An abandoned motor vehicle is hereby declared to be a nuisance, and the police department is hereby authorized to take into custody any such vehicle. The police department may employ its own personnel, equipment and facilities or hire persons, equipment and facilities to remove, preserve and store an abandoned motor vehicle.

Sec. 14.10.032 Notice to owner and lienholders

(a) Upon the impoundment of an abandoned motor vehicle, the police department shall notify within ten (10) days thereof, by certified mail, the last known registered owner of the motor vehicle and all lienholders of record, pursuant to the Certificate of Title Act or Chapter 31, Parks and Wildlife Code, that the vehicle has been taken into custody. The notice shall describe the year, make, model and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle not later than the twentieth day after the date of the notice, on payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, or garagekeeper's charges if notice is under Transportation Code 683.032, as amended. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one (1) publication in one (1) newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this article. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(c) The police department, or in the event the police department hires as its agent persons, equipment and facilities to remove, preserve and store an abandoned motor vehicle it takes into custody, is entitled to reasonable storage fees for a period of not more than ten (10) days, beginning on the date the department takes custody and continuing through the day the department mails notice as provided by this section, and a period beginning on the day after the day the department mails notice and continuing through the day any accrued charges are paid and the vehicle is removed.

Sec. 14.10.033 Sale at auction; disposition of proceeds of sale

If an abandoned motor vehicle has not been reclaimed as provided above, the police department shall then sell the abandoned motor vehicle at a public auction. Proper notice of the public auction shall be given. The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and is entitled to register the purchased vehicle and receive a certificate of title from the appropriate authority. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses

of the auction, the cost of towing, preserving and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred, if any. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholders for ninety (90) days and then shall be deposited in an account that may be used for the payment of auction, towing, preserving, storage and all notice and publication costs that result from placing another abandoned vehicle into custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these fees. The city may transfer funds in excess of \$1,000 from the account to the city's general revenue account.

Sec. 14.10.034 Vehicles abandoned in storage facility

A motor vehicle left for more than ten (10) days in a storage facility operated for commercial purposes after notice is given by registered or certified mail, return receipt requested, to the owner and to any lienholders of record to remove the vehicle, or under any of the other circumstances as set forth in V.T.C.A., Transportation Code, chapter 683, subchapter C, as amended, shall be subject to the provisions of said chapter.

Sec. 14.10.035 Disposal to demolisher

Any person, firm, corporation or unit of government on whose property or in whose possession is found any abandoned motor vehicle, and a person who is the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may apply to the state department of transportation for authority to sell, give away or dispose of the vehicle to a demolisher. The application shall be governed by V.T.C.A., Transportation Code, chapter 683, subchapter D, as amended.

Division 3. Junked Vehicles

Sec. 14.10.061 Declaration of nuisance

A junked vehicle, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates a fire hazard, constitutes an attractive nuisance creating a hazard to the health and safety of minors and is detrimental to the economic welfare of the city by producing urban blight adverse to the maintenance and continuing development of the city, and is a public nuisance.

Sec. 14.10.062 Offense

(a) A person commits an offense if the person allows or maintains a junked vehicle in any place, whether on private or public property, in ordinary public view.

(b) An offense under this section is punishable by a fine not to exceed two hundred dollars (\$200.00). A separate offense occurs each and every day the violation described in subsection (a) continues.

(c) The court shall order abatement and removal of the public nuisance on conviction of this offense.

Sec. 14.10.063 Authority to abate nuisance; procedures

Upon complaint or upon its own initiative, the city may initiate appropriate official action to remove and abate a junked vehicle from any place visible to the public, whether on private or public property.

(a) *Notice*

(1) A regularly salaried, full-time employee of the city shall provide notice by:

a. Personal delivery, sending by certified mail with a five (5) day return requested, or delivery by the United States Postal Service with signature confirmation service to:

1. the last known registered owner of the nuisance;
2. each lienholder of record of the nuisance; and
3. the owner or occupant of:

(A) the property on which the nuisance is located; or

(B) if the nuisance is located on a public right-of-way, the property

adjacent to the right-of-way.

- b. Post written notice on the junked vehicle if the address of the last known registered owner of the junked vehicle is unknown.
 - (2) The notice must state the nature of the nuisance, and that:
 - a. The junked vehicle must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed; and
 - b. Any request for a hearing must be made in writing and received by the department before that ten (10) day period expires.
 - (3) If any notice is returned undelivered, action to abate the nuisance shall continue to a date not earlier than the 11th day after the date of the return.
 - (4) No notice is required for issuance of a citation for an offense under this article.
- (c) *Hearing.*
 - (1) The municipal court judge shall conduct hearings relative to the abatement of junked vehicles.
 - (2) A public hearing must be conducted prior to the removal of the public nuisance not earlier than the 11th day after the date of service of notice.
 - (3) If a hearing is requested by a person for whom notice is required, the hearing shall be held not earlier than the 11th day after the date of the service of notice.
 - (4) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
 - (5) If the owner is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:
 - a. Description;
 - b. Vehicle identification number; and
 - c. License plate number.
 - (6) As part of the order authorizing removal or abatement of the public nuisance, the court shall:
 - a. Prohibit a vehicle from being reconstructed or made operable after removal; and
 - b. Require that notice identifying the vehicle or part of the vehicle be given to the department of public safety not later than the fifth day after the date of removal. On receipt of notice of removal, the department shall immediately cancel the certificate of title issued for the vehicle.
 - (7) The municipal court shall have full authority to enforce the abatement procedures, including, but not limited to, issuing all necessary orders.

(e) The provisions of this article shall not apply to a vehicle or a part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, a vehicle or vehicle part that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or an unlicensed operable or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in an orderly manner so that they do not constitute a health hazard and are screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, shrubbery or a car cover the completely covers the motor vehicle.

(f) The procedures of this article shall be carried out and enforced by regularly salaried, full-time employees of the city, except that the removal of vehicles or parts thereof from property may be done by any other duly authorized person, including persons with whom the city may at the time of the passage of this article or hereafter have a valid contract for the removal of such vehicles.

Sec. 14.10.064 Disposal

A junked vehicle or vehicle part may be disposed of by removal to a scrapyard, a motor vehicle demolisher

or any other suitable site for processing scrap or salvage.