



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

**Monday, February 9, 2015 - 7:00 PM**

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**CALL TO ORDER**

**INVOCATION:** Ministerial Alliance

**PLEDGE OF ALLEGIANCE:** Councilmember 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.

**EXECUTIVE SESSION:**

1. The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate:
  - (a) The evaluation and duties of a public officer or employee, to-wit: the City Manager; and,
  - (b) The duties of a public officer; to wit: City Attorney.
2. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

**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.

- C3. Consider approval of minutes from the City Council Regular Meeting held January 26, 2015.
- C4. Discuss and consider a resolution establishing the City of Lancaster 2015 Legislative Priorities for the 84th Session of the Texas Legislature.
- C5. Discuss and consider a resolution to amend Resolution 2006-05-41 that established a clean fleet vehicle policy which supports the Regional Transportation Council.
- C6. Discuss and consider a resolution accepting the terms and conditions of a settlement agreement from Oncor Electric Delivery Company LLC.

**ACTION:**

7. Discuss and consider a resolution approving the City of Lancaster Millbrook East Public Improvement District (PID) Advisory Board Appointments.
8. Discuss and consider a resolution authorizing the City Manager to execute a contract approval of a professional services with Quorum Architects, Inc., in an amount not to exceed \$331,500.00 for the design and construction management of a fleet maintenance facility.
9. 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 In N Out Burgers.
10. Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement for tangible personal property by and between the City of Lancaster and In N Out Burgers.
11. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between In N Out Burgers and the Lancaster Economic Development Corporation.

**ADJOURNMENT**

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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.

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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.

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**Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on February 6, 2015 @ 11:00 a.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**



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Sorangel O. Arenas  
City Secretary

# **LANCASTER CITY COUNCIL**

Item 1

## **Agenda Communication**

February 9, 2015

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**The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate:**

- (a) The evaluation and duties of a public officer or employee, to-wit: the City Manager; and,**
- (b) The duties of a public officer; to wit: City Attorney.**

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**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Professional and Committed City Workforce**

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Executive Session matters.

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**Submitted by:**

Sorangel O. Arenas, City Secretary

# LANCASTER CITY COUNCIL

Item 2

## Agenda Communication

February 9, 2015

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

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**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Professional and Committed City Workforce**

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This agenda item allows City Council to take action necessary, if any, on item(s) discussed in Executive Session.

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**Submitted by:**

Sorangel O. Arenas, City Secretary

# LANCASTER CITY COUNCIL

Item 3

## Agenda Communication

February 9, 2015

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**Consider approval of minutes from the City Council Regular Meeting held January 26, 2015.**

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### **Background**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held January 26, 2015

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### **Submitted by:**

Sorangel O. Arenas, City Secretary

## **MINUTES**

### **LANCASTER CITY COUNCIL MEETING OF January 26, 2015**

The City Council of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on January 26, 2015 at 7:09 p.m. with a quorum present to-wit:

#### **Councilmembers Present:**

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

#### **Councilmembers Absent:**

Marco Mejia

#### **City Staff Present:**

Opal Mauldin Robertson, City Manager  
Rona Stringfellow, Assistant City Manager  
Fabrice Kabona, Assistant to the City Manager  
Jim Brewer, Public Works Director  
Andrew Waits, Water/Wastewater Superintendent  
Thomas Griffith, Fire Chief  
Cheryl Wilson, Police Chief  
Cynthia Pearson, Finance Director  
Baron Sauls, Assistant Finance Director  
Sharon Jungman, Chief Accountant  
Dori Lee, Human Resources Director  
Sean Johnson, Managing Director of Quality of Life & Cultural Services  
Alton Dixon, Purchasing Agent  
Ed Brady, Director of Economic Development  
Robert E. Hager, City Attorney  
Angie Arenas, City Secretary

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

Mayor Knight called the meeting to order at 7:09 p.m. on January 26, 2015.

#### **Invocation:**

Pastor Richardson with Ministerial Alliance gave the invocation.

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

Deputy Mayor Pro Tem LaShonjia Harris led the pledge of allegiance.

#### **Citizens Comments:**

Sean Johnson, 103 N. Dallas Ave., shared information on the upcoming Visitors Center Grand Re-Opening on Friday, February 6, 2015.

**Consent Agenda:**

City Secretary Arenas read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meeting held December 8, 2014.**
- C2. Consider a resolution approving the terms and conditions of the City owned T-Hangar non-commercial lease from building 680 at the Lancaster Regional Airport.**
- C3. Consider a resolution approving the terms and conditions of the City owned tie down T-Spot non-commercial lease at the Lancaster Regional Airport.**
- C4. Consider a resolution approving the terms and conditions of the City owned tie down T-Spot non-commercial lease at the Lancaster Regional Airport.**
- C5. Consider a resolution approving the terms and conditions of the City owned T-Hangar office commercial lease from building 680 at Lancaster Regional Airport.**
- C6. Consider a resolution authorizing Dallas County to resell 1701 North Lancaster Hutchins Road and 508 North Elm Street, tax foreclosed properties, by public or private sell to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Code.**
- C7. Consider a resolution authorizing the purchase and installation of water meter registers from HydroPro Solutions through an Interlocal agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed \$149,881.75.**

Councilmember Jaglowski pulled consent item C7.

**MOTION:** Mayor Pro Tem Daniels made a motion, seconded by Councilmember Jaglowski, to approve consent items C1 –C6. The vote was cast 6 for, 0 against [Mejia absent].

Councilmember Jaglowski asked for clarification on item C7. City Manager Mauldin-Robertson stated this was the next step in the process authorized last year for water meter register replacements that is expected to last approximately 5 years.

Councilmember Jaglowski asked what areas were being worked on and City Manager Mauldin-Robertson stated that there was no specific area or region but that replacements are being made according to re-reads.

Deputy Mayor Pro Tem Harris asked what prompts the re-reads and City Manager Mauldin-Robertson stated that re-reads occur when readings are in line with findings historically on that meter, upon resident requests, and from staffs efforts in routine maintenance.

**MOTION:** Councilmember Jaglowski made a motion, seconded by Councilmember Morris, to approve consent item C7 as presented. The vote was cast 6 for, 0 against [Mejia absent].

8. **Discuss and consider a resolution requesting the 84th Legislature to support legislation that increases funding for the Texas Recreation and Parks account and large county and municipality Recreation and Parks Account local Park grant programs and the Texas State Park System.**

Director Johnson stated that the 84<sup>th</sup> Session of the Texas Legislature began on January 13, 2015 and numerous bills were introduced seeking to restore full funding to the Texas Recreation and Parks Accounts. These accounts are also known as the local Park Grant Program. The Texas Recreation and Parks Society and the Lancaster Quality of Life and Cultural Services department are requesting support of legislation that would ensure the sporting goods sales tax revenues remained dedicated to parks, recreation, trails and open space.

**MOTION:** Councilmember Morris made a motion, seconded by Councilmember Jaglowski, to approve the resolution requesting the 84<sup>th</sup> Legislature to support legislation that increases funding for the Texas Recreation and Parks account and large county and municipality Recreation and Parks Account local Park grant programs and the Texas State Park System. The vote was cast 6 for, 0 against [Mejia absent].

**Executive Session:**

9. **The City Council shall convene into closed executive session pursuant to Section § 551.074 (a)(1) of the TEXAS GOVERNMENT CODE to deliberate:**
  - (a) **The evaluation and duties of a public officer or employee, to-wit: the City Manager; and,**
  - (b) **The duties of a public officer; to wit: City Attorney.**
10. **Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.**

**MOTION:** Mayor Pro Tem Daniels made a motion, seconded by Councilmember Strain-Burk, to table the evaluations until the February 9, 2015 council meeting. The vote was cast 5 for, 1 against [Jaglowski] [Mejia absent].

**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 7:34 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor



# LANCASTER CITY COUNCIL

Item 4

## Agenda Communication

February 09, 2015

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**Discuss and consider a resolution establishing the City of Lancaster 2015 Legislative Priorities for the 84<sup>th</sup> Session of the Texas Legislature.**

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**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Healthy, Safe & Vibrant Community**

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### **Background**

On January 26, 2015 the City Council received a briefing on the proposed legislative program for the 84<sup>th</sup> Session of the Texas Legislature. The briefing focused on establishing priorities on a wide range of issues with direct impact on municipal government in general and on the City of Lancaster in particular.

The attached resolution will officially establish those priorities and allow staff to coordinate with the Best Southwest Cities to advocate the City position.

Following is the list of prioritized items:

### **Support**

- Support legislation to expand home-rule authority and facilitate the provision of services to the Lancaster residents.
- Support increased funding for the Texas recreation & parks account local park grant program and the Texas state park system.
- Support legislation authorizing cities to regulate the sitting of Payday, Car title and other short term lenders.
- Support funding for a grant to be applied to the Department of Public Safety to equip officers with body cameras.
- Support legislation condemning animal cruelty.
- Support legislative providing that a public information officer complies with the requirement to promptly produce public information by referring a requestor to a publically accessible website maintained by the city if the requested information is available on that website.

### **Oppose**

- Oppose any legislation that would erode local taxing authority, including measures that would create new obstacles to funding sources or that would restrict the use of existing revenue streams (**Reduction of revenue caps and appraisal caps**).
- Oppose any legislation that would create new sales tax exemption or expand exemptions.

### **Considerations**

- **Operational** – Staff will coordinate with similarly situated municipalities to advocate the position of the city related to the legislative priorities.
- **Legal** – There are no legal requirements at this time.
- **Financial** – There are no direct funding implications with approval of this resolution.
- **Public Information** – This item is being considered at a regular meeting of the City Council posted in accordance with the Texas Open Meetings Act.

### **Attachments**

- Resolution
- List of Legislative bills to monitor

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### **Submitted by:**

Fabrice Kabona, Assistant to the City Manager  
Rona Stringfellow, Assistant City Manager  
Opal Mauldin-Robertson, City Manager

**RESOLUTION NO. 2015-02-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER  
ESTABLISHING THE CITY OF LANCASTER 2015 LEGISLATIVE  
PRIORITIES FOR THE 84<sup>th</sup> SESSION OF THE TEXAS LEGISLATURE  
AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, beginning January 13, 2015, the legislature convened in its biannual 140-day session; and

**WHEREAS**, it is always a challenge for municipalities with limited resources to prevent encroachments on local authority and correct issues with existing statutes; and

**WHEREAS**, is more important than ever to establish priorities among the items considered so as to maximize the cities impact.

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

**SECTION 1.** That the City of Lancaster will attempt to find sponsors, provide testimony and actively work on behalf of the selected items. Items in the support category will be actively supported with testimony and receive support letters. The City of Lancaster will work with other similarly situated municipalities to oppose items in the oppose category.

**SECTION 2.** That the City of Lancaster adopts the following list of prioritized goals:

**Support**

- Support legislation to expand home-rule authority and facilitate the provision of services to the Lancaster residents.
- Support increased funding for the Texas recreation & parks account local park grant program and the Texas state park system.
- Support legislation authorizing cities to regulate the sitting of Payday, Car title and other short term lenders.
- Support funding for a grant to be applied to the Department of Public Safety to equip officers with body cameras.
- Support legislation condemning animal cruelty.
- Support legislative providing that a public information officer complies with the requirement to promptly produce public information by referring a requestor to a publically accessible website maintained by the city if the requested information is available on that website.

## **Oppose**

- Oppose any legislation that would erode local taxing authority, including measures that would create new obstacles to funding sources or that would restrict the use of existing revenue streams (**Reduction of revenue caps and appraisal caps**).
- Oppose any legislation that would create new sales tax exemption or expand exemptions.

**SECTION 3.** That in addition to the specific items listed above, the general principles to be followed are to support legislation which preserves local determination and oppose legislation which reduces local control by municipal government; to fight any attempt to reduce annexation authority; to specifically monitor closely any proposed legislation which would adversely impact city funding sources, especially related to lowering caps on valuation increases, tax increment financing districts, or Type A or Type B (4A or 4B) corporations; and to work with other similarly situated municipalities and with the Texas Municipal League on items of mutual interest.

**SECTION 4.** That this resolution shall be in full force and effect from and after its passage and approval and it is accordingly so resolved

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 9th day of February 2015.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

## 84<sup>th</sup> Legislative Session - 2015

**H.B. 365 (Elkins) and S.B. 182 (Bettencourt) - Revenue Cap:** Lower the property tax rollback rate from eight (8) percent to four (4) percent, except for cities or any part of the taxing unit located in an area declared a disaster area by the Governor or President of the United States during the current tax year.

**OPPOSE**

**S.B.156 (Nichols) – Appraisal Cap:** would: (1) reduce the property tax appraisal cap on homesteads from ten percent to five percent; (2) authorize a county commissioners court to call an election to increase the homestead appraisal cap for all taxing jurisdictions in the county back to some percentage between six and ten; and (3) prohibit a subsequent election from occurring for ten years after such an election is held.

**While a reduction in taxation is always favorable, it also limits many opportunities for additional funding needed to maintain service levels. OPPOSE**

**H.B 455 (Johnson) and S.B. 158 (West) - Body Cameras:** Would provide, among other things, that a law enforcement agency in this state shall apply to the Department of Public Safety for a grant to equip officers with body cameras if the agency employs officers. **SUPPORT**

**H.B. 234 (Farrar) – Cruelty to Animals:** would allow a municipal court that finds an animal's owner has cruelly treated the animal to order the owner to pay the city's reasonable attorney's fees and court costs. **SUPPORT**

**H.B. 235 (Farrar) – Animal Cruelty:** would: (1) require the Texas Department of Public Safety to establish and maintain a database of persons convicted or receiving deferred adjudication for a cruelty to animal offense; (2) establish a procedure to provide local law enforcement or animal control officers with information on whether an individual is required to register; and (3) provide penalties for an individual who is required to register and fails to do so. **SUPPORT**

**H.B. 685 (Sheets) – Public Information:** would provide that a public information officer complies with the requirement to promptly produce public information by referring a requestor to a publically accessible website maintained by the city if the requested information is identifiable and readily available on that website. **SUPPORT**

**H.B. 814 (Larson) – Meeting Notice:** would provide that: (1) a governmental body that is required by law to post notice of a meeting in a newspaper may instead post notice of the meeting on the Internet; and (2) a government body that is required by law to post notice of a meeting on the Internet is not required to post notice in a newspaper. **SUPPORT**

**H.B. 579 (Giddings) – Animal Encounter Training:** would require a peace officer to complete an animal encounter and behavior training program established by the Texas Commission on Law Enforcement: (1) not later than the second anniversary of the date the officer is licensed or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier; or (2) in any case by September 1, 2017. **NEUTRAL**

**H.B. 273 (Miles) – Illegal Dumping:** would provide minimum terms of confinement for the offense of illegal dumping committed inside a city's boundaries. **NEUTRAL**

**H.B. 274 (Miles) – Illegal Dumping:** would increase the maximum fine for violation of an illegal dumping ordinance from \$2,000 to \$4,000. **NEUTRAL**

**S.B. 253 (Ellis) – Environmental Justice Communities:** would: (1) require a person applying for a permit for a new facility that requires approval from Texas Commission on Environmental Quality (TCEQ) or the expansion of such a facility to submit to the TCEQ a report stating whether the facility is to be located in an environmental justice community; (2) require a facility in an environmental justice community to consult with the mayor in the city in which the facility is to be located; (3) require a permit applicant to publish notice of and hold a public hearing to provide information on the potential environmental impacts of the facility; and (4) allow a city and an owner or developer of an affecting facility to enter into a community environmental benefit agreement. **NEUTRAL**

**S.B. 87 (Ellis) – Statewide Smoking Ban would:** (1) prohibit smoking in most public places, in places of employment, and in seating areas at outdoor events; (2) preempt a city ordinance that prohibits smoking to a lesser degree; (3) provide that a city ordinance that prohibits or restricts smoking to a greater degree is not preempted; (4) require the Texas Department of State Health Services to annually request other government agencies, including cities, to establish local operating procedures to comply with the bill; and (5) require a city as an employer or an owner of a public place to post a no smoking sign at each entrance of the public place or place of employment. **NEUTRAL**

**H.B. 396 (McClendon) - Minimum Wage:** would: (1) raise the minimum wage for all employers with 26 employees or more; and (2) allow each city or county to adopt a minimum wage higher than the federal and state minimum wages. **NEUTRAL**

**S.B. 92 (Ellis) – Payday and Auto Title Lending:** would: (1) provide that a municipal ordinance regulating credit access businesses is not preempted by the following state law provisions; (2) provide that, if a municipal ordinance conflicts with a provision of state law, the more stringent regulation controls; (3) require the contract and other documents provided by a credit access business to be written wholly in the language in which the contract is negotiated and read in their entirety in the language in which the contract is negotiated to any consumer who cannot read; (4) require the mandatory disclosure under state law that is issued by a credit access business to a borrower to reference nonprofit agencies that provide financial education and training or cash assistance to borrowers; (5) require the mandatory disclosure and notice to be available in English and Spanish and read in their entirety in the language in which the contract is negotiated if the consumer cannot read; (6) prohibit a payday loan if the amount of cash advanced exceeds 20 percent of the borrower's gross monthly income; (7) prohibit an auto title loan if the amount of cash advanced exceeds the lesser of: (a) three percent of the borrower's gross annual income; or (b) 70 percent of the retail value of the motor vehicle; (8) require a payday or auto title loan to be payable in four or fewer installments and proceeds from each installment must be used to repay at least 25 percent of the principal amount of the debt; (9) provide that a payday or auto title loan to be paid by a single lump-sum payment may not be refinanced or renewed more than three times and proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original debt; (10) provide that a payday or auto title loan made to a consumer on or before the seventh day after the date the consumer has paid a previous extension of consumer credit is considered a refinance or renewal of the previous debt; and (11) require a credit access business to maintain a complete set of records of all extensions of consumer credit for three years after the loan was made. **SUPPORT**

# LANCASTER CITY COUNCIL

Item 5

## Agenda Communication

February 9, 2015

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**Discuss and consider a resolution to amend Resolution 2006-05-41 that established a clean fleet vehicle policy which supports the Regional Transportation Council.**

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**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Healthy Safe & Vibrant Community**

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### **Background**

The North Central Texas Council of Governments is the designated Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan Area and has designated the Regional Transportation Council as the acting body for cooperative transportation decisions such as air quality conformity to the Clean Air Act Amendments of 1990.

The City of Lancaster adopted the Clean Fleet Vehicle Policy in May 2006 with Resolution 2006-05-41. The North Central Texas Council of Government (NCTCOG) has revised the Clean Fleet Policy and requested all current cities to re-adopt the revised policy.

The revised policy amends the nitrogen oxide emissions from fifty percent to seventy-six percent and twenty-five percent of the volatile organic compounds emissions in the DFW ozone nonattainment to mobile sources.

### **Considerations**

- **Operational** – The Clean Vehicle Policy will require the City to attend training regarding air quality and ways to improve air quality through vehicle maintenance and daily operation, including fueling times. Maximize use of vehicles and equipment with the lowest emissions wherever possible. Implement vehicle and equipment disposal strategies which minimize negative impacts on air quality.
- **Legal** – This resolution was prepared and provided by the NCTCOG and has been reviewed and approved as to form by the City Attorney.
- **Financial** – Amending the clean fleet policy will require all fleet personnel to obtain the necessary training. The cost of training is included in the current fiscal year operating budget. The financial savings to the City will be achieved through overall fleet fuel efficiency and reduction of maintenance and operation cost.

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

**Options/Alternatives**

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

**Recommendation**

Staff recommends approval of the resolution as presented.

**Attachments**

- Resolution
  - Clean Fleet Policy
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**Submitted by:**

Jermaine Sapp, Fleet Superintendent  
Rona Stringfellow, Assistant City Manager



## **RESOLUTION NO. 2015-02-09**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AMENDING CLEAN FLEET VEHICLE POLICY WHICH SUPPORTS THE REGIONAL TRANSPORTATION COUNCIL (RTC); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

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

**WHEREAS**, NCTCOG has been designated as a Clean Cities Coalition for the DFW region by the US Department of Energy in accordance with federal law and the NCTCOG Executive Board authorized NCTCOG to serve as the host organization for the DFW Clean Cities (DFWCC) Coalition and its efforts; and,

**WHEREAS**, the U.S. Environmental Protection Agency (EPA) has designated the DFW area as a nonattainment area for the pollutant ozone, and air quality impacts the public health of the entire region; and,

**WHEREAS**, emissions inventories from the Texas Commission on Environmental Quality (TCEQ) indicate that in 2012, approximately 76 percent of the nitrogen oxides (NO<sub>x</sub>) emissions and 25 percent of the volatile organic compounds (VOC) emissions in the DFW ozone nonattainment area are attributable to mobile sources; and,

**WHEREAS**, the RTC is responsible for transportation conformity; and the Clean Air Act Amendments of 1990 require that transportation plans and improvement programs in air quality nonattainment areas conform to the adopted State Implementation Plan (SIP); and,

**WHEREAS**, the RTC has adopted a resolution supporting the adoption and implementation of a Clean Fleet Policy by organizations with fleet operations in the DFW area; and reserves all future vehicle funding for entities that adopt and comply with a policy consistent with the provisions outlined below,

**WHEREAS**, the City of Lancaster will set goals and provide workable, cost-effective solutions to improve air quality and reduce petroleum consumption in the DFW area, and implement those measures as practicable.

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

**SECTION 1.** Lancaster will reduce emissions from fleet activities by performing the following actions as practicable:

**1.1** Implement an idle-reduction policy/standard operating procedure (SOP) that applies to all of the entity's vehicles and equipment, except where exempted as determined by <adopting entity>; communicate idle-reduction expectations to staff, vendors and visitors; and utilize idle-reduction technology.

**1.2** Maximize use of vehicles and equipment with the lowest emissions wherever possible.

**1.3** Ensure all conversions are EPA and/or California Air Resources Board (CARB) certified; ensure that aftermarket technologies are EPA and/or CARB verified, or are listed as an emerging technology by the EPA or a state environmental agency; and both conversions and aftermarket technologies are compatible with Texas Low Emission Diesel Program (TxLED) requirements.

**1.4** Establish a plan to modify non-essential fleet activities on high ozone days to reduce air quality impacts.

**1.5** Implement vehicle and equipment disposal strategies which minimize negative impacts on air quality.

**1.6** Implement vehicle and equipment emissions inspection practices which meet or surpass the standards required by statute, including prompt resolution of any illuminated malfunction indicator lamp (MIL).

**SECTION 2.** Lancaster will reduce overall fuel consumption, particularly the use of conventional petroleum fuels, by performing the following actions as practicable:

**2.1** Pursue low-emission vehicles and equipment for acquisition, with an emphasis on alternative fuel, advanced technology, and/or Smartway<sup>SM</sup> certified vehicles and equipment.

**2.2** Improve overall fleet fuel efficiency.

**2.3** Establish practices to reduce vehicle miles traveled, passenger miles traveled, engine hours, and/or ton miles traveled, as appropriate.

**SECTION 3.** Lancaster will partner with the NCTCOG and DFWCC by performing the following actions as practicable:

**3.1** Maintain membership and active participation in DFWCC and submit timely Clean Fleet Policy reporting.

**3.2** Evaluate and consider participation in programs to test/commercialize/demonstrate new technologies to improve efficiency, reduce emissions, and/or increase fuel efficiency.

**3.3** Pursue activities which support peer fleets' efforts to implement fuel- or emissions-reducing activities by sharing and maximizing resources.

**3.4** Encourage fleet activities which minimize water, solid waste, or other environmental impacts of fleet activities, as appropriate.

**SECTION 4.** Lancaster will ensure drivers/operators and fleet personnel are familiar with air quality and petroleum reduction goals by performing the following actions as practicable:

**4.1** Provide in-house training and/or attending training administered by NCTCOG for fleet personnel and other staff involved in fleet decisions to review policy elements and provide recommendations for achieving objectives.

**4.2** Consider other mechanisms to increase understanding and awareness among fleet personnel and others.

The City of Lancaster acknowledges that adoption of the Clean Fleet Policy, adoption of an idle reduction policy/SOP as outlined in section 1.1, submittal of both policies, and submittal of Clean Fleet Policy reporting is required to be eligible for future clean fleet funding from the RTC, and may be considered when determining other funding actions. The extent of Clean Fleet Policy implementation, as documented through reporting, will also be a factor in receiving DFWCC fleet recognition.

**DULY PASSED** by the City Council of the City of Lancaster, Texas, this the 9<sup>th</sup> day of February 2015.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

## Clean Fleet Policy Guidance

This document is provided as a tool to assist fleets who adopt the Clean Fleet Policy (CFP) with implementing policy elements by outlining tips and best practices for meeting policy goals. The CFP is intended to provide adopting entities with implementation flexibility while also encouraging fleets to make additional efforts.

Fleets may choose from the suggestions provided or may take other steps toward fulfilling CFP objectives. Fleets are encouraged to “think outside the box” and notify NCTCOG staff of additional ways in which policy goals have been met. At a minimum, such practices should be submitted during CFP reporting but are welcome year-round.

### **Section 1. Adopting entity will reduce emissions from fleet activities by performing the following actions as practicable:**

- 1.1 Implement an idle-reduction policy/standard operating procedure (SOP) that applies to all of the entity's vehicles and equipment, except where exempted as determined by <adopting entity>; communicate idle-reduction expectations to staff, vendors and visitors; and utilize idle-reduction technology.

Suggested practices:

#### **A. Idle-reduction policy/SOP elements**

- 1) Requirements should be at least as strict as the TCEQ Idling Limitations Rule as published in the Texas Administrative Code, Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations:
  - Applies to all gasoline and diesel vehicles > 14,000 lbs GVWR
  - Limits idling to 5 minutes
  - No driver using the vehicle's sleeper berth may idle the vehicle: in a residential area as defined by Local Government Code, §244.001; in a school zone; within 1,000 feet of a hospital; or within 1,000 feet of a public school during its hours of operation
  - Provides for the following exceptions:
    - a) traffic conditions over which the operator has no control
    - b) vehicle operated by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle
    - c) vehicle engine providing a power source necessary for mechanical operation, other than propulsion, and/or passenger compartment heating, or air conditioning
    - d) vehicle operated for maintenance or diagnostic purposes
    - e) vehicle engine operated solely to defrost a windshield
    - f) vehicle engine used to supply heat or air conditioning necessary for passenger comfort and safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed
    - g) vehicle engine used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance
    - h) vehicle used as airport ground support equipment

- i) vehicle rented or leased to a person that operates the vehicle and is not employed by the owner
  - j) vehicle engine used to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available
- 2) Suggested additional applicability:
  - All on-road vehicles (regardless of GVWR or fuel type)
  - All non-road equipment
- 3) Suggest a 3-minute limit
- 4) Suggested additional exceptions:
  - [Exemptions stated in 30 Texas Administrative Code \(TAC\) 114, Subchapter J, Division 2, the Motor Vehicle Idling Limitations](#)
  - Idling as needed for animal transport
  - Idling as needed for cargo/supply refrigeration
- B. Communication Strategies
  - 1) Place signage that is visible and clearly communicates the idle reduction policy/SOP
  - 2) Place stickers in vehicles
  - 3) Have key chains with reminder
  - 4) Send memo/email to staff and vendors
  - 5) Reward policy adherence
    - Driver of the week or other recognition program
    - Incentives for lowest idle time
  - 6) Monitor/enforce policy/SOP compliance
    - Pull keys (example: Coppell, Carrollton)
    - Monitor with GPS and/or telematics
    - Suspend contracts with drivers who routinely violate policy/SOP (private sector only)
  - 7) Suggested resource is DOE's IdleBox; template materials are available to DFWCC members through the [member portal](#). This resource is a toolkit of print products, templates, presentations, and information resources to assist with idle-reduction projects for fleets with light- and medium-duty vehicles.
- C. Driver Behavior Strategies
  - 1) Avoid using a remote vehicle starter, which encourages unnecessary idling
  - 2) Avoid using drive-throughs; walk inside instead
  - 3) Obey no-idle zones at schools and other locations
- D. Technology Options (see [www.afdc.energy.gov/conserve](http://www.afdc.energy.gov/conserve) for more details on idle reduction)
  - 1) Install devices to monitor and collect data on idling
    - GPS and/or telematics
  - 2) Consider the purchase of an [electric drive vehicle or one with stop/start technology](#), which limits idling at traffic stops and while waiting in queue
  - 3) Install devices that prevent or reduce idling
    - Battery charging systems
    - Long haul heavy-duty truck specific (Note: NCTCOG recommends choosing products which have been verified under the EPA Smartway Transport Program. See a full listing at [Smartway Technology Idle Reduction](#) and [Alternative Fuels Data Center: Onboard Idle Reduction Equipment for Heavy-Duty Trucks](#)):
      - a) Automatic shut-down/start-up systems
      - b) Auxiliary power units

- c) Coolant heaters
- d) Electrified parking spaces
- e) Energy recovery systems
- f) Fuel operated heaters
- g) Storage air conditioners
- School Bus specific:
  - a) Aftermarket auxiliary heaters
    - Fuel-operated engine block heaters
    - Electric plug-in block heaters
    - Compartment and engine block heaters
- Medium-Duty vehicle specific:
  - a) Air heaters
  - b) Battery/auxiliary power systems
  - c) Coolant heaters
  - d) Waste-heat recovery systems
- Light-duty (LDV) and Medium-Duty (MDV) vehicle specific:
  - a) Air heaters
  - b) Automatic power management systems
  - c) Auxiliary power systems
  - d) Waste-heat recovery systems

1.2 Maximize use of vehicles and equipment with the lowest emissions wherever possible.

Suggested practices:

- A. Identify vehicles and equipment with the lowest emissions. (See Section 2.1 for details.)
  - B. Require use of vehicles and equipment with the lowest emissions whenever they are available and capable of performing the required operational demands
    - 1) Place vehicles with the lowest emissions on the longest and/or highest activity routes
    - 2) Move oldest, highest-emitting vehicles to “backup” service roles
    - 3) Create low-emitting vehicle pool for employees’ use and encourage employees to use the low-emitting vehicle pool for work trips rather than personal vehicle (example: Tarrant County)
  - C. Eliminate unused/under-utilized vehicles to optimize fleet size and to reduce evaporative emissions by parked vehicles
  - D. Determine when to retire vehicles in a consistent manner, such as using a formula
- 1.3 Ensure all conversions are EPA and/or California Air Resources Board (CARB) certified; ensure that aftermarket technologies are EPA and/or CARB verified, or are listed as an emerging technology by the EPA or a state environmental agency; and both conversions and aftermarket technologies are compatible with [Texas Low Emission Diesel Program](#) (TxLED) requirements.

Suggested practices:

- A. Check the EPA and CARB websites prior to purchasing any aftermarket technology to ensure performance verification and current status of the technology by these agencies
  - Aftermarket technologies:
    - EPA:
      - [www.epa.gov/otaq/consumer/reports.htm](http://www.epa.gov/otaq/consumer/reports.htm)
      - [www.epa.gov/smartway/forpartners/technology.htm](http://www.epa.gov/smartway/forpartners/technology.htm)

# LANCASTER CITY COUNCIL

Item 6

## Agenda Communication

February 9, 2015

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**Discuss and consider a Resolution accepting the terms and conditions of a settlement agreement from Oncor Electric Delivery Company LLCC.**

---

**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Financially Sound City Government**

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### **Background**

Oncor Electric Delivery is providing street lighting service within the City of Lancaster in accordance with the Tariff charged for Retail Delivery Service. The tariff is charged through the City of Lancaster's Energy Provider (Gexa Energy) and is included in the monthly electric energy invoices for street lights to the City of Lancaster. After performing a streetlight audit, it has been determined that Oncor's billings have, for an undetermined period of time, been inaccurate with respect to the number and/or type and/or size of street lights for which the City of Lancaster is the end-use customer.

The overbilling of street light numbers has resulted in City paying excess charges not only for transmission and distribution service, but also for energy. Both the City and Oncor wish to avoid the expense of proceedings at either the Public Utility Commission of Texas or state district court by reimbursing the City of Lancaster its streetlight overcharges. By accepting this agreement, the City of Lancaster would have agreed to not dispute the accuracy of the current street light billing information used by Oncor for the City of Lancaster's street lights.

### **Considerations**

- **Operational** – By entering into this agreement, the City of Lancaster would agree to not dispute the accuracy of the current street light billing information being used by Oncor for the City's Street Lights. This agreement would also release, discharge and acquit all persons, entities, municipalities or affiliates from and against any and all liability known or unknown to the City of Lancaster for electric service for street lights through December 2014.
- **Financial** – The City of Lancaster will receive a payment of \$39,409.27 not later than 30 days after entering into this agreement. There are no financial commitments associated with the execution of this agreement.
- **Legal** – The agreement has been reviewed and approved as to form by the City attorney.

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

**Alternatives/Options**

1. Council may approve the agreement.
2. Council may reject the agreement.

**Attachments**

- Resolution
  - Settlement and Release Agreement
  - Oncor Streetlight Audit Summary
- 

**Submitted by:**

Opal Mauldin Robertson, City Manager



**RESOLUTION NO. 2015-02-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ACCEPTING THE TERMS AND CONDITIONS OF A SETTLEMENT AGREEMENT FROM ONCOR ELECTRIC DELIVERY COMPANY LLC ("ONCOR") IN THE AMOUNT OF \$39,409.27 FOR AN ELECTRICITY BILLING ERROR FOR THE PERIOD ENDING DECEMBER 26, 2014; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Oncor had billing inaccurate billing with respect to the number and/or type and/or size of street lights through December 26, 2014; and

**WHEREAS**, the City of Lancaster desires to recapture funds from this billing error; and

**WHEREAS**, Oncor is offering this one-time payment in recognition of the billing errors;

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

**SECTION 1.** That the Oncor Settlement Agreement for billing errors is 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 of the City of Lancaster, Texas, is hereby authorized to execute said agreement.

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

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

**SECTION 5.** That 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 9<sup>th</sup> day of February 2015.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (the "Agreement") is made and entered into as of December 27, 2014 (the "Effective Date") by and between Oncor Electric Delivery Company LLC ("Oncor") and the City of Lancaster, Texas (the "City").

**WHEREAS**, Oncor and the City agree that Oncor and its predecessors in interest have been billing – either directly to the City prior to the start of retail competition in January 2002 or to retail electric providers serving the City since the start of retail competition in January 2002 – for providing service to unmetered street lights (the "Street Lights") for which the City is the end-use customer; and

**WHEREAS**, Oncor and the City agree that Oncor's billings have, for an undetermined period of time, been inaccurate with respect to the number and/or type and/or size of Street Lights for which the City is the end-use customer; and

**WHEREAS** Oncor and the City recognize that the information is not readily available to determine the exact number, type and size of streetlights provided by Oncor during the past; and

**WHEREAS** the overbilling of street light numbers has resulted in City paying excess charges not only for transmission and distribution service, but also for energy; and

**WHEREAS**, Oncor and the City wish to avoid the expense of proceedings at either the Public Utility Commission of Texas or state district court; and

**WHEREAS**, Oncor wishes to avoid the expense Oncor would incur if it were required to cancel/rebill prior bills or invoices to the City or to the City's retail electric provider(s).

**NOW, THEREFORE**, in order to fully and finally resolve all disputes and claims arising out of or related to the billings by Oncor, Oncor's predecessors in interest, the City's retail electric providers, and the affiliated companies of each, for electricity consumed by the Street Lights, and for the mutual covenants set forth in this Agreement, the adequacy and sufficiency of which is acknowledged, Oncor and the City agree as follows:

### **1. PAYMENT TO THE CITY**

No later than 30 days after the latest signature date set below, Oncor will pay the City the sum of \$39,409.27.

**2. RELEASE OF ONCOR AND ITS AFFILIATES, AND OF RETAIL ELECTRIC PROVIDERS WHO PROVIDED STREET LIGHT SERVICE TO THE CITY**

The City, on behalf of itself and its successors and assigns and any and all persons, entities or municipalities claiming by, through or under them, hereby **RELEASES, DISCHARGES AND ACQUITS**, forever and for all purposes, Oncor, its predecessors in interest, and each of their respective agents, employees, officers, directors, shareholders, partners, insurers, attorneys, legal representatives, successors, and assigns, as well as all affiliated companies, including TXU Energy Company LLC and its subsidiaries, as well as all retail electric providers from whom the City has taken retail electric service, for Street Lights from and against any and all liability which they now have, have had, or may have, and all past, present and future actions, causes of action, claims, demands, damages, costs, expenses, compensation, losses, and fees of any kind or nature whatsoever, whether known or unknown, fixed or contingent, in law or in equity, whether asserted or unasserted, whether now existing or accruing in the future, arising out of or related to the calculation, reporting, billing or invoicing of charges to the City for electric service for Street Lights through December 26, 2014.

**3. AGREEMENT AS TO ACCURACY OF CURRENT STREET LIGHT BILLING INFORMATION**

City does not dispute and agrees not to dispute that the current Street Light billing information being used by Oncor for the City's Street Lights, including but not limited to the number, types and sizes of Street Lights, as detailed on Attachment A, is accurate as of December 26, 2014.

**4. WARRANTY AS TO AUTHORITY**

Oncor and the City each warrant that the person executing this Agreement on their behalf has the authority to bind the entity for whom such person signs this Agreement.

**5. MISCELLANEOUS PROVISIONS**

A. The parties acknowledge and agree that the terms of this Agreement are all contractual and not mere recitals.

B. The parties acknowledge that they have read this Agreement in its entirety, understand its terms, and that this Agreement is entered into voluntarily, without duress, and with full knowledge of its legal significance.

C. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except in an instrument in writing signed by each party.

D. This Agreement shall be construed in accordance with the laws of the State of Texas.

E. This Agreement, and any amendment hereto, may be executed in one or more counterparts. All of such counterparts shall constitute one and the same agreement. The parties expressly agree that any counterparts signed and delivered by electronic copy or facsimile shall be deemed original document and shall legally bind the parties to the same extent as originals.

IN WITNESS THEREOF, each party, by its duly authorized representative, has executed this Agreement as of the applicable date set forth below, and by such execution, giving the Agreement full force and effect as of the Effective Date.

**ONCOR ELECTRIC DELIVERY COMPANY LLC**

By: \_\_\_\_\_

Its: Vice President

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014,  
by \_\_\_\_\_, of Oncor Electric Delivery Company LLC, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of Texas

THE CITY OF \_\_\_\_\_, TEXAS

By: \_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF TEXAS** §

**COUNTY OF** \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, on behalf of the City of \_\_\_\_\_, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

# ATTACHMENT A

## CITY OF LANCASTER STREET LIGHTING BILLING TABLE AS OF DECEMBER 26, 2014

Account	Description		Count	Last Run	Wattage	Type	Schedule
4409575	LANCASTER, CITY OF	(100,HP,A)	1,321	12/26/2014	100	HP	A
6000178	LANCASTER, CITY OF	(116,IN,I)	0	12/26/2014	116	IN	I
4409265	LANCASTER, CITY OF	(175,MV,A)	132	12/26/2014	175	MV	A
4409327	LANCASTER, CITY OF	(200,HP,A)	67	12/26/2014	200	HP	A
9607440	LANCASTER, CITY OF	(200,HP,B)	23	12/26/2014	200	HP	B
4409358	LANCASTER, CITY OF	(250,HP,A)	300	12/26/2014	250	HP	A
4409389	LANCASTER, CITY OF	(250,HP,B)	97	12/26/2014	250	HP	B
8411606	LANCASTER, CITY OF	(250,MH,A)	0	12/26/2014	250	MH	A
4409513	LANCASTER, CITY OF	(400,HP,A)	0	12/26/2014	400	HP	A
8605387	LANCASTER, CITY OF	(400,HP,B)	5	12/26/2014	400	HP	B
4409544	LANCASTER, CITY OF	(400,HP,D)	15	12/26/2014	400	HP	D
4409451	LANCASTER, CITY OF	(400,MV,A)	8	12/26/2014	400	MV	A
4409482	LANCASTER, CITY OF	(400,MV,B)	19	12/26/2014	400	MV	B
219027	LANCASTER, CITY OF	(150,HP,A)	11	12/26/2014	150	HP	A

## City of Lancaster - Oncor Streetlight Audit Summary

Inventory Counts				
Pre-Survey Light Total	Lights Surveyed	Lights Correct	Total Errors	Post-Survey Light Total
2,013	2,013	1,903	110	1,998
(9/08/2014)	100.00%	94.54%	5.46%	(12/17/2014)

Oncor 2013 Findings - 100% Audit				
Record Errors	Wattage	Removes	New Adds to Existing Premises	New Adds, Not in Billing System
110	64	36	10	11
100.00%	58.18%	32.73%	9.09%	

Settlement Calculations - Oncor 2014 Findings						
Adds - Lights in Field		Removes - Light not in Field		Net	Unit Settlement	Extended Amount
9	100-HP,A	11	100-HP,A	2	\$973.23	\$1,946.46
4	175-MV,A	7	175-MV,A	3	\$1,149.42	\$3,448.26
1	200-HP,A	3	200-HP,A	2	\$1,298.21	\$2,596.42
7	250-HP, A	4	250-HP, A	-3	\$90.27	(\$270.81)
0	250-HP, B	5	250-HP, B	5	\$2,136.57	\$10,682.85
0	400-HP, A	1	400-HP, A	1	\$1,962.03	\$1,962.03
0	400-HP, B	1	400-HP B	1	\$2,818.08	\$2,818.08
0	400-MV, A	0	400-MV, A	0	\$0.00	\$0.00
0	400-MV, B	4	400-MV, B	4	\$2,443.09	\$9,772.36
21		36		15		\$32,955.65

Wattage Correction Changes	\$6,453.62
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Total Settlement to be Paid	\$39,409.27
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# LANCASTER CITY COUNCIL

Item 7

## Agenda Communication

February 9, 2015

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**Discuss and consider a resolution approving the City of Lancaster Millbrook East Public Improvement District (PID) Advisory Board Appointments.**

---

**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Quality Development**

---

### **Background**

At the April 28, 2014 regular meeting, City Council adopted a Public Improvement District (PID) policy establishing a uniform policy for all PID Advisory Boards. As part of the adoption of the policy was a provision for all of the Board appointments to be confirmed by the governing body. On December 8, 2014, City Council affirmed all of the Public Improvement District (PID) Board appointments for the eight PIDs. They included the following: Beltline Ashmoore, Boardwalk, Glendover Estates, Lancaster Mills, Meadowview, Millbrook East, Rolling Meadows, and Tribute at Mills Branch.

### **Considerations**

The Millbrook East PID held a meeting on Thursday, February 5, 2015 and appointed new PID Board Advisory members. As such, the new PID Board would need to be confirmed by the City Council.

- **Operational** – The City Manager's office, Community Relations Division is responsible for the implementation of PIDs. As prescribed by Chapter 372 of the Texas Local Government Code and the PID policy, the Lancaster City Council will confirm all PID Advisory board elections following the policy adoption. Each year during PID service plan consideration, the PID Advisory Board confirmations will be included in all future action.
- **Legal** – The City Attorney has reviewed and approved the resolution as to form.
- **Financial** – There is no financial impact.
- **Public Information** – This item is considered at a meeting of the City Council posted in accordance with the Texas Open Meetings Act.



**Options/Alternatives**

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

**Recommendation**

Staff recommends that Council approve the resolution as presented.

**Attachments**

- Resolution
  - Minutes
- 

**Submitted by:**

Rona Stringfellow, Assistant City Manager

**RESOLUTION NO. 2015-02-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING THE MILLBROOK EAST PUBLIC IMPROVEMENT DISTRICT ADVISORY BOARD APPOINTMENTS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lancaster, Texas has previously adopted a Public Improvement District Policy; and

**WHEREAS**, Public Improvement Districts support Lancaster neighborhoods and seeks to strengthen and connect neighborhoods; and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to provide a consistent process of implementing Public Improvement Districts; and

**WHEREAS**, the City Council desires to support the process of policy implementation for the purposes of uniformity amongst all City boards and commissions.

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

**SECTION 1.** That the following appointments of the Millbrook East Public Improvement District Advisory Board attached hereto in Exhibit "A".

**SECTION 2.** That should any part of this Resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

**SECTION 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 9<sup>th</sup> day of February, 2015.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney

Exhibit "A"

Sharon Scott	Board Member
Cynthia Adams	Secretary
Eldridge Cager	Board Member
Gordon Butler	President
Evelyn Djamat Dubois	Board Member

## **MINUTES**

### **MILLBROOK EAST PUBLIC IMPROVEMENT DISTRICT MEETING OF FEBRUARY 5, 2015**

The Public Improvement District of Millbrook East of the City of Lancaster, Texas, met in Regular session in the Council Chambers of City Hall on February 5, 2015 at 7:00 p.m. with a quorum present to-wit:

#### **Committeemembers**

Gordon Butler- present

Cynthia Adams- present

Evelyn Duboise- present

Sharon Scott- absent

Vacant

Residents Present:

Deputy Mayor Pro Tem LaShonjia Harris

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

Gordon Butler called meeting to order

#### **Citizens Comments:**

**1. Discuss and consider a motion to elect officers for the Millbrook East PID Committee that will be effective immediately.**

**Motion made by Cynthia Adams and second by Evelyn Duboise to elect**

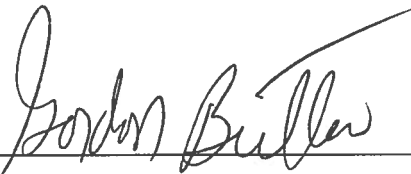
the president and secretary for the PID Committee for Millbrook East. Gordon Butler was elected as the President for the committee and Cynthia Adams elected as Secretary.

2. Discuss and consider a motion to meet with Real Property Management Company to discuss monthly report.

Motion made and second to make contact with Real Property Management Company to discuss monthly report and legal representation for Millbrook East Community.

The meeting was adjourned at 7:36

ATTEST:APPROVED:

A handwritten signature in cursive script, reading "Gordon Butler", is written over a horizontal line.

Gordon Butler-President Millbrook East PID

# LANCASTER CITY COUNCIL

Item 8

## Agenda Communication

February 9, 2015

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**Discuss and consider a resolution authorizing the City Manager to execute an agreement for professional services with Quorum Architects, Inc., in an amount not to exceed \$331,500.00 for the design and construction management of a fleet maintenance facility.**

---

**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Sound Infrastructure**

---

### **Background**

The existing Fleet Maintenance Facility located at 521 E. 3<sup>rd</sup> Street has been in service since the early fifties. The existing building was initially used as a slaughterhouse facility. Over the years, the facility was converted to a Vehicle Maintenance Facility.

Throughout the years, the building has experienced severe deterioration in addition to poor air quality due to the lack of ventilation; these are signs that the building has far exceeded its life expectancy and are in dire need of replacement to accommodate the growth the city has experienced.

City Council strategic goals are aimed at guiding Lancaster's future growth and development. Under these goals, a plan to design build a new Fleet Maintenance Facility was established.

Quorum Architects, Inc., was selected through the procurement process to provide the architectural services for this project.

### **Considerations**

- **Operational** –The overall scope of the project will include the construction of a new 10,000 to 12,000 SF Fleet Maintenance Building. The proposed tasks entailed in this proposal are:
  - **Task A: Data Collection**
  - **Task B: Master Plan/Conceptual Design**
  - **Task C: Schematic Design**
  - **Task D: Design Development**
  - **Task E: Construction Documents**
  - **Task F: Bidding**
  - **Task G: Construction Administration**
- **Legal** –The professional services contract with Quorum Architects, Inc. has been reviewed and approved as to form by the City Attorney.

- **Financial** – Quorum Architects, Inc., have submitted a proposal to provide architectural services, project specifications and construction administration services in the amount of \$331,500.00.
- **Public Information** – Bids were posted on the City's electronic procurement system and advertised in the city official publication of record, Focus Daily News on August 1 and 8, 2014. There were seven proposals received; six were M/WBE the top three proposals were interviewed on December 16, 2014. This item is being considered at a regular meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

### **Options/Alternatives**

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

### **Recommendation**

Staff recommends approval of the contract as presented.

### **Attachments**

- Resolution
- Quorum Proposal

---

### **Submitted by:**

Jermaine Sapp, Fleet Services Superintendent  
Opal Mauldin-Robertson, City Manager

**RESOLUTION NO. 2015-02-12**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT FOR ARCHITECTURAL SERVICES WITH QUORUM ARCHITECTS, INC., FOR THE DESIGN AND DEVELOPMENT OF LANCASTER FLEET SERVICES FACILITY; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Quorum Architects Inc., will provide professional architectural services to the City of Lancaster for the design and development of the Lancaster Fleet Services Facility.

**WHEREAS**, the City Council of Lancaster desires to contract with Quorum Architects, Inc. for the above referenced services.

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

**SECTION 1.** The City of Lancaster, Texas approves and authorizes the contract for architectural services with Quorum Architects, Inc. as provided in Exhibit "A" and a contingency amount not to exceed 10% of construction cost.

**SECTION 2.** The Mayor is hereby authorized to execute the Agreement, which is attached hereto and incorporated herein as Exhibit "A" and is set forth in full.

**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 9<sup>th</sup> day of February 2015.

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert E. Hager, City Attorney



ATTACHMENT "A" to Quorum proposal letter - Proposed scope and fee

Task	QUORUM FEE	est MEP FEE	est Civil	est Struct FEE	TOTAL FEE
Task A: Data Collection (approx 4 weeks) (Tasks A and B may be performed concurrently)	\$ 15,600.00				\$ 15,600.00
Orientation Meeting	\$ 1,500.00	\$ -	\$ -	\$ -	\$ -
• Develop interview questionnaires to be used during data collection with City staff.	\$ 900.00				
• Conduct an orientation/kick-off meeting for all key Client staff. Distribute programming questionnaires, discuss programming process, and address issues to assure most effective participation by key staff (include preparation and follow up)	\$ 600.00				
Data Collection	\$ 5,400.00	\$ -	\$ -	\$ -	\$ -
• Tour existing facilities in order to gain an understanding of current operating philosophies and conditions (up to two facilities)	\$ 1,500.00				
• Conduct interviews with key staff to stimulate dialogue relating to staff, and vehicle projections, office, shop, and storage space requirements, as well as general operating practices.	\$ 1,200.00				
• Review requirements for vehicle repair bays and associated shops.	\$ 450.00				
• Review requirements for workshops and material storage areas.	\$ 450.00				
• Review support facilities requirements including offices, restrooms, lunchrooms, and locker areas	\$ 450.00				
• Review building and yard storage requirements for equipment, parts, and materials.	\$ 450.00				
• Review site and building security requirements.	\$ 450.00				
• Wrap-up meeting outlining schedule and presenting the findings from the interview sessions.	\$ 450.00				
Space Needs Program	\$ 7,500.00	\$ -	\$ -	\$ -	\$ -
• Address functional areas to be located at the facility.	\$ 600.00				
• Develop space program requirements for the facility based on information and projections developed as part of the data collection effort.	\$ 3,900.00				
• Determine number and size of various workstations.	\$ 750.00				
• Determine storage requirements for parts, materials, and equipment.	\$ 750.00				
• Determine parking requirements for customers, employee, visitor, and delivery vehicles.	\$ 750.00				
• Identify clearance requirements throughout the project	\$ 750.00				
Operational Analysis	\$ 1,200.00	\$ -	\$ -	\$ -	\$ -
• Provide an analytical response to the programming data gathered during the interviews to determine what operations, including numbers of staff and vehicle, should be located at the Facilities.	\$ 1,200.00				
Task B: Master Plan / Conceptual Design (approx 4 weeks) ( A and B may be concurrent)	\$ 16,200.00	\$ 5,100.00	\$ 3,000.00		\$ 24,300.00
Site Master Plan and Concept Plan Development	\$ 3,000.00	\$ -	\$ -	\$ -	\$ -
• <del>Identify potential alternatives</del> Evaluate the City selected site to meet the requirements established in the previous task. (Proposal only includes evaluating one site)	\$ 900.00				
• Participate in the design concept while working directly with the design team and Client to develop a maximum of two alternatives for site configuration and general building design. During this on-site process, alternatives will be reviewed by the City staff. Based on review comments, selected alternatives will be refined and presented for review. A final review meeting will result in a selected Master Plan and Conceptual Design.	\$ 2,100.00				
• Site issues addressed will include:					
o Developing circulation patterns for vehicles, materials and personnel that will provide the most efficient, cost effective and safest maintenance operation.					
o Developing ingress and egress routes, which maximize safety and security and minimize vehicular and pedestrian conflict on and off the site.					
o Establishing site area relationships. Include administration, operations, Information Technology, maintenance facilities and customer, employee, delivery, and visitor parking.					
• Facility issues addressed will include:					
o Developing circulation patterns for equipment, materials, and personnel within the buildings and their relation to site circulation patterns.					
o Establishing functional area relationships both between departments and between workstations within department. Primary considerations to be industrial workflow, supervision and safety.					
o Reviewing architectural design for functional response to program and adherence to approved maintenance concept.					
Design Criteria and Report	\$ 7,500.00	\$ 3,600.00	\$ 3,000.00	\$ -	\$ -
• Prepare a design criteria document to be used for planning and designing the new facilities. The report shall document the programming process outlining key planning and design issues. The design criteria will identify preliminary functional requirements for building systems including architectural, civil, structural, equipment, mechanical, electrical and plumbing as indicated below. It shall also identify the criteria for site and building requirements, and includes an estimate of design and construction costs based on the Master Plan and Conceptual Floor Plans. The report will be distributed to the Design Team and City staff for review. The report shall include the following:	\$ 7,500.00	\$ 3,600.00	\$ 3,000.00		
o Project Overview - Describes the background and gives an overview of the project.	\$ -				
o Basis for Design - Provides a summary of the more qualitative planning issues that were noted during interview sessions. The summary includes a description of each group’s responsibilities, hours of operation, staffing counts, vehicle parking, vehicles maintained, and a list of key planning issues.	\$ -				
o Space Needs Program - Presents a detailed listing of space requirements for all the stakeholders on the site. The intent of the program is to identify program spaces to fulfill the current and future facility needs. Programmed spaces are further defined by their quantity, area, and any remarks significant to design.	\$ -				
o Operational Analysis - Provides an analytical response to the data gathered during the interviews to determine what operations, including numbers of staff and vehicles, should be located at the new Facilities	\$ -				
o Materials, finishes, and clearance requirements throughout the project.					
o General site grading, paving, and drainage issues.					
o Functional spacing and placement of structural systems.					
o Ventilation requirements for each functional area including repair bays, maintenance shops, welding, battery, steam clean areas, and pits.					
o Minimum design temperatures for heating and cooling for each functional area.					
o General lighting levels for interior and exterior areas including employee and visitor parking, repair staging, vehicle circulation areas, and outside secure storage.					
o Functional areas and equipment to be included on emergency power generating system.					
o Fire protection and service fluids piping and storage systems.					
o Design impacts on the use of alternative fuels.					
o Design Narrative - Presents planning and design criteria for the new facilities. The design narrative will identify preliminary functional requirements for building systems including architectural, civil, structural, equipment, mechanical, electrical, and plumbing.					
o Estimate of Probable Costs - Presents costs based on the projected facility equipment needs to assist in developing an initial cost estimate based on the selected Conceptual Plan.					

<b>Estimate of Probable Construction Costs</b>	\$ 1,800.00	\$ -	\$ -	\$ -	\$ -
• Provide an estimate of equipment and construction costs based on the conceptual floor plans and key planning issues identified in previous tasks.	\$ 1,800.00				
<b>Code Analysis for Maintenance Facility and Fueling Area</b>	\$ 3,000.00	\$ 1,500.00	\$ -	\$ -	\$ -
• Determine adopted codes and standards for applicable jurisdictions.	\$ 300.00	\$ 1,500.00			
• Classify hazardous locations for electrical systems.	\$ 300.00				
• Identify design requirements for mechanical systems.	\$ 300.00				
• Determine required fire protection systems.	\$ 300.00				
• Identify, inventory, and classify hazardous materials based on MSDS sheets.	\$ 450.00				
• Define control areas throughout the facility.	\$ 450.00				
• Determine occupancy classifications and separations.	\$ 450.00				
• Identify fire rated construction requirements.	\$ 450.00				
<b>Peer Review</b>	\$ 900.00	\$ -	\$ -	\$ -	\$ -
• Assist the City in the Peer Review process. Conduct a one-day meeting with City’s peers to review the project scope and design prior to the Schematic Design phase. Make adjustments to the design based on the review comments.	\$ 900.00				
<b>Task C: Schematic Design (approx 4 weeks)</b>	<b>\$ 20,400.00</b>	<b>\$ 5,400.00</b>	<b>\$ 4,000.00</b>	<b>\$ -</b>	<b>\$ 29,800.00</b>
<b>Equipment Programming</b>	\$ 3,000.00	\$ 2,400.00	\$ -	\$ -	\$ -
• Inventory existing shop equipment by functional area. Include description, quantity, manufacturer, model number, utility requirements and condition. Indicate which items will be reused.	\$ 1,500.00	\$ 1,200.00			
• Participate in equipment discussion meetings with City to identify, by functional area, maintenance and service equipment needed to support maintenance activities. Maintenance equipment includes storage equipment, shop equipment, wash equipment, lifts, and cranes. Service equipment includes compressed air system components (i.e., compressor, dryer, hose reels, filter/regulator/lubricator) and lubrication system components (i.e., pumps, tanks, hose reels). Identify quantities required, dimensions, and impact on other design team disciplines. Work related to fuel system equipment (i.e. storage tanks, monitoring systems, pumps, and dispensers) will be accomplished by others.	\$ 1,500.00	\$ 1,200.00			
<b>Equipment Layout Drawings</b>	\$ 2,100.00	\$ 1,000.00	\$ -	\$ -	\$ -
• Develop initial maintenance equipment layout drawings on CAD, which provide an efficient, cost effective, safe industrial workflow through the facility. Include workstation layouts and materials handling storeroom layouts.	\$ 2,100.00	\$ 1,000.00			
<b>Facilities</b>	\$ 15,300.00	\$ 2,000.00	\$ 4,000.00	\$ -	\$ -
• Coordinate operational and equipment related functional requirements for building systems and components including architectural, structural, mechanical, electrical, plumbing, engineering.	\$ 13,500.00	\$ 2,000.00	\$ 4,000.00		
• Review design for functional response to program equipment and code requirements.	\$ 1,800.00				
<b>Value Engineering</b>	\$ -	\$ -	\$ -	\$ -	\$ -
•Changed 1-13-15 to reduce scope and fee - moved to DD (Task D) - not enough detailed cost in Schematics yet	\$ -				
<b>Deliverables</b>	\$ -	\$ -	\$ -	\$ -	\$ -
• Preliminary Equipment List (including existing equipment).					
• Equipment Cost Estimate.					
• Preliminary Equipment Layout Drawings.					
• Schematic Design package review comments.					
• Sketches and technical memos as necessary.					
<b>Task D: Design Development (approx 6-8 weeks)</b>	<b>\$ 42,600.00</b>	<b>\$ 18,700.00</b>	<b>\$ 12,000.00</b>	<b>\$ 6,000.00</b>	<b>\$ 79,300.00</b>
<b>Equipment Review Meeting</b>	\$ 1,800.00	\$ 1,000.00	\$ -	\$ -	\$ -
• Conduct an equipment review meeting with City staff to discuss the Preliminary Equipment List and Preliminary Equipment Layout drawings.	\$ 1,800.00	\$ 1,000.00			
<b>Equipment Layout Drawings</b>	\$ 3,600.00	\$ 3,600.00	\$ -	\$ -	\$ -
• Refine maintenance equipment layout drawings, based on comments from the review meeting with Client staff.	\$ 1,800.00	\$ 1,000.00			
• Develop Discipline Coordination drawing(s) based on information developed with the City. These will be drawn on a separate level on the equipment layout drawing and will include locations of air, electrical, and water outlets not required for equipment; vehicle exhaust system outlets; drains; special grating; and overhead door controls.	\$ 1,800.00	\$ 2,600.00			
<b>Service Equipment Drawings</b>	\$ 900.00	\$ 2,400.00	\$ -	\$ -	\$ -
• Develop initial service equipment layout drawings, which provide schematic piping routes to service equipment for compressed air piping system and bulk fluid piping system.	\$ 900.00	\$ 2,400.00			
<b>Equipment Manual</b>	\$ 6,600.00	\$ 4,000.00	\$ -	\$ -	\$ -
• Update equipment list to be consistent with equipment layouts and facility design. Equipment to be listed by functional area within each department, alphabetically by description and numerically by equipment identifier. Equipment list includes information regarding description, quantity, price, dimensions, procurement strategies, specification responsibility, and discipline coordination.	\$ 2,400.00	\$ 1,000.00			
• Update equipment cost estimate.	\$ 2,400.00	\$ 750.00			
• Assemble cut sheets on maintenance and service equipment.	\$ 600.00	\$ 750.00			
• Review equipment list, cut sheets, and layout with client to ensure that all equipment requirements have been addressed.	\$ 600.00	\$ 750.00			
• Develop a discipline coordination matrix to assure coordination of specified equipment requirements with architectural, structural, mechanical, plumbing, and electrical disciplines.	\$ 600.00	\$ 750.00			
<b>Equipment Specifications</b>	\$ 2,400.00	\$ 1,200.00	\$ -	\$ -	\$ -
• Develop draft specifications for maintenance and service equipment items. Coordinate with architectural/engineering specifications. These draft specifications are to be reviewed by the various design team disciplines during the construction document phase to ensure coordination between equipment and utility requirements. Note: The following items are not included as maintenance and service equipment items and should be addressed by others: vehicle exhaust systems, fuel system components (i.e., storage tanks, monitoring systems, pumps, dispensers).	\$ 2,400.00	\$ 1,200.00			
<b>Team Meetings</b>	\$ 1,800.00	\$ 500.00	\$ -	\$ -	\$ -
• Coordinate operational and equipment related functional requirements for building systems and components including architectural, structural, mechanical, electrical, plumbing, and human engineering.	\$ 1,800.00	\$ 500.00			
<b>Facilities</b>	\$ 25,500.00	\$ 6,000.00	\$ 12,000.00	\$ 6,000.00	\$ -
• Coordinate operational and equipment related functional requirements for building systems and components including architectural, structural, mechanical, electrical, plumbing, engineering.	\$ 23,100.00	\$ 6,000.00	\$ 12,000.00	\$ 6,000.00	
• Review design for functional response to program equipment and code requirements.	\$ 2,400.00				
<b>Deliverables</b>	\$ -	\$ -	\$ -	\$ -	\$ -
• Maintenance Equipment Layout Drawings.					
• Discipline Coordination Drawings.					
• Service Equipment Drawings.					
• Updated Equipment List.					
• Equipment Brochure and Cut sheet Manual.					
• Discipline Coordination Schedule.					
• Draft Specifications.					

• Design Development package review comments.					
<b>Task E: Construction Documents (approx 6-8 weeks)</b>	<b>\$ 50,400.00</b>	<b>\$ 22,600.00</b>	<b>\$ 16,000.00</b>	<b>\$ 13,000.00</b>	<b>\$ 102,000.00</b>
<b>Equipment Layout Drawings</b>	\$ 3,600.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00	\$ -
• Refine maintenance equipment layout drawings. All functional areas identified in the equipment list to be included. Provide equipment detail drawings.	\$ 1,800.00	\$ 1,000.00			
• Refine Discipline Coordination drawing(s) based on comments received from the City.	\$ 1,800.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	
<b>Service Equipment Drawings</b>	\$ 1,800.00	\$ 2,400.00	\$ -	\$ -	\$ -
• Refine service equipment layout drawings and provide service equipment detail drawings. Provide piping schedules.	\$ 1,800.00	\$ 2,400.00			
<b>Signage and Striping Drawings</b>	\$ 8,400.00	\$ -	\$ -	\$ -	\$ -
• Prepare functional and safety signage, graphics, and striping drawings. All Final Signage, Striping and maintenance areas to be included.	\$ 1,800.00				
o Determine the location and type of functional and safety sign(s) required for each area based on the safety related issues relevant for that area.	\$ 1,200.00				
o Develop drawings that indicate through the use of a detailed schedule and numbered designations on the drawings to indicate both location and type of sign.	\$ 1,800.00				
o Indicate the location of safety related floor striping. These areas area typically designated walk areas through work zones, specific safety areas around equipment if necessary.	\$ 1,800.00				
o Indicate the location of functional related floor striping such as bus pull- in striping andvehicle back-in striping required to successfully position vehicles on lifts and in bays.	\$ 1,800.00				
<b>Equipment Manual</b>	\$ 4,200.00	\$ 2,000.00	\$ -	\$ -	\$ -
• Update equipment list to be consistent with equipment layouts and facility design.	\$ 1,800.00	\$ 1,000.00			
• Develop final cost estimate for equipment.	\$ 2,400.00	\$ 1,000.00			
<b>Equipment Specifications</b>	\$ 2,400.00	\$ 2,200.00	\$ -	\$ -	\$ -
• Finalize specifications for maintenance and service equipment items.	\$ 2,400.00	\$ 2,200.00			
<b>Facilities</b>	\$ 27,000.00	\$ 14,000.00	\$ 15,000.00	\$ 12,000.00	\$ -
• Coordinate operational and equipment related functional requirements for building systems and components including structural, mechanical, electrical, plumbing, engineering.	\$ 24,000.00	\$ 14,000.00	\$ 15,000.00	\$ 12,000.00	
• Review design for functional response to program equipment.	\$ 3,000.00				
<b>Quality Assurance</b>	\$ 3,000.00	\$ -	\$ -	\$ -	\$ -
• Review equipment layout drawings and for quality and accuracy.	\$ 3,000.00				
<b>Deliverables</b>	\$ -	\$ -	\$ -	\$ -	\$ -
• Final Equipment Layout Drawings.					
• Final Service Equipment Drawings.					
• Final Signage and Striping Drawings.					
• Final Equipment List and Cost Estimate.					
• Final Equipment Specifications.					
• Construction Documents package review comments.					
<b>Task F: Bidding</b>	<b>\$ 9,900.00</b>				<b>\$ 9,900.00</b>
	\$ 5,400.00	\$ -	\$ -	\$ -	\$ -
• Assist in the review of construction and equipment bids for specification compliance.	\$ 3,900.00				
• Participate in pre-bid meetings, if needed.	\$ 1,500.00				
<b>Deliverables</b>	\$ 4,500.00	\$ -	\$ -	\$ -	\$ -
• Written clarification of design and specification intent as necessary.	\$ 4,500.00				
<b>Task F: Construction Administration</b>	<b>\$ 51,900.00</b>	<b>\$ 9,500.00</b>	<b>\$ 5,200.00</b>	<b>\$ 4,000.00</b>	<b>\$ 70,600.00</b>
<b>Construction</b>	\$ 39,600.00	\$ 5,500.00	\$ 2,000.00	\$ 2,000.00	\$ -
• Participate in the Pre-Bid meeting.	\$ 1,200.00				
• Participate in the review process of construction bids.	\$ 3,600.00				
• Participate in the preconstruction meeting.	\$ 1,800.00				
• <b>Observe</b> installation, checkout and testing of equipment specified.	\$ 3,600.00	\$ 1,600.00			
• Make ten on-site reviews during construction to review progress relating to functional and equipment issues.	\$ 9,000.00				
• Make a trip to participate in equipment training and testing sessions.	\$ 2,400.00	\$ 1,800.00			
• Act as the construction <b>contract administrator</b> to oversee the construction process.	\$ 18,000.00	\$ 2,100.00	\$ 2,000.00	\$ 2,000.00	
<b>Shop Drawings</b>	\$ 5,400.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ -
• Review equipment shop drawings for conformance to the contract documents.	\$ 5,400.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	
<b>Requests for Information</b>	\$ 4,500.00	\$ 1,000.00	\$ -	\$ -	\$ -
• Assist in the review of equipment issues during construction.	\$ 4,500.00	\$ 1,000.00			
<b>Punch List</b>	\$ 2,400.00	\$ 1,000.00	\$ 1,200.00	\$ -	\$ -
• Make one on-site visit for final punch-out.	\$ 2,400.00	\$ 1,000.00	\$ 1,200.00		
<b>Deliverables</b>	\$ -	\$ -	\$ -	\$ -	\$ -
• Written clarification of design and specification intent as necessary.					
• Punch list based on equipment and functional issues identified during final walk-through of facilities.					
<b>TOTAL PROPOSED FEE</b>	<b>207,000</b>	<b>61,300</b>	<b>40,200</b>	<b>23,000</b>	<b>331,500</b>

January 14, 2015

Fabrice Kabona  
Assistant to the City Manager  
City of Lancaster  
211 N Henry St, P.O. Box 940  
Lancaster, TX 75146

RE: 2014-174 Fleet Maintenance Building Design  
Architectural Services proposal  
Quorum Number 14102

Fabrice,

We are pleased to respond to your request for our fee proposal for architectural services for the Fleet Maintenance Facility. We appreciate the opportunity to provide this proposal and look forward to beginning work upon your approval.

We have summarized herein our understanding of the project scope and deliverables in an effort to clearly communicate expectations of each party. For the purpose of providing a general baseline for this proposal, we are assuming between 10,000 and 12,000sf of new construction along with up to 4 acres of associate site development, appropriate for this function. As discussed with the City during development of this letter, our proposal assumes that a fuel facility is not included in the design and construction, but may be added as additional services. The proposal also assumes the City has one site selected to be evaluated for use in Conceptual development and it will not be necessary to scour the City to find additional sites, although this could also be added as an additional service if necessary. Upon approval of this proposal, the Client and Architect agree to enter into a written agreement using an AIA B101-2007 Standard Form of Agreement Between Owner and Architect reflecting the terms generally as set forth below and enumerated in the Agreement.

## ARCHITECT'S BASIC SERVICES

Quorum proposes to provide the scope of work generally in accordance with the RFQ issued by the City 8/1/2014 and as detailed on Attachment "A" Proposed scope and fee. The Facility Maintenance Plan task will be performed by the Contractor as part of the Construction close out procedures. The proposed tasks are listed and described below:

- Task A: Data Collection
- Task B: Master Plan/Conceptual Design
- Task C: Schematic Design
- Task D: Design Development
- Task E: Construction Documents
- Task F: Bidding
- Task G: Construction Administration

1. For tasks A, B, and C, Architect shall rely on site information provided by the City until a concept design approved and a survey is completed. The Pre-design documents (Tasks A, B, and C) will include a conceptual drawings based upon the information readily available by the client.

2. **Schematic Design** – Based on the mutually agreed upon program, conceptual design, and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Architect will utilize related unit costs for similarly constructed facilities recently designed by Quorum as a basis for using square foot costing methods.
3. **Design Development** – Based on the approved Schematic Design Document and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. Generally, most of the drawing sheets will be started as well as most specification sections, although the details of each will be completed during the Construction Document phase. The Architect shall advise the Owner of any adjustments to the preliminary Opinion of Probable Construction Cost.
4. **Construction Documents** – Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the project. The Architect shall advise the Owner of any adjustments to previous Opinion of Probable Construction Cost indicated by changes in requirements or general market conditions. The Architect shall assist the Owner in preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor. It is anticipated that the Owner will utilize a competitive sealed proposal" process for bidding. The Architect will assist the Owner in development of a value rating system for evaluation of proposals.
5. **Bidding** – The Architect will assist the Owner in bidding, including facilitating a Pre-proposal meeting, development of addenda as necessary and answering contractor questions of clarifications on the Documents.
6. **Construction Administration** - The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Documents B101 and A201, General Conditions of the Contract for Construction, current as the date of this agreement, unless otherwise provided in this Agreement. The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine, in general, if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences nor procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's

negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

7. **Special Services** - The Architect shall procure the services of a registered civil engineer to include necessary site work as part of the construction documents, including grading, paving, and utility plans, as well as erosion control, hydrology and drainage calculations if required. Architect shall also procure the services of a Landscape Architect to provide landscape and irrigation drawings.

## COMPENSATION

Compensation for Basic Services, and Special Services as described in Attachment "A" is proposed to be a lump sum fee of **Three hundred thirty one thousand, five hundred dollars (\$331,500)**, per the breakout below, **plus reimbursable costs** for direct expenses such as printing, reproductions of documents and renderings, mileage, and other travel related expenses, which will be marked up 10%.

<b>Task A: Data Collection</b>	<b>\$15,600</b>
<b>Task B: Master Plan/Conceptual Design</b>	<b>\$24,300</b>
<b>Task C: Schematic Design</b>	<b>\$29,800</b>
<b>Task D: Design Development</b>	<b>\$79,300</b>
<b>Task E: Construction Documents</b>	<b>\$102,000</b>
<b>Task F: Bidding</b>	<b>\$9,900</b>
<b>Task G: Construction Administration</b>	<b>\$70,600</b>

1. Additional Services (Optional) – If there is a request to expand the scope of Basic Services, or to include Additional Services in the future, the fee will be negotiated based on the specific scope. This may include may include, but not be limited to, renderings, videos, TDLR and accessibility submittals (we will assist the Client in the process, however, we cannot sign or pay for the submittal as an Owner's agent), site plan submittals if required by the City and related meetings, additional insurance if required by the Client, detailed cost projections beyond architectural summaries, fees paid for approvals of authorities having jurisdiction, bid alternates, and LEED Compliance, revisions to previously approved work, FFE selection, and multiple designs for comparison or multiple sites for evaluation. Basic Services does not include structural services to inspect all the structural as-built conditions necessary to provide the city with a "Letter of Structural Certification" of the building at the time of substantial completion. These services can be made available as an additional service. Additional Services work shall not be completed until approved by the Client.
2. Late payments: Accounts unpaid 30 days after the invoice may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance.

## SCHEDULE

Quorum Architects will endeavor to complete Task A and B (Pre-Design Services) in approximately 4 weeks each although these will be performed concurrently. Schematic design, Design Development, and Construction Documents is estimated to be 16-20 weeks total exclusive of review time by the Client between each submittal.

## ADDITIONAL INFORMATION

1. Quorum Architects, Inc. will provide the Owner with architectural services as required and agreed upon for satisfactory and normal completion of this project. The Architect shall exercise



usual and customary professional care in his efforts to comply with those laws, codes, ordinances, and regulations, which are in effect as of the date of this agreement.

2. The Architect and its Consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site. The Owner shall obtain a hazardous material evaluation, prior to beginning any demolition or construction on site.
3. Client is to procure and provide copies of any pertinent site information, which affects the design, including but not limited to a record set of construction plans, and site information such as a topographic survey, boundary survey, and geotechnical investigation since this is not part of the architect's services.
4. In performing Architectural Services, the Architect will strive to use that degree of care and skill ordinarily exercised under similar circumstances by competent members of the architecture profession. Notwithstanding compliance with this standard of care, the Owner can normally anticipate that some changes and adjustments in the project will be required either during or after construction. The Owner agrees to establish a construction contingency fund to cover the reasonably anticipated costs of these changes and adjustments as well as, changes due to code revisions and field conditions. The Owner agrees not to seek any costs related to Article 12.4 omissions from Architect unless the aforementioned contingency funds are exhausted by non-Owner initiated changes.
5. Architect will provide design and construction documents for architectural design elements and for coordination with mechanical, electrical, plumbing, and structural engineering. Ownership of the documents will remain the property of Quorum Architects, Inc., but the Client will be given printed and electronic documents, in PDF format, for its use.
6. The parties acknowledge that the ADA and the corresponding State of Texas laws regarding disability barriers ("State Law") will be subject to various and possible contradictory interpretations. The Architect, therefore will use reasonable professional efforts to interpret and comply with applicable ADA and State Law requirements and other federal, state, and local laws, rules, codes, ordinances, and regulations as they apply to the Project. The Architect, due to such competing interpretations, does not warrant or guarantee that the Project will comply with interpretations of applicable provisions of the ADA and State Law. However, the Architect will submit the Plans and Specifications to the applicable State of Texas agency with respect to compliance with State Law in order for such State of Texas agency to review and comment to the Plans and Specifications.
7. Texas law requires registrants to provide all clients with the following written statement: "The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, (512) 305-9000, has jurisdiction over individuals licensed under the Architect's Registration Law, Texas Civil Statutes, and Article 249a".

Should you have any questions or additional concerns, please feel free to contact us at your convenience. Thank you for trusting Quorum Architects, Inc. to assist you in this endeavor.

David G. Duman, AIA TX Registration #14305  
Quorum Architects, Inc.

Signature below will be accepted as our Notice to Proceed.

City of Lancaster Date \_\_\_\_\_



# LANCASTER CITY COUNCIL

Item 9

## Agenda Communication

February 9, 2015

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**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 In N Out Burgers.**

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**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Quality Development**

---

### **Background**

In N Out Burgers, a California corporation, has purchased approximately 20 acres of land in the Houston School Road IH 20 corridor with the intent to construct and occupy an approximately 200,000 square foot food processing, distribution and office facility.

The company estimates approximately \$52,000,000 value added capital investment at their operations in Lancaster and has applied for a real property incentive grant in compliance with the City's incentive policy.

### **Considerations**

- **Operational** - In N Out Burgers will annually submit receipts for real property tax payments in order to exercise the grant. Within 60 days of verification of payment, the City will remit sixty percent (60%) of the payment to the company for a period of eight (8) consecutive tax years.
- **Legal** – The City Attorney has reviewed and approved the resolution and agreement as to form.
- **Financial** - Based on the estimated value added capital investment submitted by the company and in consideration of the (60%) sixty percent real property tax grant for eight (8) consecutive tax years, the project will represent approximately \$1,238,000 over the (8) eight year period in new revenue to the City.
- **Public Information** – This item is being considered at a meeting of the City Council noticed and held 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 resolution and agreement as presented.

**Attachments**

- Resolution
  - Agreement
- 

**Submitted by:**

Ed Brady, Director of Economic Development

**RESOLUTION NO. 2015-02-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT(S) WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND IN N OUT BURGERS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** In N Out Burgers. is a leading national hamburger restaurant chain;  
and

**WHEREAS,** In N Out Burgers. has purchased approximately twenty (20) acres of real property in Lancaster, Texas and desires to construct and occupy approximately a two hundred thousand (200,000) square foot facility (hereinafter defined as the "Premises"), and construct improvements thereon for a food processing and distribution operation; and

**WHEREAS,** In N Out Burgers' development of the Premises will provide employment opportunities within the City; and

**WHEREAS,** the location of In N Out Burgers on the Premises will result in an estimated \$52,000,000 value added capital investment in construction and improvements on the Premises; and

**WHEREAS,** In N Out Burgers has advised the City that a contributing factor that would induce the company to construct and occupy the facility would be an agreement by the City to provide an economic development grant to the company; 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 In N Out Barges 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 enter into an Economic Development Agreement with In N Out Burgers 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 In N Out Burgers (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 9th day of February, 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, 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 Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and In-N-Out Burgers, a California corporation (the “Company”), acting by and through their respective authorized representatives.

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

**WHEREAS,** the Company has purchased approximately 20 acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit “A”** (the “Property”); and

**WHEREAS,** the Company intends to construct and occupy an approximately two hundred thousand (200,000) square foot facility and Related Infrastructure for a food processing, warehouse, office and distribution center representing approximately \$52,000,000 value added capital investment (the “Project”); and

**WHEREAS,** the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Property Taxes (hereinafter defined); 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 new or 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) 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(s)” shall mean annual economic development grants to be provided by the City to the Company in an amount equivalent to 60 percent (60%) of the Real Property Taxes assessed against the Premises for a given tax year for a period of eight (8) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Project is wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Project unfit for its 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 Project; and (b) January 1, 2016.

“Company” shall mean In-N-Out Burgers, a California corporation.

“Company Affiliate” shall mean any party which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with the Company, and “control” (including the correlative meanings of the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

“Effective Date” shall mean the last date of execution of this Agreement by City and the Company.

“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 under bankruptcy or insolvency laws, 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 the seventh (7th) year after the payment of the first Annual Grant.

“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 Premises or Company’s business operations at the Premises.

“Premises” shall mean the real property described on Exhibit “A” including all improvements thereon.”

“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, by the design, construction and maintenance of new improvements and related infrastructure for an approximately 200,000 square foot food processing, warehouse, office and distribution facility.

“Real Property Taxes” shall mean all real estate ad valorem taxes assessed by the City on the Premises.

“Related Infrastructure” shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issued “Certificate of Occupancy” for the Project.

“Required Use” shall mean Company’s occupancy of the Project and the Company’s operation of a food processing, warehouse, office and distribution center on the Premises.

“Taxable Value” shall mean the assessed value of the Premises 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 end on the Expiration Date.

### **Article III**

#### **Economic Development Grants**

3.1 **Annual Grants.** So long as the Company is not in default under this Agreement beyond the expiration of all notice and cure periods provided for herein, 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 Real Property Taxes assessed against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; it being acknowledged that such Real Property Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant); provided, however, that the foregoing shall not limit or affect the Company's ability to protest or contest the Taxable Value and/or taxation of the Premises. For illustration purposes only, assume that the Real Property Taxes assessed against the Premises for tax year 2015 is \$100,000.00 then the amount of the first Annual Grant for the Premises for Tax Year 2015 would be, \$60,000.00 (\$100,000.00 x 60%), and would be paid on March 1, 2016.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt to any party other than the Company 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 Annual 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 or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises 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 sixty (60) business days after such determination in the event no further Annual Grant payments are due under this Agreement.

3.5 **Refunds.** In the event the City determines in its reasonable discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) 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 it is determined 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 sixty (60) 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 Annual Grants shall be conditioned upon the Company not being in default beyond the expiration of all applicable notice and cure periods 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 own and occupy the Project and shall not allow the operation of the Project in conformance with the Required Use to cease for more than sixty (60) consecutive days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within eighteen (18) months from the execution date of this Agreement.

4.3 The Company shall not have an uncured default of this Agreement beyond the expiration of all applicable notice and cure periods.

4.4 Upon breach or default by the Company of any of its obligations under this Agreement, the City shall notify the Company, in writing. The Company shall have ninety (90) days from receipt of the notice in which to cure any such breach or default; provided, however, that if such breach or default cannot reasonably be cured within ninety (90) days, the Company shall have such additional time as is reasonably required to cure such breach or default.

#### **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 the period specified in Article IV above;
- (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 protest and contest any such taxes or Impositions and the same shall not result in any Impositions being deemed "delinquent" for purposes of this Agreement);

- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (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.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if 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.

5.4 Notwithstanding anything to the contrary contained in this Agreement, City's sole and exclusive remedy in the event of any non-cured breach or default by Company under this Agreement shall be to receive a refund of all Annual Grant(s) paid by the City to the Company under this Agreement, which refund shall constitute liquidated damages owing to the City. The parties acknowledge that actual damages in the event of such a default would be speculative and difficult to determine.

## **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.

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:

In-N-Out Burgers  
Attn: Carl Arena  
Director of Development  
13502 Hamburger Lane  
Baldwin Park, California 91706-5885

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 of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to own the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

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. Facsimile or .pdf signatures may be used in place of original signatures on this Agreement.

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) following its commencement of construction, the Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) and Company shall obtain a Certificate of Occupancy for the Premises.

**Signature page to follow**

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF LANCASTER, TEXAS**

By: \_\_\_\_\_  
Opal Mauldin-Robertson, City Manager

**Attest:**

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

**Approved as to Form:**

By: \_\_\_\_\_  
Robert E. Hager, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**IN-N-OUT BURGERS**

By: \_\_\_\_\_  
Carl G. Van Fleet, Executive Vice President  
of Planning & Development

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

## 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 Opal Mauldin-Robertson , 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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of In N Out Burger, a California corporation, 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 \_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of California



# LANCASTER CITY COUNCIL

Item 10

## Agenda Communication

February 9, 2015

---

**Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement for tangible personal property by and between the City of Lancaster and In N Out Burgers.**

---

**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Quality Development**

---

### **Background**

In N Out Burgers, a California corporation, has purchased approximately 20 acres of land in the Houston School Road IH 20 corridor with the intent to construct and occupy an approximately 200,000 square foot food processing, distribution and office facility.

The company estimates they will maintain approximately \$8,000,000 of tangible personal property at their operations in Lancaster and has applied for a tangible personal property incentive grant in compliance with the City's incentive policy.

### **Considerations**

- **Operational** – In N Out Burgers will annually submit receipts for tangible personal property tax payments in order to exercise the grant. Within 60 days of verification of payment, the City will remit forty percent (40%) of the payment to the company for a period of seven (7) consecutive tax years.
- **Legal** - The City Attorney has reviewed and approved the resolution and agreement as to form.
- **Financial** - Based on the estimated value of the tangible personal property submitted by the company and in consideration of the (40%) forty percent tangible personal property tax grant for (7) consecutive tax years, the project will represent approximately \$300,000 over the (7) seven year period in new revenue to the City.
- **Public Information** – This item is being considered at a meeting of the City Council noticed and held 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 resolution and agreement as presented

**Attachments**

- Resolution
  - Agreement
- 

**Submitted by:**

Ed Brady, Director of Economic Development

**RESOLUTION NO. 2015-02-14**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT FOR TANGIBLE PERSONAL PROPERTY WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND IN N OUT BURGERS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, In N Out Burgers is a leading national hamburger restaurant chain;  
and

**WHEREAS**, In N Out Burgers desires to construct and occupy an approximately two hundred thousand (200,000) square foot facility on property owned by the company in the City of Lancaster, Texas (hereinafter defined as the "Premises"), for a food processing and distribution center; and

**WHEREAS**, In N Out Burgers' development of the Premises will provide employment opportunities within the City; and

**WHEREAS**, the location of In N Out Burgers on the Premises will result in a significant value added capital investment, and In N Out Burgers will maintain Tangible Personal Property on the Premises with an estimated minimum value of at least \$8,000,000.00 during the term of this Agreement; and

**WHEREAS**, In N Out Burgers has advised the City that a contributing factor that would induce the company to construct and occupy the Premises would be an agreement by the City to provide an economic development grant to In N Out Burgers; 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 In N Out Burgers 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 enter into an Economic Development Agreement with In N Out Burgers 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 In N Out Burgers (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 9th day of February, 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Sorangel O. Arenas, 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 Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and In-N-Out Burgers, a California corporation (the “Company”), licensed to do business in Texas, acting by and through their respective authorized representatives.

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

**WHEREAS,** the Company has purchased approximately twenty acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit “A”** (the “Property”); and

**WHEREAS,** the Company intends to construct and occupy an approximately two hundred thousand (200,000) square foot facility and Related Infrastructure for a food processing, warehouse, office and distribution operation and will maintain an estimated \$8,000,000 of Tangible Personal Property (the “Project”); and

**WHEREAS,** the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the costs of acquisition, installation and maintenance of certain Tangible Personal Property (hereinafter defined); 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 new or 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) 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(s)” shall mean annual economic development grants to be provided by the City to the Company in an amount equivalent to forty percent (40%) of ad valorem taxes assessed and paid against the Tangible Personal Property for a given tax year for a period of seven (7) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Project is wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Project unfit for its 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 Project; and (b) January 1, 2016.

“Company” shall mean In-N-Out Burgers, a California corporation.

“Company Affiliate” shall mean any party which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with the Company, and “control” (including the correlative meanings of the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

“Effective Date” shall mean the last date of execution of this Agreement by both City and the Company.

“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 under bankruptcy or insolvency laws, 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 the sixth (6th) year after the payment of the first Annual Grant.

“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 Premises or the Company’s business operations at the Premises.

“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 construction and occupancy of an approximate two hundred thousand (200,000) square foot facility and related infrastructure for the operation of a food processing, warehouse, office and distribution center on the Premises.

“Required Use” shall mean Company’s occupancy and operation of the Project for a food processing, warehouse, office and distribution center on the Premises.

“Related Infrastructure” shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issued “Certificate of Occupancy” for the Project.

“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, 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, as rendered to the Dallas Central Appraisal District by Company on an annual basis.

“Taxable Value” shall mean the assessed value of Tangible Personal Property 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 end on the Expiration Date.

## **Article III**

### **Economic Development Grants**

3.1 **Annual Grants.** So long as the Company is not in default under this Agreement beyond the expiration of all notice and cure periods provided for herein, 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); provided, however, that the foregoing shall not limit or affect the Company’s ability to protest or contest the Taxable Value and/or taxation of the Tangible Personal Property. For illustration purposes only, assume that the ad valorem taxes assessed

against the Tangible Personal Property for tax year 2015 is \$10,000.00 then the amount of the first Annual Grant for the Tangible Personal Property for Tax Year 2015 would be, \$4,000.00 (\$10,000.00 x 40%), and would be paid on March 1, 2016.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt to any party other than the Company, 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 Annual 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), and such 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 sixty (60) business days after such determination in the event no further Annual Grant payments are due under this Agreement.

3.5 **Refunds.** In the event the City determines in its reasonable discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) 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 it is determined 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 sixty (60) 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 Annual Grants shall be conditioned upon the Company not being in default beyond the expiration of all applicable notice and cure periods, 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 own and occupy the Project and shall not allow the operation of the Project in conformance with the Required Use to cease for more than sixty (60) consecutive days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within eighteen (18) months from the execution date of this Agreement.

4.3 The Company shall not have an uncured default of this Agreement beyond the expiration of all applicable notice and cure periods.

Upon breach or default by the Company of any of its obligations under this Agreement, the City shall notify the Company, in writing. The Company shall have ninety (90) days from receipt of the notice in which to cure any such breach or default; provided, however, that if such breach or default cannot reasonably be cured within ninety (90) days, the Company shall have such additional time as is reasonably required to cure such breach or default.

## **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 the period specified in Article IV above;
- (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 protest and contest any such taxes or Impositions and the same shall not result in any Impositions being deemed “delinquent” for purposes of this Agreement);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (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.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company; except as provided in Section 5.4 of this Agreement.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if 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.

5.4 Notwithstanding anything to the contrary contained in this Agreement, City's sole and exclusive remedy in the event of any non-cured breach or default by Company under this Agreement shall be to receive a refund of all Annual Grant(s) paid by the City to the Company under this Agreement, which refund shall constitute liquidated damages owing to the City. The parties acknowledge that actual damages in the event of such a default would be speculative and difficult to determine.

## **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.

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:

In-N-Out Burgers  
Attn: Carl Arena  
Director of Development  
13502 Hamburger Lane  
Baldwin Park, California 91706-5885

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 of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to own the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

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. Facsimile or .pdf signatures may be used in place of original signatures on this Agreement.

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) following its commencement of construction, the Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) and Company shall obtain a Certificate of Occupancy for the Premises; the company warrants and agrees that it is licensed to do business in Texas and is legally authorized to perform the obligations recited herein.

**Signature page to follow**

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF LANCASTER, TEXAS**

By: \_\_\_\_\_  
Opal Mauldin-Robertson, City Manager

**Attest:**

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

**Approved as to Form:**

By: \_\_\_\_\_  
Robert E. Hager, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**IN-N-OUT BURGERS**

By: \_\_\_\_\_  
Carl G. Van Fleet, Executive Vice President  
of Planning & Development

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

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 Opal Mauldin-Robertson , 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 \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of In N Out Burger., a California corporation, 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 \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of California

My Commission Expires:

\_\_\_\_\_



# LANCASTER CITY COUNCIL

Item 11

## Agenda Communication

February 9, 2015

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**Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between In N Out Burgers and the Lancaster Economic Development Corporation.**

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**This request supports the City Council 2014-2015 Policy Agenda.**

**Goal: Quality Development**

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### **Background**

The board of directors of the Lancaster Economic Development Corporation (LEDC) convened on Thursday, January 29, 2015 to consider a grant applied for by In N Out Burgers in an amount equal to a twenty five percent (25%) refund of City permit fees associated with the construction of their approximately 200,000 square foot food processing, distribution and office facility in Lancaster. The grant is not to exceed \$30,000.

The board of directors unanimously approved the grant and incentive agreement.

### **Considerations**

- **Operational** - In N Out Burgers will submit receipts for City permit fees to LEDC upon the company receiving a City issued Certificate of Occupancy for their facility.
- **Legal** - . The City Attorney has reviewed and approved the resolution as to form.
- **Financial** - The grant total not to exceed \$30,000 is within the LEDC incentive fund.
- **Public Information** – This item is being considered at a meeting of the City Council noticed and held in accordance with the Texas Open Meetings Act.

### **Options/Alternatives**

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

**Recommendation**

Staff recommends approval of resolution ratifying the actions of LEDC.

**Attachments**

- Resolution
  - LEDC Agreement
  - LEDC Resolution
- 

**Submitted by:**

Ed Brady, Director of Economic Development

**RESOLUTION NO. 2015-02-15**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN INCENTIVE GRANT BY AND BETWEEN IN N OUT BURGERS AND THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING LEDC TO ENTER INTO A FORMAL AGREEMENT; PROVIDING AND EFFECTIVE DATE.**

**WHEREAS**, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2015-01 which was passed and approved on the 29<sup>th</sup> day of January, 2015 by the Board of Directors of the Lancaster Economic Development Corporation (LEDC), offering an incentive grant to In N Out Burgers; and

**WHEREAS**, In N Out Burgers has purchased approximately twenty (20) acres of real property in the City of Lancaster with the intent to construct and occupy an approximately two hundred thousand (200,000) square foot food processing and distribution facility and create 65 new jobs; and

**WHEREAS**, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

**WHEREAS**, the City may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code, which authorizes loans and grants of a city's general funds pursuant to a "program" to stimulate business and commercial activity in the municipality; and

**WHEREAS**, pursuant to Texas Local Government Code, Chapter 501, et seq, as amended, LEDC, as a non-profit corporation, in accordance with the Act, shall promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities, through the use of a sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

**WHEREAS**, pursuant to the City's Charter, the Act and applicable Texas Statutes, the City has the authority to enter into agreements as the City considers necessary or convenient to implement economic development in Lancaster, Texas; and

**WHEREAS**, pursuant to the Act and the bylaws of the Lancaster Economic Development Corporation, LEDC has authority to enter into agreements as LEDC considers necessary or convenient to implement economic development in Lancaster, Texas; and

**NOW, THEREFORE,** be it resolved by the City Council of the City of Lancaster that:

**SECTION 1.** The City Council ratifies the January 29, 2015 actions of the Board of Directors of the LEDC approving an incentive grant to In N Out Burgers.

**SECTION 2.** The City Council authorizes LEDC to enter into an incentive agreement with In N Out Burgers, which is attached hereto and incorporated herein as Exhibit "A."

**SECTION 3.** This resolution shall be effective from and after its passage as provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 9th day of February, 2015.

Attest:

Approved:

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

\_\_\_\_\_  
Marcus E. Knight, Mayor

Approved As To Form:

\_\_\_\_\_  
Robert E. Hager, City Attorney

**RESOLUTION NO. 2015-01**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC), IN SUPPORT OF A GRANT TO IN N OUT BURGERS FROM FUNDS COLLECTED FROM ¼ OF 1 PERCENT ADDITIONAL SALES AND USE TAX FOR THE PROMOTION AND DEVELOPMENT OF NEW AND EXPANDED BUSINESS ENTERPRISES, AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Lancaster Economic Development Corporation recognizes how important business and community development is to the vitality and growth of Lancaster; and

**WHEREAS**, In N Out Burgers has selected Lancaster as the location for their newest regional processing and distribution facility; and

**WHEREAS**, In N Out Burgers, Inc. has requested a grant for reimbursement of 25% of permit fees not to exceed \$30,000 associated with the construction and finish out of an approximately 200,000 square foot food processing and distribution facility located on property owned by In N Out Burgers in Lancaster, Texas ; and

**WHEREAS**, the Board of Directors of LEDC are responsible for the review and evaluation of Type A incentive applications; and


**WHEREAS**, the board of LEDC is also responsible for recommending Type A Incentive Grants to the Lancaster City Council for review and approval;

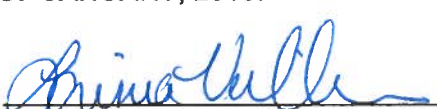
**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION:**

**SECTION 1.** That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution and Incentive Agreement which is attached hereto.

**SECTION 2.** That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

**DULY PASSED AND ADOPTED ON THIS 29<sup>TH</sup> DAY OF JANUARY, 2015.**

**APPROVED:**   
\_\_\_\_\_  
Ric Peterson, President

**ATTEST:**   
\_\_\_\_\_  
Larissa Villanueva, Executive Secretary

**APPROVED  
AS TO  
FORM:** \_\_\_\_\_  
Robert E. Hager, City Attorney

## **INCENTIVE AGREEMENT**

This Incentive Agreement (the "Agreement") is entered into by and between the Lancaster Economic Development Corporation, a non-profit corporation chartered by the State of Texas, acting by and through its Board of Directors (hereinafter referred to as the "LEDC") and In-N-Out Burgers, a California corporation, licensed to do business in Texas acting by and through its authorized officer, Carl G. Van Fleet, hereinafter referred to as (the "Company").

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

**WHEREAS**, the Lancaster Economic Development Corporation was established to promote enhanced business opportunities within the corporate limits of the City of Lancaster, Texas; and

**WHEREAS**, the LEDC recognizes the need to offer business incentives to develop real property within the City of Lancaster; and

**WHEREAS**, in order to maintain and enhance the economic and employment base within the City of Lancaster, it is in the best interests of the LEDC to enter into this Agreement in accordance with the terms provided herein; and

**WHEREAS**, the Company wishes to expand its operations as a viable economic project within the City thereby creating new business capital investment and new jobs in the City; and

**WHEREAS**, the Board of Directors of LEDC finds that the intended scope of the Project, hereinafter defined, is to construct and occupy approximately 200,000 square feet of food processing, warehouse, office and distribution space on approximately twenty acres in Lancaster owned by the Company.

**NOW THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of employment, the attraction of major investment within the City which contributes to the economic development of Lancaster, and to the enhancement of the tax base for the City, the parties agree as follows:

### **I.**

#### **EFFECTIVE DATE; TERM OF AGREEMENT**

This Agreement shall become effective upon the Board of Directors of the LEDC approval of this agreement and confirmation of same by the City Council of the City of Lancaster authorizing the LEDC to enter into this Agreement with the Company and on the last date of execution of this Agreement by the LEDC and the Company.

## II. DEFINITIONS

Whenever used in this Agreement, the following term shall have the meaning ascribed to it:

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

**“Certificate of Occupancy”** shall mean the City issued permit confirming that all Improvements on the Premises have been completed and the Project is approved for Company business operations to commence.

**“Company”** shall mean In-N-Out Burgers, a California corporation.

**“Company Affiliate”** shall mean any party which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with the Company, and “control” (including the correlative meanings of the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

**“Improvements”** shall mean the construction and finish out work necessary to commence Company operations in its approximately 200,000 square foot food processing, warehouse, office and distribution facility located on Company land described in Exhibit A, Lancaster, Texas.

**“Premises”** shall mean the property described in **Exhibit A**, attached hereto and made a part hereof for all purposes, including any improvements made thereto.

**“Project”** shall mean the improvements, Related Infrastructure and occupancy activities associated with the location, construction, finish out and maintenance of the Company's Improvements in Lancaster, Texas.

**“Related Infrastructure”** shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issued “Certificate of Occupancy” for the Improvements.

## III. PROVISIONS RELATING TO INCENTIVE AGREEMENT

In-N-Out Burgers' Obligations:

- A. The Company will begin construction of the Improvements within eighteen (18) months from the date of execution of this Agreement.

- B. The Premises and Improvements constructed thereon at all times shall be used in a manner that is consistent with the City of Lancaster's Comprehensive Zoning Ordinance, as amended and other applicable state law and/or ordinances.
- C. The Company agrees to provide any and all documentation reasonably necessary to confirm data required to implement provisions of the incentive grant pursuant to this Agreement.

LEDC's Obligations:

- A. LEDC agrees to pay a grant to the Company for reimbursement of 25% of permit fees paid by the Company directly to the City of Lancaster for the construction of the Improvements, up to a maximum grant of \$30,000. The Company will pay the City of Lancaster the full cost of permit fees associated with the construction and finish out of the Improvements and present to LEDC copies of actual paid receipts for said fees. LEDC will issue a reimbursement payment of twenty five percent (25%) of those receipts submitted not to exceed a grand total of \$30,000 within 30 days of submittal, after a final Certificate of Occupancy for the Improvements is issued to the Company.
- B. All grant of funds shall be made from available sales tax proceeds from the LEDC and is not pledged against future sales tax proceeds or the full faith and credit of LEDC or the City of Lancaster.

**IV.**

**DEFAULT; RECAPTURE OF GRANT FUNDS**

- A. In the event the Company (i) fails to commence construction of the Project and Improvements on property located in Lancaster, Texas within eighteen (18) months of execution of this Agreement; (ii) fails to complete the Project in accordance with this Agreement; or (iii) materially breaches any of the terms or conditions of this Agreement, then the Company, after the expiration of the notice and cure periods described in Paragraph IV (B) below, shall be in default of this Agreement. As LEDC's sole and exclusive remedy under this Agreement in the event of such non-cured default, the Company shall refund to LEDC all grants previously paid by LEDC under this Agreement to the Company, which refund shall constitute liquidated damages owing to LEDC. The parties acknowledge that actual damages in the event of such a default would be speculative and difficult to determine. The parties further agree that the recapture of grant funds due LEDC as a result of the Company's default under this Agreement, shall be recoverable against the Company, its successors and assigns and shall continue as a lien on the Premises.
- B. Upon breach by the Company of any of its obligations under this Agreement, the LEDC shall notify the Company, in writing. The Company shall have ninety (90) days from receipt of the notice in which to cure any such default; provided, however, that if such breach or default cannot reasonably be cured within ninety (90) days, the Company shall have such additional time as is reasonably required to cure such breach or default.



- C. If the Company fails to cure the default within the time provided as specified in Paragraph IV(B) above, or, as such time period may be extended by written agreement of the parties, then the LEDC at its sole option and as its sole and exclusive remedy, shall have the right to demand repayment of the incentives it has made hereunder to the Company in accordance with this section IV.
- D. Upon the LEDC's election under the preceding paragraph, all incentives provided by LEDC to the Company under this Agreement shall be repaid as set forth in paragraph IV(A), and shall become due and payable ninety (90) days after notice to the Company of a non-cured default hereunder beyond the expiration of all applicable notice and cure periods. The LEDC shall have all remedies provided by law for the collection of such grant funds. The LEDC at its sole discretion has the option to provide a repayment schedule. The obligation of the Company to repay such grant funds to LEDC in the event of default shall survive the termination of this Agreement.

## **V. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned without the consent of the LEDC, except to a Company Affiliate. For purposes of this paragraph V, "Company Affiliate" shall mean any party which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with the Company, and "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

## **VI. NOTICES**

All notices required by this Agreement shall be addressed to the following, or other such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

In-N-Out Burgers to:

Carl Arena  
Director of Development  
In-N-Out Burgers  
13502 Hamburger Lane  
Baldwin Park, California 91706-5885

LEDC to:

Ed Brady  
Lancaster Economic Development Corporation  
P.O. Box 940  
Lancaster, Texas 75146

**VII.  
LEDC AUTHORIZATION**

This Agreement was authorized by resolution of the LEDC, approved by its Board of Directors, authorizing its officer to execute this Agreement on behalf of the LEDC.

**VIII.  
SEVERABILITY**

In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

**IX.  
APPLICABLE LAW**

THIS AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. Venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

**X.  
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. Facsimile or .pdf signatures may be used in place of original signatures on this Agreement.

**XI.  
ENTIRE AGREEMENT**

This Agreement embodies the complete agreement between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties. The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of the Company and the LEDC. While there is no obligation for the LEDC to fund future expansion beyond that contemplated by this Agreement, nothing herein precludes the Company from requesting further assistance on future projects.

**XII.  
RECORDATION OF AGREEMENT**

A certified copy of this Agreement may be recorded in the Deed Records of Dallas County, Texas.

**XIII.  
INCORPORATION OF RECITALS**

The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein and form a part of this Agreement.

**XIV.  
EXHIBITS**

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

EXECUTED in duplicate originals this the 29th day of January, 2015.

LANCASTER ECONOMIC  
DEVELOPMENT CORPORATION

By: 

Ric Peterson, President

IN-N-OUT BURGERS

By: \_\_\_\_\_

Carl G. Van Fleet, Executive Vice  
President of Planning & Development

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

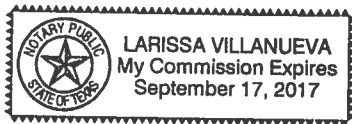
BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

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 Ric Peterson, President of the Lancaster Economic Development Corporation, 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 29<sup>th</sup> day of January, 2015.



  
\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
September 17, 2017

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of California, on this day personally appeared \_\_\_\_\_ of In N Out Burger, Inc., a State of California corporation, 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 \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of California

My Commission Expires:  
\_\_\_\_\_