



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

Monday, June 24, 2013 - 7:00 PM

CALL TO ORDER

INVOCATION: Ministerial Alliance

PLEDGE OF ALLEGIANCE: Deputy Mayor Pro Tem Nina Morris

CITIZENS' COMMENTS:

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

CONSENT AGENDA:

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

- C1. Consider approval of minutes from the City Council Regular Meeting held June 10, 2013.
- C2. Consider a resolution authorizing the award of Bid 2013-97 for concrete and asphalt repairs at the Lancaster Regional Airport to C&M Concrete in an amount not to exceed \$162,878.40.
- C3. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 700 at the Lancaster Regional Airport.
- C4. Consider a resolution adopting the City of Lancaster State Auxiliary Museum Policy.
- C5. Consider a resolution authorizing the City Manager to extend Stage 2 of the City of Lancaster Water Conservation and Drought Contingency and Water Emergency Response Plan until May 2014 as required by the Wholesale Treated Water Contract between the City of Dallas and City of Lancaster.
- C6. Consider a resolution ratifying the submission of applications to Dallas County for funding under the Fiscal Year 2013 Dallas County Community Development Block Grant (CDBG) Program for reconstruction of existing roadways: Marsalis Road from Pleasant Run Road to Green Drive and Gant Drive from Brady Drive to Marsalis Road.

ACTION:

7. Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and Johnstone Supply, Inc.

ADJOURNMENT

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

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

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on June 21, 2013 @ 9:00 a.m. and copies thereof were hand delivered to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Dolle K. Downe, TRMC
City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 24, 2013

Item 1

Consider approval of minutes from the City Council Regular Meeting held June 10, 2013.

Background

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held June 10, 2013

Submitted by:

Dolle K. Downe, City Secretary

MINUTES

LANCASTER CITY COUNCIL MEETING OF JUNE 10, 2013

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on June 10, 2013 at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present:

Mayor Marcus E. Knight
Carol Strain-Burk
Stanley Jaglowski
Marco Mejia
Mayor Pro Tem James Daniels
LaShonjia Harris
Deputy Mayor Pro Tem Nina Morris

City Staff Present:

Opal Mauldin Robertson, City Manager
Aretha Adams, Assistant City Manager
Dori Lee, Human Resources Director
Suzy Cluse, Interim Finance Director
Ed Brady, Economic Development Director
Thomas Griffith, Fire Chief
Larry Flatt, Police Chief
Rona Stringfellow, Managing Director Public Works / Development Services
Sean Johnson, Parks and Recreation Director
Shwetha Pandurangi, City Engineer
Mark Divita, Airport Manager
Dolle Downe, City Secretary

Call to Order:

Mayor Knight called the meeting to order at 7:00 p.m. on June 10, 2013.

Invocation:

Deacon Jones with World Harvest Ministries gave the invocation.

Pledge of Allegiance:

Councilmember LaShonjia Harris led the pledge of allegiance.

Proclamation

Mayor Knight read a proclamation proclaiming June 15, 2013 as Juneteenth Celebration Day in the City of Lancaster and invited everyone to attend the celebration on Saturday, June 15 from 5 to 9 p.m. in Lancaster City Park.

Citizens Comments:

Robert Stewart, 2105 N. Houston School Road, spoke against raising the speed limit to 45 mph on Houston School Road saying residents would like it to stay at 35; noted there are lots of residents on Houston School Road as well as children playing; stated there was an accident just last night and stated it would create more dangerous situations if the speed limit was increased.

Carlton Moffett, 2105 N. Houston School Road, commented that when Houston School Road was rebuilt the speeding was out of control and the Police Department did make some impact on reducing speeding; stated that only a few seconds are saved by increasing the speed limit on that segment of Houston School Road; asked Council to consider the safety factors and not make a change in the speed limit.

Consent Agenda:

City Secretary Downe read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meetings held March 25 and April 22, 2013 and Special Meeting held May 20, 2013.**
- C2. Consider a resolution authorizing the City Manager to execute an Interlocal Agreement with the City of Houston relative to the Houston Area Library Automated Network (“HALAN”) for computerized library services.**
- C3. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 700 at the Lancaster Regional Airport.**
- C4. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.**
- C5. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 690 at the Lancaster Regional Airport.**
- C6. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 670 at the Lancaster Regional Airport.**
- C7. Consider an ordinance approving and adopting Rate Schedule, Rate Review Mechanism “RRM” – Rate Corporation, Mid-Tex Division to be in force in the city for a period of time as specified in the rate schedule.**
- C8. Consider a resolution authorizing the purchase of three (3) Lifepak Monitors/Defibrillators from Physio Control through the federally funded program Resuscitation Outcomes Consortium (ROC) for a total amount not to exceed \$118,573.40.**
- C9. Consider a resolution authorizing the City Manager to execute a North Central Texas Public Works Mutual Aid Agreement relative to the initial Public Works response in the event of an emergency, disaster or catastrophic event.**
- C10. Consider a resolution authorizing Dallas County to resell 3119 Daniieldale Road, a tax foreclosed property, by public or private sale, to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Tax Code.**
- C11. Consider a resolution approving the terms and conditions of a contract for upgrading the Supervisory Control And Data Acquisition (SCADA) system on the existing City’s water infrastructure with Wheco Electric, Inc., for an amount not to exceed \$60,000.**

Councilmember Strain-Burk pulled consent items C2 and C11.

MOTION: Councilmember Strain-Burk made a motion, seconded by Councilmember Morris, to approve consent items C1 and C3 – C10. The vote was cast 7 for, 0 against.

Councilmember Strain-Burk asked the City Manager to explain more on both items for the public's knowledge. City Manager Mauldin Robertson stated that the Houston Area Library Automated Network [item C2] is a consortium that offers integrated library services such as cataloging and our Library will benefit from participation in the consortium.

Councilmember Harris commended Director Johnson on his work in modernizing the library. Director Johnson noted that the HALAN system expands the catalog system and offers interface for more e-books.

City Manager Mauldin Robertson noted that the SCADA system [item C11] is a tool for management of the water utilities commenting that this upgrade provides newer technology for data management, improved reliability and reduced costs.

MOTION: Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Daniels, to approve consent items C2 and C11 as presented. The vote was cast 7 for, 0 against.

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

City Engineer Pandurangi highlighted the traffic study conducted on Houston School Road since reconstruction of the road was completed, noting that the total recorded volumes from the study indicate the mode speed is 46.2 mph. City Engineer Pandurangi stated that the staff recommendation is to change the posted speed to 45 mph along Houston School Road between Pleasant Run Road and 100 feet north of its intersection with Ames Road.

Mayor Knight stated that the roadway was designed for 55 mph and 45 mph is the recommended speed, but perhaps consideration should be given to setting the speed at 40 mph. City Manager Mauldin Robertson noted that Council could not go higher with the speed but could go lower.

Deputy Mayor Pro Tem Daniels commented that 40 mph is a good compromise.

Councilmember Jaglowski noted that the roadway may be designed for 55 mph, but there are concerns from the subdivisions and individuals along the roadway.

Councilmember Harris commented that the speakers expressed concern about safety, and she would be interested in the number of tickets issued on that stretch of roadway.

Councilmember Strain-Burk asked if we had checked with businesses on that roadway. City Manager Mauldin Robertson indicated there was no discussion with businesses.

Mayor Pro Tem Mejia asked why we conducted the traffic study. City Engineer Pandurangi indicated there have been complaints about the speed being too low. City Manager Mauldin Robertson stated that under the Transportation Code, a speed study is required.

Deputy Mayor Pro Tem Daniels asked to hear Police Chief Flatt's recommendation. Police Chief Flatt said that with a safety issue to consider, 40 mph is a good compromise and his recommendation would be to set the speed limit at 40 mph.

MOTION: Mayor Pro Tem Mejia made a motion, seconded by Councilmember Strain-Burk, to approve an ordinance amending the Code of Ordinances, Chapter 22, Article 22.04, Speed Regulations, Section 22.04.003 by increasing the maximum prima facie speed limit on a certain portion of Houston School Road from 35 mph to 40 mph. The vote was cast 7 for, 0 against.

Councilmember Jaglowski requested that flags be placed on top of the new speed limit signs to help call attention to the change in speed limit. City Manager Mauldin Robertson stated she will coordinate with staff regarding the signage.

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

Parks and Recreation Director Johnson outlined the project noting that the shade structure is part of the amphitheater package and is included in the 50/50 match grant through the Texas Parks and Wildlife Department.

Mayor Pro Tem Mejia asked if this purchase was additional dollars. Director Johnson indicated that it is within the \$400,000 grant.

Councilmember Strain-Burk asked about durability of the shade structure. Director Johnson commented that it is very durable and will withstand wind, hail and ice.

Mayor Pro Tem Mejia confirmed it will be insured and commented that, as in the past, he cannot support this purchase as he would like the dollars to go to infrastructure.

Councilmember Strain-Burk commented that the grant dollars can only go to that project and it is taxpayers' dollars coming back into the City. Director Johnson stated that it is a non-competitive grant.

MOTION: Councilmember Morris made a motion, seconded by Councilmember Strain-Burk, to approve a resolution authorizing the purchase of a shade structure from USA Shade & Fabric Structures, Inc. through an Interlocal Agreement with BuyBoard (Contract #346-10) for the Texas Parks and Wildlife Department (TPWD) Grant Project #50-000413 in an amount not to exceed \$96,000. The vote was cast 6 for, 1 against [Mejia].

14. Consider election of a Mayor Pro Tempore.

Mayor Pro Tem Mejia nominated Deputy Mayor Pro Tem Daniels. Councilmember Morris nominated Councilmember Jaglowski. A roll call vote was cast 5 for Deputy Mayor Pro Tem Daniels to serve as Mayor Pro Tem and 2 [Jaglowski, Morris] for Councilmember Jaglowski to serve. Daniels will serve as the Mayor Pro Tempore.

15. Consider election of a Deputy Mayor Pro Tempore.

Councilmember Strain-Burk nominated Councilmember Morris. Councilmember Mejia nominated Councilmember Harris. A roll call vote was cast 4 for Councilmember Morris to serve as Deputy Mayor Pro Tem and 3 [Mejia, Daniels, Harris] for Councilmember Harris to serve. Morris will serve as the Deputy Mayor Pro Tempore.

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

The meeting was adjourned at 7:45 p.m.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

LANCASTER CITY COUNCIL

Agenda Communication

June 24, 2013

Item 2

Consider a resolution authorizing the award of Bid 2013-97 for concrete & asphalt repairs at the Lancaster Regional Airport to C&M Concrete in an amount not to exceed \$162,878.40.

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

Goal: Sound Infrastructure

Background

Lancaster Regional Airport maintains its pavement in accordance with the Federal Aviation Administration (FAA) mandated pavement management plan. This plan and its standards is a part of the grant assurances the City is required to adhere to for receipt of federal grant funding. Staff conducts monthly detailed pavement inspections to determine the quality rating of the pavement. Areas are rated 1 through 5, 1 being the lowest. The areas to be repaired include portions of the aircraft parking ramp, the south edge of taxiway "D", taxi lanes in between hangars, one fuel farm service road, one auto parking lot and repainting any surface markings where pavement was replaced.

Considerations

- **Operational** – Maintaining the airport's pavement to FAA standard is a flight safety mandate from the FAA grant assurances.
- **Legal** – The bid was processed in accordance with all local and state purchasing statutes.
- **Financial** – The TXDOT-Aviation Routine Airport Maintenance Program (RAMP) grant is covering 50% of the cost of work completed through reimbursement to the City of Lancaster. \$62,828.80 of work will be completed prior to September 2013. The remaining work will be completed after October 1, 2013 for \$100,049.60. Through the 50% RAMP grant reimbursement, the City of Lancaster will only be responsible for funding \$31,414.40 in FY13 and \$50,024.80 in FY14.
- **Public Information** – Bids were advertised in the Focus Daily News on February 7 & 14. Bids were posted on the City's electronic procurement system and pre-bid meetings were held on March 27 and May 9. The bid was opened on May 17, 2013. There were no minority bidders.

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Contract
 - Exhibit "A" Bid 2013-97
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Submitted by:

Mark Divita, Airport Manager

RESOLUTION NO. 2013-0X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE AWARD OF BID 2013-97 FOR CONCRETE AND ASPHALT REPAIRS AT THE LANCASTER REGIONAL AIRPORT TO C&M CONCRETE IN AN AMOUNT NOT TO EXCEED \$162,878.40; AUTHORIZING THE CITY MANAGER EXECUTE THE CONTRACT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Lancaster Regional Airport has pavement that must be maintained to Federal Aviation Administration standards per the grant assurances; and

WHEREAS, the City Council of Lancaster, Texas, desires to authorize the terms and conditions of the contract pursuant to the Bid 2013-97 listed in Exhibit "A";

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

SECTION 1. The City Council hereby approves and authorizes the purchase of concrete and asphalt repairs at Lancaster Airport as described in Bid 2013-97 to C&M Concrete for an amount not to exceed \$162,878.40 pursuant to the bid proposal acknowledgement, attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 2. That the City Manager is hereby authorized to execute the contract.

SECTION 3. Any prior Resolution of the City Council in conflict with the provision contained in this Resolution is hereby repealed and revoked.

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster, Texas

Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and **C&M Concrete.**, (hereinafter referred to as the "Contractor") for **Concrete & Asphalt Repairs (2013-97)**, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

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

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Invitation to Bid, Requirements and Instructions to Bidders, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any): **TXDOT Standard Specifications 2004.**

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

1.3 ENTIRE AGREEMENT

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

1.4 NO PRIVACY WITH OTHERS

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

1.5 INTENT AND INTERPRETATION

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

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

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as

defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

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

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

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

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner 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. 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 completion of **concrete and asphalt repairs at Lancaster Airport**, 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.

1.5.9 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 Con

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:

2013-97 – Concrete & Asphalt Repairs at Lancaster Airport

Remove and replace concrete and asphalt in various locations on airport property per specifications.

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. 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

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, for the fixed sum of **\$162,878.40**.

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 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 unit 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 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.

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 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 Owner a list of items to be completed or corrected. When the Owner 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 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 thereof in writing. Thereupon, the Owner 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 and will issue a final Certificate for Payment certifying 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

5.6.1.1 If the Contractor fails to achieve final completion 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 Owner 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; 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 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, 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 Owner, 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.

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

NAME	FUNCTION

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner 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. 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, 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, 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 Owner.

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 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, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH

NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Owner 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 Owner 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 to the Owner 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 FIELD ORDERS

8.1.1 The Owner 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.

8.2 MEDIATION

8.2.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Owner 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 Owner'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.

8.2.2 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 Owner 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, 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 Owner 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 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

related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change.

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 Owner 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 Owner's request or to any provisions of this Contract, it shall, if required by the Owner, be uncovered for the Owner'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 Owner, be uncovered for the Owner'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 Owner 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 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, 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 ma

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 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 specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. 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, 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 Owner'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

sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds

furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Owner at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED in single or multiple originals, this 24th day of June, 2013.

CITY OF LANCASTER

C&M CONCRETE

Opal Mauldin Robertson, City Manager

Type/Print Name and Title

ATTEST:

Address

Dolle K. Downe, City Secretary

City of Lancaster, Texas (Purchasing)

Supplier Response

Bid Information		Contact Information		Ship to Information	
Bid Creator	Dawn Berry Purchasing Agent	Address	PO Box 940	Address	730 Ferris Road
Email	dberry@lancaster-tx.com		Lancaster, TX 75146		Suite 102 (Terminal Bldg)
Phone	(972) 218-1329	Contact	Dawn Berry		Lancaster, TX 75146
Fax	(972) 218-3621		Purchasing Agent	Contact	
			Purchasing		Airport
Bid Number	2013-97 Addendum 1	Department		Department	
Title	Concrete & Asphalt Repairs at Lancaster Airport	Building		Building	
Bid Type	ITB	Floor/Room		Floor/Room	
Issue Date	05/01/2013	Telephone	(972) 218-1329	Telephone	
Close Date	5/17/2013 3:00:00 PM CT	Fax	(972) 218-3621	Fax	
Need by Date		Email	dberry@lancaster-tx.com	Email	

Supplier Information

Company C&M CONCRETE
 Address P.O BOX 381910

 DUNCANVILLE, TX 75138
 Contact CHRIS BOWEN
 Department
 Building
 Floor/Room
 Telephone 1 (972) 965-4781
 Fax 1 (972) 709-9173
 Email bowenchris1@aol.com
 Submitted 5/14/2013 6:58:36 AM CT
 Total \$162,878.40

Signature _____

Supplier Notes

payment % down ?
 material delivered to job

Bid Notes

Bid Activities

Date	Name	Description
2/7/2013 8:00:00 AM	Week 1	Week 1 Advertisement - Focus News
2/14/2013 8:00:00 AM	Week 2	Week 2 Advertisement - Focus News

Vendors are encouraged to schedule an appoint to view the affected areas to be repaired. An appointment can be scheduled with Mark Divita, Airport Manager at 972-218-1274. All site visits must be completed by May 9, 2013 prior to 3:00 PM.

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Questions	All questions shall be addressed to Dawn Berry, Purchasing Agent via email at purchasing@lanaster-tx.com.	Agree
2	Company Ownership	Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.	
3	Difficulties	What difficulties do you anticipate in serving the City? How do you plan to manage these and what assistance will you require from the City? Describe your firm's past performance on other contracts for the City (e.g. cost control, cost savings, schedule control).	
4	Financial Default	Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.	
5	Litigation with City of Lancaster	Is your firm involved in any litigation (past or pending) with the city of Lancaster? If yes, please provide details.	
6	NEPOTISM STATEMENT	The Bidder or Proposer or any officer, if the Bidder or Proposer is other than an individual, shall state whether Bidder or Proposer has a relationship, either by blood or marriage, with any official or employee of the City of Lancaster:	Not Related
7	Non-Performance	Identify if your firm has had any contracts terminated due to non-performance over the past five (5) years.	no
8	Open Records Act	All responses will be maintained confidential until award is finalized. At that time, all proposals are subject to the Open Records Act.	Agreed
9	PROPERTY TAXES	Please indicate whether you or your company, owe delinquent property taxes to the City whether an assumed name, partnership, corporation, or any other legal form.	Do Not
10	Regulatory Sanctions	Identify adverse actions sanctioned by any regulatory authorities over the past five (5) years.	none
11	Warranty - Repair Policy	What is your warranty and "redo" repetitive policy for new and repair work?	1 year , remove and replace
12	Construction Uniform	Do your field employees wear uniforms? Provide a brief description.	safty vest
13	T&C Acknowledgement	I have read and agree to the terms and conditions of this bid.	Agreed

14	Bid Acknowledgement	Bidder affirms that they have read and understand all requirements of this proposal. Additionally, the bidder affirms that they are duly authorized to execute this contract and that this company has not prepared this proposal in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the bidder nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this proposal.	Agreed
15	Completion Date	Please list the number of days to complete this project.	30
16	Insurance	Vendor shall provide insurance as listed in the insurance requirements attached.	Understood
17	County	What county is your principal place of business located?	Dallas
18	Immigration	Employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the US) and aliens authorized to work in the US. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.	(No Response Required)
19	Contractor Responsibility	Keep project area in a safe and clean environment at all times during the contract period. Ensure all work is executed in accordance with OSHA (Occupational Safety and Health Administration) Requirements. Contractor must ensure that all Federal, State, and Local regulation are met.	(No Response Required)
20	Damage	Contractors are responsible for repairs caused by their negligence for any damage to public right of way and/or private property.. Repairs must be completed prior to final acceptance of job for payment.	(No Response Required)
21	Workmanship	All work and workmanship must be of good quality and adhere to all applicable laws and regulations. Contractor must possess all necessary licenses.	(No Response Required)
22	Laws and ordenances	The Contractor shall at all times observe and comply with all Federal, State, and local laws, ordinances and regulations which in any manner affect the Contract or the work.	Understood
23	Work Hours	Working hours are not to begin prior to 7:00 AM or extend past 5:00 PM without prior written approval.	Understood
24	Payment Terms	The City of Lancaster's payment terms are Net 30.	Agreed
25	Change Orders	No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the city of Lancaster.	Agreed
26	Late Submission	Bids/RFQs are not accepted after the closing date and time. The City of Lancaster is not responsible computer, mail or carrier issues/problems. The server time located in the top right corner of this software is the official clock. It is the responsibility of the user to ensure you have chosen	Understood

the correct time zone for your company.

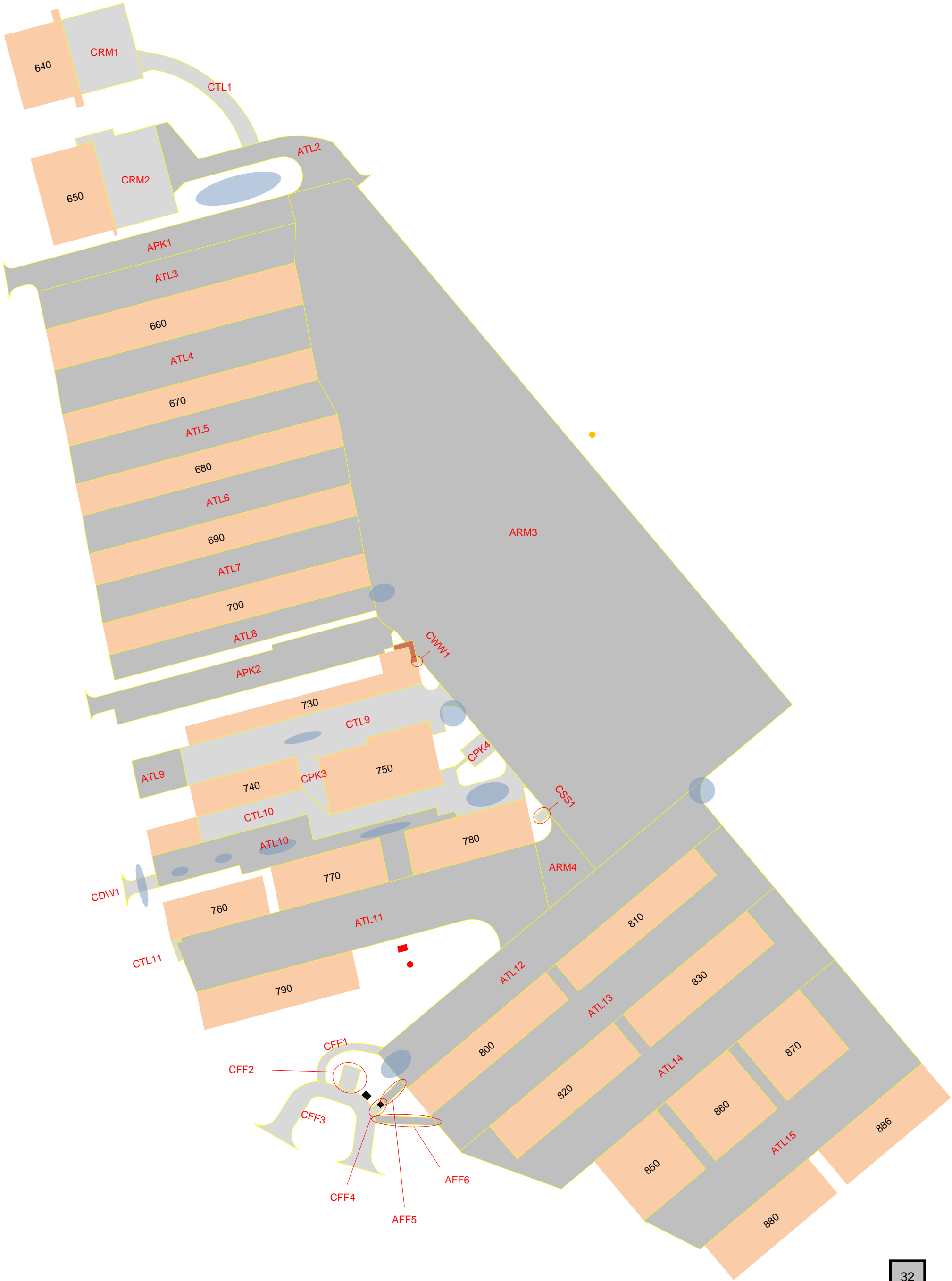
- | | | | |
|----|-------------------------|---|------------------------|
| 27 | AWARD OF CONTRACT | The contractor shall not commence work under these terms and conditions of the contract until all applicable Certificates of Insurance, Performance and Payment Bonds and have been approved by the City of Lancaster and he/she has received notice to proceed in writing and an executed copy of the contract from the City of Lancaster. | Agreed |
| 28 | Deviation | <p>DEVIATIONS: In the event, you the Proposer, intends to deviate from the general terms, conditions, special conditions or specifications contrary to those listed in the "Terms and Conditions" and other information attached hereto, all such deviations must be detailed and uploaded in the RESPONSE ATTACHMENTS section of the e-pro system with the description DEVIATION.</p> <p><P>NO DEVIATIONS: In the absence of any deviation, Proposer assures the City of Proposer's compliance with the Terms, Conditions, Specifications, and information contained in this RFP.</p> | None |
| 29 | Award | Response to specifications, location of vendor, history/relationship, price and vendor's ability to perform the work are the primary factors in determining the lowest responsible bid. | (No Response Required) |
| 30 | Contractor Independence | Contractor will operate as an independent contractor and not an agent, representative, partner, or employee of the City of Lancaster, and shall control his operations at the work site, and be solely responsible for the acts or omissions of his employee(s). All wages, taxes, and worker's compensation of all contract employees shall be paid by the contractor. | (No Response Required) |
| 31 | MWBE 1 | Is your company M/WBE or HUB certified? | No |
| 32 | MWBE 2 | If yes, what is your certification number? | |
| 33 | MWBE 3 | If yes, what agency completed the certification? | |
| 34 | MWBE 4 | If yes, what is the expiration date of your certification? | |
| 35 | BID PROTESTS | <p>All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Agent within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as protests relating to alleged improprieties or ambiguities in the specifications.</p> <p><p></p> <p>The limitation does not include protests relating to staff recommendations as to award of a bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary PRIOR to Council Award.</p> | Agreed |
| 36 | Addendum 1 | Addendum 1 has been issued and includes an updated statement of work (SOW) and TXDOT specifications. The due date and time has changed to May 17, 2013 at 3:00 PM. | ACK |

Line Items

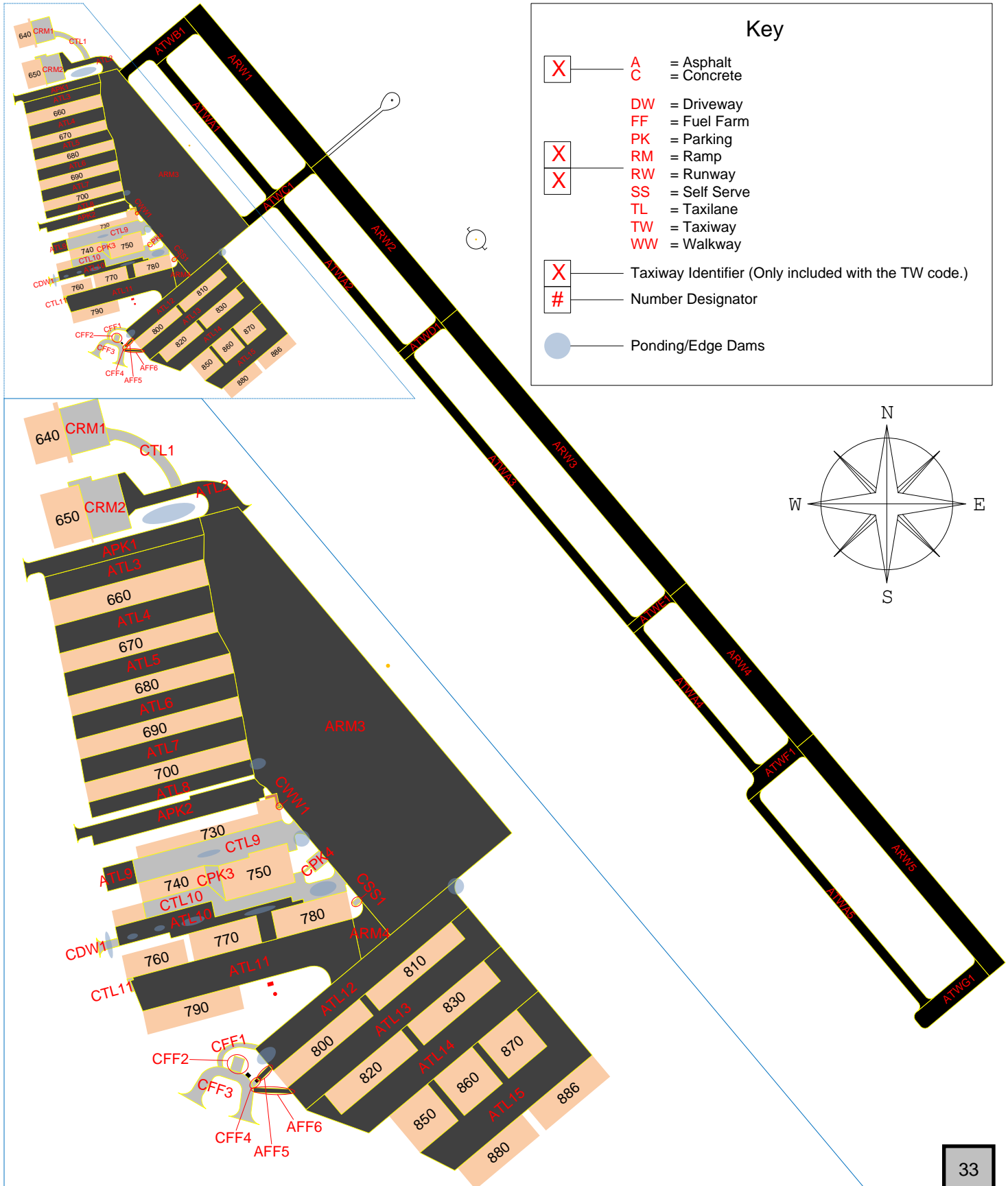
#	Qty	UOM	Description	Response
1	1	EA	Seal Cracks - Complete and in place	\$1,600.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
2	1	EA	Seal or replace HMA - Complete and in place	\$470.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
3	1	EA	Seal Cracks - Complete and in place	\$3,600.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
4	1	EA	Seal Joints - Complete and in place	\$1,253.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
5	1	EA	Replace PCC- Complete and in place	\$9,747.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
6	1	EA	Replace HMA w/PCC - Complete and in place	\$9,576.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
7	1	EA	Replace HMA w/PCC - Complete and in place	\$9,576.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
8	1	EA	Replace HMA w/PCC- Complete and in place	\$9,576.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				

9	1	EA	Replace HMA - Complete and in place	\$360.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
10	1	EA	Replace HMA - Complete and in place	\$599.40
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
11	1	EA	Replace HMA w/PCC - Complete and in place	\$54.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
12	1	EA	Seal Cracks - Complete and in place	\$15,390.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
13	1	EA	Replace HMA joining to CTL9 & 10 - Complete and in place	\$80,000.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
14	1	EA	Replace HMA adjacent to ATL8 - Complete and in place	\$581.40
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
15	1	EA	Replace HMA in car parking areas - Complete and in place	\$6,555.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
16	1	EA	Replace HMA adjacent to building 670-102 - Complete and in place	\$12,457.35
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				

17	1	EA	Add 2-3" of HMA to T-Hangar floor - Complete and in place	\$983.25
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
18	1	EA	Replace damaged or removed yellow striping - Complete and in place	\$500.00
Item Notes: See cooresponding item on the Statement of Work Attachment.				
Supplier Notes:				
Response Total:				\$162,878.40



Lancaster Airport (LNC) Pavement Maintenance Plan



LANCASTER CITY COUNCIL

Agenda Communication

June 24, 2013

Item 3

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

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

Goal: Sound Infrastructure

Background

The City owns and leases five rows of T-hangars (buildings 660-700) of three different sizes based off aircraft wingspan. There are 92 units that the City rents for aircraft storage with end cap commercial spaces on the east end of each hangar row. The City T-hangars are near full occupancy most of the time. This agenda item brings forward a non-commercial lease agreement for T-hanger 700-118 (956 sqft) for a tenant, Mr. Tommy Tigert.

Considerations

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

Options/Alternatives

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

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Exhibit “A” Lease Agreement
-

Submitted by:
Mark Divita, Airport Manager

RESOLUTION NO. 2013-0X-XX

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

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

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

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

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of June 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney



LANCASTER Regional AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

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

I.

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

1. **Premises:** Hangar Row and Suite **700-118**, located at the Airport, and consisting of approximately 956 square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the _____ day of _____, 20 _____. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$170.00** per month, due and payable in advance on the first day of each month.

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

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

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

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

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

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

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

II.

STANDARD TERMS AND PROVISIONS

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

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

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

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

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

made.

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

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

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

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

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

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

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

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

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

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

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

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

- a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.
- b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.
- c. LESSEE shall fail to provide lock combination or key to lock on assigned hangar to airport administration.
- d. LESSEE shall fail to provide accurate and correct contact information as set forth in paragraph 18 – "Notices".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LESSEE: Tommy Tigert

1305 Ferris Rd.

Lancaster, TX 75146

972-227-6836

ttig@pipeline.com

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

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

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

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

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

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

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

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

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____
Opal Mauldin Robertson,
City Manager

ATTEST:

Dolle K. Downe, City Secretary

LANCASTER CITY COUNCIL

Agenda Communication

June 24, 2013

Item 4

Consider a resolution adopting the City of Lancaster State Auxiliary Museum Policy.

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

Goal: Civic Engagement

Background

The Lancaster State Auxiliary Museum mission is to collect, preserve and interpret the history of the State of Texas and the City of Lancaster for the educational enrichment of the public. On May 28, 2007 the Lancaster Convention and Visitors Center was designated a State Auxiliary Museum by State Representative Helen Giddings and the 80th Texas Legislature. The City of Lancaster State Auxiliary Museum is located within the Lancaster Visitors Center and Convention Bureau at 103 N. Dallas Avenue within the historic Interurban Building. The museum officially opened in 2010 upon completion of building renovation.

City Council received a presentation at the June 17, 2013 work session.

Considerations

- **Operational** – Implementation of the State Auxiliary Museum Policy will begin the process of establishing the formal oversight of museum holdings and operations, the establishment of the Museum Advisory Board and additional governance guidelines.
- **Legal** – The resolution will be reviewed and approved as to form by the City Attorney.
- **Financial** – There are no direct financial considerations related to approval of the policy. Staff will seek to identify and apply for available grant funding to further the mission and goals of the Museum.
- **Public Information** – 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. Approve the resolution adopting the policy.
2. Reject the resolution adopting the policy.

Recommendation

Staff recommends approval of the resolution.

Attachments

- Resolution
 - Museum Policy
-

Submitted by:

Aretha Adams, Assistant City Manager

RESOLUTION NO. 2013-0X-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE CITY OF LANCASTER STATE AUXILIARY MUSEUM POLICY; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster supports policies and procedures to successfully govern the operations of the State Auxiliary Museum; and

WHEREAS, the Museum's mission is to collect, preserve and interpret the history of the State of Texas and the City of Lancaster for the educational enrichment of the public; and

WHEREAS, the City Council of the City of Lancaster values and appreciates an avenue by which the community and its visitors can enjoy and educate themselves on the rich history of the City of Lancaster and the State of Texas.

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

SECTION 1. The State Auxiliary Museum Policy, attached hereto and incorporated herein by reference as Exhibit "A", having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of June 2013.

APPROVED:

Marcus E. Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

City of Lancaster State Auxiliary Museum Policies & Procedures

PART I Planning, Acquisitions and Care

A. Statement of Purpose

The Statement of Purpose is as defined by the Policies and Procedures of the City of Lancaster State Auxiliary Museum.

The City of Lancaster State Auxiliary Museum collects preserves and interprets the history of the State of Texas and the City of Lancaster for the educational enrichment of the public. Interpretation is conducted through permanent and temporary exhibits, organized educational programs, special events and publications.

The museum serves as a repository of State of Texas and City of Lancaster historical artifacts. The museum collects and preserves artifacts pertinent to the history of the State of Texas and the City of Lancaster. Every effort is made to ensure authenticity of the collections and their accurate presentation.

B. Location, Scope and Use of the Collections

The City of Lancaster State Auxiliary Museum is located at 103 N. Dallas Avenue, Lancaster, Texas 75146, commonly known as the City of Lancaster Visitors Center and Convention Bureau. All collections, artifacts, exhibits and museum facilities are governed by the City of Lancaster and/or its designated agents. Exhibit A designates all square footage within 103 N. Dallas Avenue dedicated solely to operations and purposes related to the City of Lancaster State Auxiliary Museum unless otherwise specified by the City of Lancaster and/or its agents.

The City of Lancaster State Auxiliary Museum accepts artifacts, documents, photographs, and ephemera that are in good condition, worthy of permanent preservation, and are useful in interpreting the history of the State of Texas and the City of Lancaster. Objects not

accepted into the permanent collections may be cared for by the museum for special uses, if deemed advisable by the Advisory Board. Such uses include temporary exhibitions, educational, hands-on demonstrations, copying for research purposes, etc. Existing collections which are deemed outside the collection and preservation goals of the museum will be deaccessioned in accordance with accepted national museum standards.

C. Acquisitions

All acquisitions are made by the City of Lancaster State Auxiliary Museum for the educational and research purposes of the museum.

1. Collecting Goals

The overall direction and goals of collecting activities are governed by the mission of the City of Lancaster State Auxiliary Museum. The collecting goals of the **Museum Collection** are to document the history of Lancaster and the State of Texas.

2. Collection Categories

Two categories of collections are held by the museum:

The Permanent Collections (Category I) contain those objects which directly support the mission of the Museum and help to achieve its primary collecting goals, as outlined above.

The Research Collections (Category II) contain supplemental materials which augment the Permanent Collections by providing additional documentation of the collections, Lancaster's history, or the history of Texas and the United States, for research or exhibition purposes, but do not play a primary role in supporting the Museum's mission.

The Museum collects materials for its Permanent Collections in the form of artifacts, paintings, drawings, photographs, prints, decorative arts, memorabilia, audiovisual materials, and documentary written materials. Selected publications are collected for internal reference and exhibition purposes.

D. Acquisition Decisions

Decisions as to the appropriateness of proposed acquisitions are made as follows:

For Category I objects, a recommendation is made by the Museum's Advisory Board operating in accordance with its policies and procedures, to the City Manager's Office, which, taking into account the Advisory Board's recommendation, makes the final decision as to whether the object should or should not be acquired.

For Category II objects, an acquisition recommendation is made to the Director or designee, who makes the final acquisition decision.

Objects may be acquired from private individuals in the form of bequests, exchanges with other repositories, gifts, purchases, and transfers of property. The Museum will not directly or indirectly acquire objects that have an unethical history of ownership. The Museum does not accept any item or collection unless it has been legally and scientifically recovered and documented. The Museum shall not accept any item thought to be stolen or acquired unlawfully. The Museum shall not acquire any artifact or specimen that would violate the conditions of the Native American Graves Protection and Repatriation Act (NAGPRA). No staff or committee member shall compete with the museum in any personal collecting activity. The staff shall not personally deal, buy, sell or trade in objects similar to the types of artifacts collected by the Museum.

The Museum does not accept acquisitions on which restrictions or special conditions, other than donor recognition, have been placed. Exceptions to this policy must be considered by the Advisory Board and approved by the Director.

Due to limited exhibition space and periodically changing exhibitions, no commitments shall be made to exhibit objects acquired for the collections in the Museum's galleries for any duration of time as a condition of acquisition.

E. Acquisition Criteria

Potential acquisitions must meet three basic criteria:

1. Relevance: the object must support the Museum's mission and fit within its stated collecting goals.
2. Use: the object must have the capacity for use in exhibitions and/or for research, educational and scholarly purposes.
3. Condition: the object must be in reasonable condition and must not require significant expense for treatment in order to make it relevant or useful unless such funds are pledged in writing by a donor.

In addition, the following questions must be considered when evaluating a potential acquisition. If the answer to any one of these questions casts doubt on the ability of the Museum to properly care for or manage the object, serious thought should be given to declining the acquisition.

1. Is the source the rightful owner of the object and are there any conflicts regarding property rights or legal title?
2. Has the source requested that any restrictions or special conditions be placed on the acquisition? If so, is their acceptance justifiable given Museum policy?
3. Are there any constraints in terms of intellectual property rights? Will all intellectual property rights be turned over to the City of Lancaster? If the source is not the copyright holder, has the holder been identified and can copyright be transferred to the Institute or a licensing arrangement made?
4. Has the provenance of the object been properly documented? Are there any concerns as to the authenticity of the object or its provenance?
5. Does the object unnecessarily duplicate another object already in the collections?
6. Does the Museum have the ability and intention to use and care for the object? Is appropriate storage space available? Are additional funds beyond the scope of the general collections budget necessary to make the object accessible? If the answer to any of these questions is no, the Museum should explore with the prospective

donor the possibility of his/her establishing an endowment to support the extraordinary costs of care, storage, and/or access.

7. Are there any safety concerns related to the object which might demand special handling, display, and/or insurance requirements?
8. If the object is being purchased, is the price fair and reasonable? Could the object or its equivalent be acquired by gift or bequest rather than purchase?

F. Gifts

For all gifts, a Deed of Gift agreement must be signed by the donor or the donor's authorized representative at the time of donation. Objects will not be rehoused, preserved, cataloged, or made available for use by researchers until a Deed of Gift has been executed. The Museum does not accept donations in which legal title is not transferred to the City of Lancaster State Auxiliary Museum. If a donor wishes to retain title to an object, the object shall be considered an adjunct to the Permanent Collections and processed as an extended loan. In this case, it is understood by the Museum that the donor's intent is to turn all rights and title in the object over to the City of Lancaster State Auxiliary Museum at some future point and an agreement to this end must be entered into prior to acceptance of the loan. Gifts to the Museum are tax deductible to the extent allowed by law. If a donor wishes to take a charitable deduction, it is their responsibility to initiate IRS Form 8283 for Noncash Charitable Contributions. The City of Lancaster State Auxiliary Museum is responsible only for certifying receipt of the gift and is not allowed to establish any valuations, nor provide any recommendations as to appraisers. Under no circumstances will Museum staff, Advisory Board Members or volunteers appraise donations or make arrangements for an appraisal on the donor's behalf. Unsolicited objects offered as potential acquisitions for the Museum's collections are considered to be in the **temporary custody** of the Museum. If the acquisition of an unsolicited object is approved, the object will be formally accessioned into the collections and the Temporary Custody Receipt will be retained in the object's accession file. Unwanted, unsolicited objects will be returned to the source, if the source is known. If the source is not known, Museum staff will attempt to locate an appropriate repository for the object and if unsuccessful, the object may be disposed of by witnessed destruction.

G. Bequests

Bequests will be considered for acquisition in the same manner as gifts. The City of Lancaster State Auxiliary Museum reserves the right to refuse bequeathed objects that do not meet its criteria for acquisition, or it may choose to accept only a portion of the bequest. For all bequests, copies of the will including all codicils shall be retained for the object's Accession File.

H. Exchanges

Exchanges are treated as two separate collections management actions. Incoming objects will be considered for acquisition in the same manner as other acquisitions and must be approved before the exchange takes place. Title transfer documentation appropriate to the type of acquisition will be retained in the object's Accession File. Outgoing objects must be deaccessioned in accordance with Museum policy. Deaccession Recommendation and Deaccession Action forms will be retained in the object's Accession File.

I. Purchases

The City of Lancaster State Auxiliary Museum maintains an acquisition fund, under the supervision of the City Manager's Office, which is used towards the purchase of objects for the collections and for the direct care of collections, which is defined as the conservation of collections objects or the improvement of collections storage facilities. Funds for a purchase must be in hand or secured in writing prior to submitting an acquisition proposal to the Director. Objects purchased with funds from the sale of donated objects will be credited to the original donor. The bill of sale or signed Receipt of Purchase will be retained in the object's Accession File.

The City Manager's Office will provide a report on acquisitions at the close of the fiscal year.

J. Preventative Care

The role of preventive care (also known as preventive conservation) is to avoid, block, or minimize the **agents of deterioration**. By using preventive care techniques you can limit the imperceptible deterioration that occurs on a daily basis (but is cumulative over time) and the catastrophic damage that occurs occasionally. Only when preventive care techniques are not implemented or objects are inherently unstable, is conservation treatment necessary.

The agents of deterioration are forces that act upon objects causing chemical and physical damage. The Canadian Conservation Institute has defined the agents of deterioration as:

1. **Direct physical forces**, such as shock, vibration, and abrasion that can break, distort, puncture, dent, and scratch all types of objects. These forces may be *cumulative*, such as improper handling or support or *catastrophic*, such as earthquake, war, or shelf collapse.
2. **Thieves, vandals, or careless individuals** who misplace objects. Some of these agents are *intentional*, such as criminals who steal or disfigure objects. Others are *unintentional*, such as staff or users who misfile objects.
3. **Fire** that destroys, scorches, or deposits smoke on all types of objects.
4. **Water** that causes efflorescence in porous materials, swells organic materials, corrodes metals, delaminates and/or buckles layered components, and loosens joined components.
5. **Pests**, such as *insects* that consume, perforate, cut, graze, tunnel and/or excrete which destroys, weakens, disfigures, or etches organic materials. Pests also include *vermin* such as birds and other animals that gnaw organic materials and displace small objects, foul objects with feces and urine and *mold and microbes* that weaken or stain objects.
6. **Contaminants** that disintegrate, discolor, or corrode all types of objects, especially reactive and porous materials. This includes *gases* (such as pollution, oxygen), *liquids* (such as plasticizers, grease), and *solids* (such as dust, salt).

7. **Radiation**, including both ultraviolet radiation and visible light. *Ultraviolet* radiation disintegrates, fades, darkens, and/or yellows the outer layer of organic materials and some colored inorganic materials. *Unnecessary visible light* fades or darkens the outer layer of paints and wood.
8. **Incorrect temperature** that can be *too high* causing gradual disintegration or discoloration of organic materials; *too low* causing embrittlement, which results in fractures of paints and other polymers; or *fluctuating* causing fractures and delamination in brittle, solid materials. Fluctuations in temperature also cause fluctuations in RH.
9. **Incorrect relative humidity** that can be *damp (over 65% RH)*, causing mold and corrosion, or *above or below a critical value*, hydrating or dehydrating some minerals and corroding metals that contain salts. Organic materials will gradually disintegrate and discolor, especially materials that are chemically unstable at any RH level *above 0%*. *Fluctuating* RH will shrink and swell unconstrained organic materials, crush or fracture constrained organic materials, cause layered organic materials to delaminate and/or buckle, and loosen joints in organic components.

Most objects are affected by a variety of these agents of deterioration at the same time. As you improve preventive care of your collections, you will be addressing each of the agents of deterioration through a variety of policies and procedures.

The Director has primary responsibility for preventive care of the museum collections. Preventive care requires vigilance to ensure that damage does not occur. In order to carry out a proper preventive care program you should:

- know the causes and recognize the symptoms of object deterioration
- inspect collections on a regular basis
- monitor and control the museum environment (relative humidity, temperature, light, pests, dust, and other pollutants)
- practice proper techniques for the handling, storage, exhibit, packing, and shipping of objects
- provide appropriate security and fire protection for collections

- prepare and be able to implement emergency management plans for collections

K. Conservation

Conservation treatment is the deliberate alteration of the chemical and/or physical aspects of an item from a museum collection, in order to prolong the item's existence. Treatment may consist of stabilization and/or restoration. **Stabilization** consists of those treatment procedures applied to maintain the integrity of a museum object and to minimize further deterioration. For example, when a conservator washes paper, the washing removes acidic by-products of deterioration. This is a method of stabilization. **Restoration** consists of those treatment procedures intended to return cultural property to a known or assumed state, often through the addition of non-original material. For example, to restore a broken ceramic pot a conservator might glue broken pieces together and fill the losses with plaster.

Consider conservation treatment in the following cases:

- when preventive care measures are not enough to reduce the rate of deterioration to a tolerable level, such as deteriorating plastic objects
- when deterioration has proceeded to a point where the object is extremely fragile and is in danger in any circumstances, such as when paint is flaking from a picture
- when stabilization or restoration is required for exhibit
- when stabilization or restoration is required for research

Any person who performs conservation treatments for the City of Lancaster State Auxiliary Museum must agree to adhere to the American Institute for Conservation of Historic and Artistic Works (AIC) Code of Ethics and Guidelines for Practice. This requirement shall be in all requests for proposals (RFPs) or contracts with conservators.

Preventive conservation is the responsibility of everyone who works in and around museum collections, including archivists, museum technicians, collection managers, conservators, curators, interpreters, maintenance personnel, preparators, volunteers and researchers.

Addendum A (Code of Ethics)

Code of Ethics for the City of Lancaster State Auxiliary Museum

Introduction

The City of Lancaster State Auxiliary Museum values museums and the service they provide to the public. Its board, staff, and volunteers embrace fairness, inclusiveness, diversity, innovation, and integrity and work to advance the museum's mission.

As a part of government entity dedicated to the public good, the museum is accountable to the public, transparent in its operations, responsible in its stewardship of resources, and committed to excellence.

This Code of Ethics applies to the museum's staff and volunteers. Staff members include those who are employed by the association on a full-time, part-time, permanent, temporary, or contract basis.

Volunteers include interns, and any individual appointed to serve on a museum Advisory Board, task force, or working group on behalf of the museum community.

The City of Lancaster State Auxiliary Museum is actively committed to informing board, staff, and volunteers about the code of ethics and its application; evaluating the code regularly, and creating policies and procedures that reflect its values.

Mission

The Museum's mission, approved by Lancaster City Council, is to collect, preserve and interpret the history of the State of Texas and the City of Lancaster for the educational enrichment of the public. Interpretation is conducted through permanent and temporary exhibits, organized educational programs, special events and publications. The mission reflects the constituency and communities the museum serves. The museum's programs support that mission, as do those who work for or on its behalf.

Legal Compliance

The museum's board, staff and volunteers comply with all applicable laws, regulations, and international conventions.

Personal and Professional Conduct

In their dealings as representatives of the Museum, museum staff, board, and volunteers act professionally with honesty, integrity, and openness. They treat each other and museum constituents fairly and with respect. Staff, board members, and volunteers are responsible for being aware of and complying with museum policies that address their conduct.

Conflict of Interest

Museum staff, advisory board members, and volunteers act in the best interest of the museum rather than in furtherance of personal interests or the interests of third parties, such as friends and family. Decisions about the Museum and the use or disposition of its assets are made solely in terms of the benefits to the museum and are neither influenced nor appear to be influenced, by any private profit, personal gain, or outside benefit for staff, board members, and volunteers; their friends and family members; or the organizations with which they are affiliated.

Advisory Board

The City of Lancaster State Auxiliary Museum has an active advisory board that makes recommendations to the City Manager's Office regarding the association's mission, strategic direction, and policies; the City Manager's Office is responsible for oversight of its finances and operations. The board ensures that its members and the staff act for the benefit of the museum and its public purpose with integrity and honesty; that the museum's resources are responsibly and prudently managed; and that the museum has the capacity to carry out its programs effectively.

The advisory board must adhere to the City of Lancaster Boards and Commissions Policies and Procedures during the execution of its duties. The Advisory Board will consist of five (5) board members and one (1) alternate board member appointed by the Lancaster City Council, each serving staggering terms of two years.

Staff

All staff members are responsible for understanding the duties of their positions and executing those duties to the best of their abilities. The museum promotes a working environment that values respect, fairness, and integrity. Its human resource policies are fair, establish clear expectations, and provide for meaningful and effective performance evaluation. Open communication among staff is highly valued.

To help all staff meet their potential and to sustain the museum and encourage its growth, the senior staff model professional conduct and provide leadership, clarity, and respect for individuals and for diverse points of view.

Volunteers

The Museum's volunteers are in direct contact with the public on a daily basis and often are the face of the museum to their peers and the public. When acting on behalf of the museum, volunteers understand their duties and execute them to the best of their abilities. They convey the mission and goals of the museum, and as its representatives, refrain from promoting their own institutions or businesses.

Integrity

The City of Lancaster State Auxiliary Museum responds to the needs of its community and is committed to improving its organizational effectiveness, programs, products, and services. It strives to provide the public with content that is accurate, clear, and informed.

Inclusiveness and Diversity

To enhance its effectiveness, the museum promotes inclusiveness. Its staff, board, and volunteers strive to ensure that the diversity of museums and museum professionals is reflected in its programs and Advisory Board.

Awards

When granting awards, the museum:

- has guidelines in place to ensure fairness and consistency
- maintains constructive relations with applicants or nominees, based on mutual respect and shared goals;
- communicates clearly and on a timely basis;
- respects applicants' or nominees' expertise in their fields of knowledge;

Fiscal Responsibility

The City of Lancaster State Auxiliary Museum manages its funds responsibly and prudently by:

- drawing from its endowment funds consistent with donor intent and to support the endowment's public purpose;
- ensuring that all spending practices and policies are fair, reasonable, and appropriate to fulfill its mission;
- generating financial reports and annual independent audits that are accurate, complete, and accessible in all material respects.

Fund-Raising and Business Practices

The City of Lancaster State Auxiliary Museum is truthful in its fund-raising solicitation materials. It handles information about donations with confidentiality to the extent provided by the law, expends funds consistent with donor intent, and provides appropriate acknowledgement and recognition. The museum discloses whether those seeking donations are museum Advisory Board Members, volunteers, employees, or hired solicitors.

In all cases, and for the protection of the good name of the museum and its members, the museum may only enter into agreements with reputable organizations whose image, product, and services do not conflict with its mission or values.

Disclosure

The City of Lancaster State Auxiliary Museum provides comprehensive information about the museum and responds in a timely manner to reasonable requests for information. Basic data about museum operations—such as the Form 990, annual reports, audited financial statements, program reports, and policies—are available to the public by an open records request.

Confidentiality

The City of Lancaster State Auxiliary Museum staff, board, and volunteers may have access to confidential and privileged information about the association, its members, and other constituents. Loyalty to the Museum requires that individuals with access to such information comply with privacy and confidentiality policies and treat all information responsibly and appropriately.

Use of this Code of Ethics

The Code of Ethics of the City of Lancaster State Auxiliary Museum is a living document, designed to be disseminated, used, and updated. The Lancaster City Council will establish a schedule for regular review of the code and its dissemination. Museum staff will:

- incorporate the code into its operations
- review the code regularly
- post the code on the museum's public Web site
- disseminate the code to all museum volunteers

LANCASTER CITY COUNCIL

Agenda Communication

June 24, 2013

Item 5

Consider a resolution authorizing the City Manager to extend Stage 2 of the City of Lancaster Water Conservation and Drought Contingency and Water Emergency Response Plan until May 2014 as required by the Wholesale Treated Water Contract between the City of Dallas and City of Lancaster.

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

Goal: Healthy, Safe and Vibrant Neighborhoods

Background

On December 12, 2011, City Council authorized implementation of Stage 2 of the City of Lancaster's Water Conservation and Drought Contingency and Water Emergency Response Plan at the formal request of the City of Dallas, Dallas Water Utilities (DWU). Stage 2 targets a goal of five percent reduction in water consumption.

On February 10, 2012, the City received official notification from the City of Dallas that they had extended their initial drought contingency Stage by 120 days through June 8, 2012 and were requesting that the City of Lancaster extend their like initiated drought stage for the same period. On February 27, 2012 the City of Lancaster extended the Water Conservation and Drought Contingency and Water Emergency Response Plan for 120 days through June 8, 2012 as did the City of Dallas and as is required by contract.

Staff has been in attendance at the regional meetings to discuss future drought plans as lake levels continue to remain low. DWU has requested member cities to remain at a twice weekly watering stage.

Considerations

This is a request to consider remaining in Stage 2 of the Water Conservation and Drought Contingency and Water Emergency Response Plan.

- **Operational** – The Water Operations Division oversees the implementation of the water conservation plan and drought contingency plan in partnership with Dallas Water Utilities. Staff will continue to closely monitor the drought situation and update City Council as appropriate. In addition, staff spoke with other Best Southwest municipalities and determined that the City of Cedar Hill and Desoto are remaining in Stage 2 and the City of Duncanville has not adopted a plan.

- **Legal** – The City Attorney has prepared a resolution, to remain in Stage 2 until May 2014.
- **Financial** – There is no additional cost for continuous implementation of Stage 2. Utilization of less water potentially reduces our expenses and revenues.
- **Public Information** – The item will be posted in accordance with the Texas Open Meetings Act.

Options/Alternatives

1. City Council may approve this resolution.
2. City Council may deny this resolution and direct staff.

Recommendation

Staff recommends the City remain in Stage 2 of the Drought Contingency Plan.

Attachments

- Resolution
-

Submitted by:

Rona Stringfellow, Managing Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS AUTHORIZING THE CITY MANAGER TO EXTEND STAGE 2 ACTIVATION OF THE CITY OF LANCASTER WATER CONSERVATION AND DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN UNTIL MAY 2014 AS REQUIRED BY THE WHOLESALE TREATED WATER CONTRACT BETWEEN THE CITY OF DALLAS AND THE CITY OF LANCASTER AS OUTLINED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster contracts with the City of Dallas for the purchase of water supply for the City of Lancaster; and

WHEREAS, under this contract, the City of Lancaster is required to comply with formal requests from the City of Dallas to initiate or extend Drought or Water Emergency Response Stages during times of drought; and

WHEREAS, it is well documented that the Texas region has been in a serious drought condition; and

WHEREAS, on December 12, 2011, the City of Lancaster City Council authorized implementation of Stage 2 of the City of Lancaster's Water Conservation and Drought Contingency and Water Emergency Response Plan, which targets a goal of five percent (5%) reduction in water consumption, at the formal request of the City of Dallas who had also implemented a like stage of their Drought Contingency Plan; and

WHEREAS, on February 10, 2012, the City of Lancaster received official notification from the City of Dallas, that they had extended their initial drought contingency Stage by 120 days through June 8, 2012 and were requesting that the City of Lancaster extend their like initiated drought stage (Stage 2) for the same period.

WHEREAS, on February 27, 2012, the City of Lancaster extended their initiated drought Stage 2 by 120 days through June 8, 2012 as did the City of Dallas and as is required by contract.

WHEREAS, on June 17, 2013, the City Council of the City of Lancaster discussed remaining in Stage 2 as is required by contract.

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

SECTION 1. The City Council of the City of Lancaster, Texas, hereby approves extending Stage 2 of the City of Lancaster's Water Conservation and Drought Contingency and Water Emergency Response Plan through May 2014 as did the City of Dallas and as is required by contract.

SECTION 2. The City Manager is hereby authorized to take any action necessary to extend Stage 2 of the City of Lancaster's Water Conservation and Drought Contingency and Water Emergency Response Plan through May 2014.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of June 2013.

APPROVED:

Marcus Knight, Mayor

ATTEST:

Dolle K. Downe, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

LANCASTER CITY COUNCIL

Agenda Communication

June 24, 2013

Item 6

Consider a resolution ratifying the submission of applications to Dallas County for funding under the Fiscal Year 2013 Dallas County Community Development Block Grant (CDBG) Program for reconstruction of existing roadways: Marsalis Road from Pleasant Run Road to Green Drive and Gant Drive from Brady Drive to Marsalis Road.

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

**Goal: Financial Sound City Government
Sound Infrastructure**

Background

The City of Lancaster is eligible to receive \$117,859 in Community Development Block Grant (CDBG) funds for fiscal year 2013. At the work session on June 17, 2013, City Council discussed use of the CDBG funds and potential roadway projects for submission.

CDBG funds are administered through Dallas County and may only be used on projects that eliminate blight, eliminate a community threatening condition or primarily benefit low/moderate income residents. The primary objective of the program is to develop sustainable urban communities that meet the public service and housing needs of low and moderate income households. Federal rules allow each community to tailor its program to address specific local needs.

Historically, the City has used this funding for either demolition of substandard structures or residential roadway projects. For the past four years, staff has identified residential roadway projects in low to moderate income areas for consideration. Council has previously approved the following roadway projects for submission.

<u>Year</u>	<u>Roadway Project</u>
2009	Cheshier Road, from Beltline Road to its end
2010	Henry Road from Wintergreen Road to Baskin Drive
2011	Stanford Drive from Arcady Lane to Arlington Lane
2012	Baskin Drive from Henry Street to Ames Road
	Colgate Drive from Dallas Avenue to Dewberry Boulevard**
	Idlewild Court from Idlewild Lane to I-35E service road

**Following submission of application for the Colgate Drive project, it was determined that Dallas County Road and Bridge District #3 was unable to work on this roadway because it

concrete. However, Dallas County has indicated that there is an eligible, pre-qualified contractor (for CDBG projects) that can work on the Colgate roadway project. Staff is working with Dallas County and contractor to coordinate use of the 2012 designated funds for Colgate. Given the significant need for roadway improvements in various areas of the City, staff recommends qualifying roadway projects. The streets listed below were identified as projects using the City's HVJ Pavement management scoring, estimated cost within the allocated dollar amount, and are eligible under the CDBG program. The streets are listed in priority order.

NAME	FROM STREET	TO STREET	EST. COST	LENGTH LINEAR FT.
MARSALIS RD	PLEASANT RUN RD	GREEN DR	\$ 79,882	1401
PARK CIRCLE DR	GREEN DR	IDLEWILD LN	\$ 34,857	618
GANT DR	BRADY DR	MARSALIS RD	\$ 46,051	901
BALOMEDE ST	WINTERGREEN RD	BELVEDERE RD	\$ 65,500	1090

Considerations

- **Operational** – To meet the June 21, 2013 deadline for submissions, project applications have been submitted for Marsalis Road and Gant Drive as discussed during the work session. The attached resolution ratifies submission of the applications. The 2013 CDBG funds will not be available for use until October 2013.
- **Legal** – Congress provided the funding notice about ninety days later than usual. In order for Dallas County to meet the required federal submission deadline, the Dallas County Commissioners Court has authorized Dallas County to streamline the process as much as may be needed. There are two significant changes from prior years: (1) Dallas County will not require formal council approval for projects submitted; and (2) cities do not have to hold a public hearing prior to submitting their projects to the County.
- **Financial** – The City is eligible to receive \$117,859 in CDBG funding for fiscal year 2013. Any funds remaining following completion of the 2012 projects will be designated for carry-over for eligible roadway projects.
- **Public Information** – There are no public information requirements.

Options/Alternatives

1. Council may approve the resolution ratifying the project submissions.

Recommendation

Staff recommends approval of the resolution ratifying the submission of eligible roadways projects provided to Dallas County on June 21, 2013 [Marsalis Road from Pleasant Run Road to Green Drive and Gant Drive from Brady Drive to Marsalis Road] to Dallas County for the 2013 CDBG program.

Attachments

- Resolution
-

Submitted by:

Jim Brewer, Assistant Director Public Works / Development Services
Dolle K. Downe, City Secretary

RESOLUTION NO. 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE SUBMISSION OF APPLICATIONS TO DALLAS COUNTY FOR FUNDING UNDER THE FISCAL YEAR 2013 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR RECONSTRUCTION OF EXISTING ROADWAYS [MARSALIS ROAD FROM PLEASANT RUN ROAD TO GREEN DRIVE AND GANT DRIVE FROM BRADY DRIVE TO MARSALIS ROAD]; DESIGNATING A REPRESENTATIVE FOR ALL MATTERS RELATED TO THE PROJECTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Dallas County has determined, based on 2010 Census information, that the City of Lancaster is eligible to receive \$117,859 of Community Development Block Grant ("CDBG") funds for fiscal year 2013; and

WHEREAS, the City Council of the City of Lancaster desires any remaining funds from FY 2012 CDBG funding be used for roadway projects; and

WHEREAS, Lancaster could benefit greatly from Community Development Block Grant funds; and

WHEREAS, it is necessary and in the best interest of the City of Lancaster to apply for Community Development Block Grant funds through Dallas County;

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

SECTION 1. The City Council of the City of Lancaster, Texas hereby ratifies the submission of two project applications to Dallas County for funding under the Fiscal Year 2013 Community Development Block Grant Program for reconstruction of existing roadways [Marsalis Road from Pleasant Run Road to Green Drive and Gant Drive from Brady Drive to Marsalis Road], as depicted on Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 2. The City Manager or her designee shall act as the City's authorized representative in all matters related to the application and provide assurances that all requirements of the Community Development Block Grant Program are observed.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of June 2013.

APPROVED:

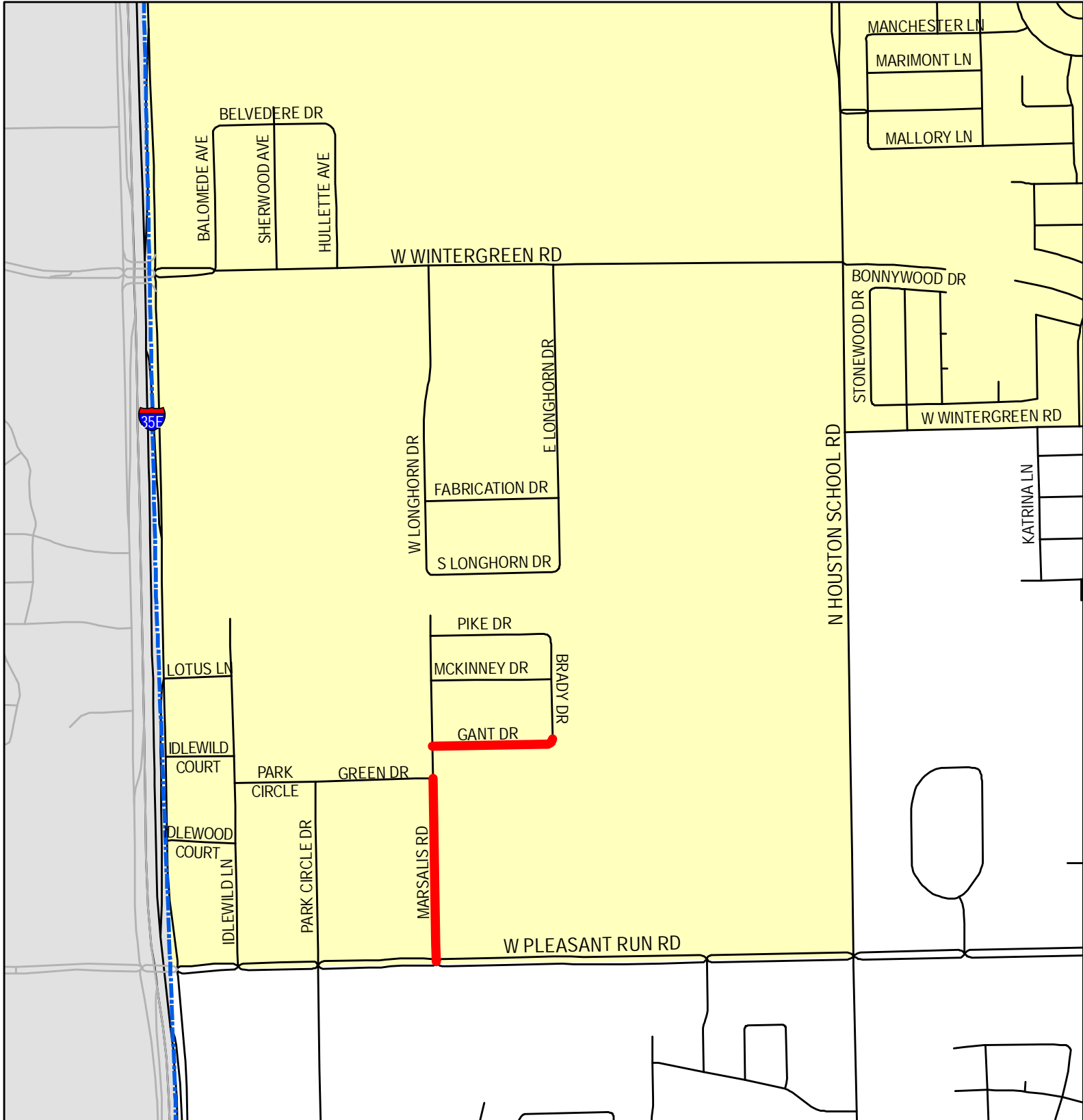
Marcus E. Knight, Mayor

ATTEST:



Dolle K. Downe, City Secretary

APPROVED AS TO FORM:


Robert E. Hager, City Attorney

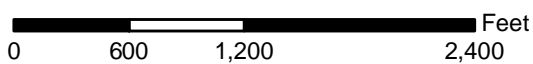


Legend

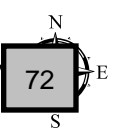
-  2013 CDBG Repair Streets
-  Lancaster City Limits

Census Block Groups Income %

 >51%



City of Lancaster Low to Moderate Income Areas



LANCASTER CITY COUNCIL

Agenda Communication

Monday, June 24, 2013

Item 7

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

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

Goal: Quality Development

Background

Staff has been working on the recruitment of Johnstone Supply, Inc., an Oregon based HVAC parts warehouse distribution company. The Lancaster site in ProLogis 20/35 Park has been selected for an approximately 160,000 square foot ten year lease which is projected to create approximately 40 new primary payroll jobs, \$1,000,000 in equipment and over \$15,000,000 of inventory.

Pursuant to our agreement with ProLogis, Johnstone has requested the business personal property tax grant for a period of ten (10) years which coincides with the lease term for the new facility.

Considerations

- **Operational** – Johnstone will annually submit receipts for business personal property tax payments in order to exercise the grant. Within 60 days of verification of payment, the City will remit twenty-five percent (25%) of the payment to the company for a period of ten (10) years.
- **Legal** – The City Attorney has reviewed and approved as to form the resolution and agreement.
- **Financial** – Based on the estimated value of the tangible business personal property (BPP) submitted by the company and consideration of the BPP twenty-five percent (25%) grant, the project will represent approximately \$107,000 over the ten (10) year period in new revenue to the City.
- **Public Information** – 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. The City Council may approve the resolution and agreement as presented.
2. The City Council may reject the resolution and agreement.

Recommendation

Staff recommends approval of the resolution and agreement as presented.

Attachments

- Resolution
 - Agreement
-

Submitted by:

Ed Brady, Director of Economic Development

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT WHICH IS ATTACHED HERETO AS EXHIBIT "A" PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND JOHNSTONE SUPPLY, INC. PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Johnstone Supply, Inc. is an Oregon based HVAC equipment and parts distributor; and

WHEREAS, Johnstone desires to lease approximately 160,000 square feet of certain real property and improvements located in the ProLogis 20/35 Park, in the City of Lancaster, Texas (hereinafter defined as the "Premises"), and construct improvements thereon for distribution uses for a period of at least ten (10) years; and

WHEREAS, Johnstone's development of the Premises will provide employment opportunities within the City; and

WHEREAS, the location of Johnstone on the Premises will result in a significant capital investment, approximately 40 new primary payroll jobs and Tangible Personal Property including inventory on the Premises with an estimated value of \$16,000,000 during the term of this Agreement; and

WHEREAS, Johnstone has advised the City that a contributing factor that would induce Johnstone to lease a location in the Premises would be an agreement by the City to provide an economic development grant to Johnstone for assistance with infrastructure and other development costs; and

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

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

WHEREAS, the City has determined that making an economic development grant to Johnstone in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City desires to authorize the City Manager to negotiate and enter into an Economic Development Agreement with Johnstone pursuant to Chapter 380 of the Texas Local Government Code.

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

SECTION 1. That the City Manager is hereby authorized to execute an Economic Development Agreement, which is attached hereto and incorporated herein as Exhibit A, pursuant to Chapter 380 of the Texas Local Government Code (and any amendments thereto, including any related instruments), on behalf of the City of Lancaster, Texas, with Johnstone Supply, Inc. (and its affiliated and related entities)

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

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of June, 2013.

ATTEST:

APPROVED:

Dolle K. Downe, City Secretary

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Economic Development Agreement

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Lancaster, Texas ("City"), and Johnstone Supply, Inc., an Oregon Cooperative Corporation, (the "Company"), registered to do business in Texas acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, the Company owns or is under contract to lease certain real property and improvements located in the ProLogis 20/35 Park, in the City of Lancaster, Texas, and being more particularly described in Exhibit "A" (the "Property"); and

WHEREAS, the Company intends to develop the Premises, renovate one or more of the existing improvements located on the Premises and construct new improvements and related facilities and infrastructure for an approximately 160,000 square foot HVAC parts distribution center (the "Improvements"); and

WHEREAS, the Company will maintain approximately one million dollars of business personal property on site, approximately fifteen million dollars of total inventory and create 40 new full time jobs, and

WHEREAS, the Company has advised the City that contributing factors that would induce the lease of a distribution center at the Premises, would be an agreement by the City to provide an economic development grant to the Company for assistance with infrastructure and improvements to property; and

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

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

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

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

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



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

Article I Definitions

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

“Annual Grant” shall mean annual economic development grant to be provided by the City in an amount equal and calculated as follows:

Twenty-five percent (25%) equivalent to the amount of the ad valorem tax assessed against the Tangible Personal Property for a given tax year for a period of ten (10) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

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

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

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a certificate of occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2014

“Company” shall mean Johnstone Supply, Inc. a cooperative wholesale distributor.

“Effective Date” shall mean the last date of execution hereof.

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

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

“Expiration Date” shall mean ninth (9th) year after the payment of the first Annual Grants.

"Freeport Goods" shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution and located on the Premises. Freeport Goods does not include "Goods in Transit" as defined by Tax Code, Section 11.253.

"Goods in Transit" shall have the same meaning assigned by Tax Code, Section 11.253.

"Grant Period" shall mean the term of the Company's lease not to exceed ten (10) years.

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

"Premises" shall mean the real property described on Exhibit "A."

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

"Project" shall mean the development of the Premises, renovation of existing improvements located on the Premises and the construction of new improvements and related facilities and infrastructure for the operation of an approximately 160,000 square foot warehouse-distribution facility.

"Required Use" shall mean Company's continuous occupancy of the Improvements and the Company's continuous operation of a warehouse-distribution facility.

"Tangible Personal Property" shall have the same meaning assigned by Tax Code, Section 1.04 and shall mean all tangible personal property, equipment, fixtures, and machinery, but excluding inventory and supplies, owned or leased by the Company and located on the Premises at the Project on January 1 of each applicable tax year.

"Taxable Value" shall mean means the appraised value as certified by the appraisal district, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and continue until November 30, 2023 unless sooner terminated as provided herein.

Article III

Economic Development Grants

3.1 **Annual Grants.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, and the Company's obligation to repay the Annual Grants pursuant to Section 5.2 hereof, the City agrees to provide the Company with the Annual Grants to be paid on March 1 of each calendar year, (or the immediately following business day if March 1 is not a business day)

beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received the ad valorem taxes assessed against the Tangible Personal Property in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such ad valorem taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the ad valorem taxes assessed against the Tangible Personal Property for tax year 2014 is \$10,000.00 then the amount of the first Annual Grant for the Tangible Personal Property for Tax Year 2015 would be, \$2,500.00 (\$10,000.00 x 25%), and would be paid on March 1, 2015

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

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

3.4 **Tax Protest.** In the event the Company timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Tangible Personal Property, or any portion thereof, with the applicable appraisal district (or its successor) the obligation of the City to provide the Annual Grant with respect to the Tangible Personal Property or portion thereof, for such tax year shall be abated until a final determination has been made of such protest or contest. In the event a Company protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Tangible Personal Property or the amount of ad valorem taxes assessed and due for the Tangible Personal Property, or portion thereof, after an Annual Grant has been paid for such Tangible Personal Property for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within thirty (30) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within thirty (30) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within thirty (30) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV

Conditions to the Economic Development Grant

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

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously lease and occupy the Improvements on the Premises and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than thirty (30) days except in connection with, and to the extent of a Casualty, an Event of a Force Majeure.

4.2 The Company shall cause the finish out the Improvements on the Premises.

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

4.4 The Company shall comply with all the terms and conditions of the Agreement by and between the City of Lancaster and the Company on or after the date of expiration.

Article V

Termination

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

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency;
- (e) by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or
- (f) by City, if Company fails to comply with the terms and conditions of any grant with the Lancaster Economic Development Corporation.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d) the Company shall immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, from the Effective Date until paid. The repayment obligation of Company set forth in this section 5.2 hereof shall survive termination.

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

Article VI Miscellaneous

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

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

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

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

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

If intended for City, to:

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

With a copy to:

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

If intended for Company:

Ms. Julie A. Schultz
Chief Financial Officer
Johnstone Supply, Inc.
11632 NE Ainsworth Circle
Portland, OR 97220

6.6 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written

Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

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

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

6.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

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

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

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

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

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall execute a minimum ten (10) year lease agreement; and (iii) Company shall obtain a Certificate of Occupancy for the Premises.

6.16 **Employment of Undocumented Workers.** During the term of this Agreement, the Owner agrees not to knowingly employ any undocumented workers, and if convicted of a violation und

U.S.C. Section 1324a (f), the Owner shall repay the taxes abated herein and any other funds received by the Owner from the City as of the date of such violation within 120 business days after the date the Owner is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Owner is not liable for a violation of this Section by a subsidiary, affiliate, or franchisees of the Owner or by a person with whom the Owner contracts.

Signature Page

EXECUTED on this _____ day of _____, 2013.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

Attest:

By: _____
Dolle Downe, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this 14 day of May, 2013.

JOHNSTONE SUPPLY, INC.

By: Julie Schultz
Julie Schultz, Chief Financial Officer

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1, Block 1, PROLOGIS PARK 20/35, an Addition to the City of Lancaster, Dallas County, Texas, according to the plat thereof recorded under Clerk's File No. 20080048828, Map Records, Dallas County, Texas.

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ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

GIVEN UNDER MY HAND SEAL OF OFFICE this the ____ day of _____, 2013.

Notary Public, State of Texas

My Commission Expires:

ACKNOWLEDGMENT

STATE OF Oregon §
§
COUNTY OF Multnomah §

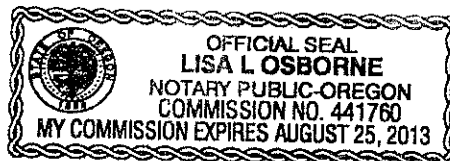
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Oregon, on this day personally appeared Julie Schultz of Johnstone Supply, Inc. an Oregon based corporation doing business as a cooperative wholesale distributor, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 14 day of May, 2013.

Lisa L Osborne
Notary Public, State of Oregon

My Commission Expires:

August 25, 2013



IN
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2013