



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



**Monday, February 22, 2016 - 7:00 PM**

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**CALL TO ORDER**

**INVOCATION:** Ministerial Alliance

**PLEDGE OF ALLEGIANCE:** Deputy Mayor Pro Tem Stanley Jaglowski

**CITIZENS' COMMENTS:**

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

**CONSENT AGENDA:**

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

- C1. Consider approval of minutes from the City Council Regular Meeting held on January 25, 2016 and February 8, 2016.
- C2. 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 \$495,750.00.
- C3. Consider a resolution authorizing the Texas Coalition for Affordable Power, Inc. (TCAP) to negotiate an Electric Supply Agreement for five years for deliveries of electricity effective January 1, 2018; authorizing TCAP to act as an agent on behalf of the city to enter into a contract for electricity; authorizing the City Manager to execute an Electric Supply Agreement for deliveries of electricity effective January 1, 2018 and committing to budget for energy purchases in 2018 through 2022 and to honor the city's commitments to purchase power for its electrical needs in 2018 through 2022 through TCAP.
- C4. Consider a resolution approving the terms and conditions of an Interlocal Agreement by and between the City of Dallas and the City of Lancaster to provide certain biomedical on-line services, providing for funding and authorizing its execution by the City Manager.

**ACTION:**

- 5. 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 JDC Holdings, LLC.
- 6. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between the Lancaster Economic Development Corporation and JDC Holdings, LLC.

7. Discuss and consider a resolution authorizing the City Manager to execute an economic development agreement pursuant to Chapter 380, Texas Local Government Code, by and between the City of Lancaster and 2935 Daniieldale Road Holdings, LLC.
8. Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between the Lancaster Economic Development Corporation and 2935 Daniieldale Road Holdings, LLC.

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

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

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

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

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### **Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on February 18, 2016 @ 2:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**



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**Sorangel O. Arenas**  
City Secretary

# **LANCASTER CITY COUNCIL**

## **Agenda Communication**

February 22, 2016

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**Consider approval of minutes from the City Council Regular Meeting held on January 25, 2016 and February 8, 2016.**

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### **Background**

Attached for your review and consideration are minutes from the:

- City Council Regular Meeting held January 25, 2016.
- City Council Regular Meeting held February 8, 2016.

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### **Submitted by:**

Sorangel O. Arenas, City Secretary

## **MINUTES**

### **LANCASTER CITY COUNCIL MEETING OF JANUARY 25, 2016**

The City Council of the City of Lancaster, Texas, met in a called Regular session in the Council Chambers of City Hall on January 25, 2016 at 7:00 p.m. with a quorum present to-wit:

#### **Councilmembers Present:**

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

#### **Councilmembers Absent:**

Mayor Pro Tem James Daniels  
Nina Morris

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

Opal Mauldin-Robertson, City Manager  
Rona Stringfellow, Assistant City Manager  
Fabrice Kabona, Assistant to the City Manager  
Sean Johnson, Managing Director of Quality of Life & Cultural Services  
Ed Brady, Director of Economic  
Sam Urbanski, Interim Police Chief  
Pat Adamcik, Assistant Fire Chief  
Michael Grace, Development Services Director  
Jermaine Sapp, Equipment and Facilities Director  
Cynthia Pearson, Finance Director  
Mark Divita, Airport Manager  
Angie Arenas, City Secretary

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

Mayor Knight called the meeting to order at 7:00 p.m. on January 25, 2016.

#### **Invocation:**

Sean Johnson gave the invocation.

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

Councilmember Marco Mejia led the pledge of allegiance.

#### **Consent Agenda:**

City Secretary Arenas read the consent agenda.

- C1. Consider approval of minutes from the City Council Special Meeting held on November 16, 2015.**
- C2. Consider a resolution approving participation by the City of Lancaster in the Community Outdoor Outreach Program by the Texas Parks & Wildlife Department (TPWD) for the purpose of helping to finance activities and interpretive signage at Bear Creek Nature Park.**
- C3. Consider a resolution adopting the Federal Emergency Management Agency (FEMA) approved 2015 Dallas County Hazard Mitigation Plan.**
- C4. Consider a resolution approving the terms and conditions of the interlocal agreement by and between the University of Texas Southwestern Medical Center and the City of Lancaster, for services related to the provision of paramedic continuing education.**

- C5. Consider a resolution approving the amendment to the airport ground lease agreement between the City of Lancaster and Airport Properties Inc., and Sterling May, by providing for a new termination date of May 20, 2029 at the Lancaster Regional Airport.**
- C6. Consider an ordinance granting a franchise for the collection and removal of commercial solid waste to Community Waste Disposal (CWD).**
- C7. Consider a resolution authorizing Dallas County to resell 3204 Belvedere Drive, a tax foreclosed property, by public or private sale, to the highest qualified purchaser, as provided by Section 34.05 of the Texas Property Tax Code.**
- C8. Consider a resolution approving the first amendment to the ambulance services agreement with Dallas County for the provision of ambulance services to unincorporated areas adjacent to the City of Lancaster, to extend the term of the agreement for an additional two years.**
- C9. Consider a resolution approving the first amendment to the fire services agreement with Dallas County for the provision of fire services to unincorporated areas adjacent to the City of Lancaster, to extend the term of the agreement for an additional two years.**

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski, to approve consent items C1-C9. The vote was cast 5 for, 0 against [Mayor Pro Tem Daniels and Morris absent].

- 10. Z15-06 Conduct a public hearing and consider an ordinance amending the comprehensive zoning ordinance by granting a change in zoning from Single Family 6 (SF-6) to Commercial Highway (CH) on approximately 0.5 acres located at 3712 Waters Street generally located on the east line of Waters Street, North of Daniieldale Road.**

Mike Grace, Development Services Director, informed the City Council that the Comprehensive Plan identifies this site as suitable for commercial highway and medium industrial uses. The Comprehensive Plan Future Land Use map designates this area as a Commercial Redevelopment Area.

Deputy Mayor Pro Tem Jaglowski inquired about prior code violations.

Mr. Grace, Development Services Director, stated there is an active legal dispute but it will not affect the applicant.

Councilmember Strain-Burk inquired information about a possible antenna for the height.

Mr. Grace related that the property abuts property zoned Single-family 6 (SF-6) to the north and south and property zoned Light Industrial (LI) to the east. Due to the proximity to residentially zoned property and per the city's Development Code, structures on the subject site will be limited to a maximum height of sixty (60') feet.

Councilmember Strain-Burk inquired if there will be any stipulations within our zoning code that will have a safety requirement for the antenna.

Vincent Zeno, 1436 Summertime Lane, Dallas, Texas, communicated that Warning Radio, Inc. is a non-profit internet radio station that has been approved by the FCC and the frequency will reach the City of Lancaster and the City of Oak Cliff.

Mayor Knight opened the public hearing.

There were no speakers.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk, to close the public hearing. The vote was cast 5 for, 0 against [Mayor Pro Tem Daniels and Morris absent].

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk, to approve item 10. The vote was cast 5 for, 0 against [Mayor Pro Tem Daniels and Morris absent].

- 11. Discuss and consider a resolution granting a request for Special Exceptions pursuant to Sections 14.505 (a) 2 and 3, height and articulations; to provide a Special Exception for increased height on the proposed Huntington Industrial site located between Longhorn Drive and North Houston School Road and more commonly known as 3201 N. Houston School Rd.**

Mike Grace, Development Services Director, advised the City Council this item was originally before the City Council on December 14, 2015. The resolution has been amended to reflect a fifty (50') foot building height limit versus forty-seven feet, six inches (47'6"). In addition, the applicant submitted revised building elevations that do not depict articulations in the truck dock portions of the proposed buildings while also depicting truck docks facing N. Longhorn Drive.

Applicant, Mike Meinhardt, shared his request the resolution reveal the total building height be increased to fifty feet (50').

Councilmember Strain-Burk inquired if the applicant could consider changing the Eastern Red Cedar trees to Nellie R Stevens Holly as the Nellie Stevens typically grows to 15-30 feet tall and can be pruned to form a tall hedge.

Applicant responded that he will consider and discuss with his landscape architect.

Mayor Knight clarified that Councilmember Strain-Burk only recommended the applicant to consider the landscape option.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Councilmember Mejia, to approve item 11. The vote was cast 5 for, 0 against [Mayor Pro Tem Daniels and Morris absent].

**MOTION:** Councilmember Mejia made a motion, seconded by Councilmember Strain-Burk, to adjourn. The vote was cast 5 for, 0 against [Mayor Pro Tem Daniels and Morris absent].

The meeting was adjourned at 7:16 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

## **MINUTES**

### **LANCASTER CITY COUNCIL MEETING OF FEBRUARY 8, 2016**

**The City Council of the City of Lancaster, Texas, met in a called Regular session in the Council Chambers of City Hall on February 8, 2016 at 7:00 p.m. with a quorum present to-wit:**

#### **Councilmembers Present:**

Mayor Marcus E. Knight  
Carol Strain-Burk  
Deputy Mayor Pro Tem Stanley Jaglowski  
Marco Mejia

#### **Councilmembers Absent:**

Mayor Pro Tem James Daniels  
LaShonjia Harris  
Nina Morris

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

Opal Mauldin-Robertson, City Manager  
Rona Stringfellow, Assistant City Manager  
Kay Brown, Community Relations Coordinator  
Dori Lee, Human Resources Director  
Sean Johnson, Managing Director of Quality of Life & Cultural Services  
Sam Urbanski, Interim Police Chief  
Jason Boulton, Assistant Police Chief  
Kelly Hooten, Police Lieutenant  
Clifford Wherley, Police Lieutenant  
Michael Fine, Police Lieutenant  
Charley Miller, Sergeant  
Stoney Logan, Sergeant  
Latisha Washington, Sergeant  
Ricardo Sparks, Police Officer  
Zachary Beachamp, Police Officer  
Maeland James, Police Officer  
Flavio Salazar, Police Officer  
Eric Alexander, Police Officer  
Michael Adams, Police Officer  
Thomas Griffith, Fire Chief  
Pat Adamcik, Assistant Fire Chief  
Michael Grace, Development Services Director  
Jermaine Sapp, Equipment and Facilities Director  
Angie Arenas, City Secretary

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

Mayor Knight called the meeting to order at 7:00 p.m. on February 8, 2016.

#### **Invocation:**

Pastor John Richardson gave the invocation.

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

Councilmember Carol Strain-Burk led the pledge of allegiance.

#### **Consent Agenda:**

City Secretary Arenas read the consent agenda.

- C1. Consider approval of minutes from the City Council Regular Meeting held on December 14, 2015.**
- C2. Consider a resolution ordering a General Election to be held on Saturday, May 7, 2016, for the election of one councilmember for District 1, one councilmember for District 3, and one councilmember for District 5 for a three year term; providing for the publication and posting of notice; and providing for early voting dates, times and locations.**

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski, to approve consent items C1-C2. The vote was cast 4 for, 0 against [Mayor Pro Tem Daniels, Harris, and Morris absent].

- 3. Consider a resolution approving the terms and conditions of a Project Specific Agreement by and between Dallas County and the City of Lancaster for the purpose of Transportation Improvements on Daniel Dale Road from Interstate Highway 35E to Houston School Road; authorizing the City Manager to execute the agreement; and providing an effective date.**

**MOTION:** Councilmember Mejia made a motion, seconded by Deputy Mayor Pro Tem Jaglowski, to approve item 3. The vote was cast 4 for, 0 against [Mayor Pro Tem Daniels, Harris, and Morris absent].

- 4. Discuss and consider appointments to the Animal Shelter Advisory Committee and Library Advisory Board.**

Nominated for the vacant position on the Animal Shelter Advisory Committee with a term expiring in 2016, was Linda Adair.

Nominated for the vacant position on the Library Advisory Board with a term expiring in 2017, was Candace Gardner.

**MOTION:** Deputy Mayor Pro Tem Jaglowski made a motion, seconded by Councilmember Strain-Burk, to appoint Linda Adair to the Animal Shelter Advisory Committee and Candace Gardner to the Library Advisory Board. The vote was cast 4 for, 0 against [Mayor Pro Tem Daniels, Harris, and Morris absent].

- 5. Consider confirmation of nominations made by the Planning and Zoning Commission for appointment to the Lancaster Historic Landmark Preservation Committee.**

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski, confirming Planning and Zoning Commission's nomination made for the Lancaster Historic Landmark Preservation Committee (HLPC). The vote was cast 4 for, 0 against [Mayor Pro Tem Daniels, Harris, and Morris absent].

- 6. Consider confirmation of Samuel Urbanski as Interim Chief of Police of the Lancaster Police Department and administer Oath of Office.**

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski, to confirm item 6. The vote was cast 4 for, 0 against [Mayor Pro Tem Daniels, Harris, and Morris absent].

City Secretary Arenas administered the Oath of Office for Samuel Urbanski as Interim Chief of Police of the Lancaster Police Department.

**MOTION:** Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski, to adjourn. The vote was cast 4 for, 0 against [Mayor Pro Tem Daniels, Harris, and Morris absent].

The meeting was adjourned at 7:10 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

# **LANCASTER CITY COUNCIL**

## **Agenda Communication**

**February 22, 2016**

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**Consider a resolution authorizing the purchase and installation of 3,000 water meter registers from HydroPro Solutions through an Interlocal agreement with Houston Galveston Area Council (HGAC) in an amount not to exceed \$495,750.00.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

**Goal: Sound Infrastructure**

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### **Background**

The City's current water meter registers were replaced in 2006 with a life expectancy of five years. The amount of water meter registers that need to be replaced (3,000) has surpassed the staffing level capabilities and must be outsourced in order to keep the City's water meters functioning properly. Council approved the replacement of nine hundred and seven (907) water meter registers on January 16, 2015 and an additional (587) water meter registers on July 13, 2015.

Interlocal Agreements allow staff to utilize other agencies' formal bid contracts. Each entity's formal bid process meets the requirements set forth in the statutes, including advertising, M/WBE participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirements.

Use of Interlocal Agreements allows the City to address the operation needs in a timely manner. Additionally, savings are achieved through aggregate volumes joint bidding opportunities.

### **Considerations**

- **Operational** – Replacement of the current water meter registers will reduce maintenance cost in labor and materials due to service interruptions and improve meter accuracy. The Water and Wastewater Division is primarily responsible for the installation and ongoing maintenance and operation of water meters, water meter registers and related equipment for the tracking of water usage. Due to the volume of water meter register replacements, it is more prudent to outsource this operation for a more efficient and effective use of staff time. Additionally, this will maintain

current levels of service to water customers by utilizing this third party method. The current number of water meter registers replaced to date is two thousand six hundred and eight (2,608).

- **Legal** – The City maintains an executed Interlocal Agreement with Houston Galveston Area Council (HGAC), a cooperative agency. Texas law authorizes cooperative agreements to help save the time of developing specifications and avoid the duplication of the complete bidding process.
- **Financial** – Funds are available in the FY 15/16 water division budget.
- **Public Information** – This item is being considered at a meeting of the City Council posted in accordance with the Texas Open Meetings Act.

### **Options/Alternatives**

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

### **Recommendation**

Staff recommends approving the resolution as presented.

### **Attachments**

- Resolution
- Quote

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### **Submitted by:**

Jim Brewer, Public Works Director  
Andrew Waits, Water & Wastewater Superintendent

## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE PURCHASE OF THREE THOUSAND (3,000) WATER METER REGISTERS THROUGH AN INTERLOCAL AGREEMENT WITH HOUSTON GALVESTON AREA COUNCIL (HGAC) IN AN AMOUNT NOT TO EXCEED \$495,750.00 TO ACQUIRE THE WATER METER REGISTERS AND INSTALLATION THEREOF EXCUTING SUCH PURCHASE ORDERS AND NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of Lancaster, Texas, desires to authorize the purchase and installation of water meter registers through an Interlocal Agreement with Houston Galveston Area Council (HGA) in an amount not to exceed \$495,750.00; and

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

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

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

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

**SECTION 1.** The City Council hereby authorizes, approves, accepts, and awards the bid to HydroPro Solutions in an amount not to exceed four hundred ninety five thousand seven hundred fifty dollars and zero cents (\$495,750.00) to purchase and install three thousand (3,000) water meter registers, as set forth in Exhibit "A," and;

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

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

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

**SECTION 5.** This Resolution shall become 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 22nd day of February, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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



January 14, 2016

City of Lancaster  
Andrew Waits  
1999 N. Jefferson St  
Lancaster, TX 75134

Subject: Master Meter pricing

Andrew,

The following is pricing for Master Meters 3G register retrofit and installation:

Product	Part Number	QTY	Unit Price	Extended
3/4" Master Meter 3G DS Register	199-050-96	3,000	\$165.25	\$495,750.00

Price includes installation for the 3G register. Installation will include replacing old Narrow Band registers with new Spread Spectrum DS registers, locking the housing onto the meter, taking a GPS coordinate, taking a photo of old register and new register, and the providing of the work order information in a paperless form to the City of Lancaster.

These prices are discounted from the **HGAC contract WM08-14**.

Please call me with any questions you may have.

Regards,

Maurice de Vries  
HydroPro Solutions  
972.754.6454

# LANCASTER CITY COUNCIL

## Agenda Communication

February 22, 2016

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**Consider a resolution authorizing the Texas Coalition for Affordable Power, Inc. (TCAP) to negotiate an Electric Supply Agreement for five years for deliveries of electricity effective January 1, 2018; authorizing TCAP to act as an agent on behalf of the city to enter into a contract for electricity; authorizing the city manager to execute an Electric Supply Agreement for deliveries of electricity effective January 1, 2018 and committing to budget for energy purchases in 2018 through 2022 and to honor the city's commitments to purchase power for its electrical needs in 2018 through 2022 through TCAP.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

**Goal 1: Financially sound, stable city government.**

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### **Background**

The Texas Coalition for Affordable Power (TCAP) is a non-profit political subdivision corporation owned and controlled by its 171 political subdivision members comprised mostly of cities. TCAP was formed in 2011 from the merger of Cities Aggregation Power Project (CAPP) of which Lancaster was a member, and South Texas Aggregation Project (STAP) both of which were formed in 2001. Through the strength of numbers, TCAP can negotiate better electricity-buying deals than would be available to any member acting alone. With 170 political subdivision members purchasing approximately 1.4 billion kWh annually, TCAP is the largest organization of its kind in the state. TCAP is governed by a 15 member board of directors, all of whom must be city employees or elected city officials.

This purpose of this item is for Council to consider a resolution designed to support one of several opportunities for TCAP members to contract for electricity for the post-2017 time period. If interested in contracting for a five-year term (2018-2022) during 2016, the member city must approve a resolution by February 25, 2016.

After the size of the load for the 2015 contract opportunity is defined the TCAP supplier will look for an opportunity to lock prices for the five-year term at or below specified benchmarks (\$04.1 – \$04.25 cents per kWh) for a five-year period commencing January 1, 2018. That may happen by the second week of March, but if it appears that prices are trending downward, TCAP will direct its designated supplier, NextEra, to daily monitor the market to hopefully capture a price lower than benchmarked prices. The window of opportunity for capturing a reasonable price at or below the benchmarks will expire by June 30, 2016.

### **Considerations**

- **Operational** – The recommended option under this agreement is for a fixed price for all consumption regardless of time of day. The price will not exceed 4.1 cents per kWh in the North and West ERCOT zones. The prices will become effective January 1, 2018. Given that these prices are to be locked in 2016 and will not expire until December 31, 2022, they are reflective of the lowest prices for electricity experienced since the retail market was deregulated January 1, 2002.
- **Legal** – As a member of TCAP, the resolution was prepared by the legal counsel representing the organization.
- **Financial** – This resolution authorizes TCAP to act as an agent on behalf of the City to enter into a contract for the purchase of electricity and commits the City to budget for and approve the funds to pay for the energy it commits to purchase. The City of Lancaster will budget to pay for the portion of the aggregated total of power it consumes. There are no new costs added with this agreement.
- **Public Information** – This item is being considered at a regular meeting posted and held 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 resolution as presented.

### **Attachments**

- Resolution

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### **Submitted by:**

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

## RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE TEXAS COALITION FOR AFFORDABLE POWER, INC. (TCAP) TO NEGOTIATE AN ELECTRIC SUPPLY AGREEMENT FOR FIVE YEARS FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2018; AUTHORIZING TCAP TO ACT AS AN AGENT ON BEHALF OF THE CITY TO ENTER INTO A CONTRACT FOR ELECTRICITY; AUTHORIZING THE CITY MANAGER TO EXECUTE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2018 AND COMMITTING TO BUDGET FOR ENERGY PURCHASES IN 2018 THROUGH 2022 AND TO HONOR THE CITY'S COMMITMENTS TO PURCHASE POWER FOR ITS ELECTRICAL NEEDS IN 2018 THROUGH 2022 THROUGH TCAP**

**WHEREAS**, the City of Lancaster, Texas (City) is a member of Texas Coalition For Affordable Power, Inc. (TCAP), a non-profit, political subdivision corporation dedicated to securing electric power for its more than 170 members in the competitive retail market; and

**WHEREAS**, TCAP has unique rights under Texas law to negotiate directly in the wholesale market and arrange separate contracts for power supply and retail services which provides TCAP leverage to achieve contract provisions that single city negotiations with a Retail Electric Provider (REP) would be unlikely to produce; and

**WHEREAS**, TCAP's geographic diversity across all four ERCOT zones produces an aggregated peak load that is lower than the total of individual peak loads of the individual TCAP members, allowing price benefits in the wholesale market that are not likely to be available to any given TCAP member alone; and

**WHEREAS**, TCAP and its predecessor organizations, Cities Aggregation Power Project, Inc. (CAPP) and South Texas Aggregation Project, Inc. (STAP), negotiated favorable contract terms that resulted in rebates from the wholesale supplier and reasonable commodity prices for delivered electricity since 2002 resulting in stable budgets for electricity for members; and

**WHEREAS**, commodity prices for electricity experienced significant volatility between 2002 and 2009, with prices ranging from 4 cents to over 13 cents per kWh, causing CAPP and STAP members to welcome a five year contractual commitment that came close to cutting the 2008 prices in half, with that contract being extended until December 31, 2017, with a negotiated price reduction of about 1 cent per kWh; and

**WHEREAS**, TCAP has become a forceful voice for consumer protections and market reform to benefit the public and well as cities and other political subdivisions; and

**WHEREAS**, TCAP is owned by its members and distributes monetary and other resources according to relative load size of members and is controlled by a 15 member Board of Directors, all of whom must be city employees of members who represent diversity in size and geography; and

**WHEREAS**, wholesale power prices within the deregulated Texas market are largely determined by the NYMEX gas futures prices for natural gas which are currently low and relatively stable, but which change daily; and

**WHEREAS**, daily price changes require retail customers to execute a contract immediately upon receipt of a favorable offer; and

**WHEREAS**, pursuant to Texas Local Government Code Section 252.022(a)(15) expenditures for electricity are exempt from competitive bidding requirements; and

**WHEREAS**, on any given day, TCAP is able to capture a favorable wholesale price for any period of time, comparable to or better than any given REP or broker; and

**WHEREAS**, TCAP intends to continue to contract with its current wholesale supplier, NextEra, because the relationship with NextEra is such that NextEra is willing, after it knows the size of a given load, to execute a contract at or below prescribed price and terms; and

**WHEREAS**, the City desires to execute a contract for electricity for the period beyond the expiration of its current contract on December 31, 2017, that locks-in favorable wholesale prices under one of three different supply options:

Option 1-fixed-price, full-requirements at a price not to exceed 4.1 cents per kWh for the North and West zones or 4.25 cents per kWh for the South and Houston zones; and

**WHEREAS**, TCAP will allow members six weeks from receipt of this resolution to consider whether to participate in this second opportunity to contract for post-2017 electrical supply, and thereafter allow NextEra until June 30, 2016 to contact for power for five years at a price not to exceed 4.1 cents per kWh in the North and West zones and a price not to exceed 4.25 cents per kWh in the South and Houston zones for Option 1, so long as the aggregated load for any of the three supply options reaches at least 50 megawatts; and

**WHEREAS**, wholesale suppliers demand assurance that TCAP will pay for all contracted load; and

**WHEREAS**, the City needs to assure TCAP that it will sign a Commercial Electric Supply Agreement (CESA) reflecting the contract extension and budget for energy purchases for the post-2017 period and honor its commitment to purchase power for its electrical needs for 2018 through 2022 through TCAP,

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

**SECTION 1.** That the TCAP Board of Directors and its consultants and advisors are agents authorized to negotiate for the City's electricity needs as a member of TCAP for the period 2018 through 2022 at a price not to exceed 4.1 cents per kWh for the North and West zones and a price not to exceed 4.25 cents per kWh in the Houston and South zones for supply Option 1;

**SECTION 2.** The City prefers to participate in supply Option 1 with the following understanding: a) while supply Option 1 is a full-requirements, fixed-price option, Options 2 (fixed price on-peak, variable spot prices for off-peak usage) and 3 (fixed price for base load, fixed price for a portion of peak load, and variable spot market for remainder) have variable price components and savings over Option 1 cannot be guaranteed, and b) if there is insufficient desire among members to achieve a 50 MW threshold for either Option 2 or 3, the member selecting the inadequately subscribed option will be placed in the Option 1 category. If no option is selected, TCAP will assume that a passed Resolution approves of Option 1

**SECTION 3.** Assuming this resolution is passed before February 25, 2016 and the combined load of TCAP members passing this resolution exceeds 50 megawatts for the preferred Option and NextEra is able to provide TCAP an opportunity prior to June 30, 2016 to contract for power to be delivered to members at a price not to exceed 4.1 cents per kWh for the North and West zones and not to exceed 4.25 cents per kWh in the Houston and South zones for supply Option 1 for the period January 1, 2018 through December 31, 2022, any one of the following individuals is hereby authorized to sign an electric supply agreement for the City within 24 hours of receipt of a contract that has been approved and recommended by the TCAP Board of Directors: Opal Mauldin-Robertson, City Manager.

**SECTION 4.** That the City will commit to purchase power to meet all of its electricity needs eligible for competition pursuant to the TCAP approved supply agreement and approve funds necessary to pay electricity costs proportionate to the City's load under the supply agreement (whether wholesale or retail) arranged by TCAP and signed by TCAP's Executive Director or President or other TCAP representatives authorized by the TCAP Board.

**SECTION 5.** That a copy of this resolution shall be sent to Jay Doegey, Executive Director, TCAP, 15455 Dallas Parkway, Suite 600, Addison, Texas 75001 and Geoffrey M. Gay, legal counsel to TCAP at 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 22nd day of February, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

# LANCASTER CITY COUNCIL

## Agenda Communication

February 22, 2016

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**Consider a resolution approving the terms and conditions of an Interlocal Agreement with the City of Dallas to provide certain biomedical on-line services, providing for funding and authorizing its execution by the City Manager.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

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

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### **Background**

Texas law requires each Advanced Life Support (ALS) ambulance provider to have a qualified medical control system. This medical control agency provides day-to-day on-line medical direction for paramedics in the field. The City of Lancaster has used the Dallas Biomedical On-Line Supervision system for these services since the inception of our paramedic program in 1986. Other Cities that participate in the system are Dallas, DeSoto, Duncanville, Highland Park, Garland, Irving, Sunnyvale, Mesquite, University Park, and Wills Point. All Cities share the cost of running the system. The system has been recognized as one of the best in the Nation.

### **Considerations**

- **Operational** – Without On-Line Supervision, the City of Lancaster will not be able to provide Ambulance Services to the Citizens of Lancaster.
- **Legal** – The City Attorney has reviewed the agreement.
- **Financial** – The cost to the City of Lancaster is calculated on a per capita basis for an amount not to exceed \$14,833.00 for the year 2015-2016 and \$15,162.00 for the year 2016-2017, not to exceed \$30,045.00 for this term. We saw an increase of \$342.00 in cost due to Carrollton and Farmer's Branch dropping out of the co-op.
- **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. Approve the proposed resolution.
2. Reject the resolution and discontinue paramedic ambulance services.

**Recommendation**

Staff recommends that City Council approve the resolution as presented.

**Attachments**

- Resolution
  - City of Dallas Interlocal Agreement
  - Dallas Master Contract
- 

**Submitted by:**

Thomas Griffith, Fire Chief

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF DALLAS AND THE CITY OF LANCASTER, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT A, FOR SERVICES RELATED TO THE BIOTEL SYSTEM; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Dallas ("Dallas") has renewed its contract with Parkland Health and Hospital System to staff the Dallas Emergency Medical Service Radio Center to provide medical control for paramedics in the field via radio and telemetered patient data ("BioTel System"); and

**WHEREAS**, the City of Lancaster ("Lancaster") desires to purchase the BioTel system services from Dallas and Dallas desires to sell said services to Lancaster; and

**WHEREAS**, the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE provides authorization for any local government to contract with one or more local governments to perform government functions and services under the terms of the Act; and

**WHEREAS**, Dallas and Lancaster desire to enter into the Interlocal Agreement permitting Lancaster to purchase BioTel services from Dallas, which is attached hereto and incorporated herein as Exhibit A, and authorizing the City Manager to execute said Agreement;

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

**SECTION 1.** The City Council hereby authorizes, approves and accepts the terms and conditions of the Interlocal Agreement by and between the City of Lancaster and City of Dallas for BioTel System services, which is attached hereto and incorporated herein by reference as Attachment A; and, the City Manager is hereby authorized to execute said Agreement.

**SECTION 2.** That 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 22 day of February, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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



December 15, 2015

BioTel Participants for FY2016-17

RE: BioTel Final Contract Amount for FY2016 to FY2017

Dear Biotel Participant:

Attached is the information regarding contract amounts for each of participant for the next two fiscal years for Biomedical On-Line Supervision with Parkland Health and Hospital System (PHHS) for FY2016-17. As a result of renegotiation, the initial year's contract amount is a little less for each participant year.

The intent of sending this information to you now is so that you will have time to adjust your budget request for FY2017.

If you have any questions or need more information, please contact me at 214-671-8073.

Respectfully,

Alexander  
Rodriguez

Digitally signed by Alexander O. Rodriguez  
DN: cn = Alexander Rodriguez, o =  
email=alexander.rodriquez@dallascityhall.com, c = US  
Date: 2015.12.15 11:44:26 -0600

Alexander O. Rodriguez  
Business Manager III  
Emergency Medical Services Bureau  
Dallas Fire-Rescue Department  
1551 Baylor, Suite 300  
Dallas, Texas 75226  
[alexander.rodriquez@dallascityhall.com](mailto:alexander.rodriquez@dallascityhall.com)

Dallas Fire-Rescue Department – Emergency Medical Service Bureau - 1551 Baylor, Suite 300  
Dallas, Texas 75201 - 214-671-8073

THE STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS                   §

INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF DALLAS, a Municipal Corporation, located in Dallas County, Texas, ("CITY") and LANCASTER, TEXAS, a political subdivision of the State of Texas ("LANCASTER").

WITNESSETH

WHEREAS, the Interlocal Cooperation Act, Chapter 791, V.T.C.A., Texas Government Code provides authorization for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the CITY issued a Request For Proposal for Biomedical On-Line Supervision for a Dallas-area emergency medical system; and

WHEREAS, the BioTel System, staffed by Parkland Health and Hospital System physicians, paramedics, registered nurses, and clerical staff, was created on July 1, 1980, to provide medical control for paramedics in the field via radio and telemetered patient data; and

WHEREAS, the CITY has, pursuant to Resolution No. 15-1750 entered into an Interlocal Agreement, effective October 1, 2015 with Parkland Health and Hospital System to staff the Dallas Emergency Medical Service Radio Center; and

WHEREAS, the CITY desires to contract with LANCASTER for the sale of BioTel services and LANCASTER desires to purchase from CITY the BioTel system services;

WHEREAS, the Contract for Biomedical On-Line Supervision for Emergency Medical System services between the City of Dallas and Dallas County Hospital District d/b/a Parkland Health & Hospital System for the provision of BioTel System services, entered into on September 22, 2015, is incorporated herein by reference thereto, the same as if copied herein; and

NOW THEREFORE, CITY and LANCASTER hereby enter into this interlocal agreement, for the mutual considerations stated herein:

I.

This Agreement should be administered on behalf of the CITY by the Chief of the Fire Department or his designee ("Chief or Director").

II.

Upon CITY'S request, the BioTel System shall provide to LANCASTER the medical control operation services selected from the list of services described in the contract between the CITY and Parkland Health and Hospital System.

III.

For the performance of the services provided by the BioTel System, LANCASTER agrees to pay CITY for all services provided by CITY an annual biotelemetry fee to be calculated on a per capita basis and CITY shall issue an invoice reflecting said fee in an amount not to exceed \$14,883.00 for year 2015-2016 and \$15,162.00 for year 2016-2017, for a total not to exceed amount of \$30,045.00 for this term. Payments for each of the various services requested from the CITY by LANCASTER will be made within thirty days after receipt of the invoice from CITY. All payments made under this agreement shall be made from currently available funds. Failure by the LANCASTER City Council to appropriate sufficient funds for the purpose of performing this Agreement shall operate as an automatic termination of the Agreement. LANCASTER shall pay City for all services performed prior to LANCASTER notifying City of such termination.

IV.

The term of this Agreement shall be coterminous with the CITY's Interlocal Agreement with Parkland Health & Hospital System, which shall begin as of October 1, 2015 and end on September 30, 2017. Upon expiration of this Contract term the Contract will continue on a month to month basis until a new contract between the parties is executed. Either party to this Agreement may terminate the performance of services under this agreement on thirty (30) days written notice to the other party. LANCASTER agrees to pay CITY for the services authorized by the Chief and completed prior to the effective date of termination.

V.

LANCASTER agrees to be responsible for its own acts of negligence and CITY agrees to be responsible for its own acts of negligence, which may arise in connection with the purchase, use, and operation of BioTel System services. In the event of joint and concurrent negligence, LANCASTER and CITY agree that responsibility shall be apportioned in accordance with the laws of the State of Texas. This obligation shall be construed for the benefit of the parties hereto, and not for the benefit of any third parties, nor to create liability for the benefit of any third parties, nor to deprive the parties hereto of any defenses each may have as against third parties under the laws and court decisions of the State of Texas.

## VI.

All notices, communications and reports under the Agreement shall be mailed or delivered to the respective parties as follows:

To CITY:

Chief, Fire Department  
City Hall, 7AS  
1500 Marilla Street  
Dallas, Texas 75201

To LANCASTER, TEXAS:

Chief, Fire Department  
City of Lancaster  
1650 North Dallas Avenue  
Lancaster, Texas 75134

## VII.

### MISCELLANEOUS PROVISIONS

1. Each party to this Agreement paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

2. This Agreement is entered into subject to the Charter and ordinances of the City of Dallas, as amended, and applicable Texas State laws. The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas; and exclusive venue for any litigation that may be filed by either party hereto in connection with this Agreement shall be in Dallas County, Texas.

3. This Agreement can be revised at anytime by mutual consent of the parties and shall be revised by written amendment(s) to this Agreement and signed by both parties. No oral modifications can be made to this Agreement.

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

5. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters in this Agreement.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURES APPEAR ON THE FOLLOWING PAGE.**

EXECUTED as of this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by CITY and LANCASTER, TEXAS.

APPROVED AS TO FORM:  
WARREN M. S. ERNST  
City Attorney

CITY OF DALLAS:  
A. C. GONZALEZ  
City Manager

BY \_\_\_\_\_  
Assistant City Attorney

BY \_\_\_\_\_  
Assistant City Manager

LANCASTER, TEXAS

LANCASTER, TEXAS

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
City Manager

**PROPOSED BIOTEL COSTS 2015-17**

BIOTEL COSTS 2015-2017 (Oct 1, 2015 to Sep 30, 2017)

Equipment & Supplies	No. Units	Cost/Mo.	Total cost
Floor Mount transmitter	3	\$ 18.58	\$ 669
Receiver Voter	3	\$ 87.29	\$ 3,142
Fixed site receivers	28	\$ 48.02	\$ 16,135
Centracom Consoles	3	\$ 18.58	\$ 669
PCs	3	\$ 70.32	\$ 2,532
Printer	1	\$ 58.33	\$ 700
Connections and Support	4	\$ 132.74	\$ 6,372
Desktop Base Station	2	\$ 18.58	\$ 446
Centrex Telephone	1	\$ 61.26	\$ 735
Microwave Audio Ckt	31	\$ 18.58	\$ 6,912
Total Equipment & Supplies Cost:			\$ 38,311

Biotel Contract Cost		FTE	FY2016	FY2017	Total Costs
Manager		1	107,588	109,740	\$ 217,328
Nurses		5.1	405,752	413,867	\$ 819,619
Paramedics		2.4	106,227	108,352	\$ 214,579
Social Worker		0.02	10,279	10,494	\$ 20,763
Overtime			3,768	3,843	\$ 7,611
Differentials			89,622	89,622	\$ 179,244
Total Labor			723,236	735,908	\$ 1,459,144
Total Supplies			2,000	4,960	\$ 6,960
Legal			72,000	72,000	\$ 144,000
Other			75	75	\$ 150
TOTAL BIOTEL CONTRACT COST			797,311	812,943	\$ 1,610,254

SUMMARY	Yr 1	Yr 2
Biotel Contract Cost	797,311	812,943
Equipment Cost	\$ 38,311	\$ 38,311
Total Cost	\$ 835,622	\$ 851,254

City	Population	Annual Cost- Year 1	Annual Cost- Year 2	Total Cost 2015-2017
Carrollton	0	\$ -	\$ -	\$ -
Cockrell Hill	4,200	\$ 1,703	\$ 1,735	\$ 3,438
Dallas	1,237,420	\$ 489,651	\$ 498,811	\$ 988,463
DeSoto	49,540	\$ 20,090	\$ 20,466	\$ 40,556
Duncanville	38,610	\$ 15,658	\$ 15,951	\$ 31,608
Farmers Branch	0	\$ -	\$ -	\$ -
Garland	228,060	\$ 92,486	\$ 94,217	\$ 186,703
Highland Park	8,520	\$ 3,455	\$ 3,520	\$ 6,975
Irving	218,850	\$ 88,751	\$ 90,412	\$ 179,163
Lancaster	36,700	\$ 14,883	\$ 15,162	\$ 30,045
Mesquite	139,950	\$ 56,755	\$ 57,816	\$ 114,571
Richardson	100,450	\$ 40,736	\$ 41,498	\$ 82,234
Sunnyvale	5,200	\$ 2,109	\$ 2,148	\$ 4,257
University Park	23,040	\$ 9,344	\$ 9,518	\$ 18,862

TOTAL POPULATION	2,060,540	Annual	Contract Period Total	
		\$ 835,622	\$ 851,254	\$ 1,686,875

Cost per Capita	Yr 1	Yr 2
	\$ 0.4055353	\$ 0.4131217

Population estimates are from the North Texas Council of Government's Annual Census Estimates from March 2012

**WHEREAS**, State law requires Biomedical On-Line Supervision of the City of Dallas Fire-Rescue paramedics; and

**WHEREAS**, it is most advantageous to the City of Dallas to enter into an Interlocal Agreement for Biomedical On-Line Supervision services with Dallas County Hospital District d/b/a Parkland Health and Hospital System; and

**WHEREAS**, it is in the best interest of the City to renew the Interlocal Agreements with participating governmental entities which shall distribute the cost of the system on a per capita basis.

**NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

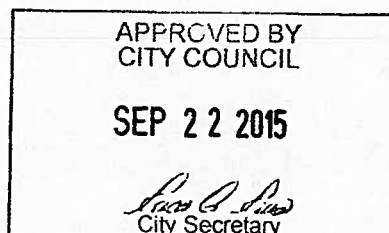
**Section 1.** That the City Manager or his designee is hereby authorized to enter into an Interlocal Agreement with Dallas County Hospital District d/b/a Parkland Health and Hospital System for a twenty-four month period, subject to annual appropriations.

**Section 2.** That the Chief Financial Officer is hereby authorized to disburse funds to Dallas County Hospital District d/b/a Parkland Health and Hospital System for Biomedical On-Line Supervision for the twenty-four month period, from Fund 0001, Dept. DFD, Unit ER90, Object Code 3070, Encumbrance CT DFDER900807, Vendor #900498, total payment not to exceed \$877,848 in FY 2015-16 and \$895,610 in FY 2016-17.

**Section 3.** That the City Manager or his designee is hereby authorized to enter into Interlocal Agreements with other governmental entities to provide Biomedical On-Line Supervision, the cost for such services to be calculated on a per capita basis. Governmental entities may be added or deleted as required.

**Section 4.** That the Chief Financial Officer is hereby authorized to receive reimbursements from the participating cities in the amount of \$804,676 over the twenty-four month contract period and deposit revenues into Fund 0001, Dept DFD, Unit ER90, Revenue Source 7472.

**Section 5.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



THE STATE OF TEXAS  
COUNTY OF DALLAS

CONTRACT FOR SERVICES  
BIOMEDICAL ON-LINE SUPERVISION  
FOR EMERGENCY MEDICAL SYSTEM

This Contract is made and entered into by and between the CITY OF DALLAS, a municipal corporation, located in Dallas County, Texas, hereinafter called "CITY" and DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND HEALTH & HOSPITAL SYSTEM, a political subdivision of the State of Texas, 5200 Harry Hines, Dallas, Texas 75235, hereinafter called "PARKLAND".

WITNESSETH

WHEREAS, the Interlocal Cooperation Act, Chapter 791, V.T.C.A., Texas Government Code provides authorization for any local government to contract with one or more local governments to perform governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, the Dallas County Hospital District (Parkland) and the City are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have entered into this agreement by action of its governing body in the appropriate manner prescribed by law to provide Biomedical On-Line Supervision pre-hospital emergency medical control system known as BioTel for Dallas area emergency medical system; and

WHEREAS, the BioTel System, staffed by physicians, paramedics, Registered nurses, and clerical staff who are approved by Parkland, was created to provide medical control for paramedics in the field via radio and telemetered patient data; and

WHEREAS, both the City and Parkland represent to one another that each respective party has the authority to enter into this agreement and perform the obligations and duties stated herein; and

WHEREAS, the City and Parkland specify that each party paying for the performance of the said functions of government shall make those payments from current funds available to the paying party;

NOW THEREFORE, the City and Parkland hereby enter into this interlocal agreement in consideration of the aforementioned recitals, and for the mutual considerations stated herein:

1. DESCRIPTION OF WORK

1.1 For the consideration hereinafter agreed to be paid to Parkland by the City, Parkland shall provide medical assistance and advice concerning emergency medical services, and Parkland shall provide a pre-hospital emergency medical control system known as BioTel in the City and County of Dallas, Texas hereinafter called the "Services." The Services are to be performed according to acceptable standard medical practices and to conform in every respect to the following documents:

(i) The Dallas County Hospital District Scope of Service for On-line Medical Control for the BioTel EMS System- August 2015 (Scope of Services); and

(ii) City's Requirements for the Services as described in this Contract;

1.2 All of the documents referred to in Subsection 1.1 of this Section are made a part hereof for all purposes as though each were written word for word herein; provided, however, that in case of conflict in the language of the Scope of Services, and this Contract, the terms and conditions of this Contract shall be final and binding on both parties hereto.

1.3 In addition to those responsibilities and duties described in the Scope of Services, Parkland agrees to, and shall be responsible for the following services under this contract:

A. The coordinating physician responsible for coordinating on-line medical control and rectifying medical problems associated with the operation of the BioTel program shall be the BioTel Medical Director.

B. Maintenance of the BioTel room and facilities, and the records involving BioTel, shall be provided by Parkland. The BioTel room and facilities shall be available for reasonable use by the System (Participating EMS administrators) paramedics, provided that such use does not interfere with the medical operations and functions of the BioTel office and facilities.

C. Periodic meetings, at least quarterly, will be scheduled between the System representatives and the medical personnel of Parkland who supervise the BioTel operation. The purpose of the meetings will be to assess the program and Services being provided and recommend improvements.

D. Only registered nurses (RNs), physicians, paramedics and clerical staff shall be assigned by Parkland to the BioTel program.

E. Selected System designated representatives will have input in the selection of BioTel management positions.

1.4 In addition to those responsibilities and duties described in the Scope of Services, Parkland, through the physicians assigned to the BioTel program, agrees to, and shall be responsible for the following Services under this contract:

A. The physicians assigned to BioTel will supply medical control (i.e. medical advice) when requested by System's paramedics who are assisting patients. Adequate BioTel physician staffing shall be maintained twenty-four (24) hours a day, seven days a week, during the term of this Contract. As a minimum, at least one physician will be assigned to, and on duty with, the BioTel operation at all times. If only one physician is on duty and that physician must leave the Emergency Room (ER) facilities, an alternate physician shall be available. In all cases, a physician will answer all requests for assistance either from the BioTel room or from the ER areas 24 hours a day. The physician need not be present in the radio room while assigned to, and on duty with, the BioTel operation.

B. BioTel physicians shall respond to a field paramedic's request for assistance immediately after receipt of a call. BioTel will be responsible for monitoring and enforcing this time standard.

C. Personnel assigned to BioTel shall comply with the, then current BioTel Policy and Procedure Manual enacted for the functioning of the BioTel operation. Parkland may modify the BioTel Policy and Procedure Manual provided however that both System participants and Parkland must mutually agree upon any material changes to these procedures, unless otherwise required by law, rule, regulation, and all other applicable governmental agencies and accrediting organizations having jurisdiction over Parkland. Parkland shall make the BioTel Policy and Procedure Manual available to System participants upon request.

D. When notified by field personnel, BioTel staff shall assist as needed in contacting a hospital to which a critical, priority patient is en-route, and provide that hospital with all pertinent data concerning the patient.

E. BioTel staff shall monitor area hospital's capabilities and help coordinate EMS transports to appropriate facilities as provided in accordance with departmental procedures approved by the BioTel Medical Director.

1.5 In addition to those duties and responsibilities described in the Scope of Services, Parkland, through the nurses and paramedics assigned to the BioTel program, agrees to, and shall be responsible for the following Services under this Contract:

A. The BioTel program shall be adequately staffed by at least one registered nurse twenty-four hours a day, seven days a week throughout the duration of this Contract. Additional personnel will be assigned as needed based upon workload. Efficiency of the system shall be maintained by BioTel administration. A physician, nurse or paramedic shall monitor the radio communications at all times. Changes to the staffing model may be made, if necessary, upon agreement between the System agencies and BioTel.

B. BioTel staff shall be responsible for assisting other medical personnel in emergency situations. BioTel RNs shall follow established BioTel RN Treatment Guideline Options according to the needs of the patient. The BioTel staff shall contact an Emergency Medicine Physician when a request for assistance is made, and shall record all recommended treatment and maintain all appropriate records.

C. BioTel staff in conjunction with the City of Dallas shall ensure the proper functioning of all contracted BioTel equipment.

D. BioTel staff shall maintain current database for day to day medical control, as well as the monthly statistical report. The staff will also maintain revisions to the UTSW/BioTel EMS Treatment Guidelines and Policies and perform other tasks as needed under the direction of the BioTel Management. A copy of the statistical report will be furnished to the System agencies quarterly.

1.6 All RNs, physicians, and paramedics assigned to the BioTel program shall undergo initial training and ongoing training including the role of BioTel and EMS in the community. They will review and be tested on UTSW/BioTel EMS Treatment Guidelines and Policies and instructed in proper radio communication procedures relating to the BioTel equipment.

## 2. OTHER GOVERNMENTAL ENTITIES

It is acknowledged and agreed by both parties that:

2.1. Other governmental entities (System participants) have contracted with the City for Services of the BioTel program and others may do so during the term of this Contract;

2.2. BioTel Services shall be made available to such governmental entities on the same basis as such Services are provided to CITY, and unless otherwise agreed to between Parkland and System participants, the same terms and conditions under this contract will apply to System participants. It is intended that the costs for the services of BioTel to the other governmental entities shall be covered and satisfied as part of the total payment provided for in this Contract so that no charges, other than the total payment provided for in Section 5 of this Contract for BioTel Services, shall be imposed upon CITY or these other governmental entities contracting with CITY under this section of the Contract.

2.3 If any of the System participants terminate their participation during the term of this Contract, Parkland shall reduce the cost of the service delivery accordingly. The remaining System participants and the City will meet with Parkland to determine the areas of reduction of service delivery and negotiate in good faith to determine the exact reduction in cost.

## 3. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

3.1 Except as set forth in 3.2 and to satisfy the requirements of this Contract, Parkland agrees that Parkland will not use or disclose the City's protected health information (PHI) for any purpose. However, the parties agree that Parkland will receive PHI from the City for treatment purposes as described in this Contract and that such PHI will no longer be considered the City's PHI once it has been received by Parkland for these treatment purposes. After receipt by Parkland, the PHI received by Parkland belongs to Parkland and Parkland shall be responsible for it.

3.2 If the City contracts with Parkland or its affiliate to perform the City's covered functions on behalf of the City, Parkland will execute a Business Associate Agreement and comply with all requirements of the Privacy Laws applicable to Business Associates before any of the City's PHI is used or disclosed.

3.3 If it is deemed that this Agreement is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the administrative regulations and/or guidance which have issued or may in the future be issued pursuant to HIPAA, including but not limited to the Department of Health and Human Services regulations on privacy and security, and Texas state laws pertaining to medical privacy (collectively, "Privacy Laws"), the parties agree to comply with all Privacy Laws that are applicable to this Agreement and to negotiate in good faith to execute any amendment to this Agreement that is required for the terms of this Agreement to comply with applicable Privacy Laws. In the event the parties are unable to agree on the terms of an amendment pursuant to this paragraph within sixty (60) days of the date the amendment request is delivered by one party to the other (the "Renegotiation Period"), this Contract may be terminated by either party upon written notice to the other party.

## 4. COORDINATION

4.1 All Services under this Contract shall be coordinated under, and performed in accordance with the

Contract and the Scope of Services to the reasonable satisfaction of the Chief of the Fire-Rescue Department of CITY, or his designated representative, hereinafter called "Director". The Director shall have authority to approve payment for Services that have been properly provided in accordance with the terms of this Contract. If at any time Parkland fails to properly furnish all or a portion of the services called for by this Agreement, the City is authorized to withhold payment of funds associated with the Services not properly performed hereunder until any deficiency has been, if possible, cured. It is further agreed between Parkland and City that should any dispute or questions arise respecting the reasonableness of the withheld amount of payment attributable to Parkland's failure to fully perform, the parties agree to meet and make a good faith effort to resolve the dispute. Prior to the City exercising any payment withholding under this provision, the City must provide Parkland with notice of any deficiencies and provide Parkland ten (10) business days to remedy any deficiencies. City will release any withheld funds associated with the Services not properly performed once the deficiencies are remedied.

## 5. PAYMENT

5.1 The Contract term is twenty-four (24) months. Total payments by CITY during the Contract term shall not exceed ONE MILLION SIX HUNDRED EIGHTY-SIX THOUSAND EIGHT HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$1,686,875.00), which amount (or a portion thereof where contract term may exceed one year) is hereby set aside and segregated for the purpose of paying for the Services in accordance with the terms of this Contract. Payments shall be made in the following manner:

5.2 For the period between October 1, 2015 and September 30, 2016, equal monthly payments in the amount of \$69,635.17 shall be made at the end of each month.

5.3 For the period between October 1, 2016 and September 30, 2017, equal monthly payments in the amount of \$70,937.83 shall be made at the end of each month.

5.4 If any of the System participants terminate their participation during the term of this Contract, the total contract amount and the monthly payments payable to Parkland will be reduced to reflect the reduction of service delivery. The exact amount of cost reduction and the level of service reduction will be determined in accordance with Section 2.3 of this Contract.

## 6. TERM

6.1 The term of this Contract shall commence on October 1, 2015, and terminate on September 30, 2017, unless sooner terminated in accordance with the provisions of this contract. The Contract shall be submitted for renewal to the City Council for approval and authorization for successive twenty-four (24) month periods upon the same terms and conditions as set forth in this Contract. The parties shall mutually agree to any change in consideration during subsequent renewal periods.

## 7. INDEPENDENT CONTRACTOR

7.1 Parkland's status and the status of all physicians, nurses, paramedics, and other medical personnel performing work related to the BioTel system shall be that of an Independent Contractor and not any of the following: an agent; servant; employee; member of City's workforce; or representative of CITY in the performance of these Services. No term or provision of this Contract or act of Parkland or City under this Contract shall be construed as changing that status.

## 8. INDEMNIFICATION

8.1 Parkland, to the extent permitted by the laws of the State of Texas, shall indemnify, defend and hold harmless City and all of its officers, agents and employees from any suits, actions or claims whatsoever that might arise on account of any injury or damage received or sustained by any person or property as a result of Parkland's conduct of any activity or operation in connection with Parkland's use of the BioTel system. To the extent permitted by law, Parkland shall pay any judgment, together with costs, which may be obtained against CITY, or any of its officers, agents or employees as a result of such injury or damage.

8.2 City shall give Parkland prompt notice of any matter covered by Subsection 8.1 above, and shall forward to Parkland every demand, notice, summons or process received in any claim or legal proceeding covered by Subsection 8.1 above.

8.3 Parkland shall not be obligated to indemnify, defend or hold harmless City or any of its officers, agents, or employees when the injury or damage to a person or property is caused by the negligence of City, its officers, agents or employees. In the event of joint and concurrent negligence of Parkland and CITY, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas.

8.4 No part of this Contract shall be interpreted to constitute a waiver of any defense of the parties available to CITY and Parkland under Texas law and the immunities or limits of liability granted to Parkland or City under the Texas Torts Claim Act.

8.5 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## 9. ASSIGNMENT

9.1 Parkland shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the Director; and as a condition of such consent, Parkland shall still remain liable for completion of the Services in the event of default by the successor contractor or assignee.

## 10. TERMINATION

10.1 City may, at its option and without prejudice to any other remedy it may be entitled at law or in equity, or elsewhere under this Contract, terminate further work under this Contract, in whole or in part by giving at least one hundred eighty (180) days prior written notice thereof to Parkland, with the understanding that all Services being terminated shall cease upon the date specified in such notice. City shall compensate Parkland in accordance with the terms of this Contract for the Services properly performed prior to the date specified in such notice, following inspection and acceptance of same by City's Director. Parkland shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate. However, unless the termination results from the failure of Parkland to provide all the Services set forth in this Contract in accordance with standard medical practices, then City agrees to compensate Parkland based on the following formula for any termination by City prior to the termination date set forth in Section 6 of this Contract.

10.2 If City terminates this Contract after Parkland has contracted (which contract shall be for a term no greater than twenty four (24) months with physician(s) to perform services required by this Contract,

then the City shall pay Parkland a maximum of \$7,000.00 per month for as long as any such physician(s) is under contract to Parkland and has not been able to obtain medical related employment with either Parkland, another entity, or by commencing his or her own practice, provided that such payments shall be made for not more than three (3) months and City's total liability shall not exceed \$21,000.00.

## 11. NOTICES

11.1 Except as otherwise provided in Article 12, any notice, payment, statement or demand required or permitted to be given hereunder by either party to the other may be effected by personal delivery, in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notice shall be deemed communicated as of three days after mailing.

### If Intended for City, to:

Louie Bright, III, Fire Chief  
Dallas Fire-Rescue Department  
71A/South, City Hall  
1500 Marilla Street  
Dallas, Texas 75201

### If Intended for Parkland, to

General Council  
Legal Affairs  
Parkland Health and Hospital System  
5201 Harry Hines  
Dallas, Texas 75235

## 12. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Contractor shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

## 13. APPLICABLE LAWS

13.1 This Contract is entered into subject to the Charter and Ordinances of City, as amended, and all applicable State of Texas and Federal Laws.

## 14. VENUE

14.1 The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Dallas County, Texas.

## 15. GOVERNING LAW

15.1 This Contract shall be governed by and construed in accordance with the laws and court decision of the State of Texas.

16. LEGAL CONSTRUCTION

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

17. COUNTERPARTS

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

18. CAPTIONS

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

19. SUCCESSORS AND ASSIGNS

19.1 This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Contract, their assigns.

20. ENTIRE AGREEMENT

20.1 This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written agreement of the parties.

EXECUTED as of this the 22nd day of September, 2015, by the City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 15-1750, adopted by the City Council on September 22, 2015, and by Parkland Health & Hospital System acting by and through its duly authorized officers.

APPROVED AS TO FORM:

WARREN M.S. ERNST

City Attorney

  
Assistant City Attorney

CITY OF DALLAS

A.C. GONZALEZ

City Manager

BY: 

Assistant City Manager

CONTRACTOR: PARKLAND HEALTH &  
HOSPITAL SYSTEM

BY;

John G. Moore  
AUTHORIZED OFFICER

JOHN MOORE  
NAME

EVP & CFO

TITLE



**Dallas County Hospital District**  
**Scope of Service for On-Line Medical Control for the BioTel EMS System**  
**AUGUST 2015**

**I. Purpose**

The purpose of this directive is to define the BioTel Organizational Plan and Scope of Service.

**II. Directive**

The mission of BioTel is to facilitate assertive, excellent, compassionate patient care and utilize multifaceted medical resources and consultation.

**III. Introduction**

Parkland Health & Hospital System, in collaboration with the City of Dallas and surrounding suburban cities provides on-line medical direction for the out-of-hospital Emergency Medical Services (EMS) system known as "BioTel". This system is comprehensive and the providers of these services require extensive knowledge of the EMS system, as well as EMS clinical and operational guidelines, protocols and policies. The confidentiality of all records will be protected as required by law. The City will have access to all records, with the exception of performance documents, which may be required in the preparation of reports and information related to peer review activities that will be conducted by Parkland in accordance with its standard procedures. All policies, protocols and standards are reviewed and revised at least bi-annually and in accordance with regulatory agencies. A BioTel Department Policy Manual is available for review upon request.

**IV. Performance of Service**

**A. Physician Staff**

**1. BioTel Medical Director**

The BioTel Medical Director's primary role is to work collaboratively with the BioTel Program Manager, BioTel EMS agency Chief Officers and staff, Parkland Health & Hospital leadership, the University of Texas Southwestern (UTSW) Medical Direction Team and receiving hospital emergency department partners to ensure that BioTel activities result in the delivery of quality out-of hospital emergency medical care for patients.

**Roles and Responsibilities**

a. To assure physician staffing continuously twenty-four hours per day, seven days per week. There will be one or more board certified/eligible BioTel emergency medicine physicians on duty at all times in the Parkland Health & Hospital emergency department. If there is an unusual circumstance and an emergency medicine faculty member is not immediately available, emergency medicine residents will provide BioTel coverage.

- b. Shall be available by telephone or pager 24-hours a day, 7 days a week (or arranges for appropriate coverage) for immediate clinical consultation, assistance with EMS system problem resolution and direct field response when requested by BioTel staff, EMS agency staff, or Parkland Health & Hospital managers.
- c. Shall ensure that all BioTel physicians are educated and trained on the UTSW/BioTel EMS Treatment Guidelines and Policies and appropriate BioTel operational directives.
- d. Shall develop and/or revise clinical policies and treatment guidelines that are mutually agreed upon by the EMS System participants, Parkland Health & Hospital System, and the UTSW Medical Direction team. Approval of policies relating to clinical guidelines, policies and procedures by all parties will be documented through minutes of BioTel system meetings.
- e. In collaboration with the BioTel Program Manager, shall develop, implement and evaluate BioTel EMS performance improvement activities.
- f. Shall serve as the physician liaison to the Parkland Health & Hospital System Emergency Department Operations Committee, the North Central Texas Trauma Regional Advisory Council, the Dallas Fort Worth Hospital Council, the Dallas County Medical Society, BioTel EMS agencies, regional hospital emergency departments and other committees or entities as appropriate.
- g. Shall review the clinical performance of BioTel staff and BioTel EMS system paramedics with regards to following on-line medical direction and adherence the UTSW/BioTel EMS Treatment Guidelines and Policies and shall inform EMS agency Associate Medical Directors and command staff about any problems with performance or instances of exemplary care. Will perform performance management as outlined.
- h. Shall ensure that all BioTel physicians are trained and educated regarding UTSW/BioTel Treatment Guidelines for Therapy.

## **2. BioTel Physicians**

Shall be familiar with and will adhere to all applicable laws and regulations regarding the provision of on-line medical direction.

**a. Emergency Medicine Faculty and Residents:** These are emergency medicine physicians who are Board Certified/ Board eligible licensed to practice in the State of Texas. Medical Control (i.e. Medical Direction) will be provided when requested by BioTel paramedics or BioTel staff who are caring for patients. They will respond to requests for assistance immediately. Monitoring of this time standard will be through performance review of the BioTel reports.

## **3. Specialist Physicians**

Provide medical advice when requested by BioTel staff according to their specialized area. BioTel presently has the capability to obtain a specialized physician in the following areas: Pediatrics, internal medicine, surgical, trauma, obstetrical/gynecological, psychiatry, toxicology and cardiology. Additional subspecialty consultation is available.

## **B. Nursing/ Staff**

### **1. BioTel Program Manager**

The BioTel Program Manager's primary role is to work collaboratively with the BioTel Medical Director, BioTel EMS agency Chief Officers and staff, Parkland Health & Hospital System leadership, receiving hospital partners and BioTel staff to ensure that BioTel activities result in the delivery quality out-of-hospital emergency medical care possible for patients.

### **a. Education, Training & Experience**

1) Master's degree in Nursing from an accredited school of professional nursing plus (4) years of professional nursing experience in an emergency services environment; **OR** a Bachelor's degree in Nursing from an accredited school of professional nursing plus (6) years in nursing experience in an emergency services environment.

### **b. Certification/Licensure**

- 1) Current license with the Texas State Board of Nurse Examiners.
- 2) Current healthcare provider Cardio-pulmonary Resuscitation Certification
- 3) Current Advanced Cardiac Life Support Certification
- 4) Current Emergency Nursing Pediatric Course and/or Pediatric Advanced Life Support Certification
- 5) Current Trauma Nursing Core Course Certification
- 6) Must maintain current licenses and certifications at all times.
- 7) Prefer current Paramedic Certification with Texas Department of Health or

National Registry of Emergency Medical Technicians (NREMT).

**c. Special Abilities**

- 1) Must demonstrate leadership ability.
- 2) Must communicate effectively with all levels of pre-hospital and hospital staff, including medical staff.
- 3) Must demonstrate a working knowledge of standard pre-hospital procedures and techniques, and appropriate regulatory guidelines.
- 4) Must demonstrate ability to operate BioTel equipment.
- 5) Must demonstrate service excellent behavior.
- 6) Must demonstrate patient centered/patient valued care.

**d. Roles and Responsibilities:**

- 1) Will supervise BioTel Operations on a full-time basis.
- 2) Will supervise, hire and terminate BioTel employees and prepare annual evaluations of each employee.
- 3) Will schedule double coverage at peak volume intervals, one of which will be a RN. Coverage may be verified on the staffing schedule.
- 4) Shall serve as the primary liaison with:
  - Area receiving hospitals.
  - EMS agencies that contract with the City of Dallas for Medical Control Services.
  - Emergency air medical services operating in the DFW region.
  - UTSWMC-Division of EMS Education.
  - Pre-hospital providers that are not under BioTel medical control.
- 5) Will supervise data collection.
- 6) Will provide written and verbal feedback to BioTel staff regarding performance of patient care through random review of Med channels audio recordings and performance management review of the BioTel report.
- 7) Oversee the BioTel staffs role in research studies
- 8) Will provide monthly, quarterly and annual on-line Medical Direction statistics to include but not limited to:
  - EMS Agency BioTel call volume
  - Types of BioTel calls
  - Frequency and type of physician consultation
  - Numbers of patients for whom BioTel is notified/contacted received by area hospitals
  - Resource overload (this is a North Texas Trauma Regional Advisory Committee function (NCTTRAC))

- Emergency Legal Assistance Program
  - Specialty Team Activation
  - Trauma diversion
- 9) Will represent BioTel at various committees and organizations. Shall serve as the primary liaison to BioTel EMS agencies, regional hospital emergency departments and other committees or entities as appropriate, including:
    - North Central Texas EMS Providers Committee
    - North Central Texas Trauma Regional Advisory Committee
  - 10) Will contribute information concerning clinical operations, continuing education and performance improvement activities, and make recommendations for improving in care at the following monthly meetings:
    - Trauma Executive Committee
    - Emergency Services Operations Committee
    - UTSW-EMS staff meeting
  - 11) Will investigate and respond to all complaints/concerns regarding medical control, consistent with the BioTel performance improvement plan. A record of all complaints will be maintained in Emergency Services Administration. These investigations are subject to performance improvement review. Complaints or concerns regarding EMS agencies' staff performance will be referred to the appropriate person in that agency consistent with the BioTel Inquiry Management System.
  - 12) Coordinates the Emergency Legal Assistance Program.
  - 13) Conducts or coordinates EMS Protocol, policy and BioTel Operations in-services for staff, faculty and specialty physicians (as indicated).
  - 14) Assists in the operation and maintenance of audio recordings relating to Medical Control.
  - 15) Works with EMS agencies to ensure that for critical priority patients, the receiving hospital will be contacted and provided with appropriate information prior to patient arrival.

**C. BioTel Outreach Coordinator:**

1. Responsible for managing BioTel Emergency Medical Outreach programs by providing program design, implementation and evaluation of program initiatives.

**Education, Training and Experience**

- 1) Must be a registered paramedic and have 4 years of progressive pre-hospital experience.

**a. Certification/Licensure**

- 1) Current healthcare provider Cardio-pulmonary Resuscitation Certification
- 2) Current Advanced Cardiac Life Support Certification
- 3) Must have Current Pre-hospital Pediatric Providers Course (PEPP) or Pediatric Advanced Life Support Certification (PALS), within 3 months of hire.
- 4) Must maintain current licenses and certifications at all times.
- 5) Prefer current Paramedic Certification with Texas Department of Health or National Registry of Emergency Medical Technicians (NREMT).

**b. Special Abilities**

- 1) Must communicate effectively with all levels of pre-hospital and hospital staff, including medical staff.
- 2) Must demonstrate a working knowledge of standard pre-hospital procedures and techniques and appropriate regulatory guidelines.
- 3) Must demonstrate ability to operate BioTel equipment.
- 4) Must demonstrate service excellent behavior.
- 5) Must demonstrate patient centered/patient valued care.

**c. Roles and Responsibilities**

- 1) Will Represent BioTel at various committees and organizations. Shall serve along with the BioTel Program Manager as liaison to BioTel EMS agencies, regional hospital emergency departments and other committees or entities as appropriate, including
  - North Central Texas EMS Providers Committee
  - North Central Texas Trauma Regional Advisory Committee
- 2) Shall serve along with the BioTel Program Manager as liaison to
  - Area receiving hospitals.
  - EMS agencies that contract with the City of Dallas for Medical Control Services.
  - Emergency air medical services operating in the DFW region.
  - UTSWMC- Division of EMS Education.
  - Pre-hospital providers that are not under BioTel medical control
- 3) Serves as a backup for BioTel paramedic staff in documenting records, evaluating, assessing and advising paramedic on pre-hospital patient care to ensure optimal emergency medical services.

#### **D. BioTel Registered Nurse**

1. Provides 24-hour coverage of on-line medical control and maintains knowledge of medical control operations the UTSW/BioTel EMS Treatment Guidelines and Policies, and all policies and protocols related to EMS system function.

##### **a. Education, Training & Experience**

1) Must be a graduate of an accredited school of professional nursing plus have two (2) years of nursing experience in an emergency services environment.

##### **b. Certifications/Licensures**

- 1) Current license with the Texas State Board of Nurse Examiners.
- 2) Current healthcare provider Cardio-pulmonary Resuscitation Certification
- 3) Current Advanced Cardiac Life Support Certification
- 4) Must have Current Emergency Nursing Pediatric Course and/or Pediatric Advanced Life Support Certification, Current Trauma Nursing Core Course Certification or obtain within 3 months of hire.
- 5) Must maintain current licenses and certifications at all times.
- 6) Prefer current Paramedic Certification with Texas Department of Health or National Registry of Emergency Medical Technicians (NREMT).

##### **c. Responsibilities**

- 1) Supervises in the "lead" capacity BioTel Staff Paramedics.
- 2) Responsible for maintaining standards of prehospital care for any patient under direct care of the Emergency Medical Systems.
- 3) Responsible for complete knowledge and understanding of the UTSW/BioTel EMS Treatment Guidelines and Policies that can be followed under the direction of the BioTel Staff RN.
- 4) Responsible for complete knowledge and understanding of BioTel Policy and Procedures Manual.
- 5) Responsible for obtaining information regarding the patient's condition, health history, ordered treatment and medications, mechanism of injury and/or disease, and changes in condition prior to arrival at a facility.
- 6) Follows designated protocols for obtaining and relaying information to a physician.
- 7) Advises receiving facility of patient's chief complaint, condition, and estimated time of arrival.
- 8) Must be able to develop and maintain knowledge and understanding of the EMS System and various medical controls in Dallas County.
- 9) Resource person for BioTel paramedics, field paramedics, and physicians
- 10) Must demonstrate a positive and proactive attitude towards EMS and Hospital personnel.
- 11) Performs other duties as assigned.

**d. Tasks**

- 1) Monitor and answer radio transmissions relating to BioTel
- 2) Communicate and document EMS related communications
- 3) Answer and communicate on DFR mainline and BioTel backline phones
- 4) Complete BioTel Report on incidents where medical control advice is given, air medical reports, and critical patients
- 5) Record incidents on Run-tally Log
- 6) Communicate with area hospitals regarding incoming patients via verbal reports and paging systems as required per protocols
- 7) Enter BioTel Run Tally logs onto BioTel computer
- 8) Monitor EMS systems
- 9) Stock work area and kitchen prior to end of shift
- 10) Assist in the managing and maintaining of ALS and all Fire Department pre hospital patient care treatment guidelines
- 11) Assist in the orientation and training of paramedics, students, and medical staff in BioTel protocols
- 12) Participate in the Performance Improvement program as assigned by the Program Manager.

**E. BioTel Paramedic**

1. Assist with providing 24-hour coverage of on-line medical control and maintains knowledge of medical control operations the UTSW/BioTel EMS Treatment Guidelines and Policies, related to EMS system function.

**a. Education, Training & Experience**

- 1) Must be a currently certified or registered paramedic with the Texas Department of Health or with the National Registry of EMT-Paramedics.
- 2) Paramedic training must be through the UT Southwestern Medical Center at Dallas, EMS Program. If training obtained elsewhere, paramedic must attend an 8-hour continuing education date at UT Southwestern Medical Center and pass the Bi-Annual Recertification Exam administered by UT Southwestern Medical Center.
- 3) Must have one (1) year of experience in pre-hospital care and/or emergency services environment.

**b. Licenses/Certification**

- 1) Current healthcare provider Cardio-pulmonary Resuscitation Certification
- 2) Current Advanced Cardiac Life Support Certification
- 3) Must have Current Pre-hospital Pediatric Providers Course (PEPP) or Pediatric Advanced Life Support Certification (PALS), within 3 months of hire.
- 4) Must maintain current licenses and certifications at all times.
- 5) Prefer current Paramedic Certification with Texas Department of Health or

National Registry of Emergency Medical Technicians (NREMT).

**c. Special Abilities:**

1) Must be self-directed and be able to communicate effectively with internal and external personnel.

**d. Responsibilities**

- 1) Responsible for complete knowledge and understanding of the UTSW/BioTel EMS Treatment Guidelines and Policies
- 2) Responsible for complete knowledge and understanding of BioTel Policy and Procedure Manual.
- 3) Responsible for obtaining information regarding the patient's condition, health history, ordered treatment and medications, mechanism of injury and/or disease, and changes in condition prior to arrival at a facility.
- 4) Follows designated protocols for obtaining and relaying information to a physician.
- 5) Advises receiving facility of patient's chief complaint, condition, and estimated time of arrival.
- 6) Utilizes the BioTel Nurse on duty the resource for problem solving.
- 7) Performs other duties as assigned.

**e. Tasks**

- 1) Monitor and answer the Radio Med Channels
- 2) Communicate and document the Med Channel Activity
- 3) Answer and communicate on DFR mainline and BioTel backline phones
- 4) Complete BioTel Report on all incidents where any medical control advice is given, on any air medical report, and on any critical patient
- 5) Monitor DFR printer for incoming notifications
- 6) Record incidents on Run-tally Log
- 7) Communicate with area hospitals regarding incoming patients
- 8) Enter BioTel Run Tally logs onto BioTel computer.
- 9) Stock work area

**f. Training**

Refers to instruction and training of BioTel nurses, paramedics and physicians in UTSW/BioTel Treatment Guidelines for Therapy, policies, procedures and protocols. All registered nurses, paramedics and Emergency Medicine faculty physicians assigned to the Medical Control operation shall be trained on the following:

- 1) BioTel Staff RN must complete BioTel Staff RN Orientation.
- 2) BioTel Staff Paramedic must complete BioTel Staff Paramedic Orientation.
- 3) Orientation to include application the UTSW/BioTel EMS Treatment

#### Guidelines and Policies

- 4) Prior to completion of orientation, BioTel Staff must be able to *compare and contrast* the UTSW/BioTel EMS Treatment Guidelines and Policies and the BioTel RN Treatment Options.
- 5) BioTel Staff RN must pass the BioTel Protocol for Therapy test with a score of 80% or higher within three attempts.
- 6) BioTel Staff must become proficient with the operation of radio communication equipment and procedures. BioTel Staff may request assistance from Dallas Fire-Rescue Technology and Personnel Support Bureau personnel, as needed.
- 7) BioTel Staff RNs will accompany one of the EMS Agency ambulance units for at least eight (8) hours in order to become acquainted with EMS procedures and common medical issues confronting the System's paramedics. Furthermore, after such initial inspection ride, nurses will periodically (at least once every three months) accompany one of the EMS Agency ambulance units in order to reinforce knowledge and familiarity with EMS procedures and medical issues confronting paramedics. Scheduling may be verified on the master staffing schedule.

#### **g. Performance Management**

This program will provide a continuous assessment of the quality of both Medical Control and pre-hospital care services which are rendered in the field. Action will be taken to improve practice, policy and system, i.e., production of education programs targeting problem prone areas.

- 1) The Risk Management Component: Risk Management issues are incorporated into the BioTel performance improvement management process.
- 2) The BioTel Program Manager will initiate an Inquiry Management System upon identification of major deviation from approved clinical protocols.
- 3) Investigate the incident in collaboration with the BioTel Medical Director.
- 4) Investigate and review the assessment of pre-hospital care, continue with follow-up in the receiving hospital and conclude with a determination of patient outcome.
- 5) Include consultation with board certified specialists in the areas of Emergency Medicine, Surgery, Trauma, Internal Medicine, Pediatrics, OB/GYN, and Psychiatry as determined necessary by the BioTel Medical Director.

#### **h. Continuous Monitoring component**

Documentation of analysis of the data shall include conclusions, recommendations and actions to be taken. Actions shall be instituted, tracked and re-evaluation conducted to determine if actions have led to improvement.

- 1) Include random reviews of BioTel calls, data reports, and deviation from protocols or on-line medical control orders. This shall be done by the BioTel Medical Director with the assistance of the BioTel Program Manager.
- 2) Include a random review of Medical channel tapes.

**i. Management of Information**

- 1) Information will be maintained in a computer database and available on a monthly basis to pre-hospital providers.
- 2) Performance management reports will be generated quarterly.

**j. Emergency Legal Assistance Program (ELAP)**

- 1) Will provide an on-call attorney licensed to practice law in the State of Texas that is board certified by the Texas Board of Legal Specialization and Certification in:

- Civil Trial Law
- Personal Injury

- 2) The Attorney will be:

- Familiar with delivery of Emergency Medical Services and applicable laws pertaining thereto, including, but not limited to the Medical Practice Act and the Health and Safety Code and any other applicable laws.
- On-call 24 hr. /day, 7 days a week when emergency legal assistance and/or a court order may be necessary to transport a patient.
- Expected to provide an alternate in case of his/her absence.

- 3) Each instance of ELAP activation will be tracked and shall be initiated in accordance with BioTel policy.

**k. Poison Control Center**

- 1) Will provide consultation to the BioTel staff, physicians and paramedics on calls involving ingestions, poisonings or exposure to toxic/hazardous substances.

**I. Field Amputation Team Activation**

- 1) Will be activated at the request of EMS Agency field paramedics, supervisors or Chief Officers or at the discretion of BioTel staff consistent with BioTel policy.

- 2) The Team will consist of:

- One fifth year Post Graduate Surgery Resident
- One attending Trauma Surgeon
- One Trauma nurse clinician

- 3) The Team will provide supplies necessary for field amputation

- 4) Parkland Health & Hospital System will provide access to air or ground transportation as appropriate.

- 5) The Team will be ready for transport to scene within fifteen (15) minutes of activation. Estimated time of arrival may vary depending on scene location and other factors.



# LANCASTER CITY COUNCIL

## Agenda Communication

February 22, 2016

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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 JDC Holdings, LLC.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

**Goal: Quality Development**

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### **Background**

JDC Holdings, LLC (Texas Nameplate Company) has purchased six acres at 2900 S. Longhorn Drive to construct a 35,000 square foot facility to manufacture and distribute company products.

Staff entered into incentive discussions with the company prior to the company selecting Lancaster for their operation and the closing of the property. The company estimates approximately \$5,000,000 in value added capital investment at their site in Lancaster and will create 30-35 jobs. The company has applied for a real property tax incentive grant in compliance with the City's Incentive Policy.

### **Considerations**

- **Operational** – JDC Holdings, LLC 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 thirty percent (30%) of the payment to the company for a period of three (3) 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 thirty percent (30%) real property tax grant for three (3) years, the project will represent approximately \$130,000 over the three year period in new revenue to the City.
- **Public Information** – This item if 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 the resolution and agreement.

**Attachments**

- Resolution
- Agreement

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**Submitted by:**

Ed Brady, Director of Economic Development

## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND JDC HOLDINGS, LLC, A TEXAS LIMITED LIABILITY COMPANY OPERATING AS A PARTNERSHIP; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, JDC Holdings, LLC, a Texas Limited Liability Company operating as a partnership, has purchased approximately six (6) acres of real property in Lancaster, Texas and desires to construct two owner occupied manufacturing facilities totaling approximately 36,000 square feet; and

**WHEREAS**, JDC Holdings, LLC's development of the Premises will provide employment opportunities within the City; and

**WHEREAS**, the location of JDC Holdings, LLC's project on the Premises will result in a significant capital investment and improvements on the Premises; and

**WHEREAS**, JDC Holdings, LLC has advised the City that a contributing factor that would induce the company to construct and occupy the two manufacturing buildings 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 Texas Nameplate Company, Inc. in accordance with this agreement is in accordance with the City Economic Development Policy 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 JDC Holdings, LLC 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 "1", 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 JDC Holdings, LLC 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 22<sup>nd</sup> day of February, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

THE STATE OF TEXAS     §  
                                     §     **ECONOMIC DEVELOPMENT AGREEMENT**  
COUNTY OF DALLAS     §

This Economic Development Agreement ("Agreement") is made by and between the City of Lancaster, Texas ("City"), and JDC Holdings, LLC., a Texas Limited Liability Company operating as a partnership, (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 6 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 two buildings totaling approximately 36,000 square feet and related infrastructure for owner occupied manufacturing operations (the "Project") and building permits will be applied for and construction on the buildings will commence within six (6) months from the execution of this agreement; 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 Estate 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) will promote local economic development and stimulate business and commercial activity in the City.

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

### **Article I Definitions**

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

“Annual Grant(s)” shall mean annual economic development grant to be provided by the City in an amount equivalent to 30 percent (30%) of the Real Property Taxes assessed against the Premises for a given tax year for a period of three (3) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

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

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

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2017.

“Company” shall mean JDC Holdings, LLC, a Texas Limited Liability Company..

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

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

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

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

“Expiration Date” shall mean the second (2nd) 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 Company or any property or any business owned by Company within the City.

“Premises” shall mean the real property described on Exhibit “A” with or without improvements.”

“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 owner occupied manufacturing facilities totaling approximately 36,000 square feet.

“Real Property Taxes” shall mean, all real estate ad valorem taxes assessed and levied by the City on the real property with or without improvements in accordance with state law.

“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 issue “Certificate of Occupancy” at completion of project activities.

“Required Use” shall mean Company’s continuous operation as owner occupied manufacturing facilities 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 fourth (4th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

## **Article III**

### **Economic Development Grants**

3.1 **Annual Grants.** Subject to the Company’s continued satisfaction of all the terms and conditions of this Agreement, 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 of 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 Estate Taxes assessed and paid 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; and such Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Premises for tax year 2016 is \$100,000.00 then the amount of the first Annual Grant for the Premises for Tax Year 2016 would be, \$30,000.00 ( $\$100,000.00 \times 30\%$ ), and would be paid on March 1, 2017.

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

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

3.4 **Tax Protest.** In the event the Company 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 the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within 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 the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within 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 Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own, lease or make available for lease the Improvements and shall not allow the

operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) 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 six (6) months of the execution date of this agreement or the agreement will terminate.

4.3 The Company shall not have an uncured breach or default of this Agreement or been in arrears for any ad valorem taxes owed to the City; nothing contained herein shall preclude a good faith tax protest under section 3.4 of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

## **Article V**

### **Termination**

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

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; 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.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

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 such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

## **Article VI**

### **Miscellaneous**

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

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

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

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

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

If intended for City, to:

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

With a copy to:

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

If intended for Company:

Texas Nameplate Company, Inc.  
Attn: Dale Crownover  
President/CEO  
P.O. Box 150499  
Dallas, Texas 75315

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 subsidiary. 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 subsidiary, without obtaining the City's prior written consent, which may not be withheld. Any attempted assignment by the Company, except to a Company subsidiary, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

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

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

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

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make 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) Company shall obtain a Certificate of Occupancy for the Premises.

**EXECUTED in triplicate originals** on this \_\_\_\_ day of \_\_\_\_\_, 2016.

**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 \_\_\_\_\_, 2016.

**JDC HOLDINGS, LLC**

By: \_\_\_\_\_  
**Dale Crownover**, President/CEO

**ACKNOWLEDGEMENT**

THE 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 \_\_\_\_\_, 2016.

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

My Commission Expires:

\_\_\_\_\_

**ACKNOWLEDGEMENT**

THE 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 Dale Crownover, President/CEO of Texas Nameplate Company, Inc., a Texas 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 \_\_\_\_\_, 2016.

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

My Commission Expires:

\_\_\_\_\_

## EXHIBIT "A" LEGAL DESCRIPTION

No.: 001281127

SITUATED in the City of Lancaster, in the Marady Parks Survey, Abstract No. 1120 of Dallas Texas County, and being a part of that certain called 77.49 acre tract of land described in a deed from- Ecanae, Inc. to 12, recorded in Volume 2003011, Page 6116, Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described by metes & bounds as follows:

BEGINNING at a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701" (hereinafter referred to as "with cap"), found at the intersection of the south right-of-way line of Fabrication Drive (60' wide RO.W.) and the East right-of-way line of West longhorn Drive (60' wide RO.W.) as dedicated by a Street Dedication Plat, recorded in Volume 67205, Page 2752, Deed Records of Dallas County, Texas (O.R.D.C.T.);

THENCE: North 89 deg. 53 min. 14 sec. East, along the south line of said Fabrication Drive, a distance of 477.50 feet to a 112 inch iron rod, with cap, found for corner;

THENCE: South 00 deg. 06 min. 46 sec, East, departing from the south line of said Fabrication Drive, a distance of 505.00 feet to a 1/2 inch iron rod, with cap, found on the north right-of-way line of South longhorn Drive (60' wide ROW.);

THENCE: South 89 deg. 53 min. 14 sec. West, along the north line of said South Longhorn Drive, a distance of 452.50 feet to a 1/2 inch iron rod, with cap, found for corner at the beginning of a curve to the right having a radius of 25.00 feet and a chord that bears North.45 deg. 06 min. 46 sec, West...35.36

THENCE: Continuing along the north right-of-way of said South Longhorn Drive and along said curve to the right, through a central angle of 90 deg. 00 min. 00 sec and along an arc distance of 39.27 feet to a 1/2 inch iron rod, with cap, set for corner at the end of said curve, on the east right-of-way line of the above mentioned West Longhorn Drive;

THENCE: North 00 deg. 06 min. 46 sec. West, along the east line of said West Longhorn Drive, a distance of 480.00 feet to the POINT OF BEGINNING and containing 241,005 square feet or 5.533 acres land.

# LANCASTER CITY COUNCIL

## Agenda Communication

February 22, 2016

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**Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between the Lancaster Economic Development Corporation and JDC Holdings, LLC.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

**Goal: Quality Development**

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### **Background**

The board of directors of the Lancaster Economic Development Corporation convened on Tuesday, February 2, 2016 to consider a grant applied for by JDC Holdings, LLC in an amount equal to a forty percent (40%) refund of City permit fees associated with the construction of their 35,000 square foot manufacturing facility in Lancaster. The grant is not to exceed \$25,000.

### **Considerations**

- **Operational** – JDC Holdings, LLC will submit upon receiving a Certificate of Occupancy from the City for their completed facility, receipts for City permit fees to LEDC for payment verification.
- **Legal** – The City Attorney has reviewed and approved the resolution and agreement as to form.
- **Financial** – The grant will not exceed \$25,000 and 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 the resolution.

### **Attachments**

- Resolution
  - LEDC Resolution
  - LEDC Agreement
- 

### **Submitted by:**

Ed Brady, Director of Economic Development

## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND JDC HOLDINGS, LLC, A TEXAS LIMITED LIABILITY COMPANY OPERATING AS A PARTNERSHIP; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, JDC Holdings, LLC, a Texas Limited Liability Company operating as a partnership, has purchased approximately six (6) acres of real property in Lancaster, Texas and desires to construct two owner occupied manufacturing facilities totaling approximately 36,000 square feet; and

**WHEREAS**, JDC Holdings, LLC's development of the Premises will provide employment opportunities within the City; and

**WHEREAS**, the location of JDC Holdings, LLC's project on the Premises will result in a significant capital investment and improvements on the Premises; and

**WHEREAS**, JDC Holdings, LLC has advised the City that a contributing factor that would induce the company to construct and occupy the two manufacturing buildings 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 Texas Nameplate Company, Inc. in accordance with this agreement is in accordance with the City Economic Development Policy 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 JDC Holdings, LLC 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 "1", 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 JDC Holdings, LLC 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 22<sup>nd</sup> day of February, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

**RESOLUTION NO. 2016-01**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC), IN SUPPORT OF A GRANT TO JDC HOLDINGS, LLC 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**, JDC Holdings, LLC .has selected Lancaster as the location for their manufacturing facility; and

**WHEREAS**, JDC Holdings, LLC has requested a grant for assistance with forty (40) percent of the costs of permit fees not to exceed \$25,000 associated with the construction and finish out of an approximately 36,000 square foot manufacturing facility located on property owned by Texas Nameplate Company, Inc. 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;

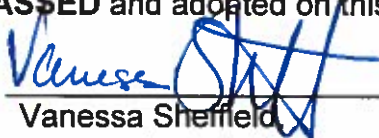
**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION:**

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

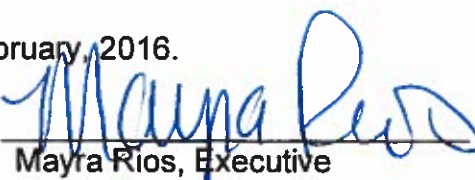
**SECTION 2.** That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

**DULY PASSED** and adopted on this 2<sup>nd</sup> day of February, 2016.

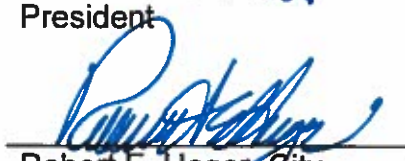
**APPROVED:**

  
Vanessa Sheffield,  
President

**ATTEST:**

  
Mayra Rios, 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 JDC HOLDINGS, LLC a Texas Limited Liability Company operating as a partnership, acting by and through its authorized officer, Dale Crownover, 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 own, construct and occupy approximately 36,000 square feet of manufacturing space on approximately six (6) 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 JDC Holdings, LLC, a Texas 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 36,000 square foot manufacturing 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**

JDC Holdings, LLC's Obligations:

- A. The Company will begin construction of the Improvements within six (6) 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 40% 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 \$25,000. 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 subject to the provisions of this Agreement. LEDC will issue a reimbursement payment equivalent to forty percent (40%) of the actual paid permit fees, not to exceed a grand total of \$25,000 payable within thirty (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 twelve (12) 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:

Texas Nameplate Company, Inc. to:

Dale Crownover  
President/CEO  
P.O. Box 150499  
Dallas, Texas 75315

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.

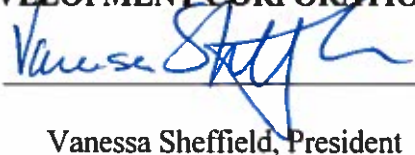
**XIV.  
EXHIBITS**

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

**EXECUTED in triplicate** originals this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**LANCASTER ECONOMIC  
DEVELOPMENT CORPORATION**

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



Vanessa Sheffield, President

**JDC HOLDINGS, LLC**

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

Dale Crownover, President/CEO

## ACKNOWLEDGEMENT

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF DALLAS   §

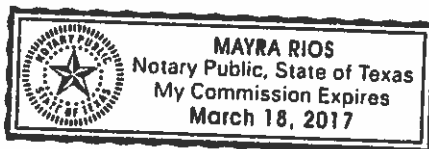
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Vanessa Sheffield, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the 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 2<sup>nd</sup> day of February 2016.

Mayra Rios  
Notary Public, State of Texas

My Commission Expires:

March 18, 2017



**ACKNOWLEDGEMENT**

THE 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 Dale Crownover, President/CEO of Texas Nameplate Company, Inc., a State of Texas 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 \_\_\_\_\_, 2016.

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

My Commission Expires:

\_\_\_\_\_

## EXHIBIT "A" LEGAL DESCRIPTION

No.: 001281127

SITUATED in the City of Lancaster, in the Marady Parks Survey, Abstract No. 1120 of Dallas Texas County, and being a part of that certain called 77.49 acre tract of land described in a deed from- Ecanae, Inc. to 12, recorded in Volume 2003011, Page 6116, Deed Records, Dallas County, Texas (D.R.D.C.T.) and being more particularly described by metes & bounds as follows:

BEGINNING at a 1/2 inch iron rod, topped with a red plastic cap, stamped "RPLS 4701" (hereinafter referred to as "with cap"), found at the intersection of the south right-of-way line of Fabrication Drive (60' wide R.O.W.) and the East right-of-way line of West Longhorn Drive (60' wide R.O.W.) as dedicated by a Street Dedication Plat, recorded in Volume 67205, Page 2752, Deed Records of Dallas County, Texas (O.R.D.C.T.);

THENCE: North 89 deg. 53 min. 14 sec. East, along the south line of said Fabrication Drive, a distance of 477.50 feet to a 1/2 inch iron rod, with cap, found for corner;

THENCE: South 00 deg. 06 min. 46 sec. East, departing from the south line of said Fabrication Drive, a distance of 505.00 feet to a 1/2 inch iron rod, with cap, found on the north right-of-way line of South Longhorn Drive (60' wide R.O.W.);

THENCE: South 89 deg. 53 min. 14 sec. West, along the north line of said South Longhorn Drive, a distance of 452.50 feet to a 1/2 inch iron rod, with cap, found for corner at the beginning of a curve to the right having a radius of 25.00 feet and a chord that bears North 45 deg. 06 min. 46 sec. West...35.36

THENCE: Continuing along the north right-of-way of said South Longhorn Drive and along said curve to the right, through a central angle of 90 deg. 00 min. 00 sec and along an arc distance of 39.27 feet to a 1/2 inch iron rod, with cap, set for corner at the end of said curve, on the east right-of-way line of the above mentioned West Longhorn Drive;

THENCE: North 00 deg. 06 min. 46 sec. West, along the east line of said West Longhorn Drive, a distance of 480.00 feet to the POINT OF BEGINNING and containing 241,005 square feet or 5.533 acres land.

# LANCASTER CITY COUNCIL

## Agenda Communication

February 22, 2016

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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 2935 Danieldale Road Holdings, LLC.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

**Goal: Quality Development**

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### **Background**

2935 Danieldale Road Holdings, LLC (Holt Lunsford Commercial) has purchased fifty-eight (58) acres at 2935 Danieldale Road (the former Conway Trucking site) to construct two warehouse distribution facilities totaling approximately one million (1,000,000) square feet to lease to future tenants.

Staff entered into incentive discussions with the company prior to the company selecting Lancaster for their operation and the closing of the property. The company estimates approximately \$40,000,000 in value added capital investment at their site in Lancaster. The company has applied for a real property tax incentive grant in compliance with the City's Incentive Policy.

### **Considerations**

- **Operational** – 2935 Danieldale Road Holdings, LLC 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 fifty percent (50%) of the payment to the company for a period of seven (7) years.
- **Legal** – The City Attorney as 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 fifty percent (50%) real property tax grant for seven (7) years, the project will represent approximately \$1,218,000 over the 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 the resolution and agreement.

**Attachments**

- Resolution
  - Agreement
- 

**Submitted by:**

Ed Brady, Director of Economic Development

## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT WHICH IS ATTACHED HERETO AS EXHIBIT A PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND 2935 DANIELDALE ROAD HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, 2935 Danieldale Road Holdings, LLC, a Delaware Limited Liability Company has purchased approximately fifty-eight (58) acres of real property in Lancaster, Texas and desires to construct two warehouse-distribution buildings totaling approximately 1,000,000 square feet combined; and

**WHEREAS**, 2935 Danieldale Road Holdings, LLC's development of the Premises will provide employment opportunities within the City; and

**WHEREAS**, the location of 2935 Danieldale Road Holdings, LLC's project on the Premises will result in a significant capital investment and improvements on the Premises; and

**WHEREAS**, 2935 Danieldale Road Holdings, LLC has advised the City that a contributing factor that would induce the company to construct and lease to tenants the buildings 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 2935 Danieldale Road Holdings, LLC in accordance with this Agreement is in accordance with the City Economic Development Policy 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 2935 Danieldale Road Holdings, LLC 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 "1", 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 2935 Daniieldale Road Holdings, LLC 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 22<sup>nd</sup> day of February, 2016.

**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 2935 Danieldale Road Holdings, LLC, a Delaware limited liability company (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 58 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 on the Property two warehouse-distribution buildings totaling approximately 1,000,000 square feet combined (the "Buildings") and related infrastructure for future tenant or owner occupied warehouse-distribution operations and building permits will be applied for and construction of the buildings is intended to commence within twenty-four (24) months from the execution of this Agreement; and

**WHEREAS**, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project (hereinafter defined) 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 Estate 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 tax base and economic vitality of the City; and

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

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

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

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

## **Article I Definitions**

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

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to fifty (50%) of the Real Property Taxes assessed against the Project 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 Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

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

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the occupancy of any portion of the Improvements (it being acknowledged and agreed that there may be multiple tenants of the Improvements and multiple Certificates of Occupancy issued for the Improvements, but the Commencement Date shall be on the issuance of the first Certificate of Occupancy for the occupancy of any portion of the Improvements), and (b) August 1, 2018.

“Company” shall mean 2935 Danieldale Road Holdings, LLC, a Delaware limited liability company.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

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

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

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or

omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean the sixth (6th) full calendar 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 Company or any property or any business owned by Company within the City.

“Improvements” shall mean the construction and finish out work necessary to commence operations in the Buildings, including construction of the Related Infrastructure.

“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 Property, by the design, construction and maintenance of new improvements and Related Infrastructure for the Buildings on the Property and shall include the Property, the Buildings, the Related Infrastructure and all other Improvements constructed on the Property in connection with any of the foregoing.

“Real Property Taxes” shall mean, all real estate ad valorem taxes assessed and levied by the City on the Project, with or without Improvements in accordance with state law.

“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 issue “Certificate of Occupancy” at completion of the Project, excluding any tenant improvement or tenant finish out work required for occupancy of the Improvements.

“Required Use” shall mean Company’s continuous operation (either by the Company, or by tenants or by the Company holding out the Project as available for lease to tenants) of warehouse-distribution facilities on the Property. The Improvements do not have to be occupied in order to comply with the Required Use so long as the same are held for lease for warehouse-distribution use.

“Taxable Value” shall mean the assessed value of the Project 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 sixth (6th) full calendar year after the payment of the first Annual Grant.

### Article III Economic Development Grants

3.1 **Annual Grants.** Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, 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 of 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 Estate Taxes assessed against the Project 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 Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Project for tax year 2019 is \$100,000.00 then the amount of the first Annual Grant for the Premises for tax year 2019 would be \$50,000.00 (\$100,000.00 x 50%), and would be paid on March 1, 2020.

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

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

3.4 **Tax Protest.** In the event the Company 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 Project, 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 Project or the amount of ad valorem taxes assessed and due for the Project, or portion thereof, after an Annual Grant has been paid for such Project 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 the 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 the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within 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's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own, lease or make available for lease the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) 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 Property within twenty-four months (24 months) of the execution date of this Agreement or the agreement will terminate. For purposes of this Agreement, commencement of Project construction shall mean commencement of site work and Improvements on the Property.

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

#### **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 ninety (90) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; 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.
- (f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

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

5.4 If the Company defaults under this Agreement, the right to terminate this Agreement shall be the City's sole and exclusive remedy and in no event shall the Company be liable for any damages as a result of a breach of this Agreement and all such damages are hereby waived by the City.

## **Article VI Miscellaneous**

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

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

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

6.4 **Authorization.** Each party represents that (i) it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement, and (ii) 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 either on the day actually received or upon first attempted delivery, 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:

2935 Danieldale Road Holdings, LLC  
c/o Clarian Partners  
717 McKinney Avenue, Suite 1900  
Dallas, TX 75202  
Attention: Ryan Bandy

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 subsidiary or to a subsequent owner of the Project. 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 subsidiary or to a subsequent owner of the Project, without obtaining the City's prior written consent, which may not be withheld. Any attempted assignment by the Company, except to a Company subsidiary or subsequent owner of the Project, in violation of the terms and

provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

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

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

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

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

**Signature page to follow**

**EXECUTED** on this 22<sup>nd</sup> day of February, 2016.

**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 \_\_\_\_\_, 2016.

2935 DANIELDALE ROAD HOLDINGS, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: Andrew S. Lowe  
Title: Senior Vice President

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 \_\_\_\_\_, 2016.

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

My Commission Expires:

\_\_\_\_\_

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 Andrew S. Lowe, the Senior Vice President of 2935 Daniieldale Road Holdings, LLC, a Delaware limited liability company, 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 limited liability company, and that he executed the same as the act of said limited liability company for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2016.

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

My Commission Expires:

\_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

DESCRIPTION, of a 58.206 acre tract of land situated in the S. B. Runyon Survey, Abstract No. 1199, Dallas County, Texas; said tract being all of Lot 1 and Lot 2, Block A, Contract Freighters, Inc. Addition, an addition to the City of Lancaster, according to the Amended Plat recorded in Volume 99155, Page 60 of the Deed Records of Dallas County, Texas; said Lot 1 and Lot 2, Block A, being part of those tracts of land described in Warranty Deeds to Con-Way Truckload, Inc., recorded in Instrument Number 200900241247 and Instrument Number 200900241246 of said Official Public Records of Dallas County, Texas; said 58.206 acre tract being more particularly described as follows:

BEGINNING, at a point for corner in the north line of Danieldale Road (a variable width right-of-way), at the southwest corner of said Lot 1, Block A and in the east line of a tract of land described as Tract II in Warranty Deed With Vendor's Lien to Hugo F. Duran and Maria S. Duran, recorded in Instrument Number 201000111603 of said Official Public Records; from which a 1/2-inch iron rod found bears South 00 degrees, 32 minutes East, a distance of 3.4 feet;

THENCE, North 00 degrees, 57 minutes, 58 seconds West, departing said north line of Danieldale Road, along the east line of said Lot 1, Block A, a distance of 1,566.01 feet to 1/2-inch iron rod found for corner; said point being the northwest corner of said Lot 1, Block A and the most southerly southwest corner of a tract of land described as Tract 2C in Warranty Deed to Highland Park Land Company, recorded in Instrument Number 201100269768 of said Official Public Records;

THENCE, North 88 degrees, 54 minutes, 53 seconds East, along the north line of said Lot 1, Block A and the south line of said Highland Park Land Company tract, at a distance of 548.49 feet pass the northeast corner of said Lot 1, Block A and the northwest corner of said Lot 2, Block A, in all a total distance of 729.17 feet to a 5/8-inch iron rod found for corner; said point being at an angle point in the north line of said Lot 2, Block A, the most southerly southeast corner of said Highland Park Land Company tract, and a reentrant corner of a tract of land described in Executor's Deed to Randy Justiss and Virginia A. Justiss, recorded in Instrument Number 200900077417 of said Official Public Records;

THENCE, North 88 degrees, 56 minutes, 45 seconds East, along said north line of Lot 2, Block A and the most northerly south line of said Justiss tract, a distance of 995.49 feet to a point for corner; said point being the northeast corner of said Lot 2, Block A and a reentrant corner for said Justiss tract; from which a 1-inch iron pipe found bent bears South 54 degrees, 07 minutes, East a distance of 0.4 feet;

THENCE, South 06 degrees, 31 minutes, 41 seconds West, along the east line of said Lot 2, Block A and the west line of said Justiss tract, at a distance of 722.02 feet passing a 1/2-inch iron rod found for witness, in all a total distance of 781.67 feet to a point for corner; said point being in the center of a creek;

THENCE, along the east line of said Lot 2, Block A and the west line of said Justiss tract; along the approximate centerline of said creek the following twelve (12) courses and distances:

South 36 degrees, 13 minutes, 47 seconds West, a distance of 19.88 feet to a point for corner;

South 06 degrees, 23 minutes, 04 seconds West, a distance of 273.29 feet to a point for corner;

South 04 degrees, 21 minutes, 20 seconds West, a distance of 69.21 feet to a point for corner;

South 19 degrees, 17 minutes, 57 seconds West, a distance of 27.39 feet to a point for corner;

South 15 degrees, 41 minutes, 01 seconds East, a distance of 18.91 feet to a point for corner;

South 07 degrees, 41 minutes, 55 seconds West, a distance of 28.86 feet to a point for corner;

South 30 degrees, 27 minutes, 23 seconds West, a distance of 17.85 feet to a point for corner;

South 02 degrees, 28 minutes, 23 seconds East, a distance of 50.66 feet to a point for corner;

South 09 degrees, 15 minutes, 32 seconds West, a distance of 194.49 feet to a point for corner;

South 03 degrees, 41 minutes, 33 seconds West, a distance of 80.60 feet to a point for corner;

South 26 degrees, 42 minutes, 47 seconds East, a distance of 22.70 feet to a point for corner;

South 26 degrees, 33 minutes, 32 seconds West, a distance of 10.48 feet to a point for corner in said north line of Danieldale Road; said point being the southeast corner of said Lot 2, Block A; from which a 1/2-inch iron rod with "PACHECO KOCH" cap set for witness corner bears South 89 degrees, 05 minutes, 41 seconds West, a distance of 50.00 feet;

THENCE, South 89 degrees, 05 minutes, 41 seconds West, departing the west line of said Justiss tract, along said north line of Danieldale Road and the south line of said Lot 2, Block A, at a distance of 506.45 feet passing the southwest corner of said Lot 2, Block A and the southeast corner of said Lot 1, Block A, from which a 1/2-inch iron rod found bears South 01 degrees, 05 minutes East a distance of 0.7 feet, at a distance of 538.78 feet passing a 1/2-inch iron rod found, in all a total distance of 1,516.24 feet to the POINT OF BEGINNING;

CONTAINING: 2,535,466 square feet or 58.206 acres of land, more or less.

# LANCASTER CITY COUNCIL

## Agenda Communication

February 22, 2016

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**Discuss and consider a resolution ratifying the terms and conditions of an incentive grant by and between the Lancaster Economic Development Corporation and 2935 Danieldale Road Holdings, LLC.**

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**This request supports the City Council 2015-2016 Policy Agenda.**

**Goal: Quality Development**

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### **Background**

The board of directors of the Lancaster Economic Development Corporation convened on Tuesday, February 2, 2016 to consider a grant applied for by 2935 Danieldale Road Holdings, LLC in an amount equal to \$100,000 to assist with permit and infrastructure costs associated with the construction of their two warehouse distribution buildings totaling approximately 1,000,000 square feet in Lancaster. The grant is not to exceed \$100,000.

### **Considerations**

- **Operational** – Upon receiving a City Certificate of Occupancy for the constructed buildings, the company will submit a request for the grant payment
- **Legal** – The City Attorney has reviewed and approved the resolution and agreement as to form.
- **Financial** – The grant will not exceed \$100,000 and 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 the resolution.

### **Attachments**

- Resolution
  - LEDC Resolution
  - LEDC Agreement
- 

### **Submitted by:**

Ed Brady, Director of Economic Development

## **RESOLUTION NO.**

### **A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN INCENTIVE GRANT BY AND BETWEEN 2935 DANIELDALE ROAD HOLDINGS, LLC 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 2016-02 which was passed and approved on the 2<sup>nd</sup> day of February, 2016 by the Board of Directors of the Lancaster Economic Development Corporation (LEDC), offering an incentive grant to 2935 Danieldale Road Holdings, LLC.; and

**WHEREAS**, 2935 Danieldale Road Holdings, LLC has purchased approximately fifty-eight (58) acres of real property in the City of Lancaster, Texas with the intent to construct and lease to tenants two warehouse-distribution buildings totaling approximately one million (1,000,000) square feet combined; 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 February 2, 2016 actions of the Board of Directors of the LEDC approving an incentive grant to 2935 Danieldale Road Holdings, LLC.

**SECTION 2.** The City Council authorizes LEDC to enter into an incentive agreement with 2935 Daniieldale Road Holdings, LLC which is attached hereto and incorporated herein as Exhibit “1”.

**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 22<sup>nd</sup> day of February, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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

**RESOLUTION NO. 2016-02**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC), IN SUPPORT OF A GRANT TO 2935 DANIELDALE ROAD HOLDINGS, LLC (THE COMPANY) 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,** the Company has selected Lancaster as the location for their newest warehouse-distribution facilities; and

**WHEREAS,** the Company has requested a grant for assistance with the costs of infrastructure improvements associated with the construction and finish out of two warehouse-distribution buildings totaling approximately 1,000,000 square feet combined located on property owned by the Company 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;

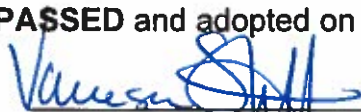
**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION:**

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

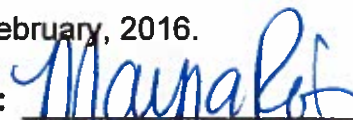
**SECTION 2.** That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

**DULY PASSED** and adopted on this 2<sup>nd</sup> day of February, 2016.


**APPROVED:**

  
Vanessa Sheffield  
President

**ATTEST:**

  
Mayra Rios, Executive  
Secretary

**APPROVED AS  
TO FORM:**

  
Robert E. Hager, City  
Attorney

## **INCENTIVE AGREEMENT**

This Incentive Agreement (this "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 2935 Daniieldale Road Holdings, LLC, a Delaware limited liability company (hereinafter referred to as the "Company"), acting by and through its authorized officer.

### **WITNESSETH:**

**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 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 lease to tenants approximately 1,000,000 square feet of warehouse-distribution space on approximately fifty-eight (58) 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 City Council of the City of Lancaster authorizing the LEDC to enter into an agreement with the Company and on the last date of execution of this Agreement by the LEDC and the Company, and shall continue until the earlier of (i) LEDC's payment of the Incentive Grant, or (ii) six (6) months following the issuance of a Certificate of Occupancy for the Project.

## **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

**"Company"** shall mean 2935 Daniieldale Road Holdings, LLC, a Delaware limited liability company.

**"Improvements"** shall mean the construction and finish out work necessary to commence operations in the two buildings totaling approximately 1,000,000 square feet combined (such buildings, the **"Buildings"**) to be constructed by the Company on the land described in **Exhibit A** owned by the Company in Lancaster, Texas (such land, the **"Land"**).

**"Project"** shall mean the shell Buildings and Related Infrastructure associated with the location and construction of the Buildings. Project does not include any tenant improvement or finish out work necessary for occupancy of the Buildings.

**"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" at completion of the Project.

## **III. PROVISIONS RELATING TO INCENTIVE AGREEMENT**

### **Company Obligations:**

- A. The Company will commence construction within twenty-four (24) months from the date of execution of this Agreement on the Buildings. For purposes of this Agreement, commencement of construction shall mean commencement of site work and Improvements on the Land.
- B. The Project and Improvements 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 ordinances.
- C. The Company agrees to provide any and all documentation necessary to confirm data required to implement provisions of the Incentive Grant.

### **LEDC's Obligations:**

- A. LEDC agrees to pay a grant to the Company in an amount equal to one hundred thousand dollars (\$100,000) to assist with the costs of Related Infrastructure improvements associated with the construction of the Buildings (the **"Incentive Grant"**). A \$50,000 Incentive Grant payment shall be made to the Company for

each of the two Buildings receiving a City issued Certificate of Occupancy upon completion of the Project. LEDC will issue payment of the Incentive Grant within sixty (60) days of the Company receiving final Certificates of Occupancy for the Buildings (it being agreed that the Certificates of Occupancy shall be for the shell Buildings, and the Incentive Grant payments shall not be conditioned upon completion of tenant improvement or finish out work necessary for occupancy of the Buildings).

- B. All grant of funds shall be made from available sales tax proceeds from the LEDC and, any grant made herein, is not pledged against future sales tax proceeds or the full faith and credit of LEDC or the City of Lancaster.

#### **IV. COMPANY DEFAULT; REMEDIES**

- A. In the event the Company (i) fails to commence Project on the Land within twenty-four months of execution of this Agreement, or (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 liquidated damages in the event of such non-cured default and as the LEDC's sole and exclusive remedy, LEDC shall have the right to terminate this Agreement and the Company shall not be entitled to receive the Incentive Grant. The parties acknowledge that actual damages in the event of default termination 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, default under this Agreement, shall be recoverable against the Company, its successors and assigns and shall continue as a lien on the Project.
- B. Upon breach by the Company, of any 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.
- 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 shall have the right to withhold payment of the Incentive Grant or terminate the 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 be assigned only with the consent of the LEDC.

**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 or by nationally recognized overnight courier service:

Company to:

c/o Clarian Partners  
717 McKinney Avenue, Suite 1900  
Dallas, TX 75202  
Attention: Ryan Bandy

LEDC to:

Ed Brady  
Lancaster Economic Development Corporation  
211 N. Henry St.  
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.

**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 to be attached to and made a part of this Agreement. The provisions of this Agreement are hereby declared covenants running with the Project and are fully binding on all successors, heirs, and assigns of the Company who acquire any right, title, or interest in or to the Project, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement. While there is no obligation for the LEDC to fund future expansion, 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 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 \_\_\_\_ day of \_\_\_\_\_, 2016.

LANCASTER ECONOMIC  
DEVELOPMENT CORPORATION

By:   
Vanessa Sheffield, President

2935 DANIELDALE ROAD HOLDINGS,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

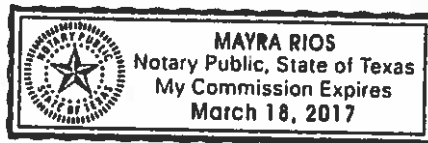
STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS     §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Vanessa Sheffield, 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 2<sup>nd</sup> day of February, 2016.

Mayra Rios  
Notary Public, State of Texas

My Commission Expires:  
March 18, 2017



ACKNOWLEDGMENT

STATE OF TEXAS           §  
                                     §  
COUNTY OF DALLAS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by \_\_\_\_\_, the \_\_\_\_\_ of 2935 Danieldale Road Holdings, LLC, a Delaware limited liability company, on behalf of said limited liability company.

GIVEN UNDER MY HAND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 2016.

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

My Commission Expires:

\_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF THE LAND

DESCRIPTION, of a 58.206 acre tract of land situated in the S. B. Runyon Survey, Abstract No. 1199, Dallas County, Texas; said tract being all of Lot 1 and Lot 2, Block A, Contract Freighters, Inc. Addition, an addition to the City of Lancaster, according to the Amended Plat recorded in Volume 99155, Page 60 of the Deed Records of Dallas County, Texas; said Lot 1 and Lot 2, Block A, being part of those tracts of land described in Warranty Deeds to Con-Way Truckload, Inc., recorded in Instrument Number 200900241247 and Instrument Number 200900241246 of said Official Public Records of Dallas County, Texas; said 58.206 acre tract being more particularly described as follows:

BEGINNING, at a point for corner in the north line of Danieldale Road (a variable width right-of-way), at the southwest corner of said Lot 1, Block A and in the east line of a tract of land described as Tract II in Warranty Deed With Vendor's Lien to Hugo F. Duran and Maria S. Duran, recorded in Instrument Number 201000111603 of said Official Public Records; from which a 1/2-inch iron rod found bears South 00 degrees, 32 minutes East, a distance of 3.4 feet;

THENCE, North 00 degrees, 57 minutes, 58 seconds West, departing said north line of Danieldale Road, along the east line of said Lot 1, Block A, a distance of 1,566.01 feet to 1/2-inch iron rod found for corner; said point being the northwest corner of said Lot 1, Block A and the most southerly southwest corner of a tract of land described as Tract 2C in Warranty Deed to Highland Park Land Company, recorded in Instrument Number 201100269768 of said Official Public Records;

THENCE, North 88 degrees, 54 minutes, 53 seconds East, along the north line of said Lot 1, Block A and the south line of said Highland Park Land Company tract, at a distance of 548.49 feet pass the northeast corner of said Lot 1, Block A and the northwest corner of said Lot 2, Block A, in all a total distance of 729.17 feet to a 5/8-inch iron rod found for corner; said point being at an angle point in the north line of said Lot 2, Block A, the most southerly southeast corner of said Highland Park Land Company tract, and a reentrant corner of a tract of land described in Executor's Deed to Randy Justiss and Virginia A. Justiss, recorded in Instrument Number 200900077417 of said Official Public Records;

THENCE, North 88 degrees, 56 minutes, 45 seconds East, along said north line of Lot 2, Block A and the most northerly south line of said Justiss tract, a distance of 995.49 feet to a point for corner; said point being the northeast corner of said Lot 2, Block A and a reentrant corner for said Justiss tract; from which a 1-inch iron pipe found bent bears South 54 degrees, 07 minutes, East a distance of 0.4 feet;

THENCE, South 06 degrees, 31 minutes, 41 seconds West, along the east line of said Lot 2, Block A and the west line of said Justiss tract, at a distance of 722.02 feet passing a 1/2-inch iron rod found for witness, in all a total distance of 781.67 feet to a point for corner; said point being in the center of a creek;

THENCE, along the east line of said Lot 2, Block A and the west line of said Justiss tract; along the approximate centerline of said creek the following twelve (12) courses and distances:

South 36 degrees, 13 minutes, 47 seconds West, a distance of 19.88 feet to a point for corner;

South 06 degrees, 23 minutes, 04 seconds West, a distance of 273.29 feet to a point for corner;

South 04 degrees, 21 minutes, 20 seconds West, a distance of 69.21 feet to a point for corner;

South 19 degrees, 17 minutes, 57 seconds West, a distance of 27.39 feet to a point for corner;

South 15 degrees, 41 minutes, 01 seconds East, a distance of 18.91 feet to a point for corner;

South 07 degrees, 41 minutes, 55 seconds West, a distance of 28.86 feet to a point for corner;

South 30 degrees, 27 minutes, 23 seconds West, a distance of 17.85 feet to a point for corner;

South 02 degrees, 28 minutes, 23 seconds East, a distance of 50.66 feet to a point for corner;

South 09 degrees, 15 minutes, 32 seconds West, a distance of 194.49 feet to a point for corner;

South 03 degrees, 41 minutes, 33 seconds West, a distance of 80.60 feet to a point for corner;

South 26 degrees, 42 minutes, 47 seconds East, a distance of 22.70 feet to a point for corner;

South 26 degrees, 33 minutes, 32 seconds West, a distance of 10.48 feet to a point for corner in said north line of Danieldale Road; said point being the southeast corner of said Lot 2, Block A; from which a 1/2-inch iron rod with "PACHECO KOCH" cap set for witness corner bears South 89 degrees, 05 minutes, 41 seconds West, a distance of 50.00 feet;

THENCE, South 89 degrees, 05 minutes, 41 seconds West, departing the west line of said Justiss tract, along said north line of Danieldale Road and the south line of said Lot 2, Block A, at a distance of 506.45 feet passing the southwest corner of said Lot 2, Block A and the southeast corner of said Lot 1, Block A, from which a 1/2-inch iron rod found bears South 01 degrees, 05 minutes East a distance of 0.7 feet, at a distance of 538.78 feet passing a 1/2-inch iron rod found, in all a total distance of 1,516.24 feet to the POINT OF BEGINNING;

CONTAINING: 2,535,466 square feet or 58.206 acres of land, more or less.