



**NOTICE OF SPECIAL WORK SESSION AND
SPECIAL MEETING AGENDA
LANCASTER CITY COUNCIL
MUNICIPAL CENTER CITY COUNCIL CHAMBERS
211 N. HENRY STREET, LANCASTER, TEXAS**



Monday, July 30, 2018 - 7:00 PM

7:00 P.M. SPECIAL WORK SESSION:

CALL TO ORDER

1. Receive a presentation regarding the City of Lancaster proposal Fiscal Year 2018/2019 employee insurance program.
2. Discuss and receive a presentation regarding a professional services agreement with Siemens Industry, Incorporated for the replacement of the Building Automated System/Heating Ventilation and Air Conditioning BAS/HVAC and the pool unit at the Recreation Center, in an amount not to exceed one million three hundred sixty-four thousand dollars and five hundred and seventy-one dollars (\$1,364,571.00).
3. Discuss and receive a presentation on the University Hills Municipal Management District (MMD).
4. Discuss and receive an update on the operations and management of the Countryview Golf Course.
5. Receive a presentation and discuss the Quarterly Financial Report for the third quarter of FY 2017/2018 for the period ending June 30, 2018.
6. Discuss the report of City Council's Five Year Goals and Strategies established during the annual City Council Strategic Planning Session in June 2017 for the second quarter of Fiscal Year 2017/2018.

ADJOURN SPECIAL WORK SESSION

7:30 P.M. SPECIAL MEETING:

CALL TO ORDER

CONSENT AGENDA:

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

1. Consider a resolution approving an Interlocal agreement with the North Central Texas Council of Government (NCTCOG) for reimbursement of Grant funds for the Solid waste and Recycling education project.

2. Consider a resolution authorizing the City Manager to execute commercial and non-commercial leases, ground leases, and assignments and assumptions of ground leases at the Lancaster Regional Airport from August 1, 2018 to July 31, 2019.
3. Consider a resolution authorizing a professional services agreement with Johnson Controls, Incorporated for the replacement of Heating Ventilation and Air Conditioning (HVAC), exhaust fans, and ceiling and lighting for the Lancaster Animal Shelter in an amount not to exceed one hundred and twenty-two thousand three hundred ninety dollars (\$122,390.00) and authorizing the City Manager to execute said agreement.

PUBLIC HEARING:

4. Z18-05 Conduct a Public Hearing and consider a rezoning request from Agricultural Open (AO) to SF-4 Single Family Residential. The property is approximately 125.2 acres and is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. It is further described as Abstract 449 Arthur Eldridge, Lancaster, Dallas County, Texas.
5. Z18-06 Conduct a Public Hearing and consider an ordinance granting a Specific Use Permit (SUP) request for in-home daycare at a property addressed as 1743 O'Neal Street; Lot 7, Block B in Wellington Park North Subdivision. The property is located within the Jonathan L. Samson Survey, Abstract No. 1311 City of Lancaster, Dallas County, Texas.

ACTION:

6. Discuss and consider a resolution approving the terms and conditions of an agreement with McMahon Contracting L.P. for limited pavement repairs on Pleasant Run Road in an amount not to exceed one million nine hundred seventy-five thousand two hundred eighty-nine dollars and seventy-four cents (\$1,975,289.74).
7. Consider a resolution authorizing a professional services agreement with Siemens Industry, Incorporated for the replacement of the Building Automated System/Heating Ventilation and Air Conditioning BAS/HVAC and the pool unit at the Recreation Center, in an amount not to exceed one million three hundred sixty-four thousand dollars and five hundred and seventy-one dollars (\$1,364,571.00) and authorizing the City Manager to execute said agreement.
8. Discuss and consider appointments to the Hike and Bike Trails Advisory Committee.
9. Discuss and receive a presentation on the appointment of a Capital Improvements Advisory Committee (CIAC).
10. Discuss and consider a resolution adopting the City of Lancaster Proposed Budget Calendar for Fiscal Year 2018/2019.

ADJOURNMENT

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

ACCESSIBILITY STATEMENT: Meetings of the City Council are held in municipal facilities are wheelchair-accessible. For sign interpretive services, call the City Secretary's office, 972-218-1311, or TDD 1-800-735-2989, at least 72 hours prior to the meeting. Reasonable accommodation will be made to assist your needs.

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

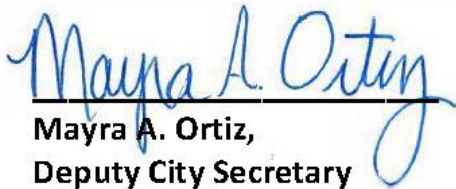
CONFORME A LA SECCION 30.06 DEL CODIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO CON LICENCIA) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO 411, CODIGO DEL GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO OCULTADA.

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

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

Certificate

I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on July 27, 2018 @ 5:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.


Mayra A. Ortiz,
Deputy City Secretary

LANCASTER CITY COUNCIL

A City Council Special Work Session

1.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Professional & Committed City Workforce

Submitted by: Dori Lee, Human Resources Director

Agenda Caption:

Receive a presentation regarding the City of Lancaster proposal Fiscal Year 2018/2019 employee insurance program.

Background:

For the 2017/2018 renewal, the City of Lancaster experienced a 93.9% loss ratio at the time of the renewal which was above the projected insurance carrier target loss ratio of 83%. IPS Advisors, our insurance consultant, released an RFP and was able to re-negotiate the renewal to a rate pass, thus maintaining the current rates.

Over the past 12 months, the City has experienced a decrease in its loss ratio to 71.8%. BCBS provided the City a rate pass for the 2018/2019 plan year. IPS Advisors was able to re-negotiate the renewal to a 3% decrease and is recommending accepting the renewal due to competitiveness of the offer vs actuarial projections and to preserve the City's long term carrier history. Furthermore, the City's plan of benefits are in line with IPS Advisors municipal benchmark cities like the City of Duncanville, Keller, Rockwall, Rowlett, and the Colony. We recommend to continue the City's current plan design.

The City currently offers a High Deductible Health Plan (HDHP) and Health Savings Account (HSA) plan option to assist in controlling future health care costs. The City also continued premium incentives for employees who received an annual physical and who didn't use tobacco.

Health Insurance

The best and final renewal offer from BCBS represents a 3.0% decrease or \$81,808 decrease to the City.

Recommendations for the health plan for 2018/2019 plan year include:

- The City currently subsidizes 100% of the employee only cost for the HDHP and 56.5% for dependents across all plans. It is proposed to not change the employee rates and to decrease dependent subsidy levels on all plans to 55.2%. It is recommended to maintain the current HSA employer funding of \$1,210 for employee and \$2,420 for dependents for the 2018/2019 plan year.
- Implement a Spousal Surcharge of \$25 per month to employees who spouses are working and have coverage offered through their employer. This surcharge is put into place to encourage those participants eligible for other group coverage to take advantage of that coverage. Additionally, it allows the City to keep its medical plans more affordable.
- Renew with Methodist Health Systems for the City's wellness program. This program includes Health Risk Assessments, Fitness and Nutrition Tools, Wellness Workshops, Incentive Management and Employer and Employee Risk Factor reporting.

- Continue annual physical and tobacco surcharge of \$80 per month. These surcharges are put into place to increase participation in wellness screenings and reduce tobacco utilizers that are enrolled in the City's health plan.
- Continue Compass Professional Health Services for those who are enrolled in the High Deductible Health Plan. This service provides employees and dependents with pricing and quality information for hospitals, physicians, pharmacy and dental services.

Dental Insurance

The City currently contracts with MetLife for Dental Insurance. The City completed its first year of a two year rate guarantee. Renewal with MetLife for Dental Insurance is the recommendation for the 2018/2019 plan year.

Flexible Spending Account (FSA)

A Flexible Spending Account (FSA) allows an employee to set aside a portion of his or her earnings to pay for qualified expenses as established in the cafeteria plan, most commonly for medical expenses, but often for dependent care or other expenses. Money deducted from an employee's pay into an FSA is not subject to payroll taxes, resulting in a substantial payroll tax savings. The City received a rate pass and the recommendation is renew with Discovery Benefits for the 2018/2019 plan year.

Health Savings Account (HSA)

A health savings account (HSA) is a tax-advantaged medical savings account available to employees enrolled in a high-deductible health plan. The funds contributed to this account are not subject to federal income tax at the time of deposit. However, HSA funds may be used only to pay for qualified medical expenses. The City currently utilizes HSA Bank to administer the account. HSA Bank presented a rate pass with no changes to benefits. The recommendation is to continue with HSA Bank for the 2018/2019 plan year.

Ancillary Insurance

The City is currently utilizes Dearborn National to provide Basic Life, Optional Life, Short Term Disability and Long Term Disability insurance to employees. The City completed its first year of a two year rate guarantee. Renewal with Dearborn National is the recommendation for the 2018/2019 plan year.

Employee Assistance Program

Employee Assistance Programs (EAPs) are employee benefit programs offered by many employers, typically in conjunction with a health insurance plan. EAPs are intended to help employees deal with problems that might adversely impact their work performance, health, and well-being. Alliance Work Partners presented a rate pass and renewal with Alliance Work Partners is recommended for the 2018/2019 plan year.

Vision

The City currently contracts with Avesis for Vision Insurance. The City completed its first year of a four year rate guarantee. Renewal with Avesis for Vision Insurance is the recommendation for the 2018/2019 plan year.

COBRA Administration

The City requires offering employees the opportunity to continue temporarily their group health coverage under the City's plan if their coverage otherwise would cease due to termination, layoff, or other change in employment status. The City utilizes Flores & Associates and the City completed its first year of a five year rate guarantee. Renewal with Flores & Associates for COBRA Administration is the recommendation for the 2018/2019 plan year.

Insurance Committee

The insurance committee met with Methodist Health Systems June 22, 2018 to discuss the continuation of health and wellness program for the employees of the City of Lancaster. Health and wellness continues to be a priority of the insurance committee with unanimous agreement to provide education and rewards for participation in the wellness program.

Fiscal Impact:

The total health care cost decrease to the City of Lancaster is approximately \$81,808 and the City would fund approximately 82.6% of total healthcare costs.

Recommendation:

Staff recommends remaining with current vendors for all renewing policies and plans, no plan design changes, no employee rate changes, no changes to employer HSA funding, and implementing a \$25 per month spousal surcharge. The total health care cost decrease to the City of Lancaster is approximately \$81,808 and the City would fund approximately 82.6% of total healthcare costs.

Attachments

Resolution

Analysis

Renewal Agreement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY OF LANCASTER TO ENTER INTO AGREEMENTS WITH EMPLOYEE BENEFIT PROVIDERS AND/OR ADMINISTRATORS AS FOLLOWS: (1) BLUE CROSS BLUE SHIELD FOR MEDICAL ADMINISTRATION WITH A HEALTH SAVINGS ACCOUNT (HSA) OPTION; (2) METLIFE FOR DENTAL BENEFIT ADMINISTRATION; (3) DEARBORN NATIONAL FOR SHORT TERM DISABILITY INSURANCE; (4) FLORES & ASSOCIATES FOR COBRA BENEFIT ADMINISTRATION; (5) AVESIS FOR VISION BENEFIT ADMINISTRATION; AND (6) ALLIANCE WORK PARTNERS FOR EMPLOYEE ASSISTANCE PROGRAM ADMINISTRATION; AUTHORIZING EXECUTION OF ANY NECESSARY CONTRACTS AND DOCUMENTS PURSUANT TO THIS RESOLUTION BY THE CITY MANAGER; REPEALING ALL RESOLUTIONS IN CONFLICTS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster provides medical insurance and other benefits to employees; and

WHEREAS, in accordance with Texas competitive bidding laws, a request for proposals was sent out to obtain proposals for the provision of insurance and benefit services and administration to determine the best qualified and most cost effective solutions for the City; and

WHEREAS, the City of Lancaster has determined that the respective companies offer the best insurance and benefit solutions and desires to contract with them to provide the designated benefits and services to City employees.

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

SECTION 1. The City Council authorizes: (1) the renewal of Bid No. 2017-7 to Blue Cross Blue Shield for medical benefit administration with a Health Savings Account (HSA) option; (2) Metlife for dental benefit administration; (3) Dearborn National for short term disability insurance; (4) Flores & Associates for Cobra benefit administration; (5) Avesis for vision benefit administration; and (6) Alliance Work Partners for employee assistance program administration, in accordance with fiscal year 2018-2019 plans; and authorizes the City Manager to execute any necessary contracts and documents in conformance with this resolution, after approval as to form by the City Attorney.

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

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

SECTION 4. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 13th day of August, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

City of Lancaster
2018 - 2019 BCBSTX Renewal Rates (No Change to Employee Rates)

Enrollment		Unit Costs			
HSA \$3,000/100%	Full Time Employees	Medical Rate	City Contribution (\$)	City Contribution (%)	Employee Contribution (\$)
Employee	151	\$517.95	\$517.95	100.0%	\$0.00
+ Spouse	12	\$621.88	\$343.05	55.2%	\$278.83
+ Children	28	\$518.18	\$285.84	55.2%	\$232.34
+ Family	27	\$1,245.81	\$687.24	55.2%	\$558.57
Premium Contributions	151	\$1,605,827.04	\$1,306,632.60	81.4%	\$299,194.44
Total HSA Contributions		\$263,780.00	\$263,780.00	100.0%	\$0.00
Total Contributions		\$1,869,607.04	\$1,570,412.60	84.00%	\$299,194.44

HSA Contribution Amounts

Employee
\$1,210

Family
\$2,420

Total Employee Rates		
Total Employee Contribution (\$)	Total Monthly Employee Change From Current (\$)	Total Monthly Employee Change From Current (%)
\$0.00	\$0.00	n/a
\$278.83	\$0.00	0.0%
\$232.34	\$0.00	0.0%
\$558.57	\$0.00	0.0%

HMO	Full Time Employees	Medical Rate	City Contribution (\$)	City Contribution (%)	Employee Contribution (\$)
Employee	73	\$631.65	\$606.20	96.0%	\$25.45
+ Spouse	2	\$758.41	\$418.38	55.2%	\$340.03
+ Children	14	\$631.93	\$348.60	55.2%	\$283.33
+ Family	6	\$1,519.28	\$838.10	55.2%	\$681.18
Premium Contributions	73	\$787,079.64	\$659,980.32	83.9%	\$127,099.32

Total Employee Contribution (\$)	Total Monthly Employee Change From Current (\$)	Total Monthly Employee Change From Current (%)
\$25.45	\$0.00	0.0%
\$365.48	\$0.00	0.0%
\$308.78	\$0.00	0.0%
\$706.63	\$0.00	0.0%

PPO	Full Time Employees	Medical Rate	City Contribution (\$)	City Contribution (%)	Employee Contribution (\$)
Employee	20	\$700.14	\$530.00	75.7%	\$170.14
+ Spouse	5	\$840.62	\$463.71	55.2%	\$376.91
+ Children	4	\$700.45	\$386.39	55.2%	\$314.06
+ Family	0	\$1,683.98	\$928.94	55.2%	\$755.04
Premium Contributions	20	\$252,092.40	\$173,569.32	68.9%	\$78,523.08

Total Employee Contribution (\$)	Total Monthly Employee Change From Current (\$)	Total Monthly Employee Change From Current (%)
\$170.14	\$0.00	0.0%
\$547.05	\$0.00	0.0%
\$484.20	\$0.00	0.0%
\$925.18	\$0.00	0.0%

All Plans	Full Time Employees	Total Medical Cost	City Contribution (\$)	City Contribution (%)	Employee Contribution (\$)
Total Contributions - All Plans	244	\$2,908,779.08	\$2,403,962.24	82.6%	\$504,816.84
\$ Change from Current		-\$81,808.44	-\$81,808.44		\$0.00
% Change from Current		-3%	-3%		0%



**BlueCross BlueShield
of Texas**

1001 E. Lookout Drive
Richardson, Texas 75082

**BENEFIT PROGRAM APPLICATION ("BPA")
Blue Cross and Blue Shield of Texas (herein called BCBSTX/HMO)
LARGE GROUP PLANS**

Account Status: ☐ New ☒ Existing with Changes

Off Cycle Change: ☐ Yes ☒ No

☐ Former BCBSTX ASO converting to fully insured

Account Number (6-digits): 151475

Group Number(s): 151475, 151532,
151533

Section Number(s): ALL

Contract Effective Date: 10/01/2018

Contract Anniversary Date: 10/01

Legal Account Name: City of Lancaster

(Specify the employer or the employee trust applying for coverage. An employee benefit plan may not be named)

☒ **NO CHANGES**

GROUP INFORMATION

Employer Identification
Number ("EIN"): _____

SIC: _____

Nature of Business: _____

Primary (Mailing) Address: _____

City: _____

State: _____

Zip: _____

Administrative Contact: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

Blue Access for Employers (BAE) Contact: _____

The BAE Contact is an employee of the account who is authorized by the employer to access and maintain the account in BAE.

Title: _____

Phone: _____

Fax: _____

Email: _____

Administrative Contact (if different from Primary): _____ Title: _____

Phone: _____ Fax: _____ Email: _____

Physical Address (if different from Primary - required): _____

City: _____

State: _____

Zip: _____

Contact: _____

Billing Address (if different from Primary): _____

City: _____

State: _____

Zip: _____

Billing Contact: _____

Email: _____

Title: _____

Phone: _____

Fax: _____

Do you cover any wholly-owned subsidiary or affiliated companies? ☐ Yes ☐ No If yes, please list below:

Proprietary and Confidential Information of Blue Cross and Blue Shield of Texas. Not for use or disclosure outside Blue Cross and Blue Shield of Texas, Employer, their respective affiliated companies and third party representatives, except with written permission of Blue Cross and Blue Shield of Texas.

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Subsidiary Companies: _____ Subsidiary Address: _____
City: _____ State: _____ Zip: _____ Contact: _____
Title: _____ Phone: _____ Fax: _____ Email: _____
Affiliated Companies: _____ Location(s): _____

ERISA Regulated Group Health* Plan: ☐ Yes ☒ No

If Yes, is your ERISA Plan Year* a period of 12 months beginning on the Anniversary Date specified above? ☐ Yes ☐ No

If no, please specify your ERISA Plan Year: Beginning Date __/__/__ End Date __/__/__ (month/day/year)

ERISA Plan Administrator*: _____ Plan Administrator's Address: _____

If you maintain that ERISA is not applicable to your group health plan, please give legal reason for exemption:

- ☐ Federal Governmental plan (e.g., the government of the United States or agency of the United States)
☐ Non-Federal Governmental plan (e.g., the government of the State, an agency of the state, or the government of a political subdivision, such as a county or agency of the State)
☐ Church plan (complete and attach a Medical Loss Ratio Assurance form)
☐ Other; please specify: _____

Is your Non-ERISA Plan Year a period of 12 months beginning on the Anniversary Date specified above? ☐ Yes ☐ No

If no, please specify your Non-ERISA Plan Year: Beginning Date __/__/__ End Date __/__/__ (month/day/year)

For more information regarding ERISA, contact your Legal Advisor.

*All as defined by ERISA and/or other applicable law/regulations

<input checked="" type="checkbox"/> NO CHANGES	PRODUCER OF RECORD INFORMATION
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1. *Producer/Agency** name to whom commissions are to be paid: _____

Producer Number of ☐ Producer or ☐ Agency: _____

Street Address: _____ City: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

Is Producer/Agency appointed with BCBSTX/HMO? ☐ Yes ☐ No

Affiliated with General Agent? ☐ Yes ☐ No

2. *Producer/Agency** name to whom commissions are to be paid: _____

Producer Number of ☐ Producer or ☐ Agency: _____

Street Address: _____ City: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

Is Producer/Agency appointed with BCBSTX/HMO? ☐ Yes ☐ No

Affiliated with General Agent? ☐ Yes ☐ No

If commission split, designate

percentage for each Producer/agency

Producer/Agency 1: _____%

Producer/Agency 2: _____%

Note: total commissions paid must equal 100%

3. Writing Producer's Name (please print): _____

Producer Number: _____ Phone: _____ Email: _____

Writing Producer's Signature: _____ Date: _____

* The producer or agency name(s) above to whom commissions are to be paid must exactly match the name(s) on the appointment application(s).

** If commissions are split, please provide the information requested above on both producers/agencies. BOTH must be appointed to do business with BCBSTX/HMO.

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an Independent Licensee of the Blue Cross and Blue Shield Association

4. General Agent (GA) Override? ☐ Yes ☐ No General Agent Name: _____
Tax ID: _____ Agency #: _____ Email: _____
Address: _____ City: _____ Zip: _____

Health Override Amount (if applicable): _____ Dental Override Amount (if applicable): _____

If applicable, effective _____, the named producer(s) or agency(ies) is/are recognized as Employer's Producer of Record (POR), to act as representative in negotiations with and to receive commissions from Blue Cross and Blue Shield of Texas, a division of Health Care Service Corporation (HCSC), a Mutual Legal Reserve Company, and HCSC subsidiaries for employer's employee benefit programs. This statement rescinds any and all previous POR appointments for employer. The POR is authorized to perform membership transactions on behalf of employer. This appointment will remain in effect until withdrawn or superseded in writing by employer.

General Agent's Signature: _____ Date: _____

☒ NO CHANGES

SCHEDULE OF ELIGIBILITY

1. **Standard Eligibility Provisions:**

Eligible Employee/Subscriber means an employee who works on a full-time basis, who usually works at least 30 hours a week, and who otherwise meets the Participation Criteria established by an employer. The term includes a sole proprietor, a partner, and an independent contractor, if the individual is included as an employee under a Health Benefit Plan of a large employer regardless of the number of hours the sole proprietor, partner, or independent contractor works weekly, but only if the plan includes at least two other eligible employees who work on a full-time basis and who usually work at least 30 hours a week. Participation Criteria means any criteria or rules established by a large employer to determine the employees who are eligible for enrollment or continued enrollment under the terms of a Health Benefit Plan. The Participation Criteria may not be based on Health Status Related Factors.

(HMO only) the Eligible Subscriber must reside, live or work in the Service Area.

2. **Other Eligibility Provisions (check all that apply):**

- ☐ Retiree of the employer.
☐ Part-time employee of the employer.
☐ Other: _____

Are any classes of employees to be excluded from coverage? ☐ Yes ☐ No

If yes, please identify the classes and describe the exclusion: _____

Domestic Partners covered: ☐ Yes ☐ No

A Domestic Partner means a person with whom the employee has entered into a domestic partnership in accordance with the employer's plan guidelines. The employer is responsible for providing notice of possible tax implications to those covered employees with Domestic Partners.

Are Domestic Partners eligible for continued coverage equivalent to COBRA continuation? ☐ Yes ☐ No

3. All current and new Employees must satisfy the substantive eligibility criteria and required waiting period in order for coverage to become effective. Covered Dependents do not have to satisfy a waiting period to become effective, but in no instance shall a Dependent be covered prior to the Employee's effective date.

If a person is added to the Policy and it is later determined that the Policyholder reported a coverage date earlier than what would apply, based on the Waiting Period and eligibility conditions the Policyholder provided to the Plan, the Plan reserves the right to retroactively adjust the coverage date for such person.

What is the effective date for a newly eligible person who becomes effective after the employer's initial enrollment? (No effective date may exceed ninety-one (91) calendar days from the date that an individual becomes eligible for coverage, unless permitted by applicable law.)

- ☐ The date of employment (date of hire).
- ☐ The _____ day (standard is 1st or 15th) of the month following the date of employment.
- ☐ The _____ day (standard is 1st or 15th) of the month following _____ days (select 0, 30 or 60 days) of employment.
- ☐ The _____ day (standard is 1st or 15th) of the month following _____ month(s) (select 1 or 2 months) of employment.

Substantive Eligibility Criteria (Optional):

Provide a representation below regarding the terms of any eligibility conditions (other than any applicable waiting period already reflected above) imposed before an individual is eligible to become covered under the terms of the plan. If any of these eligibility conditions change, you are required to submit a new BPA to reflect that new information. Check all that apply:

- ☐ An Orientation Period that:
 - 1) Does not exceed one month (calculated by adding one calendar month and subtracting one calendar day from an employee's start date); and
 - 2) If used in conjunction with a waiting period the waiting period begins on the first day after the orientation period.
- ☐ A Cumulative hours of service requirement that does not exceed 1200 hours
- ☐ An hours of service per period (or full-time status) requirement for which a Measurement period is used to determine the status of variable-hour employees, where the measurement period:
 - 1) Starts between the employee's date of hire and the first day of the following month;
 - 2) Does not exceed 12 months; and
 - 3) Taken together with other eligibility conditions does not result in coverage becoming effective later than 13 months from the employee's start date plus the number of days between a start date and the first day of the next calendar month (if start day is not the first day of the month).
- ☐ Other substantive eligibility criteria not described above; please describe:

(HMO only) What is the effective date of coverage for a Newly Eligible Employee who becomes effective after the Employer's initial enrollment date? (No effective date may exceed ninety-one (91) calendar days from the date that an individual becomes eligible for coverage, unless permitted by applicable law.)

- ☐ The 1st day of the month following the date of employment (date of hire).
- ☐ The 1st day of the month following _____ days (select 0, 30 or 60 days) of employment.
- ☐ The 1st day of the month following _____ month(s) (select 1 or 2 months) of employment.

4. Are there multiple new hire waiting periods? ☐ Yes ☐ No

If yes, attach eligibility and contribution details for each section.

Is the waiting period requirement to be waived on initial group enrollment?

Health ☐ Yes ☐ No ☐ N/A Dental ☐ Yes ☐ No ☐ N/A

5. The minimum standard limiting age for covered Dependent children is twenty-six (26) years. Hereafter, a Dependent child, child or children means a natural child, a stepchild, a medical support order child, a dental support

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order child (if applicable), an eligible foster child, an adopted child (including a child for whom the employee or their spouse is a party in a suit in which the adoption of the child is sought) regardless of presence or absence of a child's financial dependency, residency, student status, employment status, marital status, eligibility for other coverage or any combination of those factors. To be eligible for coverage, a child of an employee's child must also be dependent upon employee for federal income tax purposes at the time application for coverage is made.

☒ **NO CHANGES**

CURRENT ELIGIBILITY INFORMATION

Total number of Employees/Subscribers:

1. on payroll _____
2. on COBRA continuation coverage _____
3. with retiree coverage (if applicable) _____
4. who work part-time _____
5. serving the new hire waiting period _____
6. declining because of other **group** coverage (e.g., other commercial group coverage, Medicare, Medicaid, TRICARE/Champus) _____
7. declining coverage (not covered elsewhere) _____

☒ **NO CHANGES**

(HMO only) LEGISLATIVE ELECTIONS

The following mandated benefit offers are made by HMO in compliance with Texas regulations. Please mark your acceptance or declination. Acceptance may result in a rate adjustment.

In Vitro Fertilization Services

Authorized Company Official's Initials: _____

- ☐ **Accept** – If accepted, benefits for In Vitro Fertilization Services will be provided to the same extent as benefits provided for other pregnancy related procedures. (Note: If selected an additional charge will be added to your rates.)
- ☐ **Decline** – If declined, no benefits are available.

Speech and Hearing Services

Authorized Company Official's Initials: _____

- ☐ **Accept** – Benefits are paid same as any other illness.
- ☐ **Decline** – If declined, medically necessary speech therapy is covered on an outpatient basis only. Hearing aids are covered under Durable Medical Equipment Additional Benefit Option only.

Development Delay – Certain therapies for children with developmental delays are already included in the HMO plans.

☒ **NO CHANGES**

(Non-HMO only) LEGISLATIVE ELECTIONS

The following mandated benefit offers are made in compliance with Texas regulations. Please mark your acceptance or declination.

In Vitro Fertilization Services: Benefits for Medical-Surgical Expense incurred for in vitro fertilization procedures will be the same as for maternity care, provided specific requirements are met.

- ☐ **Accept** – If accepted, benefits for In Vitro Fertilization Services will be provided to the same extent as benefits provided for other pregnancy related procedures. (Note: If selected an additional charge will be added to your rates.)
- ☐ **Decline** – If declined, no benefits are available for these services.

Speech and Hearing Services: Benefits are available for the services of a physician or other provider to restore loss of or correct an impaired speech or hearing function. This benefit includes coverage for hearing aids.

- ☐ **Accept** – If accepted, benefits are available for medically necessary services to restore loss of or correct an impaired speech or hearing function, with no benefit maximum on hearing aids.
- ☐ **Decline** – If declined, benefits are available for medically necessary services to restore loss of or correct an impaired speech or hearing function; however, benefits for hearing aids are limited to 1 hearing aid per ear every 36 months.

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Development Delay – Certain therapies for children with developmental delays are already included in the Non-HMO plans.

☒ **NO CHANGES**

LINES OF BUSINESS
(Check all applicable products)

Managed Health Care Coverage:

☐ Single Option:

Plan _____

☒ HMO*

Plan HMO

☒ Dual Option:

Plan 1 PPO 750 PPO

Plan 2 HSA 3000 HSA

Additional Benefit Options:

☐ Prescription Drug Program _____

☐ Inpatient Mental Health Care (IM4)

☐ Durable Medical Equipment Select DME

☐ Triple Option:

Plan 1 _____ Select Product

Plan 2 _____ Select Product

Plan 3 _____ Select Product

See HMO Legislative Elections for In-Vitro Fertilization and Speech and Hearing Services options.

If BlueEdge HCA Plan(s) are selected, the HCA BPA with HCA Administrative Services Agreement must be completed, signed and submitted.

100% of eligible employees must reside, live or work in the service area. The HMO service area includes all counties in Texas.

If BlueEdge HSA/HDHP Plan is selected, provide name of HSA Administrator or trustee: _____

***If only HMO health plan selected, please complete the HMO Non-Network Plan Certification (item 2) in the OTHER PROVISIONS section of this BPA.**

☐ **BlueEdge FSA** ConnectYourCare

BlueMax Advantage

☐ Graduated dental benefit max

☐ Enhanced dental benefits

☐ **Blue Directions** (Private Exchange)

If Blue Directions is selected, the Blue Directions Addendum is attached and made part of the Policy.

☐ **Life & Disability** (if checked, attach separate FDL application)

Plan 1 _____

Plan 2 _____

Plan 3 _____

Plan 4 _____

Plan 5 _____

COMMENTS: Group is renewing as is with current plans

Health Care Management Services:

☐ Blue Care Connection Standard Package

☐ Blue Care Connection Enhanced Package (additional fee applies)

In-Hospital Indemnity Plan:

☐ IHI

DENTAL BENEFIT PLANS

Employer-Paid Dental

☐ Plan _____

☐ Dual Option: Plan 1 _____ Plan 2 _____

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Voluntary Group Dental

Plan _____

☒ **NO CHANGES****ACCOUNT EXPERIENCE – NEW GROUPS ONLY**

Has there been a significant change in the claims experience previously provided?

☐ No – skip the rest of this (Account Experience) section☐ Yes – Please answer the below questions to the best of your knowledge. Note: any changes indicated below may impact rates and will require Underwriter approval. "Participant" means all Eligible Employees, Dependents, Retirees and COBRA Continuant.

- | | |
|---|--|
| 1. Has any Participant received more than \$20,000 in medical benefits during the last 12 months? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Is any Participant expected to have claims in excess of \$20,000 during the next 12 months? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Is any Participant mentally or physically handicapped or disabled or not actively at work? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Has any Participant been diagnosed as having a high risk condition? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

If any question is answered "yes," details must be provided below:

Participant Age	Diagnosis or Nature of the Disorder	Dates of Treatment	\$ Amount of Claims	Prognosis/Current Treatment

RATES

For the current year's premium and rate information, refer to the accepted finalized new group rates letter ("Letter") or the renewal exhibit ("Exhibit") for complete details. The Letter, or Exhibit, shall be incorporated by reference and made part of the BPA and Group Administration Document.

☒ **NO CHANGES****FUNDING / CONTRIBUTION****FUNDING ARRANGEMENT:**☐ Premium – Prospective☐ (Non-HMO only) Premium – Prospective Retention (Retro Contingent)

☐ (Non-HMO only) Alternative Funding Minimum Premium Program – Prospective Minimum Premium (Retro Contingent) The standard premium and rate information does not apply to alternative funding programs. All information regarding premiums and the payments thereof for alternative funding programs can be found in the mutually agreed upon alternative funding agreement between the employer and BCBSTX.

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STANDARD PREMIUM INFORMATION

1. Premium Period:

- ☐ The first day of each calendar month through the last day of each calendar month.
☐ The 15th day of each calendar month through the 14th day of the next calendar month.
☐ 15/16 Day Rule – premiums will be billed for the entire month for Participants with effective dates on the 1st through the 15th day of the month. Premiums will not be billed for the month when the Participant's effective date falls on the 16th day through the end of the month.

2. The contribution of premium to be paid by the employer is:

PRODUCT	Employee Only	Employee/Child(ren)	Employee/Spouse	Employee/Family
HEALTH				
Plan 1	% or \$	% or \$	% or \$	% or \$
Plan 2	% or \$	% or \$	% or \$	% or \$
Plan 3	% or \$	% or \$	% or \$	% or \$
DENTAL	% or \$	% or \$	% or \$	% or \$
Plan 1	% or \$	% or \$	% or \$	% or \$
Plan 2	% or \$	% or \$	% or \$	% or \$

3. Grace Period (HMO only): thirty (30) days – standard

4. Prior written notification by BCBSTX/HMO to Employer for change of premium rates is 60 days

5. Additional Information/Comments: _____

☒ **NO CHANGES****BILLING SPECIFICATIONS**

Employees Listed: ☐ alphabetically ☐ by location
If by location, list locations including location numbers if applicable: _____

Sort by: ☐ Unique Identification Number (standard) ☐ Social Security Number

Billing format:

(complete only if special billing requirements are needed)

- ☐ Benefit Agreement
☐ Also Page Break
☐ Categories
☐ Multiple Billing Profiles

Explanation: _____

Premium Delay:

(Underwriter approval required for options other than zero day delay)

- ☐ Zero day delay (standard)
☐ 30 day delay
☐ 60 day delay
☐ 90 day delay

☒ **NO CHANGES****ID CARD DELIVERY**

Mail ID Cards to:

- ☐ Account
☐ Member's homes (standard)

☒ **NO CHANGES****OTHER PROVISIONS**

1. Electronic Issuance: The Employer consents to receive, via an electronic file or access to an electronic file, any Certificate Booklet provided by BCBSTX/HMO to the Employer for delivery to each employee. The Employer further agrees that it is solely responsible for providing each Employee access to the most current version of any E-file Certificate Booklet, amendment, or other revised form provided by BCBSTX/HMO, or to provide a paper copy of the

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same to an Employee upon request. The Employer is solely responsible and holds BCBSTX/HMO harmless from any misuse of the E-file provided by BCBSTX/HMO.

☐ Accept – Employer consents to receive electronic versions of certificate-booklets for covered Employees. Employer may withdraw this consent at any time and request receipt of hard copy versions by contacting their BCBSTX Account Executive.

☐ Decline – Employer does not consent to receive electronic versions of certificate-booklets for covered Employees or the Contract and desires BCBSTX/HMO to print and distribute hard copy versions.

Authorized Company Official's Initials: _____ Date: _____

2. (HMO only) HMO Non-Network Plan Certification:

The Texas Insurance Code mandates HMOs whose network based delivery system of coverage is the only health benefit coverage being offered under an employer's health benefit plan must offer all Eligible Subscribers the opportunity to obtain other health coverage through a non-network plan at the time of enrollment and at least annually.

The non-network coverage required by law may be provided through a point-of-service contract, a preferred provider benefit plan, or any coverage arrangement that allows an employee to access services outside the HMO's or limited provider network's delivery network. New and renewing groups who refuse to offer or certify that they offered a non-network plan concurrent with the HMO-only will not be allowed to purchase or renew coverage through BCBSTX/HMO. To comply with the provisions of this mandate, BCBSTX/HMO requests employer groups certify a non-network plan will be offered to Eligible Subscribers.

Describe Non-Network Product Offered: _____

Authorized Company Official's Initials: _____

3. EHB Election:

Employer elects EHBs based on the following:

☐ 1. EHBs based on a HCSC state benchmark:

- | | |
|-------------------------------------|-----------------------------------|
| <input type="checkbox"/> Illinois | <input type="checkbox"/> Oklahoma |
| <input type="checkbox"/> Montana | <input type="checkbox"/> Texas |
| <input type="checkbox"/> New Mexico | |

☐ 2. EHBs based on benchmark of a state other than IL, MT, NM, OK and TX

If so, indicate the state's benchmark that Employer elects: _____

In the absence of an affirmative selection by Employer of its EHBs, then Employer is deemed to have elected the EHBs based on the BCBSTX benchmark plan.

4. This BPA is incorporated into and made a part of the Contract entered into and agreed upon by BCBSTX/HMO and the account.

5. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of coverage.

ADDITIONAL PROVISIONS:

A. Grandfathered Health Plans: Employer shall provide BCBSTX with written notice prior to renewal (and during the plan year, at least 60 days advance written notice) of any changes in its Contribution Rate Based on Cost of Coverage or Contribution Rate Based on a Formula towards the cost of any tier of coverage for any class of Similarly Situated Individuals as such terms are described in applicable regulations. Any such changes (or failure to provide timely notice thereof) can result in retroactive and/or prospective changes by BCBSTX to the terms and conditions of coverage. In no event shall BCBSTX be responsible for any legal, tax or other ramifications related to any benefit package of any group health insurance coverage (each hereafter a "plan") qualifying as a "grandfathered health plan" under the Affordable Care Act and applicable regulations or any representation regarding any plan's past, present and future grandfathered status. The grandfathered health plan form ("Form"), if any, shall be incorporated by reference and part of the BPA and Group Policy, and Employer represents and warrants that such Form is true, Proprietary and Confidential Information of Blue Cross and Blue Shield of Texas. Not for use or disclosure outside Blue Cross and Blue Shield of Texas, Employer, their respective affiliated companies and third party representatives, except with written permission of Blue Cross and Blue Shield of Texas.

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complete and accurate. If Employer fails to timely provide BCBSTX with any requested grandfathered health plan information, BCBSTX may make retroactive and/or prospective changes to the terms and conditions of coverage, including changes for compliance with state or federal laws or regulations or interpretations thereof.

- B. Retiree Only Plans and/or Excepted Benefits:** If the BPA includes any retiree only plans and/or excepted benefits, then Employer represents and warrants that one or more such plans is not subject to some or all of the provisions of Part A (Individual and Group Market Reforms) of Title XXVII of the Public Health Service Act (and/or related provisions in the Internal Revenue Code and Employee Retirement Income Security Act) (an "exempt plan status"). Any determination that a plan does not have exempt plan status can result in retroactive and/or prospective changes by BCBSTX to the terms and conditions of coverage. In no event shall BCBSTX be responsible for any legal, tax or other ramifications related to any plan's exempt plan status or any representation regarding any plan's past, present and future exempt plan status.
- C.** Employer shall indemnify and hold harmless BCBSTX and its directors, officers and employees against any and all loss, liability, damages, fines, penalties, taxes, expenses (including attorneys' fees and costs) or other costs or obligations resulting from or arising out of any claims, lawsuits, demands, governmental inquiries or actions, settlements or judgments brought or asserted against BCBSTX in connection with (a) any plan's grandfathered health plan status, (b) any plan's exempt plan status, (c) any directions, actions and interpretations of the Employer, and/or (d) any provision of inaccurate information, and/or (f) Employer's selection of Essential Health Benefit ("EHB") benchmark for the purpose of ACA. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of coverage.

The provisions of paragraphs A-C (directly above) shall be in addition to (and do not take the place of) the other terms and conditions of coverage and/or administrative services between the parties.

ACA FEE NOTICE: ACA established a number of taxes and fees that will affect our customers and their benefit plans. One of those fees is: the Annual Fee on Health Insurers or "Health Insurer Fee."

Section 9010(a) of ACA requires that "covered entities" providing health insurance ("health insurers") pay an annual fee to the federal government, commonly referred to as the Health Insurer Fee. The amount of this fee for a given calendar year will be determined by the federal government and currently involves a formula based in part on a health insurer's net premiums written with respect to health insurance on certain health risk during the preceding calendar year. This fee will go to help fund premium tax credits and cost-sharing subsidies offered to certain individuals who purchase coverage on health insurance exchanges.

In addition, ACA Section 1341 and/or other applicable laws may provide for the establishment of a temporary reinsurance program(s) that may be funded by reinsurance contributions or other amounts (collectively, the "Reinsurance Fees or Amounts") collected from health insurance issuers and/or self-funded group health plans. Federal and/or state governments may provide information as to how these Reinsurance Fees or Amounts are calculated. Federal regulations establish a flat per member per month fee. The temporary reinsurance programs funded by these Reinsurance Fees or Amounts will help stabilize premiums in the individual market.

Your premium, which already accounts for current applicable federal and state taxes, includes the effects of the Health Insurer Fees and Reinsurance Fees or Amounts, if any. These rates may be adjusted on an annual basis for any incremental changes in Health Insurer Fees and Reinsurance Fees or Amounts, if any.

Notwithstanding anything in the Policy or Renewal(s) to the contrary, BCBSTX reserves the right to revise our charge for the cost of coverage (premium or other amounts) at any time if any local, state or federal legislation, regulation, rule or guidance (or amendment or clarification thereto) is enacted or becomes effective/implemented, which would require BCBSTX to pay, submit or forward, on its own behalf or on the Policyholder's behalf, any additional tax, surcharge, fee, or other amount (all of which may be estimated, allocated or pro-rated amounts).

Renewals Only: (For the purposes of this Contract, the term "existing BPA" includes, if applicable, the initial Schedule of Specifications and/or Group Agreement signed by the Employer, and any subsequent Schedules of Specifications and/or Group Agreements and amendments thereto.) If this BPA is blank, it is intentional and this BPA is an addendum to the existing BPA. In such case, all terms of the existing BPA as amended from time to time shall remain in force and effect.

However, beginning with the Employer's first renewal date on or after September 23, 2010, the provisions of paragraphs A-C (above) shall be part of (and be in addition to) the terms of the existing BPA as amended from time to time.

Summary of Benefits & Coverage:

1). BCBSTX will create Summary of Benefits & Coverage (SBC)?

- ☐ Yes. If yes, please answer question #2. The SBC Addendum is attached.
- ☐ No. If No, then the Employer acknowledges and agrees that the Employer is responsible for the creation and distribution of the SBC as required by Section 2715 of the Public Health Service Act (42 USC 300gg-15) and SBC regulations (45 CFR 147.200), as supplemented and amended from time to time, and that in no event will BCBSTX have any responsibility or obligation with respect to the SBC. BCBSTX may, but is not required to, monitor Employer's performance of its SBC obligations, audit the Employer with respect to the SBC, request and receive information, documents and assurances from Employer with respect to the SBC, provide its own SBC (or SBC corrections) to participants and beneficiaries, communicate with participants and beneficiaries regarding the SBC, respond to SBC-related inquiries from participants and beneficiaries, and/or take steps to avoid or correct potential violations of applicable laws or regulations. BCBSTX is not obligated to respond to or forward misrouted calls, but may, at its option, provide participants and beneficiaries with Employer's contact information. A new clause (e) is added to Subsection C. in the Additional Provisions as follows: "(e) the SBC". (Skip question #2.)

2). BCBSTX will distribute Summary of Benefits & Coverage (SBC) to participants and beneficiaries?

- ☐ No. BCBSTX will create SBC (only for benefits BCBSTX insures under the Contract) and provide SBC to the Employer in electronic format. Employer will then distribute SBC to participants and beneficiaries (or hire a third party to distribute) as required by law.
- ☒ Yes. BCBSTX will create SBC (only for benefits BCBSTX insures under the Contract) and distribute SBC to participants and beneficiaries via regular hardcopy mail or electronically in response to occasional requests received directly from individuals. All other distribution is the responsibility of the Employer.

UNDERSTAND AND AGREE THAT:

1. BCBSTX reserves the right to take any or all of the following actions:

a) Initial rates for new groups will be finalized for the effective date of the policy based on the enrolled participation and employer contribution levels; b) after the policy effective date the group will be required to maintain a minimum employer contribution of 50%, and at least a 75% participation of eligible employees. In the event the group is unable to maintain the contribution and participation requirements, then the rates will be adjusted accordingly; and/or c) non-renew or discontinue coverage if the 50% minimum employer contribution is not met and/or less than 75% of eligible employees are enrolled for coverage or six consecutive months.

BCBSTX reserves the right to change premium rates when a substantial change occurs in the number or composition of subscribers covered. A substantial change will be deemed to have occurred when the number of Employees/Subscribers covered changes by ten percent (10%) or more over a thirty (30) day period or twenty five percent (25%) or more over a ninety (90) day period.

Employer will promptly notify BCBSTX of any change in participation and Employer contribution.

2. Producer Statement (if applicable): I certify that I have reviewed all enrollment materials. I have also advised the employer that I have no authority to bind these coverages, to alter the terms of the Contract(s), this BPA or enrollment material in any manner or to adjust any claims for benefits under the Contract(s).
3. BCBSTX/HMO will report the value of all remuneration by BCBSTX/HMO to ERISA plans with 100 or more participants for use in preparation of ERISA Form 5500 schedules. Reporting will also be provided upon request to non-ERISA plans or plans with fewer than 100 participants. Reporting will include base commissions, bonuses, incentives, or other forms of remuneration for which your agent/consultant is eligible for the sale or renewal of self-funded and/or insured products.
4. The undersigned person represents that he/she is authorized and responsible for purchasing coverage on behalf of the employer. It is understood that the actual terms and conditions of coverage are those contained in the Contract into which this BPA shall be incorporated at the time of acceptance by BCBSTX/HMO. Upon acceptance, BCBSTX/HMO shall issue a Contract to the employer and the employer shall be referred to as the "Employer or Contractholder" (Non-HMO) and "Group" (HMO) in the Contract.
5. The Employer's Benefit Program Application must pre-date the requested effective date and be received at BCBSTX at its Home Office no less than thirty (30) days prior to the requested effective date.

Kevin Shively

Authorized BCBSTX/HMO Representative

Account Executive

Title

06/27/2018

Date

Signature of Authorized Purchaser

Opal Mauldin-Jones, City Manager

Title

Date

Agent Representative (if applicable)

PROXY (OPTIONAL)

The undersigned hereby appoints the Board of Directors of Health Care Service Corporation, a Mutual Legal Reserve Company, or any successor thereof ("HCSC"), with full power of substitution, and such persons as the Board of Directors may designate by resolution, as the undersigned's proxy to act on behalf of the undersigned at all meetings of members of HCSC (and at all meetings of members of any successor of HCSC) and any adjournments thereof, with full power to vote on behalf of the undersigned on all matters that may come before any such meeting and any adjournment thereof. The annual meeting of members shall be held each year in the corporate headquarters on the last Tuesday of October at 12:30 p.m. Special meetings of members may be called pursuant to notice mailed to the member not less than 30 nor more than 60 days prior to such meetings. This proxy shall remain in effect until revoked in writing by the undersigned at least 20 days prior to any meeting of members or by attending and voting in person at any annual or special meeting of members.

HCSC pays indemnification or advances expenses to directors, officers, employees or agents consistent with HCSC's bylaws then in force and as otherwise required by applicable law.

Group No.: 151475 By: _____
Print Signer's Name Here



Signature and Title

Group Name: City of Lancaster

Address: 211 N. Henry Street

City: Lancaster State: TX Zip Code: 75146

Dated this _____ day of _____
Month Year

TEXAS DEPARTMENT OF INSURANCE
REQUIRED DISCLOSURE NOTICE FOR ALL LARGE GROUP HMO
CONSUMER CHOICE BENEFIT PLANS ISSUED IN TEXAS

As required by 28 TAC §21.3530, I have been informed that the Consumer Choice Health Benefit Plan that I am purchasing does not include all state mandated health insurance benefits. I understand that the following benefits are provided at a reduced level from what is mandated, or excluded completely from the plan.

Mandated Benefit Description	Benefit Reduced	Benefit Excluded
<p>Copayments Section 11.506(2)(A), Subchapter F, Title 28 Texas Insurance Code: A reasonable copayment option may not exceed 50 percent of the total cost of services provided. A basic service HMO may not impose copayment charges on any enrollee in any calendar year, when the copayments made by the enrolled in that calendar year total two hundred percent of the total annual premium cost which is required to be paid by or on behalf of that enrollee.</p>	<p>For some services and supplies, this plan may include cost-sharing that exceeds the limits imposed by the mandated.</p>	
<p>Deductibles Section 11.506(2)(B), Subchapter F, Title 28 Texas Insurance Code: A deductible shall be for specific dollar amount of the cost of the basic, limited or single health care service. An HMO shall charge a deductible only for services performed out of the HMO's service area or for services performed by a physician or provider who is not in the HMO's delivery network.</p>	<p>Deductibles may apply to some services provided by HMO Participating Providers in the HMO service area.</p> <p>Deductibles may apply to Professional Services, Inpatient Hospital Services, Outpatient Facility Services, Outpatient Lab and X-Ray Services, Rehabilitation Services, Maternity Care and Family Planning, Behavioral Health Services, Emergency and Ambulance Services, Extended Care Services, some Preventive Care Services, Dental Surgical Procedures, Cosmetic, Reconstructive or Plastic Surgery, Allergy Care, Diabetes Care, Prosthetic Appliances, Orthotic Devices, Durable Medical Equipment, Hearing Aids and Prescription Drugs.</p>	

This HMO Consumer Choice Health Benefit Plan may include requirements and/or restrictions on deductibles, coinsurance, copayments or annual or lifetime benefit amounts that differ from other HMO plans. I understand that I may obtain additional information on Consumer Choice Health Benefit Plans, either by visiting the TDI website at www.tdi.texas.gov/consumer/index.html, or by calling 1-800-252-3439.

Signature of Applicant

Name of Applicant (print name)

Name of Business (if applicable)

Address

City

State

Zip

Date

Note: This form must be retained by the carrier issuing the policy and must be provided to the Commissioner of Insurance upon request. **You have the right to a copy of this written disclosure free of charge.** A new form must be completed upon each subsequent renewal of this policy.

LANCASTER CITY COUNCIL

A City Council Special Work Session

2.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

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

Submitted by: Jermaine Sapp, Director of Equipment Services & Facilities

Agenda Caption:

Discuss and receive a presentation regarding a professional services agreement with Siemens Industry, Incorporated for the replacement of the Building Automated System/Heating Ventilation and Air Conditioning BAS/HVAC and the pool unit at the Recreation Center, in an amount not to exceed one million three hundred sixty-four thousand dollars and five hundred and seventy-one dollars (\$1,364,571.00).

Background:

The Lancaster Recreation Center was built in 2001 and the existing Building Automated System BAS/HVAC is not working correctly. The City desires to engage in a professional services agreement with Siemens Industry, Incorporated. An updated Heating Ventilation and Air Conditioning System is needed to provide a cooler building to patrons.

Operational Considerations:

Lancaster Recreation Center needs to replace the aging air-cooled chiller currently serving the building, as well as replace the Pool Area Dehumidifier that will include a point-to-point system. This will require the installation of an upgraded existing Building Automated System and Implement Scheduling that will allow minimal run-time and reduce operating costs, and provide a Johnson Controls Incorporated campus network front end for building controls.

Public Information Considerations:

This item is being considered at a Special Work Session meeting posted in accordance with the Texas Open Meetings Act.

Fiscal Impact:

Funding will not exceed one million three hundred sixty-four thousand five hundred seventy-one dollars (\$1,364,571.00).

Options/Alternatives:

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

Recommendation:

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

Attachments

Resolution

Exhibit "1"

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS FOR PROFESSIONAL SERVICES AGREEMENT WITH SIEMENS INDUSTRY, INCORPORATED FOR A PROFESSIONAL SERVICES AGREEMENT, IN AN AMOUNT NOT TO EXCEED ONE MILLION THREE HUNDRED SIXTY-FOUR THOUSAND FIVE HUNDRED SEVENTY-ONE DOLLARS (\$1,364,571.00) AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Lancaster desires a professional services contract with Siemens Industry, Incorporated for the above referenced services.

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

SECTION 1. That the City Council hereby authorize a contract for professional services agreement with Johnson Controls, Incorporated for the replacement of the Building Automated System/Heating Ventilation and Air Conditioning BAS/HVAC and the pool unit at the Lancaster Recreation Center in an amount not to exceed one million three hundred sixty-four thousand dollars and five hundred and seventy-one dollars (\$1,364,571.00) and authorize the City Manager to execute the Agreement, which is attached hereto and incorporated herein as Exhibit "1".

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

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

SECTION 4. That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreement in substantial compliance as depicted in Exhibit "1".

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

PERFORMANCE CONTRACTING AGREEMENT

between

City of Lancaster

and

**Siemens Industry, Inc.,
Building Technologies Division**

TABLE OF ARTICLES

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work by SIEMENS
6. CLIENT Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

PERFORMANCE CONTRACTING AGREEMENT

Number: SAP JOB NUMBER

Article 1 AGREEMENT

THIS PERFORMANCE CONTRACTING AGREEMENT (“Agreement”) is made this day of , (the “Effective Contract Date”, defined below), **by and between Siemens Industry, Inc., Building Technologies Division (“SIEMENS”) and the party identified below as the CLIENT.**

The CLIENT: **City of Lancaster**
211 N. Henry Street
Lancaster, TX 75146

DESIGNATED REPRESENTATIVE: Ms. Opal Mauldin-Jones
PHONE: 972-218-1304 FAX: 972-275-0919

Siemens Industry, Inc., Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, Illinois 60089

With offices at: 8850 Fallbrook Rd.
Houston, TX 77064

DESIGNATED REPRESENTATIVE: Mr. Robert McMillin
PHONE: 281-949-3000 FAX:

For Work and Services in connection with the following project (the “Project”):

City of Lancaster Performance Contracting Project

The CLIENT considered performing the following FIMs but at this time, has determined to exclude them from the Scope of Work and Services, Exhibit A:

Additional HVAC
Additional building automation upgrades
Parks and ballfield lighting
Building lighting upgrades

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement consists of this document, which includes the following articles and exhibits which are acknowledged by the CLIENT and SIEMENS and incorporated into the Agreement by this reference:

Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

Exhibits

Exhibit A	Scope of Work and Services
Exhibit B	Payment Schedule(s)
Exhibit C	Performance Assurance
Exhibit D1	Form of Certificate of Substantial Completion
Exhibit D2	Form of Certificate of Final Completion

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same, and may be modified only by a written instrument signed by both Parties.

COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **City of Lancaster]**

(Signature) by: _____

Print Name and Title: Opal Mauldin-Jones, City Manager

(Signature) by: _____

Print Name and Title: Opal Mauldin-Jones, City Manager

Agreed for **Siemens Industry, Inc.**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

PERFORMANCE CONTRACTING AGREEMENT

Article 2

Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

Acceptance means the CLIENT has signed, or is deemed to have signed, a Certificate of Final Completion.

Acceptance Date means the date on which the CLIENT signs or is deemed to have signed a Certificate of Final Completion.

Annual Performance Assurance Report means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

Annual Period means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

Annual Realized Savings means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

Applicable Law means laws, ordinances, codes, rules and regulations applicable to the Work and in effect on the Effective Contract Date.

Baseline means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

Baseline Period means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

BTU means a British Thermal Unit and is a unit of thermal energy.

Capital Off-Set Savings means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues: potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

Certificate of Final Completion means a document, in the form attached as Exhibit D2 hereto, indicating that the Work identified in Article 1 of the Scope of Work and Services-Exhibit A has been completed in accordance with the Agreement, including all items in the Outstanding Items List(s).

Certificate of Substantial Completion means a document, in the form attached as Exhibit D1 hereto, indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement. A Certificate of Substantial Completion may be accompanied by an Outstanding Items List.

CLIENT Representative means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

Construction Period means the period between the Effective Contract Date and the first day of the month following the Acceptance Date.

Construction Period Savings means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

Contracted Baseline means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

Deferred Maintenance means a sub-category of Operational Savings where Savings result from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

Deliverables shall mean collectively, (a) any Equipment and any Software Product deliverable to CLIENT from SIEMENS under or in connection with the Work, and (b) any Work Product Deliverables.

Effective Contract Date is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

Energy Conservation Measure or **ECM** means the SIEMENS Products and/or other third party equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by SIEMENS or the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

PERFORMANCE CONTRACTING AGREEMENT

Equipment means the installed physical equipment to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

Escalation Rate means an annual percentage increase to be applied to the previous Annual Period's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

Facility or Facilities means the **building(s)** or structure(s) where Work will be installed or implemented.

Facility Improvement Measures or FIMs means the (i) Instruments, know-how and Intellectual Property, including but not limited to methods and techniques for energy conservation, owned or licensed by SIEMENS and employed by SIEMENS to perform the Work and Services under this Agreement; and, (ii) the installation of Equipment and Software Products with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities. A FIM may include one or multiple ECMs as well as any non-conservation-related activities, means or methods.

FEMP means the Federal Energy Management Program managed by the United States Department of Energy.

FEMP Guidelines means the FEMP M&V Guidelines v. 3.0 published by FEMP as M&V Guidelines; Measurement and Verification for Federal Energy Management Projects.

Guarantee Date means the first day of the month following the date on which the CLIENT executes, or is deemed to have executed, the Certificate of Final Completion.

Guaranteed Annual Savings are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will be achieved in an Annual Period of the Performance Guarantee Period.

Guaranteed Measured & Verified Savings means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

Guaranteed Savings means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period, as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8.

Hazardous Materials refers to the definition found in Section 11.1.

Instruments means all know-how, tools and related documentation owned or licensed by SIEMENS and used by SIEMENS to install or commission Equipment and Software Products for operation at the Facility, including but not limited to tools for installing any Software Products in Equipment, performing diagnostics on Equipment as installed in the Facility as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS and used by SIEMENS to provide an ECM or a FIM. Instruments excludes Work Product Deliverables.

Intellectual Property Rights or Intellectual Property means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

IPMVP means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

kW and kWh means kilowatt and kilowatt hour, respectively.

Maintenance Services Program or MSP means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

Material Change means a measurable deviation in the Contracted Baseline such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

Measured & Verified Savings means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

Oil refers to the definition found in Section 11.1.

PERFORMANCE CONTRACTING AGREEMENT

Operational Savings means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

Outstanding Items List means a list of items in need of completion or correction that relates to the Work, or a designated portion thereof that is Substantially Complete. The absence of such items does not deprive the CLIENT of the ability to put such Work, or a designated portion thereof to beneficial use. An Outstanding Items List may be attached to a Certificate of Substantial Completion.

Parties means the CLIENT and SIEMENS.

Performance Assurance is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

Performance Assurance Services Program or PASP means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and comparing the same to the Annual Guaranteed Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

Performance Guarantee means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

Performance Guarantee Period means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

Permitted Users means the CLIENT, its employees and agents.

Savings means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

Savings Shortfall means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

Services means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

SIEMENS Pre-existing Intellectual Property means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of SIEMENS before SIEMENS performs any Work or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of SIEMENS performing the Work under this Agreement; or, (iii) if developed while performing the Work under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as a FIM or part of a FIM. SIEMENS Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS.

SIEMENS Product means a product, including Software Product and/or Equipment, offered for sale or license by SIEMENS or its affiliates or subsidiaries and developed prior to performing the Work or SIEMENS rendering services in connection with this Agreement. A SIEMENS Product also includes improvements or modifications to any Equipment and any Software Product developed by SIEMENS or developed as part of the Work, including any SIEMENS Product that is configured or modified for operation at a site specified by the CLIENT. Any information that is provided by the CLIENT and incorporated into a SIEMENS Product is not, by itself, a SIEMENS Product. A compilation of such information and the product of such compilation, however, is a SIEMENS Product.

Software Product means any software that is owned or licensed by SIEMENS or its affiliates and that is either separately deliverable for use in the Equipment or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Equipment.

Stipulated Savings are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the

PERFORMANCE CONTRACTING AGREEMENT

IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

Substantial Completion or Substantially Complete means the Work, or any identifiable portion thereof, which is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes.

Therm is a measure of energy equal to 100,000 BTUs.

Total Guaranteed Savings means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

Work means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

Work Product Deliverable means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the CLIENT in connection with the Work to be performed by SIEMENS under this Agreement.

Article 3

General

3.1 The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.

3.2 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with the terms and conditions of this Agreement.

3.3 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.

3.4 SIEMENS represents, warrants and covenants to the CLIENT that:

- (a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS organizational documents, any Applicable Law, or any agreements with third parties;
- (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
- (d) To SIEMENS best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
- (e) It is duly authorized to do business in all locations where the Work and Services are to be performed.

3.5 The CLIENT represents, warrants and covenants to SIEMENS that:

- (a) It has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT's organizational documents, any Applicable Law, or any agreements with third parties;

PERFORMANCE CONTRACTING AGREEMENT

- (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
- (d) To the CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
- (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

Article 4

Performance Guarantee

4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in the Performance Assurance, Exhibit C.

4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."

(a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.

(b) Costs of energy are defined in Article 6 of Exhibit C-Utility Rate Structures and Escalation Rates.

4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.

4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.

4.4 The CLIENT agrees to notify SIEMENS prior to or within thirty (30) days of CLIENT's knowledge of any Material Change.

4.5 Within thirty (30) days of notice of a Material Change, SIEMENS' discovery of a Material Change and with prompt notice to CLIENT, SIEMENS will either:

- (a) Require an adjustment to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
- (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Performance Assurance and the Performance Guarantee.

4.6 A Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:

- (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.
- (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
- (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.

PERFORMANCE CONTRACTING AGREEMENT

- (d) A Savings Shortfall shall be paid by SIEMENS within sixty (60) days following the CLIENT's acceptance of the reconciliation and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.
- 4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.
- 4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP then; (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee acts to render the Agreement in violation of Applicable Law, all Guaranteed Savings thereafter shall be determined to have been achieved and SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.
- 4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT under this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE BY CLIENT TO EITHER SIEMENS AND/OR A THIRD-PARTY (IN THE EVENT THAT THE CLIENT HAS FINANCED THE TRANSACTION) FOR THE AGGREGATE OF: THE PRICE, AS DEFINED IN EXHIBIT B, ARTICLE 1.1; THE PASP PAYMENTS; THE MSP PAYMENTS, IF ANY; AND, IF APPLICABLE, THE CLIENT'S COST OF FINANCING THE WORK. The CLIENT's cost of financing the Work is the cost of financing calculated either: (a) On the date that the escrow account is funded in accordance with Exhibit B, Article 1.2; or, (b) On the Effective Contract Date if the escrow requirement is expressly waived by SIEMENS.
- 4.9 The CLIENT represents that all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse effect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.
- 4.10 If the Equipment or the existing equipment is altered or moved by any person (including the CLIENT) other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense in order to determine if a Material Change has occurred.
- 4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:
- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to determine if a Material Change has occurred;
 - (b) Provide access to any Facility where Work is to be performed;
 - (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
 - (d) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.

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4.12 Unless expressly contrary to Applicable Law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice and in such notice indicate that the CLIENT has selected one of the following:

- (a) The CLIENT will re-invest the avoided cost of cancellation of the PASP into Facility improvements and services that improve the overall Facility's performance and which improvements and services are implemented by SIEMENS; or,
- (b) The CLIENT will pay to SIEMENS 100% of the remaining value left in the PASP Annual Period, as a liquidated damage and not as a penalty, to compensate SIEMENS for SIEMENS' up-front costs and expenses in preparing to perform the PASP as contracted for the Annual Period. Upon cancellation of the PASP and making the liquidated damage payment, CLIENT shall have no obligation to make any further PASP annual payments defined in Table B.2 of Exhibit B.

4.13 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

Article 5

Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a workmanlike manner.
- 5.2 SIEMENS shall perform the Work during its normal hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Facility available so Work may proceed in an efficient manner.
- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by the Parties.
- 5.4 All Work Product Deliverables shall become the CLIENT's property upon receipt by CLIENT. SIEMENS may retain file copies of such Work Product Deliverables. If any Instruments are provided to the CLIENT under this Agreement, any such Instruments shall remain SIEMENS' property, including the Intellectual Property conceived or developed by SIEMENS in the Instruments. All SIEMENS' Pre-existing Intellectual Property that may be included in the Deliverables provided to the CLIENT under this Agreement shall also remain SIEMENS property including the SIEMENS Pre-existing Intellectual Property included in the Work Product Deliverables. All Work Product Deliverables and any Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. SIEMENS hereby grants the CLIENT a royalty-free (once payments due under this Agreement are paid to SIEMENS), non-transferable, perpetual, nonexclusive license to use any SIEMENS Pre-existing Intellectual Property solely as incorporated into the Deliverables and SIEMENS' Intellectual Property as incorporated into any Instruments provided to the CLIENT under this Agreement. Under such license, and following agreement to be bound to such separate confidentiality provisions that may exist between the Parties, Permitted Users shall have a right to:
- (a) Use, in object code form only, the Software Products included in the Deliverables ("Software Deliverables");
 - (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality provisions) except if the Software Deliverable is embedded in the Equipment; and,
 - (c) Use all such Deliverables and such Instruments, provided however, the Deliverables and Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Deliverables are provided. All Deliverables provided to the CLIENT are for Permitted Users' use only for the purposes disclosed to SIEMENS, and the CLIENT shall not transfer them to

PERFORMANCE CONTRACTING AGREEMENT

others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent.

5.4.1 Any reuse of such Deliverables or such Instruments for other projects or locations without the written consent of SIEMENS, or use by any party other than Permitted Users will be at Permitted Users' risk and without liability to SIEMENS; and, the CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

5.4.2 In consideration of such license, CLIENT agrees not to reverse engineer any Equipment or Software Product to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software Product even to the extent such restriction is allowable under Applicable Law.

5.4.3 Nothing contained in this Agreement shall be interpreted or construed to convey to the CLIENT the pre-existing Intellectual Property rights of any third party incorporated into the Deliverables. CLIENT agrees to take delivery of any Software Deliverables subject to any applicable SIEMENS or third party end-user license agreement accompanying such Software Deliverable.

5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at the Facility shall not relieve others of their responsibility to the CLIENT or to others.

5.6 SIEMENS warrants that:

- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.
- (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one year after the Work is performed. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.

5.7 Warranty Limitation:

- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
- (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT's sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
- (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.

5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF

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MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of:

- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc., unless covered by the warranty provisions herein or otherwise specifically stated herein; or
- (b) The CLIENT's or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.

Article 6

CLIENT Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT's sole control so as not to disrupt the Work and Services proceeding in an efficient manner;
- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT's files for a period of fifteen (15) years from the Effective Contract Date;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) In accordance with Article 11 hereof, promptly notify SIEMENS of all known or suspected Hazardous Materials at the Facility, of any contamination of the Facility by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
- (h) Comply with Applicable Law and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
- (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Facility where the Work is to be performed;
- (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;

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- (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;
- (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
- (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.

6.2 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.

6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT's activities or operations, the CLIENT's other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

Article 7

Changes and Delays

- 7.1 As the Work is performed, Applicable Law or conditions may change, or circumstances outside SIEMENS' reasonable control may develop, which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS' compensation and the time for performance. In the event such changes require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.**
- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties.**
- 7.3 SIEMENS may, in its sole discretion, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.**
- 7.4 SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed, for any costs and expenses of termination, and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.**

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Article 8

Compensation

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.
- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within thirty (30) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
- (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at times other than during SIEMENS' normal working hours, unless otherwise agreed to in Exhibit A; or
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

Article 9

Acceptance

- 9.1 When SIEMENS believes that all or an independent definable phase or portion of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
- (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will sign the Certificate of Substantial Completion and return it to SIEMENS;
 - (b) A Certificate of Substantial Completion may include, as an attachment to it, an Outstanding Items List prepared by SIEMENS;
 - (c) If the CLIENT does not concur that the Work is Substantially Complete, then, within five (5) business days of receiving the Certificate of Substantial Completion, the CLIENT shall notify SIEMENS in writing of the reasons it believes the Work is not Substantially Complete;
 - (d) If SIEMENS disagrees with the CLIENT as to whether the Work is Substantially Complete, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
 - (e) If, within five (5) business days of receiving the Certificate of Substantial Completion the CLIENT fails to sign the Certificate, and within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice of the reasons the CLIENT believes that the Work is not Substantially Complete, then in the mutual

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interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.

9.2 After the CLIENT signs and returns, or is deemed to have signed and returned to SIEMENS all of the Certificates of Substantial Completion relating to the Work, and after SIEMENS corrects and completes all of the items on all of the Outstanding Items Lists, if any, SIEMENS will submit to the CLIENT a Certificate of Final Completion which shall be subject to the following:

- (a) If the CLIENT concurs that all of the items on all of the Outstanding Items Lists have been completed or corrected, the CLIENT will indicate its final acceptance of the Work by signing the Certificate of Final Completion and returning it to SIEMENS;
- (b) If the CLIENT does not concur that all of the items on all of the Outstanding Items Lists have been completed or corrected, then the CLIENT shall, within five (5) business days of receiving the Certificate of Final Completion, identify the items that, it believes, were not completed or corrected;
- (c) If SIEMENS disagrees that the items identified by the CLIENT have not been completed or corrected, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with section 9.3 herein;
- (d) If, within five (5) business days of receiving a Certificate of Final Completion, the CLIENT fails to sign that Certificate, and, within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice identifying the items on the Outstanding Items List(s) that, the CLIENT believes, were not completed or corrected, then the CLIENT will be deemed to have agreed to and signed and returned the Certificate of Final Completion.

9.3 Any disputes concerning the Substantial Completion or the Final Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to Final Completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

Article 10

Insurance and Allocation of Risk

10.1 SIEMENS shall maintain, at SIEMENS' expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:

- (a) Workers' Compensation at the statutory amounts and limits as prescribed by Applicable Law.
- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
 - \$1,000,000 per occurrence
 - \$1,000,000 Disease Policy
 - \$1,000,000 Each Employee
- (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS' operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
 - Products and Completed Operations
 - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse and Underground Hazards
 - Personal Injury Liability:
 - Limits of liability shall be \$1,000,000 per occurrence/aggregate
- (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:

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- \$1,000,000 per occurrence/aggregate
- (e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:
 - \$5,000,000 per occurrence/aggregate

10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement or otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.

10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Facility, and the CLIENT shall be responsible for protecting them against theft and damage.

10.4 **SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages").** Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS' performance of the Work or Services. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. **UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE LESSER OF \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT.** The preceding limit shall not apply to the CLIENT's remedy under the Performance Guarantee as such is limited by Section 4.8.

10.5

As to Patents and Copyrights:

PERFORMANCE CONTRACTING AGREEMENT

- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.
- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT's design or instructions, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 **The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.**

Article 11

Hazardous Materials Provisions

- 11.1** The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that, to the best of its knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT's representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.
- 11.2** The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials, to the best of its knowledge following due inquiry, known to be present, potentially present or likely to become present at the Facility and provided a copy of any Facility safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by Applicable Law.

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11.3 Regardless of whether Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remediating or neutralizing such Oil or Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 11.1, SIEMENS shall have the right to stop the Work until the Facility is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.

11.4 Except where expressly prohibited by Applicable Law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from the CLIENT's breach of, or failure to perform its obligations under this Article.

11.5 For purposes of this Article 11, in the context of the phrase "to the best of its knowledge following due inquiry"; "knowledge" means actual awareness of the facts by the CLIENT's directors, officers, employees or agents, or the presence of relevant information contained in the CLIENT's books or records; and, "due inquiry" means inquiry of those persons under the CLIENT's control who should have knowledge of the subject matter of such inquiry.

Article 12

Miscellaneous Provisions

12.1 Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.

12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both Parties.

12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located.

12.4 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.

12.5 Reserved.

12.6 SIEMENS' performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement

12.7 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.

PERFORMANCE CONTRACTING AGREEMENT

12.8 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.

12.9 In the event that Applicable Law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$Price identified in Section 1.1 of Exhibit B. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT's funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.

Article 13

Maintenance Services Program

13.1 If applicable, the scope of Services provided by SIEMENS for the Maintenance Services Program is stated in Exhibit A.

13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.

13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense.

13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the Parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT's sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged on a time and materials basis, and not included in fees paid hereunder. If individual items of equipment cannot, in SIEMENS' sole determination, be properly repaired or replaced due to age, obsolescence, lack of availability of refrigerant gas, halon gas, necessary parts, materials, compatibility or otherwise, or as a result of excessive wear or deterioration, SIEMENS may, within ten (10) days of such inspection, give written notice that it is withdrawing such items from coverage under the MSP and adjust the MSP payments due hereunder accordingly.

13.5 If the removal of equipment from coverage would compromise or impair the integrity of the Work, Services or compliance with law of any system, then SIEMENS will provide a written statement thereof for execution by the CLIENT. The CLIENT's failure to execute such statement within ten (10) days will void the MSP and release SIEMENS from any further obligations with respect to the MSP.

13.6 If the MSP scope of Services provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.



February 2, 2018

City of Lancaster
Siemens Scope and Pricing for the Recreation Center Upgrades

Replace HVAC Equipment with High Efficiency Units at the Recreation Center

- Replace aging Air-Cooled Chiller serving Building
- Replace aging Pool Area Dehumidifier
- Point-to-point check out of system

Install Building Automation System (BAS) and Implement Scheduling

- Upgrade existing BAS at Recreation Center
- Schedule HVAC systems at Recreation Center to minimize runtime and reduce operating costs
- Provide a JCI campus network front end for building controls

This project is guaranteed per LG302. The pricing is firm, fixed turn-key pricing - no change orders. Includes all design, product, installation, project development, project management.

Building	FIM	Cost	Energy Savings	Ops Savings
Recreation/Community Center	BAS/HVAC	\$ 333,191	\$26,473	\$5,000
	Pool unit	\$ 854,824		15000
All Facilities above	Project Development, Project Management, M&V Set up	\$ 176,556		
Total		\$ 1,364,571	\$26,473	\$20,000

Annual Measurent & Verification price - 3% annual escalation	\$14,046
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Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of Work, the CLIENT shall pay to SIEMENS \$1,364,571.00 (plus taxes, if applicable).
- 1.2 **Timely Payments:** The CLIENT agrees to pay SIEMENS per Table B.1 below. CLIENT agrees to pay all invoices submitted by SIEMENS per Article 8 of the Agreement.

Table B.1 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Audit & Mobilization	\$ 81,874.00	6.00%	Month 1
Progress Payment #1	\$ 81,874.00	6.00%	Month 2
Progress Payment #2	\$ 136,457.00	10.00%	Month 3
Progress Payment #3	\$ 204,686.00	15.00%	Month 4
Progress Payment #4	\$ 204,686.00	15.00%	Month 5
Progress Payment #5	\$ 109,166.00	8.00%	Month 6
Progress Payment #6	\$ 136,457.00	10.00%	Month 7
Progress Payment #7	\$ 136,457.00	10.00%	Month 8
Progress Payment #8	\$ 68,229.00	5.00%	Month 9
Progress Payment #9	\$ 68,229.00	5.00%	Month 10
Progress Payment #10	\$ 68,228.00	5.00%	Month 11
Retainage & Final Payment	\$ 68,228.00	5.00%	End of Project
PROJECT TOTAL:	\$ 1,364,571.00	100%	

Article 1 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Lancaster

Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.2 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

Table B.2 – Performance Assurance Program Payment Schedule

Date	Annual Payments (\$)	Notes
Year 1	\$ 14,046.00	Year 1 Measurement & Verification
Year 2	\$ 15,024.00	Year 2 Measurement & Verification
Year 3	\$ 15,474.00	Year 3 Measurement & Verification
Year 4	\$ 15,939.00	Year 4 Measurement & Verification
Year 5	\$ 16,417.00	Year 5 Measurement & Verification
Year 6	\$ 16,909.00	Year 6 Measurement & Verification
Year 7	\$ 17,416.00	Year 7 Measurement & Verification
Year 8	\$ 17,939.00	Year 8 Measurement & Verification
Year 9	\$ 18,477.00	Year 9 Measurement & Verification
Year 10	\$ 19,031.00	Year 10 Measurement & Verification
Year 11	\$ 19,602.00	Year 11 Measurement & Verification
Year 12	\$ 20,190.00	Year 12 Measurement & Verification
Year 13	\$ 20,796.00	Year 13 Measurement & Verification
Year 14	\$ 21,420.00	Year 14 Measurement & Verification
Year 15	\$ 22,063.00	Year 15 Measurement & Verification

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Lancaster

Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 3: Payment for Maintenance Services Program (MSP)

- 3.1 **Not Applicable:** Per exhibit A, Article 4, a Maintenance Service Program, (MSP) is not included in the scope of this agreement. If the Parties later agree, SIEMENS may perform maintenance services for additional fees on a Time and Materials basis or as established in a separate maintenance agreement.

Article 3 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Lancaster**

Signature: _____

Printed Name: Opal Mauldin-Jones

Title: City Manager

Date: July 30, 2018

SIEMENS: **Siemens Industry, Inc.**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Data
Article 6	Utility Rate Structures and Escalation Rates
Article 7	Contracted Baseline Data

Table 1.1 - Total Guaranteed Savings (Units)

Performance Period	Electric Energy Saved (kWh)	Electric Power Saved (kW-mo)	Natural Gas Saved (MCF)
Annual Period 1	355,825	0	0

- 1.1 Table 1.1 above shows the Annual Total Guaranteed Savings in units for each year of the Performance Guarantee Period. In order to achieve these unit savings, the CLIENT must operate the Facility in accordance with the Contracted Baselines identified in Article 7. 2.

Table 1.2 – Total Guaranteed Savings and Operational Savings

Performance Period	Energy/Utility Savings (\$)	Operational Savings (\$)	Total Savings (\$)
Annual Period 1	\$26,473	\$20,000	\$46,473
Annual Period 2	\$27,268	\$20,600	\$47,868
Annual Period 3	\$28,086	\$21,218	\$49,304
Annual Period 4	\$28,928	\$21,855	\$50,783
Annual Period 5	\$29,796	\$22,510	\$52,306
Annual Period 6	\$30,690	\$23,185	\$53,875
Annual Period 7	\$31,611	\$23,881	\$55,492
Annual Period 8	\$32,559	\$24,597	\$57,156
Annual Period 9	\$33,536	\$25,335	\$58,871
Annual Period 10	\$34,542	\$26,095	\$60,637
Annual Period 11	\$35,578	\$26,878	\$62,456
Annual Period 12	\$36,645	\$27,685	\$64,330
Annual Period 13	\$37,745	\$28,515	\$66,260
Annual Period 14	\$38,877	\$29,371	\$68,248
Annual Period 15	\$40,043	\$30,252	\$70,295
Total	\$492,377	\$371,977	\$864,354

- 1.1a Client represents and warrants that it is paying Siemens with available capital funds pursuant to Texas Local Government Code 302.004(a-1). Accordingly, Client acknowledges that the costs of the project will not be covered solely out of the savings realized by Client under the Agreement. Client has requested Siemens to install certain measures that are related to, connected with or otherwise ancillary to the FIM's as further set forth in Exhibit A.

- 1.2 Table 1.2 shows the CLIENT'S guaranteed cost Savings for each Annual Period that are extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 6.
- 1.3 SIEMENS cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the CLIENT and SIEMENS agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period's stipulated energy/utility rate and Escalation Rates and not the Annual Period's actual utility rate.
- 1.4 The determination of energy/utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.
- 1.5 The Performance Guarantee does not operate to guarantee the Savings per-FIM. Rather, the calculation of Savings is based on aggregate performance of all of the FIMs contained in the Project. The projected value of such aggregate performance is contained in Table 1.2 above representing the Total Guaranteed Savings as monetized.

This Exhibit C, comprising 12 pages, is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Lancaster, TX**
Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: **Siemens Industry, Inc.**
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 2: Measurement and Verification (“M&V”) Options

- 2.1 There are five options to measure and verify energy/utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; and, Option D - Calibrated Simulation. Options A through and including D are part of the IPMVP. Option E-Stipulated is based on industry accepted engineering standards and is the Option used for purposes of calculating Operational Savings.

Option A - Retrofit Isolation, Key Parameter Measurement: Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the FIM’s affected system(s) and/or the success of the Project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer’s specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option B - Retrofit Isolation, All Parameter Measurement: Savings are determined by field measurement of the energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option C - Whole Facility: Savings are determined by measuring energy use at the whole Facility or sub-Facility level. Continuous measurements of the entire Facility’s energy use are taken throughout the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole Facility, or of a sub-Facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the Facility. This Option usually requires considerable skill in calibrated simulation. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option E - Stipulated: This Option is the method of measurement and verification applicable to FIMS consisting either of Operational Savings or where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer’s measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the Savings stipulated will be achieved upon completion of the FIM and no further measurements or calculations will be performed during the Performance Guarantee Period. If applicable, the methodology and calculations to establish Savings value will be defined in Section 4.6 of this Exhibit C.

- 2.2 Table 2.1 below summarizes the first Annual Period’s Guaranteed Savings (See Article 1, Tables 1.1 and 1.2) utilizing the applicable Measurement and Verification Options as applied to the referenced FIMs valued pursuant to the agreed upon amounts identified in Article 6 hereof.

Table 2.1 – Savings for First Annual Period by M&V Option

FIM	Energy/Utility Savings \$						Operational Savings \$	Total Savings \$
	M&V Options							
	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	E Stipulated	Total Energy/Utility Savings	E Stipulated	
Building Automation Systems	\$5,798					\$5,798		\$5,798
HVAC Replacements	\$20,675					\$20,675	\$5,000	\$25,675
Pool Area Dehumidifier							\$15,000	\$15,000
TOTAL	\$26,473					\$26,473	\$20,000	\$46,473

- 2.3 Table 2.2 identifies the source of Operational Savings defined and quantified by the Parties. The Parties affirm that such amounts are Stipulated Savings for purposes of calculating Annual Realized Savings and acknowledge that the Guaranteed Savings identified herein have been based on CLIENT’S affirmation. OPERATIONAL SAVINGS SHALL NOT BE MEASURED OR MONITORED DURING THE PERFORMANCE GUARANTEE PERIOD.

Table 2.2 - Source of Operational Savings

FIM	Description	First Year Savings	# of Annual Periods Savings Are Applied	Annual Period Savings Begin
HVAC Replacements	Reduced labor and materials from installation of new HVAC Systems	\$5,000	15	1
Pool Area Dehumidifier	Reduced labor and materials from installation of new dehumidifier	\$15,000	15	1
Total		\$20,000		

- 2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings are incorporated into the Annual Realized Savings.

- 2.5 The Escalation Rate applicable to the Operational Savings is three percent (3%).

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED MEASUREMENT AND VERIFICATION OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

CLIENT: **City of Lancaster, TX**
Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: **Siemens Industry, Inc.**
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 3: Performance Guarantee Period Responsibilities of the CLIENT

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative at each Facility to coordinate work and provide required data described below.
- 3.2 The CLIENT will provide SIEMENS with accurate Facility operating information as defined below and in the Contracted Baseline article of this Exhibit C during each Annual Period, within thirty (30) days of any Material Change that may increase or decrease energy usage.
- 3.3 If applicable, the CLIENT will provide SIEMENS with copies of utility bills within thirty (30) days of receipt by the CLIENT or provide access to utility vendor information to allow SIEMENS to include a utility bill analysis in the Annual Performance Assurance Report. The utility bill analysis does not take the place of the Measurement and Verification Plan identified in Article 4 of this Exhibit C and is not used to measure the Project's performance.
- 3.4 If required for the Work, CLIENT will provide telephone/data remote access, through SIEMENS Insight® software package or otherwise, as SIEMENS reasonably requests. All charges related to telephone/data line installation, activation and communication services are the responsibility of the CLIENT.
- 3.5 If required for the Work, CLIENT will provide and coordinate utility meter upgrade for interface with SIEMENS metering and data collection. All charges related for these upgrades are the responsibility of the CLIENT. (-or- shall be reimbursed to CLIENT by SIEMENS).

Article 4: Measurement and Verification (“M&V”) Plan

The following information is applicable to this Agreement:

Article 4.1 General Overview

Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.1 General Overview –

The purpose of the M&V Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each FIM which has energy/utility Savings. Savings are determined by comparing prior usage, consumption accuracy or efficiencies (defined as the “Baseline”) against the post-FIM implementation usage, consumption, accuracy or efficiencies. The Baseline usage, consumption, accuracy or efficiencies are described in this Exhibit C, Article 5. The post-FIM implementation usage, consumption, accuracy or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 7.

4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.2.1 *Building Automation Systems (BAS) - Time of Day Scheduling (TOD) & HVAC Replacements*

Location(s): Recreation Center

Overview:

Siemens will install a Johnson Controls Metasys Building Automation System (BAS) to optimize the heating and cooling set point and implement scheduling at the Recreation Center. Energy savings are achieved scheduling the units to turn off during unoccupied periods. The Recreation Center operated Sunday through Saturday 4am to 11pm. Equipment schedule will be verified through continuous trending of equipment run time annually.

In addition, Siemens will replace the existing HVAC equipment at the Recreation Center with new high efficiency units which will reduce electric consumption. Verification of the electric savings shall be based on the post-retrofit efficiency (IEER) as stated by the equipment manufacturer.

Post-retrofit, if contracted baseline schedules for this equipment, as established in Article 7 of this Exhibit C, are modified by the CLIENT and result in a loss of energy savings, the Guaranteed Savings for this FIM will be deemed achieved.

Pre-Retrofit Measurement/Calculations:

$$\text{kWh}_{\text{pre}} = (12^{\text{Btu}} / \text{Ton} / \eta_{\text{Pre}, n}) * \text{Ton-hrs}_{\text{pre}}$$

Where :

kWh_{pre} = Pre-retrofit electric consumption per unit, as identified in Table 4.2.1.1

$\eta_{\text{Pre}, n}$ = Pre-retrofit Energy Efficiency Factor (IEER) for HVAC unit n per Table 4.2.1.1

$\text{Ton-hrs}_{\text{pre}} = \text{Size}_{,n} * (1 - \% \text{OEF}) * \text{EFLH}_{\text{Pre}, n}$ = Pre-retrofit ton-hours per Table 4.2.1.1

Where:

$\text{EFLH}_{\text{Post}}$ = Pre-retrofit Equivalent Full Load Hours (hours/yr) of HVAC equipment n per Table 4.2.1.1

Size = Equipment size of HVAC unit n (Tons) per Table 4.2.1.1
%OEF = Oversized equipment factor
Recreation Center = 35%

Table 4.2.1.1 – Pre-Retrofit Operating Parameters and Consumption

Location	Equipment (n)	Size (Tons)	Pre-Retrofit Efficiency (η_{pre})	Pre-Retrofit Cooling Equivalent Full Load Hours ($EFLH_{pre}$)	Pre-Retrofit Cooling Load (Ton-hrs $_{pre}$)	Pre-Retrofit Electric Consumption (kWh/yr) (kWh $_{pre}$)
Recreation Center	Air Cooled Screw Chiller	170	5.0	2,019	222,090	533,016

Post-Retrofit Measurements/Calculations:

Ton-hrs $_{post}$ = Post-retrofit ton-hours calculated through bin temperature bin analysis of post installation HVAC unit n

$$\text{Ton-hrs}_{post} = \text{Size}_{,n} * (1 - \%OEF) * EFLH_{Post, n}$$

Where :

$EFLH_{Post}$ =Post-retrofit Equivalent Full Load Hours (hours/yr) determined through bin temperature bin analysis of post installation HVAC unit n Calculated and summed for each outdoor air temperature bin shown in Table 4.2.1.2

$$EFLH = \sum ((\text{Cooling Load}\% * AOH_{post})_{BIN,n})$$

Where:

Cooling Load% = Cooling Load (%) at each outdoor air temperature bin per Table 4.2.1.2

AOH_{post} = Post-retrofit annual operating hours will be determined through continuous trending of unit status to establish each units schedule. The post-retrofit schedules will be used create a bin model of operating hours at each outdoor air temperature bin shown in Table 4.2.1.2. Bin Maker Pro or equivalent will be used to calculate the annual operating hours post-retrofit.

Table 4.2.1.2 – Outdoor Air Temperature Bins

Outdoor Air Temperature (DB °F) (BIN n)	Mid-pts (DB °F)	Annual Operating Hours (AOH)	Cooling Load (%)
100 to 102	101	Verified	108%
98 to 100	99	Verified	103%
96 to 98	97	Verified	97%
94 to 96	95	Verified	92%

92 to 94	93	Verified	87%
90 to 92	91	Verified	82%
88 to 90	89	Verified	76%
86 to 88	87	Verified	71%
84 to 86	85	Verified	66%
82 to 84	83	Verified	61%
80 to 82	81	Verified	55%
78 to 80	79	Verified	50%
76 to 78	77	Verified	45%
74 to 76	75	Verified	39%
72 to 74	73	Verified	34%
70 to 72	71	Verified	29%
68 to 70	69	Verified	24%
66 to 68	67	Verified	18%
64 to 66	65	Verified	13%
62 to 64	63	Verified	8%
60 to 62	61	Verified	3%

$$\text{kWh}_{\text{post}} = (12^{\text{Btu}}_{\text{Ton}} / \eta_{\text{Post}, n}) * \text{Ton-hrs}_{\text{post}}$$

Where:

kWh_{post} = Post-retrofit electric consumption summed for all pieces of HVAC equipment n , as identified in Table 4.2.2.1 above

$\eta_{\text{Post}, n}$ = Post-retrofit Energy Efficiency Factor (IEER) for HVAC unit n verified from manufacturer's submittal data sheets for the units at Recreation Center.

Saving Calculations:

Energy Savings (kWh/yr):

$$\text{kWh}_S = \text{kWh}_{\text{pre}} - \text{kWh}_{\text{post}}$$

Where:

kWh_S = Total annual electric savings (kWh/yr)

Cost Savings(\$/yr):

$$\$_S = \text{kWh}_S * \$/\text{kWh}$$

Where:

$\$_S$ = Total annual cost savings

$\$/\text{kWh}$ = contracted unit price for electricity at each location as per Article 6 of this Exhibit C

Article 5: Baseline Data

- 5.1 The year(s) selected as the Baseline Period starts on July 2015 and ends on June 2017. Table 5.1 outlines the utility consumption that occurred during this Baseline Period. This

Baseline Period's Facility utility consumption will be used as the reference for comparing the Facility's utility consumption during the Performance Guarantee Period in order to determine the Annual Realized Savings.

Table 5.1 – Summary of Electric and Gas Usage for Baseline Year (Jan – Dec 2016)

BUILDING	Annual Electric Energy (kWh)	Annual Electric Cost (\$)	Annual Gas Energy (CCF)	Annual Gas Cost (\$)	Total Annual Cost (\$)
Recreation Center	1,635,300	\$165,299	22,728	\$13,757	\$179,055
TOTALS	1,635,300	\$165,299	22,728	\$13,757	\$179,055

- 5.2 The operating practices during the Baseline Period determine the utility consumption shown in Table 5.1. This data indicates the operating characteristics that were in effect during the Baseline Period. The Guaranteed Savings provided under this Agreement are based on the efficiencies gained by implementing the Work and implementing the Contracted Baseline in Article 7 of this Exhibit C.

Table 5.1.1 – HVAC Setpoints

Operating Mode	Temperature Setpoints
Occupied Cooling	72 – 74 °F
Unoccupied Cooling	80° F
Occupied Heating	68 – 71°F
Unoccupied Heating	65°F

Table 5.1.2 – HVAC Operating Schedules for Recreational Center

Day of Week	Occupied Run Hours	Unoccupied Run Hours
Monday	19	5
Tuesday	19	5
Wednesday	19	5
Thursday	19	5
Friday	19	5
Saturday	19	5
Sunday	19	5
Holiday	19	5

Article 6: Utility Rate Structures and Escalation Rates

- 6.1 Utility costs used for Savings calculations will be based on the utility rates and rate escalation percentages, as provided in the table(s) below. Each escalation rate will be applied annually to the utility rate.

Most buildings audited have similar gas rates as shown above in Table 5.2. Since all other buildings have a similar rate, those rates were averaged and used for calculating savings.

Table 6.1.1 – Electricity Utility Rates

Tariff Number or Designation:	Varies
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Utility Name:	Gexa Energy
Rate Structure:	\$0.0744/kWh
	\$9.26/kW
Rate Escalation:	3% per Annual Period

Table 6.1.2 – Natural Gas Utility Rates

Tariff Number or Designation:	Varies
Utility Name:	Gexa Energy
Rate Structure:	\$6.00/MCF
Rate Escalation:	3% per Annual Period

Article 7: Contracted Baseline Data

- 7.1 The following tables details the operating parameters that are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of facility operating parameters is the Contracted Baseline. The failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

Table 7.1.1 – HVAC Setpoints

Operating Mode	Temperature Setpoints
Occupied Cooling	72 – 74 °F
Unoccupied Cooling	80° F
Occupied Heating	68 – 71°F
Unoccupied Heating	65°F

Table 7.1.2 – HVAC Operating Schedules for Recreational Center

Day of Week	Occupied Run Hours	Unoccupied Run Hours
Monday	19	5
Tuesday	19	5
Wednesday	19	5
Thursday	19	5
Friday	15	9
Saturday	13	11
Sunday	4	20
Holiday	4	20



Certificate of Substantial Completion

PROJECT NAME:	City of Lancaster PC – Phase 1
CLIENT:	City of Lancaster, Texas
CERTIFICATE DATE (mm/dd/yyyy):	
CERTIFICATE NUMBER:	
PROJECT NUMBER:	

The following portions of the Work are at Substantial Completion in accordance with the Agreement.
(Insert unique Work item such as Facility Improvement Measure title, system name, building, etc.)

Work Item:	
Warranty Start Date (mm/dd/yyyy):	
Work Item:	
Warranty Start Date (mm/dd/yyyy):	
Work Item:	
Warranty Start Date (mm/dd/yyyy):	

The Building Technologies Division of Siemens Industry, Inc. guarantees the workmanship and materials of the above Substantially Complete Work in accordance with the Agreement.

The Work indicated above has been reviewed by the CLIENT and has been found, to the best of the CLIENT's knowledge, to be Substantially Complete. Substantial Completion is the milestone in the progress of the Work at which time the Work is sufficiently complete and available for the CLIENT to have beneficial use of the Work for its intended purpose. A list of items to be completed and corrected (if any) shall be identified as the Outstanding Items List, attached to this form, and indicated by checking the appropriate box below:

Outstanding Items List Attached: ☐ **No Outstanding Items Noted:** ☐

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the Certificate Date of this

Certificate, but within the warranty period shall be corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. agrees to complete or correct all items indicated on the Outstanding Items in a timely manner.

Building Technologies Division of Siemens Industry, Inc. Representative: _____

Signature: _____ Date: _____

The CLIENT accepts the Work indicated above as Substantially Complete and assumes possession and beneficial use of the Work on the Warranty Start Date indicated above.

CLIENT: City of Lancaster, Texas

CLIENT Representative: _____

Signature: _____ Date: _____

Note: The CLIENT shall, upon execution of this Certificate of Substantial Completion, assume all contractual responsibilities for maintenance, insurance, operation, and protection of the Substantially Complete Work in accordance with the Agreement.



Certificate of Final Completion

PROJECT NAME:	City of Lancaster PC- Phase 1
CLIENT:	City of Lancaster, Texas
CERTIFICATE DATE (mm/dd/yyyy):	
PROJECT NUMBER:	

All elements of the project Work have been reviewed by the CLIENT and have been found, to the best of the CLIENT's knowledge, to be at Final Completion. All items noted in the Outstanding Items Lists associated with Certificate(s) of Substantial Completion have been resolved, and all Work as defined in Exhibit A of the Agreement is complete.

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the date of this Certificate, but within the warranty period shall be promptly corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. has reviewed the project Work, as well as all contractual requirements, and the requirements for Final Completion have been met.

Building Technologies Division of Siemens Industry, Inc. Representative: _____

Signature: _____ Date: _____

The CLIENT accepts the project Work as meeting the requirements for Final Completion.

CLIENT: City of Lancaster, Texas

CLIENT Representative: _____

Signature: _____ Date: _____

LANCASTER CITY COUNCIL

A City Council Special Work Session

3.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda

Submitted by: Rona Stringfellow, Assistant City Manager

Agenda Caption:

Discuss and receive a presentation on the University Hills Municipal Management District (MMD).

Background:

In December 2017, an article appeared in the Dallas Morning News regarding concerns raised about a developer in Dallas that was approved for a Municipal Management District (MMD) created by the State. Staff researched the matter and determined in the last legislative session, an MMD was approved (Senate Bill 2244) in the area just north and east of the Lancaster Campus District.

The University Hills Municipal Management District (MMD) was created by the Texas Legislature in June 2017. It was created without the prior consent of the Dallas City Council and this MMD's statute does not contain conditions and limitations that were included in the creation legislation for other MMD's within the City of Dallas, that the City of Dallas consented to. Staff is providing this summary to outline the location, scope of power, and board composition of the MMD. It should be of note that the City of Dallas is considering possible action as it relates to this MMD.

The creation of this MMD and the fact that the City of Dallas was not involved of importance to the City of Lancaster and the future development of the Lancaster Campus District. The City of Dallas has been and continues to be a critical partner to the City in renaming Houston School Road to University Hills Road, creating the campus district to remain compatible with the University of North Texas at Dallas Campus, amending the Master Thoroughfare Plan to match the Dallas' Forward Dallas (Comprehensive Plan) and thoroughfare plan, as well as landscape improvements through a TXDOT grant for the bridge at Interstate 20 and University Hills Road.

Attachments

DMN Article

Senate Bill 2244

SOUTHERN DALLAS

Plan hatched by senator, developer stirs concern

Officials caught off guard by legislative OK of tax district; but council still has final say

By TRISTAN HALLMAN
and MILES MOFFEIT
Staff Writers

A prominent developer and a state senator have carved out a section of southern Dallas they hope to see controlled by a hand-selected board with significant governmental and financial power over about 300 acres.

The deal struck between developer

Mehrdad Moayed and state Sen. Royce West, D-Dallas, has raised concern at Dallas City Hall, where some officials feel that the City Council was frozen out of its traditional oversight role. The council does have some say in the matter, though West has insisted the deal ought to be approved and has said he "will not be a happy camper if they can't work this thing out."

A vote is scheduled Wednesday to decide whether the first step of the plan and its complex funding formula can move forward.

See **COUNCIL** Page 8A

Council to vote on moving plan forward

Proposed University TIF district

Continued from Page 1A

West said he supports the deal because he believes creation of the so-called University Hills Municipal Management District will help bring growth to southern Dallas — a long-standing goal of city leaders.

But the nature of the deal, and the way it was legislated, caught city officials off guard. Council member Mark Clayton went so far as to say it "comes across a bit shady."

"It may be the greatest thing ever, but I don't feel like it's been presented to us in the most transparent way possible," Clayton said.

City officials were under the mistaken impression that a municipal management district needed the city's backing before legislative approval. A presentation to a council committee also pointedly noted that the MMD was created "without any input or prior consent of the Dallas City Council."

West said he was certain city officials knew something and approved of the deal. Ross Martin, an attorney for Moayed's development company, Centurion American, said they had "worked closely with" previous leaders in the city's Office of Economic Development.

But a shake-up by new City Manager T.C. Broadnax saw the senior economic development staff change earlier this year. And at the time West

moved forward the legislation, he had at least one letter of support from a city official, council member Erik Wilson, who represented the area encompassing the MMD before he lost his re-election bid in June.

Wilson said those critical of the process are "nitpicking" a quality development.

"I just find it difficult to say there was more information to be given," Wilson said. "To me, that's kind of revisionist history."

The council still has power to approve or dissolve the district. Wilson's successor, Tennell Atkins, wants to sort through the issues and get moving.

"It's a game-changer for southern Dallas," he said.

Figuring it out

City staff, meanwhile, are still trying to figure out how this particular district would function. Robin Bentley, who earlier this year ran the city's economic development department on an interim basis, said she only found out the bill had passed in August — after it had already taken effect — when she met with officials from Centurion American. Bentley and the city's current economic development director, Courtney Pogue, said the city is still in negotiations with Centurion about incentives and other matters.

Martin, the attorney, said reaching agreements with the

city will be needed for the project.

A management district is among a variety of special government districts in Texas that businessmen can create, with the help of friendly lawmakers, to reap profits on real estate projects.

The entities — including Moayed's University Hills district — wield some of the same powers as cities, including public financing. They can issue bonds and levy assessments on properties in the district, allowing the developer to pass on infrastructure costs.

Special districts have seeded business growth across Texas. The sprawling Woodlands development in the Houston area and the Las Colinas corporate hub in Irving are two examples.

But the districts have also created problems. For example, about two decades ago when business development lagged in Las Colinas and its district's debt ballooned, Irving taxpayers had to help bail it out with millions of dollars in subsidies.

The city of Dallas appears to have little direct control over the University Hills district. The legislation named five initial appointees to the MMD board, none of whom are city officials. Two were chosen by West, including former Texas Education Commissioner Michael Williams, who serves as a representative of the University of Texas at Dallas. Moayed's group chose three others. The district will have an election for

its board later — a provision the developers' representatives say was necessary to get the legislation passed — if both Dallas and Lancaster sign off on it.

Dallas officials can head off issues if they insist on a role in the district's decisions, experts say.

"If you don't have high-quality governance systems with strong public input, you can end up at some point with severe financial problems," said Richard Sandow of Southlake Capital Advisors Inc., a veteran investment expert.

For years, the town of Westlake battled Ross Perot Jr.'s Hillwood Development and other developers over their aggressive use of special districts to try to win financial incentives. Former Mayor Scott Bradley calls the entities undemocratic.

"In effect, it's putting another layer of government and taxation on people," Bradley said. "And the district's not accountable to the people in the city because the developer controls it."

Northern development

In Moayed's complex plan, tax breaks from new construction in a Centurion housing development in Far North Dallas will be funneled into the development in the south, which proposes 800 homes and other amenities such as event venues and restaurants.

The council is scheduled to vote Wednesday to allow the incentive plan, known as tax in-

crement financing, to move forward. Usually TIFs, as they are known, are meant to help pump back tax revenue back into areas over many years to help them grow faster.

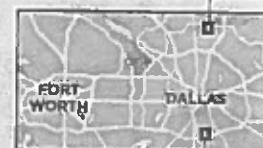
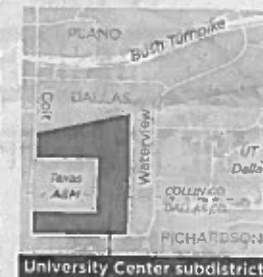
If the TIF passes, the University Hills district hopes to issue bonds, which can be paid off indirectly with the tax increment generated by the northern University Center development. The developer's reps say the TIF approval is necessary for their project.

Dallas created another TIF for Centurion last year — its \$230 million redevelopment of the downtown Statler Hotel and adjoining old library, which now houses *The Dallas Morning News*. In turn, Centurion took the unusual step of leveraging the future TIF payments as collateral to back a tax-exempt bond issue out of Wisconsin. The city endorsed the move, and that gave the company quick access to cash.

The IRS, however, ruled that the bonds don't qualify for the tax exemption investors were promised. And the Securities and Exchange Commission is investigating the Statler's financing. *The News* reported in August.

But Centurion doesn't foresee any trouble with its financing for the management district. And some council members have expressed support. Even Clayton, the council member who had concerns, said the project might be needed in that part of the city.

"I just want to make sure that



SOURCE: City of Dallas

Laurie Joseph/Staff Artist

in the effort to do what's needed, we don't take the path of least resistance and right off the bat, there's a cloud hanging over it," he said. "If it's the right thing to do, it's the right thing to do."

thallman@dallasnews.com,
mmoffeit@dallasnews.com

Twitter: @TristanHallman,
@milesmooffeit

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

A BILL TO BE ENTITLED AN ACT

relating to the creation of the University Hills Municipal
Management District; providing authority to issue bonds; providing
authority to impose assessments or fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 4, Special District Local Laws

Code, is amended by adding Chapter 3947 to read as follows:

CHAPTER 3947. UNIVERSITY HILLS MUNICIPAL MANAGEMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3947.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "City" means the City of Dallas, Texas.

(3) "Commission" means the Texas Commission on

Environmental Quality.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(4) "County" means Dallas County, Texas.

(5) "Director" means a board member.

(6) "District" means the University Hills Municipal

Management District.

Sec. 3947.002. CREATION AND NATURE OF DISTRICT. The

University Hills Municipal Management District is a special

district created under Sections 52 and 52-a, Article III, and

Section 59, Article XVI, Texas Constitution.

Sec. 3947.003. PURPOSE; LEGISLATIVE FINDINGS. (a) The

creation of the district is essential to accomplish the purposes of

Sections 52 and 52-a, Article III, and Section 59, Article XVI,

Texas Constitution, and other public purposes stated in this

chapter. By creating the district and in authorizing the city and

other political subdivisions to contract with the district, the

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

legislature has established a program to accomplish the public
purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote,
develop, encourage, and maintain employment, commerce,
transportation, housing, tourism, recreation, the arts,
entertainment, economic development, safety, and the public
welfare in the district.

Sec. 3947.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE.

(a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district
will benefit from the improvements and services to be provided by
the district under powers conferred by Sections 52 and 52-a,
Article III, and Section 59, Article XVI, Texas Constitution, and
other powers granted under this chapter.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(c) The district is created to accomplish the purposes of a
municipal management district as provided by general law and
Sections 52 and 52-a, Article III, and Section 59, Article XVI,
Texas Constitution.

(d) The creation of the district is in the public interest
and is essential to:

(1) further the public purposes of developing and
diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(e) The district will:
(1) promote the health, safety, and general welfare of
residents, employers, potential employees, employees, visitors,
and consumers in the district, and of the public;

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(2) provide needed funding for the district to
preserve, maintain, and enhance the economic health and vitality of
the district territory as a community and business center; and

(3) promote the health, safety, welfare, and enjoyment
of the public by providing pedestrian ways and by landscaping and
developing certain areas in the district, which are necessary for
the restoration, preservation, and enhancement of scenic beauty.

(f) Pedestrian ways along or across a street, whether at
grade or above or below the surface, and street lighting, street
landscaping, parking, and street art objects are parts of and
necessary components of a street and are considered to be a street
or road improvement.

Sec. 3947.005. INITIAL DISTRICT TERRITORY. (a) The
district is initially composed of the territory described by

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section 2 of
the Act enacting this chapter form a closure. A mistake in the
field notes or in copying the field notes in the legislative process
does not affect the district's:

- (1) organization, existence, or validity;
- (2) right to contract;
- (3) authority to borrow money or issue bonds or other
obligations described by Section 3947.203 or to pay the principal
and interest of the bonds or other obligations;
- (4) right to impose or collect an assessment or
collect other revenue; or
- (5) legality or operation.

Sec. 3947.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(a) All or any part of the area of the district is eligible to be

included in:

(1) a tax increment reinvestment zone created under

Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created under

Chapter 312, Tax Code; or

(3) an enterprise zone created under Chapter 2303,

Government Code.

(b) If the city creates a tax increment reinvestment zone

described by Subsection (a), the city and the board of directors of

the zone, by contract with the district, may grant money deposited

in the tax increment fund to the district to be used by the district

for:

(1) the purposes permitted for money granted to a

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

corporation under Section 380.002(b), Local Government Code; and

(2) any other district purpose, including the right to

pledge the money as security for any bonds or other obligations

issued by the district under Section 3947.203.

(c) If the city creates a tax increment reinvestment zone

described by Subsection (a), the city may determine the percentage

of the property in the zone that may be used for residential

purposes and is not subject to the limitations provided by Section

311.006, Tax Code.

Sec. 3947.007. CONFIRMATION AND DIRECTORS' ELECTION

REQUIRED. On receipt of a petition signed by the owners of a

majority of the acreage and the assessed value of real property in

the district according to the most recent certified tax appraisal

roll for the county, the initial directors shall hold an election to

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

confirm the creation of the district and to elect five permanent
directors as provided by Section 49.102, Water Code.

Sec. 3947.008. APPLICABILITY OF MUNICIPAL MANAGEMENT

DISTRICT LAW. Except as provided by this chapter, Chapter 375,
Local Government Code, applies to the district.

Sec. 3947.009. CONSTRUCTION OF CHAPTER. This chapter shall
be construed in conformity with the findings and purposes stated in
this chapter.

Sec. 3947.010. CONSENT OF MUNICIPALITY REQUIRED. The
temporary directors may not hold an election under Section 3947.007
until each municipality in whose corporate limits or
extraterritorial jurisdiction the district is located has
consented by ordinance or resolution to the creation of the
district and to the inclusion of land in the district.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Sec. 3947.011. CONCURRENCE ON ADDITIONAL POWERS. If the legislature grants the district a power that is in addition to the powers approved by the initial resolution of the governing body of the city consenting to the creation of the district, the district may not exercise that power unless the governing body of the city consents to that change by ordinance or resolution.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3947.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b) Except as provided by Section 3947.054, directors serve staggered four-year terms, with two or three directors' terms expiring June 1 of each odd-numbered year.

Sec. 3947.052. BOARD MEETINGS. The board shall hold meetings at a place accessible to the public.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Sec. 3947.053. REMOVAL OF DIRECTORS. (a) The board may
remove a director by unanimous vote of the other directors if the
director has missed at least half of the meetings scheduled during
the preceding 12 months.

(b) A director removed under this section may file a written
appeal with the commission not later than the 30th day after the
date the director receives written notice of the board action. The
commission may reinstate the director if the commission finds that
the removal was unwarranted under the circumstances after
considering the reasons for the absences, the time and place of the
meetings, the business conducted at the meetings missed, and any
other relevant circumstances.

Sec. 3947.054. INITIAL DIRECTORS. (a) The initial board
consists of:

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

<u>Pos. No.</u>	<u>Name of Director</u>
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<u>1</u>	<u>Kenneth Medlock</u>
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<u>2</u>	<u>Michael Williams</u>
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<u>3</u>	<u>Susan Larson</u>
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<u>4</u>	<u>Alan Michlin</u>
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<u>5</u>	<u>Michael Warner</u>
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(b) Initial directors serve until the earlier of:

(1) the date permanent directors are elected under

Section 3947.007; or

(2) the fourth anniversary of the effective date of

the Act enacting this chapter.

(c) If permanent directors have not been elected under

Section 3947.007 and the terms of the initial directors have

expired, successor initial directors shall be appointed or

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

reappointed as provided by Subsection (d) to serve terms that

expire on the earlier of:

(1) the date permanent directors are elected under

Section 3947.007; or

(2) the fourth anniversary of the date of the

appointment or reappointment.

(d) If Subsection (c) applies, the owner or owners of a

majority of the assessed value of the real property in the district

according to the most recent certified tax appraisal rolls for the

county may submit a petition to the commission requesting that the

commission appoint as successor initial directors the five persons

named in the petition. The commission shall appoint as successor

initial directors the five persons named in the petition.

SUBCHAPTER C. POWERS AND DUTIES

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Sec. 3947.101. GENERAL POWERS AND DUTIES. The district has
the powers and duties necessary to accomplish the purposes for
which the district is created.

Sec. 3947.102. IMPROVEMENT PROJECTS. The district may
provide, or it may enter into contracts with a governmental or
private entity to provide, the improvement projects described by
Subchapter D or activities in support of or incidental to those
projects.

Sec. 3947.103. WATER DISTRICT POWERS. The district has the
powers provided by the general laws relating to conservation and
reclamation districts created under Section 59, Article XVI, Texas
Constitution, including Chapters 49 and 54, Water Code.

Sec. 3947.104. AUTHORITY FOR ROAD PROJECTS. Under Section
52, Article III, Texas Constitution, the district may design,

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

acquire, construct, finance, issue bonds for, improve, operate,
maintain, and convey to this state, a county, or a municipality for
operation and maintenance macadamized, graveled, or paved roads or
improvements, including storm drainage, in aid of those roads.

Sec. 3947.105. ROAD STANDARDS AND REQUIREMENTS. (a) A
road project must meet all applicable construction standards,
zoning and subdivision requirements, and regulations of each
municipality in whose corporate limits or extraterritorial
jurisdiction the road project is located.

(b) If a road project is not located in the corporate limits
or extraterritorial jurisdiction of a municipality, the road
project must meet all applicable construction standards,
subdivision requirements, and regulations of each county in which
the road project is located.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(c) If the state will maintain and operate the road, the
Texas Transportation Commission must approve the plans and
specifications of the road project.

Sec. 3947.106. NO TOLL ROADS. The district may not
construct, acquire, maintain, or operate a toll road.

Sec. 3947.107. PUBLIC IMPROVEMENT DISTRICT POWERS. The
district has the powers provided by Chapter 372, Local Government
Code, to a municipality or county.

Sec. 3947.108. CONTRACT POWERS. The district may contract
with a governmental or private entity, on terms determined by the
board, to carry out a power or duty authorized by this chapter or to
accomplish a purpose for which the district is created.

Sec. 3947.109. AD VALOREM TAXATION. The district may not
impose an ad valorem tax.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Sec. 3947.110. LIMITATIONS ON EMERGENCY SERVICES POWERS.

The district may not establish, operate, maintain, or finance a
police or fire department without the consent of the city by
ordinance or resolution.

Sec. 3947.111. ADDING OR REMOVING TERRITORY. As provided
by Subchapter J, Chapter 49, Water Code, the board may add territory
inside the corporate boundaries or the extraterritorial
jurisdiction of the city to the district or remove territory inside
the corporate boundaries or the extraterritorial jurisdiction of
the city from the district, except that:

(1) the addition or removal of the territory must be
approved by the city;

(2) the addition or removal may not occur without
petition by the owners of the territory being added or removed; and

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(3) territory may not be removed from the district if
bonds or other obligations of the district payable wholly or partly
from assessments assessed on the territory are outstanding.

Sec. 3947.112. DIVISION OF DISTRICT. (a) The district may
be divided into two or more new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) This chapter applies to any new district created by the
division of the district, and a new district has all the powers and
duties of the district.

(c) Any new district created by the division of the district
may not, at the time the new district is created, contain any land
outside the area described by Section 2 of the Act enacting this
chapter.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(d) The board, on its own motion or on receipt of a petition
signed by the owner or owners of a majority of the assessed value of
the real property in the district, may adopt an order dividing the
district.

(e) The board may adopt an order dividing the district
before or after the date the board holds an election under Section
3947.007 to confirm the creation of the district.

(f) An order dividing the district must:

(1) name each new district;

(2) include the metes and bounds description of the
territory of each new district;

(3) appoint initial directors for each new district;

and

(4) provide for the division of assets and liabilities

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

between or among the new districts.

(g) On or before the 30th day after the date of adoption of
an order dividing the district, the district shall file the order
with the commission and record the order in the real property
records of each county in which the district is located.

(h) Any new district created by the division of the district
shall hold a confirmation and directors' election as required by
Section 3947.007.

(i) Municipal consent to the creation of the district and to
the inclusion of land in the district granted under Section
3947.010 acts as municipal consent to the creation of any new
district created by the division of the district and to the
inclusion of land in the new district.

(j) Any new district created by the division of the district

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

must hold an election as required by this chapter to obtain voter
approval before the district may impose a maintenance tax or issue
bonds payable wholly or partly from ad valorem taxes.

(k) If the creation of the new district is confirmed, the
new district shall provide the election date and results to the
commission.

Sec. 3947.113. ENFORCEMENT OF REAL PROPERTY RESTRICTIONS.

The district may enforce a real property restriction in the manner
provided by Section 54.237, Water Code, if, in the reasonable
judgment of the board, the enforcement of the restriction is
necessary.

Sec. 3947.114. PROPERTY OF CERTAIN UTILITIES EXEMPT FROM

ASSESSMENTS AND FEES. The district may not impose an assessment,
impact fee, or standby fee on the property, including the

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

equipment, rights-of-way, easements, facilities, or improvements,

of:

(1) an electric utility or a power generation company

as defined by Section 31.002, Utilities Code;

(2) a gas utility, as defined by Section 101.003 or

121.001, Utilities Code, or a person who owns pipelines used for the

transportation or sale of oil or gas or a product or constituent of

oil or gas;

(3) a person who owns pipelines used for the

transportation or sale of carbon dioxide;

(4) a telecommunications provider as defined by

Section 51.002, Utilities Code; or

(5) a cable service provider or video service provider

as defined by Section 66.002, Utilities Code.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Sec. 3947.115. NO EMINENT DOMAIN POWER. The district may
not exercise the power of eminent domain.

SUBCHAPTER D. IMPROVEMENT PROJECTS AND SERVICES

Sec. 3947.151. IMPROVEMENT PROJECTS AND SERVICES. The
district may provide, design, construct, acquire, improve,
relocate, operate, maintain, or finance an improvement project or
service, including water, wastewater, drainage, and roadway
projects or services, using any money available to the district, or
contract with a governmental or private entity and reimburse that
entity for the provision, design, construction, acquisition,
improvement, relocation, operation, maintenance, or financing of
an improvement project, service, or cost, for the provision of
credit enhancement, or for any cost of operating or maintaining the
district or the issuance of district obligations authorized under

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

this chapter, Chapter 372 or 375, Local Government Code, or Chapter
49 or 54, Water Code.

Sec. 3947.152. BOARD DETERMINATION REQUIRED. The district
may not undertake an improvement project unless the board
determines the project is necessary to accomplish a public purpose
of the district.

Sec. 3947.153. LOCATION OF IMPROVEMENT PROJECT. An
improvement project may be located or provide service inside or
outside the district.

Sec. 3947.154. CITY REQUIREMENTS. An improvement project
in the district must comply with any applicable requirements of the
city, including codes and ordinances, unless specifically waived or
superseded by agreement with the city.

Sec. 3947.155. IMPROVEMENT PROJECT AND SERVICE IN DEFINABLE

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

AREA; BENEFIT BASIS. The district may undertake an improvement project or service that confers a special benefit on a definable area in the district and levy and collect a special assessment on benefited property in the district in accordance with:

(1) Chapter 372, Local Government Code; or

(2) Chapter 375, Local Government Code.

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS; ASSESSMENTS

Sec. 3947.201. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3947.202. MONEY USED FOR IMPROVEMENTS OR SERVICES.

The district may undertake and provide an improvement project or service authorized by this chapter using any money available to the

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

district.

Sec. 3947.203. BORROWING MONEY; OBLIGATIONS. (a) The

district may borrow money for a district purpose, including the

acquisition or construction of improvement projects authorized by

this chapter and the reimbursement of a person who develops or owns

an improvement project authorized by this chapter, by issuing

bonds, notes, time warrants, or other obligations, or by entering

into a contract or other agreement payable wholly or partly from an

assessment, a contract payment, a grant, revenue from a zone

created under Chapter 311 or 312, Tax Code, other district revenue,

or a combination of these sources.

(b) An obligation described by Subsection (a):

(1) may bear interest at a rate determined by the

board; and

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(2) may include a term or condition as determined by
the board.

(c) The board may issue an obligation under this section
without an election.

(d) The district may issue, by public or private sale,
bonds, notes, or other obligations payable wholly or partly from
assessments in the manner provided by Subchapter J, Chapter 375,
Local Government Code.

(e) If the improvements financed by an obligation will be
conveyed to or operated and maintained by a municipality or retail
utility provider pursuant to an agreement between the district and
the municipality or retail utility provider entered into before the
issuance of the obligation, the obligation may be issued in the
manner provided by Subchapter A, Chapter 372, Local Government

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Code.

Sec. 3947.204. ASSESSMENTS. (a) Except as provided by
Subsections (b) and (c), the district may impose an assessment on
property in the district to pay for an obligation described by
Section 3947.203 or an improvement project authorized by Section
3947.151 in the manner provided for:

(1) a district under Subchapters A, E, and F, Chapter
375, Local Government Code; or

(2) a municipality or county under Subchapter A,
Chapter 372, Local Government Code.

(b) The district may not impose an assessment on a
municipality, county, or other political subdivision.

(c) The board may not finance an improvement project or
service with assessments unless a written petition requesting that

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

improvement project or service has been filed with the board. The
petition must be signed by the owners of a majority of the assessed
value of real property in the district subject to assessment
according to the most recent certified tax appraisal roll for the
county.

Sec. 3947.205. RESIDENTIAL PROPERTY NOT EXEMPT. Sections
375.161 and 375.164, Local Government Code, do not apply to the
district.

Sec. 3947.206. COLLECTION OF ASSESSMENTS. The district may
contract as provided by Chapter 791, Government Code, with the
commissioners court of the county for the assessment and collection
of assessments imposed under this subchapter.

Sec. 3947.207. RATES, FEES, AND CHARGES. The district may
establish, revise, repeal, enforce, and collect rates, fees, and

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

charges for the enjoyment, sale, rental, or other use of:

(1) an improvement project;

(2) a product resulting from an improvement project;

or

(3) another district facility, service, or property.

SUBCHAPTER F. DISSOLUTION

Sec. 3947.251. DISSOLUTION BY BOARD. The board may

dissolve the district in the manner provided by Section 375.261,

Local Government Code, subject to Section 375.264, Local Government

Code.

Sec. 3947.252. DISSOLUTION BY CITY. (a) The city may

dissolve the district by ordinance.

(b) The city may not dissolve the district until:

(1) the district's outstanding debt or contractual

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

obligations have been repaid or discharged; or

(2) the city agrees to succeed to the rights and

obligations of the district, including an obligation described by

Section 3947.254.

Sec. 3947.253. COLLECTION OF ASSESSMENTS AND OTHER REVENUE.

(a) If the dissolved district has bonds or other obligations

outstanding secured by and payable from assessments or other

revenue, the city succeeds to the rights and obligations of the

district regarding enforcement and collection of the assessments or

other revenue.

(b) The city shall have and exercise all district powers to

enforce and collect the assessments or other revenue to pay:

(1) the bonds or other obligations when due and

payable according to their terms; or

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(2) revenue or assessment bonds or other obligations
issued by the city to refund the outstanding bonds or obligations of
the district.

Sec. 3947.254. ASSUMPTION OF ASSETS AND LIABILITIES.

(a) After the city dissolves the district, the city assumes the
obligations of the district, including any contractual obligations
or bonds or other debt payable from assessments or other district
revenue.

(b) If the city dissolves the district, the board shall
transfer ownership of all district property to the city.

SECTION 2. The University Hills Municipal Management
District initially includes all the territory contained in the
following area:

BEING a 281.112-acres tract or parcel of land out of Abstract

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Number 1277, Abstract Number 0014 and Abstract Number 0380 situated

in the City of Dallas, Dallas County, Texas; and being part of that

tract of land conveyed to Patriot Real Estate Holdings RS10 by Deed

recorded in Instrument Number 201200385008, Deed Records, Dallas

County Texas, and being part of that tract of land conveyed to CADG

Property Holdings I, LLC by deed recorded in Instrument Number

201600055916, Deed Records, Dallas County, Texas, and being part of

that tract of land conveyed to CADG Property Holdings I, LLC by deed

recorded in Instrument Number 201500029116, Deed Records, Dallas

County, and being part of that tract of land conveyed to CADG

Property Holdings SPV, LLC by deed recorded in Instrument Number

201400314231, Deed Recorded, Dallas County, Texas, and being part

of that tract of land conveyed to St. Marks Believers Temple by deed

recorded in Volume 81014, Page 976, Deed Records, Dallas County,

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Texas; and being more particularly described as follows:

COMMENCING at the northeast corner of a tract of land

conveyed to Patriot Real Estate Holdings RS10 by deed recorded in

Instrument Number 201200385008, Deed Records, Dallas County,

Texas, said point being in the west right-of-way line of Lancaster

Road (variable width right-of-way);

THENCE South 07 degrees 07 minutes 07 seconds East along the

easterly line of said Patriot Real Estate Holdings RS10 tract and

along the westerly right-of-way line of said Lancaster Road a

distance of 433.04 feet to the POINT OF BEGINNING;

THENCE South 07 degrees 25 minutes 01 seconds East,

continuing along the easterly line of said Instrument Number

201600198606 tract and the westerly right-of-way line of said

Lancaster Road, a total distance of 734.79 feet to a point for

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

corner;

THENCE South 07 degrees 25 minutes 18 seconds East, following

the easterly line of said Instrument Number 201600055154 and the

westerly right-of-way line of Lancaster Road, a total distance of

583.17 feet to a point for corner;

THENCE South 06 degrees 24 minutes 46 seconds East,

continuing along said westerly right-of-way line, a total distance

of 105.30 feet to a point for corner;

THENCE South 07 degrees 54 minutes 14 seconds East,

continuing along said westerly right-of-way line, a total distance

of 193.87 feet to a point for corner;

THENCE South 07 degrees 27 minutes 10 seconds East,

continuing along said westerly right-of-way line and following the

easterly line of said Instrument Number 201600055916a total

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

distance of 401.82 feet to a point for corner, said point being the

northeast corner of a tract of land conveyed to Yvonne Simmons by

deed recorded in Volume 2005121, Page 3183, Deed Records, Dallas

County, Texas;

THENCE South 82 degrees 29 minutes 50 seconds West,

continuing along the easterly line of said Instrument Number

201600055916 tract and the northerly line of said Simmons tract, a

total distance of 150.00 feet to a point for corner; said point

being the northwesterly corner of said Simmons tract;

THENCE South 07 degrees 27 minutes 10 seconds East,

continuing along the easterly line of said Instrument Number

201600055916 tract and the westerly line of said Simmons tract, a

total distance of 68.00 feet to a point for corner, said point being

the southwest corner of said Simmons tract;

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

THENCE North 82 degrees 29 minutes 50 seconds East,

continuing along the easterly line of said Instrument Number

201600055916 tract and the southerly line of said Simmons tract, a

total distance of 150.00 feet to a point for corner, said point

being the southeast corner of said Simmons tract;

THENCE South 07 degrees 27 minutes 10 seconds East, following

said westerly right-of-way line of Lancaster Road, a total distance

of 251.73 feet to a point for corner, said point being the beginning

of a tangent curve to the left;

THENCE in a southeasterly direction along a curve to the

left, having a central angle of 00 degrees 23 minutes 50 seconds, a

radius of 8654.40 feet, and a chord bearing and distance of South 07

degrees 39 minutes 05 seconds East, 60.00 feet, a total arc length

of 60.00 feet to a point for corner, said point being in an easterly

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

corner of a tract of land conveyed to King E. Rhodes, by deed

recorded in Volume 2002187, Page 0125, Deed Records, Dallas County,

Texas;

THENCE South 77 degrees 25 minutes 31 seconds West, along the

southerly line of said Instrument Number 201600055916 tract and the

easterly line of said Rhodes tract, a total distance of 323.66 feet

to a point for corner, said point being the southwest corner of said

Instrument Number 201600055916 tract, said point also being a

easterly corner of said Rhodes tract;

THENCE North 07 degrees 22 minutes 14 seconds West, along the

westerly line of said Instrument Number 201600055916 tract and the

easterly line of said Rhodes tract, a total distance of 890.11 feet,

to a point for corner, said point being the northwest corner of said

Instrument Number 20160055916 tract and the northeast corner of

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

said Rhodes tract, said point also being in a call centerline of

Wheatland Road;

THENCE South 58 degrees 38 minutes 34 seconds West, following

the centerline of said Wheatland Road, a total distance of 287.40

feet to a point for corner;

THENCE South 58 degrees 50 minutes 23 seconds West,

continuing along the centerline of said Wheatland Road, a total

distance of 834.11 feet to a point for corner, said point being the

northwest corner of said Rhodes tract;

THENCE South 37 degrees 05 minutes 08 seconds East, following

the westerly line of said Rhodes tract and the easterly line of said

Instrument Number 201400314231, a total distance of 1206.46 feet to

a point for corner, said point being the southwest corner of said

Rhodes tract;

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

THENCE North 52 degrees 54 minutes 29 seconds East, following

the southerly line of said Rhodes tract, a total distance of 492.84

feet to a point for corner;

THENCE North 07 degrees 22 minutes 14 seconds West, following

the southeasterly line of said Rhodes tract, a total distance of

235.91 feet to a point for corner;

THENCE North 77 degrees 25 minutes 15 seconds East,

continuing along said southeasterly line of said Rhodes tract, a

total distance of 323.99 feet to a point for corner, said point

being in said westerly right-of-way line of Lancaster Road, said

point also being the beginning of a non-tangent curve to the left;

THENCE in a southeasterly direction along said curve to the

left and following said westerly right-of-way line, having a

central angle of 05 degrees 25 minutes 56 seconds, a radius of

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

8654.40 feet, and a chord bearing and distance of South 11 degrees

25 minutes 46 seconds East, 820.22 feet, a total arc length of

820.53 feet, to a point for corner, said point being in the

southerly line of said Instrument Number 201600055916 tract, said

point also being the most northeasterly corner of a tract of land

conveyed to DFW Oil Inc. as recorded in Instrument #2008038074,

Deed Records, Dallas County, Texas;

THENCE South 75 degrees 57 minutes 36 seconds West, along the

southerly line of said Instrument Number 201600055916 tract and the

northerly line of said DFW Oil Inc. tract, a total distance of

225.00 feet to a point for corner;

THENCE South 15 degrees 36 minutes 40 seconds East,

continuing along the southerly line of Instrument Number

201600055916 tract and the northerly line of said DFW Oil Inc.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

tract, a total distance of 385.17 feet, to a point for corner, said point being the northeast corner of a tract of land conveyed to All Saints Inc., as recorded Instrument Number 200900059010, Deed Records, Dallas County, Texas, said point being in the southerly line of said Instrument Number 201600055916 tract;

THENCE South 69 degrees 59 minutes 35 seconds West, along the southerly line of said Instrument Number 201600055916 tract and the northerly line of said All Saints Inc. tract, a total distance of 295.42 feet, a point for corner, said point being in the southerly line of said Instrument #201600055916 tract and the northwesterly corner of said All Saints Inc. tract;

THENCE South 20 degrees 24 minutes 03 seconds East, along the southerly line of said Instrument Number 201600055916 tract and the westerly line of said All Saints Inc. tract a total distance of

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

231.52 feet to a point for corner, said point being the southwest corner of said All Saints Inc. tract and the southerly line of said Instrument Number 201600055916 tract and the northerly line of said DFW Oil Inc. tract;

THENCE South 69 degrees 51 minutes 21 seconds West, along the southerly line of said Instrument Number 201600055916 tract and the northerly line of said DFW Oil Inc. tract a total distance of 221.74 feet to a point for corner, said point being the southerly line of said Instrument Number 201600055916 tract and the northwest corner of said DFW Oil Inc. tract;

THENCE South 20 degrees 08 minutes 39 seconds East, along the southerly line of said Instrument Number 201600055916 tract and the west line of said DFW Oil Inc. tract, a total distance of 250.00 feet to a point for corner, said point being the most southerly

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

corner of said Instrument Number 201600055916 tract and being the

southwest corner of said DFW Oil Inc. tract, said point also being

in the northerly line of Interstate Highway 20 (LBJ Freeway a

variable width right-of-way);

THENCE South 69 degrees 51 minutes 21 seconds West, along the

southerly line of said Instrument Number 201600055916 tract and the

northerly right-of-way line of said Interstate Highway 20, a total

distance of 315.04 feet;

THENCE South 71 degrees 39 minutes 35 seconds West,

continuing along the southerly line of said Instrument Number

201600055916 tract with the northerly line of said Interstate

Highway 20, a total distance of 1338.56 feet;

THENCE South 55 degrees 12 minutes 20 seconds West,

continuing along the southerly line of said Instrument Number

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

201600055916 tract with the northerly line of said Interstate
Highway 20, a total distance of 39.62 feet said point being the
southwest corner of said Instrument #201600055916 tract and the
southeast corner of a tract of land conveyed to Susan Wright Key, by
deed recorded in Volume 88021, Page 1852, Deed Records, Dallas
County, Texas;

THENCE North 30 degrees 14 minutes 08 seconds West, along the
westerly line of said Instrument Number 201600055916 tract and
along the easterly line of said Susan Wright Key tract and the
easterly line of a tract of land conveyed to Wycliff Bible
Translators, Inc. as recorded in Volume 74198, Page 104, Deed
Records, Dallas County, Texas and the easterly line of a tract of
land conveyed to George P. Shropulos Family Limited Partnership as
recorded in Volume 94043, Page 2846, Deed Records, Dallas County,

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

Texas, a total distance of 2132.27 feet to a point for corner, said point being in the south right-of-way line of Wheatland Road (a variable width right-of-way), said point being the northwest corner of said Instrument Number 201600055916 tract;

THENCE with the westerly line of said Instrument #201500029116 tract and the easterly line of said RK CJ LLC tract the following courses and distances:

South 58 degrees 50 minutes 23 seconds West, a total distance of 22.99 feet to a point for corner;

North 30 degrees 26 minutes 17 seconds West, a total distance of 472.69 feet to a point for corner;

North 62 degrees 56 minutes 00 seconds East, a total distance of 17.96 feet to a point for corner;

North 31 degrees 11 minutes 24 seconds West, a total

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

distance of 1205.27 feet to a point for corner, said point being

approximately the center line of a creek;

THENCE along said approximately centerline of creek the

following courses and distances;

North 18 degrees 56 minutes 06 seconds East, a total

distance of 154.49 feet to a point for corner;

North 53 degrees 46 minutes 06 seconds East, a total

distance of 203.00 feet to a point for corner;

South 68 degrees 22 minutes 54 seconds East, a total

distance of 133.72 feet to a point for corner;

North 86 degrees 02 minutes 06 seconds East, a total

distance of 111.50 feet to a point for corner;

North 10 degrees 48 minutes 06 seconds East, a total

distance of 107.15 feet to a point for corner;

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

North 35 degrees 39 minutes 06 seconds East, a total
distance of 141.00 feet to a point for corner;

North 78 degrees 20 minutes 06 seconds East, a total
distance of 97.05 feet to a point for corner;

North 28 degrees 27 minutes 54 seconds West, a total
distance of 140.57 feet to a point for corner;

North 47 degrees 08 minutes 06 seconds East, a total
distance of 150.88 feet to a point for corner;

North 31 degrees 12 minutes 06 seconds East, a total
distance of 130.56 feet to a point for corner;

North 63 degrees 34 minutes 36 seconds East, a total
distance of 134.95 feet to a point for corner;

North 87 degrees 41 minutes 36 seconds East, a total
distance of 129.10 feet to a point for corner;

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

North 03 degrees 13 minutes 36 seconds East, a total
distance of 132.20 feet to a point for corner;

North 34 degrees 51 minutes 36 seconds East, a total
distance of 164.10 feet to a point for corner;

North 11 degrees 51 minutes 36 seconds East, a total
distance of 124.70 feet to a point for corner;

THENCE North 23 degrees 47 minutes 24 seconds West, a total
distance of 139.58 feet to a point for corner, said point being in
the northerly line of said Instrument Number 201500029116 tract and
the southerly line of a tract of land conveyed to the City of Dallas
as recorded in Volume 95095, Page 5779, Deed Records, Dallas
County, Texas;

THENCE North 54 degrees 24 minutes 43 seconds East, along the
northerly line of said Instrument Number 201500029116 tract and

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

along the southerly line of said City of Dallas tract a total

distance of 537.89 feet to a point for corner;

THENCE North 32 degrees 43 minutes 59 seconds West,

continuing along said common linea total distance of 1.62 feet;

THENCE North 58 degrees 51 minutes 51 seconds East,

continuing along said common line and passing along the southerly

line of a tract of land conveyed to 154 Lancaster Ltd., as recorded

in Volume 98055, Page 0435, Deed Records, Dallas County, Texas, a

total distance of 471.29 feet to a point for corner, said point

being the northeasterly corner of said Instrument #201500029116

tract;

THENCE South 31 degrees 05 minutes 57 seconds East, departing

the southerly line of said 154 Lancaster Ltd. tract along the

easterly line of said Instrument Number 201500029116 tract passing

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

along the westerly line of a tract of land conveyed to Camplanc

Investments as recorded in Instrument Number 201100097436, Deed

Records, Dallas County, Texas and passing along the westerly line

of said Proton Properties LLC tract, a total distance of 634.03 feet

to a point for corner, said point being the southwesterly corner of

said Proton Properties LLC tract, and being a northerly corner of

said Instrument Number 201500029116 tract;

THENCE along the northerly line of said Instrument Number

201500029116 tract and the southerly line of said Proton Properties

LLC tract the following courses and distances:

North 58 degrees 57 minutes 36 seconds East, a total

distance of 894.69 feet to a point for corner;

South 07 degrees 25 minutes 01 seconds East, a total

distance of 277.11 feet to a point for corner;

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

North 82 degrees 34 minutes 59 seconds East, a total

distance of 439.00 feet to the POINT OF BEGINNING and containing a

total area of 12,245,246.54 square feet, or 281.112 acres of land,

more or less.

SECTION 3. (a) The legal notice of the intention to

introduce this Act, setting forth the general substance of this

Act, has been published as provided by law, and the notice and a

copy of this Act have been furnished to all persons, agencies,

officials, or entities to which they are required to be furnished

under Section 59, Article XVI, Texas Constitution, and Chapter 313,

Government Code.

(b) The governor, one of the required recipients, has

submitted the notice and Act to the Texas Commission on

Environmental Quality.

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) The general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

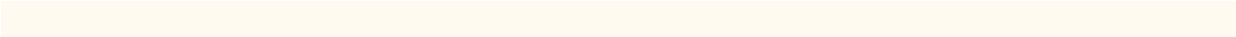
SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as

By: West
(Giddings)
Substitute the following for S. B. No. 2244:
By: Bell

provided by Section 39, Article III, Texas Constitution. If this

Act does not receive the vote necessary for immediate effect, this

Act takes effect September 1, 2017.



LANCASTER CITY COUNCIL

A City Council Special Work Session

4.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda

Goal(s): Financially Sound Government
Quality Development

Submitted by: Rona Stringfellow, Assistant City Manager

Agenda Caption:

Discuss and receive an update on the operations and management of the Countryview Golf Course.

Background:

City Council identified, review and evaluation of operations and management of Country View Golf Course during the FY 2016 Strategic Planning. At the January 9, 2017 City Council Special Work Session, City Council received an "Opportunity Assessment" from Touchstone Golf, LLC regarding the review and evaluations of the Country View Golf Course. This assessment derived from the FY 2016 Annual Strategic Planning Session (June 2015), whereby, City Council authorized an assessment of Country View Golf Course and its operations.

The City Manager's Office began oversight of the process and created a transition team to ensure operations at the golf course remain uninterrupted. On November 1, 2017, the City entered into a short-term management agreement (November 1, 2017 through December 31, 2017) with Touchstone Golf, LLC to oversee the operations at the Country View Golf Course. During this time, Touchstone evaluated operations, the facility, and other items based upon their industry experience to determine next steps.

On January 8, 2018, City Council received a presentation on findings of operations. Staff recommended the City extend the term of the Touchstone Golf, LLC agreement to provide a more comprehensive plan following a full season of golf.

On January 29, 2018, the City Council approved the extended management agreement with Touchstone Golf, LLC and directed staff to provide an update on golf course operations quarterly.

On April 16, 2018, the City Council received a presentation and update on course operations. On April 23, 2018, the City Council received a presentation and requested additional information. On May 7, 2018, City Council received an update from previously requested information and an amended budget was approved. Council directed staff to provide a quarterly update on golf course operations. This is the next scheduled update.

City Council will receive a presentation.

LANCASTER CITY COUNCIL

A City Council Special Work Session

5.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda

Goal(s): Financially Sound Government

Submitted by: Baron Sauls, Director of Finance

Agenda Caption:

Receive a presentation and discuss the Quarterly Financial Report for the third quarter of FY 2017/2018 for the period ending June 30, 2018.

Background:

The broad purpose of the City's Financial and Investment policy statements is to enable the City to achieve and maintain a long-term stable and positive financial position, and provide guidelines for the day to day planning and operations of the City's financial affairs. The following information is representative of the third quarter of fiscal year 2017/2018; April 1, 2018 through June 30, 2018. The reports will be distributed, presented and reviewed during the work session.

LANCASTER CITY COUNCIL

A City Council Special Work Session

6.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda

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

Submitted by: Opal Mauldin-Jones, City Manager

Agenda Caption:

Discuss the report of City Council's Five Year Goals and Strategies established during the annual City Council Strategic Planning Session in June 2017 for the second quarter of Fiscal Year 2017/2018.

Background:

City Council conducted an annual Strategic Planning Session in June 2017. This report represents activity for the second quarter of Fiscal Year 2017/2018 (April 1, 2018 thru June 30, 2018). This is a review of the implementation and progress on strategies and initiatives outlined in the 2017/2018 strategic plan and how said strategies connect to continued progress toward the realization of the Vision.

Attachments

3rd Quarterly Update FY 2017/2018

Fiscal Year 2017-2018 Third Quarterly Update July 30, 2018

Financially Sound Government

The City has a long-range financial plan and has prudent fiscal policies and processes in place. It has met or exceeded all fund reserve goals, has funds available to address the needs of the community, and responsibly manages its debt.

1. In March 2018, staff submitted the Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association (GFOA) seeking the Certificate of Excellence in Financial Reporting Award. Staff is awaiting announcement of award winners.
2. The Texas Comptroller of Public Accounts has transitioned to a new transparency program. The City of Lancaster achieved the 2015 Texas Comptroller Platinum Leadership Circle Award which has been superseded by the new program – the Transparency Stars program. Though transparency achievements made as part of the Leadership Circle program are still relevant, the program and its awards have been discontinued. Transparency Stars are granted and maintained on an ongoing basis. The City has since qualified for the following stars – Traditional Finances and Debt Obligation.
3. Staff presented financials to City Council and LRDC & LEDC Boards in April 2018.
4. Staff has updated the Financial, Investment, Debt, Petty Cash and Grant policies for upcoming budget adoption as is customary annually.
5. Staff completed and submitted documentation to JP Morgan Chase for a purchase lease agreement to purchase fire trucks in May 2018.

Quality Development

The City encourages high quality, diverse housing, commercial and retail development and public facilities. Policies encourage sustainable building practices, conservation and the use of alternative energy sources.

1. Continue design and development of a new City Hall – Downtown TIF.

Downtown TIF – This was placed on hold until the new Mayor and City Councilmembers for Districts 4 and 5 were seated. Staff will provide a presentation and update in the fourth quarter after City Council strategic planning to seek direction from the City Council.

Staff will utilize the implementation plan and tools from the recently adopted comprehensive plan to explore the appropriate steps for the creation of a TIF district within the downtown area. Staff has made a presentation to Council regarding options for implementation of a TIF.

Additional contact has been made with Dallas County to explore the possibility of their participation in a TIF.

New City Hall – Staff has met with GSBS Architects regarding design elements and cost estimating for a City Hall. Council received a presentation during the Strategic Planning session in June 2017. City Council toured four cities on November 13, 2017.

At the January 29, 2018 Special Meeting, City Council requested additional information at a future Work Session for staff to receive direction.

2. Continue Land Bank Program

City Council adopted the Land Bank Policy at the February 26, 2018 regular Meeting. Staff continues to explore opportunities for implementation of the policy.

3. Continue Economic Development Strategic Plan.

The Willdan Group completed one on one interviews with each City Councilmember in February 2018. Willdan has drafted an Economic Profile Report and is continuing their work on the Economic Development Strategic Plan (EDSP). Willdan will be present an update to Council in the fourth quarter.

Willdan is researching to see if targeted industrial sectors will fit in Lancaster's current and future workforce environment. The sectors are food-related manufacturing, cold storage transportation, artificial intelligence, aerospace, semiconductor development, and robotics. They requested the following materials from us: marketing material for the International Shopping Center Conference (ICSC), a list of all new businesses in the community including wages, a calendar of scheduled trade shows for the next three years, and a contact with Kimley-Horn & Associates regarding water and wastewater lines.

Staff engaged Willdan to receive an update, seek feedback on the current and internally proposed incentive policy, ask them to have focus on current and potential workforce, to reinforce the focus on what industries will work in Lancaster, and redirected them again on branding. We are seeking a reputation on being the most friendly and astute place to do business in the area and the place to invest in the region.

On July 3, 2018, staff requested weekly updates from Willdan regarding their progress. On July 5, 2018, Willdan reached out requesting a meeting regarding marketing and branding. Staff continues to refine in order to present to City Council.

4. Adopt Xeriscape amendments to the Lancaster Development Code (LDC), Code of Ordinances and/or applicable development regulations.

On July 2, 2018, staff met with the consultant to review the draft Tree Technical Manual and Xeriscape ordinance prepared by the consultant. The consultant is currently revising the draft manual based on staff feedback and comments. The manual will be ready for City Council presentation by mid-August 2018.

5. Implementation of TIFs for key growth areas.

The City Council identified the Downtown, Historic and Campus Districts as key areas for TIF implementation. The Lancaster Campus District as well as the area adjacent to it is undergoing an engineering study in coordination with the City of Dallas.

Staff met with Kimley-Horn and the study is expected to evaluate several options for provision of water and sewer to compliment future development in the area that will benefit both the City of Lancaster and the City of Dallas. Included in the study is the opportunity to partner with Dallas Water Utilities (DWU) to provide options for wastewater. Staff will provide an update once this study is complete.

The TIF Number 1 (located east of Lancaster-Hutchins Road, South of Wintergreen Road, North of Beltline Road and to the easternmost City limits) was recently amended on February 05, 2018 by City Council for continuation of the infrastructure project plan in cooperation with Dallas County. The bid was awarded to the construction company in July 2018, with a targeted start date of late August 2018.

6. Implement the Comprehensive Plans.

Staff consistently reviews development applications in light of the Comprehensive Plan to ensure that all development applications are consistent with the Comprehensive Plan.

City Council approved a Professional Services Agreement to update the Hike and Bike Trails Master Plan, which should be complete by January 2019.

The Water and Wastewater Master Plan update is in progress. This project started in January 2018 and is expected to be completed in the spring 2019, as this project is currently in the data-gathering phase.

Requests for Proposals (RFP's) are being prepared for the Stormwater Master Plan – A request for qualification (RFQ) for this plan update will be started in September 2018.

Requests for Proposals (RFP's) are being prepared for the Streetscape Master Plan and Parks and Parks and Open Space Master Plan update. Staff will have a RFP and a request for qualification (RFQ) posted September 2018. A consultant who will be working on the update will be selected by mid-September.

In-home Daycare Policy - Staff will have an in-home daycare policy ready by the end of July 2018.

7. Code Compliance:

Illegal Dumping Cases by the Code Compliance Team

ID #	Short Address	Case Start Date
18-01353	2401 DANIELDALE ROAD	04/02/2018
18-01359	1325 CORNEEL ROAD	04/02/2018
18-01365	2100 W MAIN STREET	04/02/2018
18-01366	901 GREENE ROAD	04/02/2018
18-01389	2655 PARKERVILLE ROAD	04/03/2018
18-01390	2729 BEAR CREEK ROAD	04/05/2018
18-01391	2901 PARKERVILLE ROAD	04/06/2018
18-01393	2511 W MAIN STREET	04/05/2018
18-01394	2505 W MAIN STREET	04/05/2018
18-01396	2301 W MAIN STREET	04/05/2018
18-01397	2700 W MAIN STREET	04/05/2018
18-01399	CHESHIRE/BELTLINE	04/05/2018
18-01400	790 S I-35E	04/05/2018
18-01464	2717 PIKE DRIVE	04/10/2018
18-01466	2501-2899 W BELTLINE	04/10/2018
18-01468	211 N HENRY STREET	04/10/2018
18-01494	865 STANFORD DRIVE	04/11/2018
18-01495	405 HANA LANE	04/11/2018
18-01541	2005 CORNELL ROAD	04/13/2018
18-01556	3212 N HOUSTON SCHOOL ROAD	04/16/2018
18-01560	854 OAKBLUFF	04/16/2018
18-01624	201 N ELM STREET	04/18/2018
18-01625	905 FRANCIS STREET	04/18/2018
18-01652	1425 N DALLAS AVENUE	04/23/2018
18-01653	1300 BEAR CREEK ROAD	04/23/2018
18-01655	2401 BEAR CREEK ROAD	04/23/2018
18-01687	CORNELL ROAD	04/24/2018
18-01702	600 E SECOND STREET	04/25/2018
18-01746	HOUSTON SCHOOL ROAD	04/26/2018
18-01750	424-898 CHESHIER COURT	04/27/2018
18-01829	300 N LANCASTER HUTCHINS ROAD	05/03/2018
18-01852	1020 W BELTLINE ROAD	05/02/2018
18-01908	2218 W MAIN STREET	04/30/2018
18-01909	1400 WHEATLAND ROAD	04/30/2018

18-01912	1605 N HOUSTON SCHOOL ROAD SUITE # 9207	04/30/2018
18-01913	400 S LANCASTER HUTCHINS ROAD	05/01/2018
18-01914	2395-3561 N DALLAS AVENUE	05/01/2018
18-01923	2105 W PLEASANT RUN ROAD	05/01/2018
18-01924	3000 S HOUSTON SCHOOL ROAD	05/07/2018
18-01925	NO GIVEN ADDRESS	05/07/2018
18-01926	405 HANA LANE	05/08/2018
18-01927	683-899 TELEPHONE ROAD	05/08/2018
18-01928	3201-3299 N DALLAS AVENUE	05/08/2018
18-01929	386-680 TELEPHONE ROAD	05/08/2018
18-01931	500 OLD RED OAK ROAD	05/09/2018
18-01932	600 RED BUD	05/09/2018
18-01933	820 W WINTERGREEN ROAD	05/09/2018
18-02007	1625 WILLOWBROOK STREET	05/15/2018
18-02059	648 E PLEASANT RUN ROAD	05/16/2018
18-02141	500 E MAIN STREET	05/18/2018
18-02142	1452 BEAR CREEK ROAD	05/21/2018
18-02145	2807 AMBER WAVES LANE	05/22/2018
18-02163	2001 GREENE ROAD	05/29/2018
18-02164	420 N I-35E	05/29/2018
18-02166	2040 GREENE ROAD	05/29/2018
18-02167	2001 GREENE ROAD	05/30/2018
18-02168	2034 GREENE ROAD	05/29/2018
18-02200	2511 W MAIN STREET	06/04/2018
18-02202	3200-3222 W BELTLINE ROAD	06/04/2018
18-02222	2622 N I-35E	06/05/2018
18-02223	3518 N I-35E	06/05/2018
18-02224	3548 N I-35E	06/05/2018
18-02228	682-898 TELEPHONE ROAD	06/05/2018
18-02229	682-898 TELEPHONE ROAD	06/05/2018
18-02276	400 S LANCASTER HUTCHINS ROAD	06/11/2018
18-02277	400 S LANCASTER HUTCHINS ROAD	06/11/2018
18-02278	1400 MEADOWLARK LANE SUITE # 102	06/11/2018
18-02279	2538 LBJ FRWY	06/13/2018
18-02280	2615 W WINTERGREEN ROAD	06/13/2018
18-02281	387-571 CEDARDALE ROAD	06/13/2018
18-02284	3335 SPRINGFIELD AVENUE	06/14/2018
18-02322	1803 KINGS CROSS DRIVE	06/07/2018
18-02325	2471 S DALLAS AVENUE SUITE # 110	06/19/2018
18-02380	703 S BLUEGROVE ROAD	06/18/2018
18-02450	2401 S DALLAS AVENUE	06/19/2018
18-02451	2401 S DALLAS AVENUE	06/19/2018
18-02452	1650 S I-35E	06/19/2018
18-02453	1630 N I-35E	06/19/2018
18-02454	1059 TEN MILE ROAD	06/19/2018
18-02455	600 S BLUEGROVE ROAD	06/19/2018
18-02456	800-1798 S BLUEGROVE ROAD	06/21/2018
18-02457	2141 BEAR CREEK ROAD	06/20/2018
18-02458	106-198 W WINTERGREEN ROAD	06/21/2018
18-02459	1254 ALHAMBRA DRIVE	06/20/2018
18-02460	2100 W WINTERGREEN ROAD	06/22/2018
18-02465	692 BERMUDA AVENUE	06/28/2018
18-02466	1218 OAKBLUFF DRIVE	06/29/2018

Commercial Code Compliance Cases

Business	Address	Violation	Action taken	Status
TRAILER TECH	3147 SHERWOOD	OVER HANGING TREE LIMBS	NOTICE GIVEN 4-9-18	ABATED BY OWNER 4-20-18
TRAILER TECH	3147 SHERWOOD	HIGH GRASS WEEDS	NOTICE GIVEN 4-9-	ABATED BY

			18	OWNER 4-20-18
J & R LANDMARK CONSTRUCTION	3146 SHERWOOD	INOPERABLE VEHICLE TG#964373C	NOTICE GIVEN 4-9-18	ABATED BY OWNER 4-20-18
J & R LANDMARK CONSTRUCTION	3146 SHERWOOD	IMPROPER OUTSIDE STORAGE	NOTICE GIVEN 4-9-18	ABATED BY OWNER 4-20-18
J & R LANDMARK CONSTRUCTION	3146 SHERWOOD	HIGH GRASS WEEDS	NOTICE GIVEN 4-9-18	ABATED OWNER 4-20-18
EXPRESS LUBE	1220 DALLAS AVE	HIGH GRASS WEEDS	NOTICE GIVEN 4-11-18	ABATED BY MANAGER 4-12-18
EXPRESS LUBE	1220 DALLAS AVE	IMPROPER OUTSIDE STORAGE	NOTICE GIVEN 4-11-18	ABATED MANAGER 4-12-18
A-MAX AUTO INSURANCE	1445 PLEASANT RUN STE 600	ILLEGAL FLAG SIGNS	ABATED MANAGER 4-11-18	CLEAR
DOLLAR TREE	1445 PLEASANT RUN STE 300	ILLEGAL SIGNAGE	ABATED MANAGER 4-11-18	CLEAR
DOLLAR TREE	1445 PLEASANT RUN STE 300	NO DUMPSTER ENCLOSURE	VERBAL WARNING 4-15-18	PENDING COMPANY RESPONSE
K AUTO PARTS	820 DALLAS AVE	HIGH GRASS WEEDS	NOTICE GIVEN 4-11-18	ABATED BY OWNER 4-15-18
PHILLIPS 66	2705 DALLAS AVE	HIGH GRASS WEEDS	ABATED BY OWNER 4-16-18	ABATED BY MANAGER
PHILLIPS 66	2705 DALLAS AVE	IMPROPER OUTSIDE STORAGE	NOTICE GIVEN	ABATED BY MANAGER
SNOW CONE	631 PLEASANT RUN	HIGH GRASS WEEDS	ABATED BY OWNER 4-16-18	ABATED BY MANAGER
FARMERS MARKET	729 PLEASANT RUN	IMPROPER OUTSIDE STORAGE PALLOTS	NOTICE GIVEN	ABATED BY MANAGER
FARMERS MARKET	729 PLEASANT RUN	HIGH GRASS WEEDS	ABATED OWNER 4-16-18	ABATED BY MANAGER
WOK EXPRESS	1005 PLEASANT RUN	LITTER TRASH	ABATED 4-16-18	ABATED BY MANAGER
WOK EXPRESS	1005 PLEASANT RUN	ILLEGAL DUMPING	ABATED BY MANAGER 4-16-18	ABATED BY MANAGER
VACANT LOT	1981 PLEASANT RUN	HIGH GRASS WEEDS	PHONE CALL OWNER	ABATED BY OWNER 4-18-18
LANCASTER DONUTS	630 PLEASANT RUN STE 630	ILLEGAL DUMPING SOFA	NOTICE POSTED 4-20-18	ABATED OWNER 4-23-18
KOOLEYS BBQ closed	PLEASANT RUN	HIGH GRASS WEEDS	PHONE CALL TO OWNER 4-23-18	ABATED BY OWNER 4-24-18
DALLAS TEACHERS CREDIT	100 REA	HIGH GRASS WEEDS	NOTICE SENT BY MAIL	ABATED BY OWNER 4-25-18
VACANT LOT	3145 LOMITA @ I-35	HIGH GRASS WEEDS	NOTICE SENT BY MAIL 4-23-18	IN PROCESS
WILD ABOUT CHEER	1502 I-35 FRONTAGE	IMPROPER SINAGE	ABATED BY CODE 4-23-18	ABATED BY MANAGER
CORNER LOT WINTERGREEN AT I-35		HIGH GRASS WEEDS	NOTICE SENT MAIL 4-23-18	PENDING CITY ABATEMENT
CAVALIER SERVICE	3109 DANIELDALE	HIGH GRASS WEEDS	NOTICE GIVEN 4-26-18	ABATED BY OWNER
VACANT LOT	2480 N I-35 E	HIGH GRASS WEEDS	NOTICE SENT MAIL 4-26-18	PENDING ABATEMENT 6-6-18
BRIDGESTONE TIRE	1401 DALLAS AVE	PARKING UNIMPROVED X 2	POSTED VEHICLES 5-7-18	ABATED BY OWNER 5-8-18
BRIDGESTONE TIRE	1401 DALLAS AVE	HIGH GRASS WEEDS	NOTICE GIVEN 5-7-18	ABATED BY OWNER 5-10-18

LANCASTER SUPER MART	1415 DALLAS AVE	HIGH GRASS WEEDS	VERBAL WARNING 5-7-18	ABATED BY OWNER
DONUT SHOP	1303 DALLAS AVE	HIGH GRASS WEEDS	NOTICE POSTED 5-7-18	ABATED BY OWNER
OIL CHANGE SHOP	1220 DALLAS AVE	HIGH GRASS WEEDS	VERBAL WARNING ABATED 5-7-18	ABATED BY OWNER
VACANT LOT ON SQUARE	106 DALLAS AVE	HIGH GRASS WEEDS	POSTED VIA PLACARD	ABATED BY OWNER 5-10-18
VACANT LOT	3145 LOMITA @ I-35	HIGH GRASS WEEDS	NOTICE SENT VIA MAIL 4-23-18	ABATED OWNER 5-2-18
VACANT LOT	3250 SHASTA	HIGH GRASS WEEDS	NOTICE SENT MAIL 4-23-18	ABATED OWNER 5-2-18
VACANT LOT	3250 SHASTA	INOPERABLE VEHICLE	NOTICE SENT 4-23-18	EXTENDED 7-4-18
LANCASTER TIRE	3460 I-35 FRONTAGE	HIGH GRASS WEEDS	NOTICE HAND DELIVERY 5-10-18	ABATED BY OWNER 5-18-18
LANCASTER TIRE	3460 I-35 FRONTAGE	IMPROPER OUTSIDE STORAGE	NOTICE HAND DELIVERY 5-10-18	ABATED BY OWNER
PAD SITE VACANT LOT	3100 PLEASANT RUN	HIGH GRASS WEEDS	NOTICE SENT 5-9-18	ABATED BY OWNER 5-19-18
FAMILY DOLLAR	3163 DALLAS AVE	HIGH GRASS WEEDS	NOTICE HAND DELIVRY 5-10-18	ABATED BY OWNER 5-15-18
FAMILY DOLLAR	3163 DALLAS AVE	FENCING VIOLATION	NOTICE HAND DELIVERY 5-10-18	ABATED BY OWNER 6-18-18
FAMILY DOLLAR	3163 DALLAS AVE	LITTER TRASH	NOTICE HAND DELIVERY 5-10-18	ABATED BY OWNER 5-10-18
DUKE REALTY	2820 N.I-35 FRONTAGE	HIGH GRASS WEEDS	NOTICE HAND DELIVERY 5-10-18	ABATED BY OWNER 5-15-18
VACANT LOT	3436 N.I-35 FRONTAGE	HIGH GRASS WEEDS	POSTED PLACARD 5-12-18	ABATED BY OWNER 5-24-18
VACANT HOUSE	2953 PLEASANT RUN	HIGH GRASS WEEDS	SENT VIA MAIL 5-10-18	ABATED BY OWNER 5-18-18
VACANT HOUSE	2955 PLEASANT RUN	HIGH GRASS WEEDS	SENT VIA MAIL 5-10-18	ABATED BY OWNER 5-18-18
WOODED LOT	2945 PLEASANT RUN	TRASH LITTER	SENT VIA MAIL 6-7-18	ABATED BY OWNER 6-28-18
LA-MARIA RESTURANT	920-N.I-35 FRONTAGE	TRASH LITTER	VERBAL WARNING	ABATED BY OWNER
COMMERCIAL LOT	601 W.BELT LINE	HIGH GRASS WEEDS	NOTICE SENT 6-28-18	ABATED BY OWNER 7-2-18
COMMERCIAL LOT	701 W.BELTLINE	HIGH GRASS WEEDS	NOTICE SENT 6-28-18	ABATED BY OWNER 7-2-18
COMMERCIAL LOT	531 W.BELT LINE	HIGH GRASS WEEDS	NOTICE SENT 6-28-18	ABATED BY OWNER 7-2-18
COMMERCIAL LOT	1500 JEFFERSON	HIGH GRASS WEEDS	NOTICE SENT 6-28-18	ABATED BY CITY CREW 7-10-18
COMMERCIAL LOT	702 E.PLEASANT RUN	HIGH GRASS WEEDS	NOTICE SENT 6-28-18	ABATED BY CITY CREW 7-10-18

Healthy, Safe, & Engaged Community

Lancaster is a place where we embrace public safety and compassionate enforcement in our neighborhoods to sustain vibrant residential and business communities. The community celebrates unity and participates in citywide events, recreational and cultural activities. Residents have opportunities for involvement in civic life through boards and commissions, youth and parent volunteer opportunities in recreation, sports teams, City elections, Civic Academies, Schools and citywide celebrations.

1. Develop an expanded community health initiative.

The Health and Fitness Advisory Committee has worked to increase partnerships with local and regional established healthcare leaders. The committee collaborated to help promote the Dallas County Health and Human Services Health and Wellness Fair. On May 9, 2018, the Health and Fitness Advisory Chair also attended and networked with wellness vendors at the event. In addition, the committee also partnered with Dallas County to promote the 2018 Older Americans Month Information and Health Fair, "Engage at Every Age." On May 10, 2018, members from the Senior Life Center and the Health and Fitness Advisory Chair attended the health fair event.

The Health and Fitness Advisory Committee Chair, Jasmine Carr, continues to meet with the Best Southwest Partnership Healthcare Committee. Given Lancaster's Health Disparity Study results, the chair participates in the two subgroup committees that are the most applicable, Heart Failure and Pre-Natal Care. The Best Southwest Heart Failure subcommittee continues to plan and seek donors for the first annual Best Southwest Heart Run in Lancaster. The February 2019 event supports the City's health initiative to reduce heart disease. In April, the committee chair met with the Lancaster ISD School Health Advisory Committee Chair and school nurses in order to discuss feedback from the BSW prenatal subcommittee meeting. The nurses noted mental health as a key area of concern in schools. The city health advisory committee chair will work with the Best Southwest Partnership to connect the school district with the Youth Mental Health Conference in September. The event is being planned by the Best Southwest Partnership Mental Health subcommittee.

The City continues to assess the health and wellness of City employees and staff. On June 22, 2018, health insurance committee members received an annual wellness report card provided by Methodist Health Systems and discussed the results of the previous year's wellness program. The committee discussed best practices across departments and brainstormed next year's Wellness at Work incentives. On July 9, 2018, the American Heart Association announced to the City of Lancaster a Bronze level Workplace Health Achievement recognition status. The purpose of the Workplace Health Achievement Index recognition program is to recognize companies meeting criteria predefined by the American Heart Association for efforts to implement quality workplace employee health programs.

2. Amend the fee schedule to allow the City to be reimbursed for use of public property and land in commercial films.

City Council received a presentation at the November 6, 2017 Work Session to establish a commercial film policy for uses of city-owned real estate, personnel, rights-of-way permit requirement and fees, as well as insurance requirements from staff.

At the December 04, 2017 Special Meeting, City Council approved amending the master fee schedule in an effort to establish a commercial film policy when uses of city-owned real estate, personnel, rights-of-way permit requirement and fees, as well as insurance requirements.

3. Expand the business retention and expansion programs (BREP):

Formal BREP meetings with the Mayor, City Manager, and Economic Development Department included Sub-Zero/Wolf in February and Bentwood in March. The Director visited Bilco in April regarding a possible expansion.

Staff also conducted informal visits with every business along I-35E. Staff also met with Sitco, and FFE. The Meeting with FFE resulted in interfacing with Cedar Valley College and hosting a Logistics Round Table Discussion. The meeting included area logistical companies and the Texas Workforce Investment Council. I-35 visits resulted in Rental One expanding their product line and services to include gasoline fuel ups. Staff also connected Texas Nameplates and Cedar Valley College's Sustainable Communities Institute (SCI). The SCI held a Sustainable Economic Development Roundtable, which featured Texas Nameplates as a key panelist. This partnership is continuing to work on promoting and growing proprietor's 'going green' initiatives.

4. Reinvigorate the Lancaster Eyes and Ears Program (LEEP) that establishes a partnership between Code Compliance and Community Volunteers.

LEEP volunteers continue to be a great asset to the Code Compliance Division and to the City overall by assisting code officers in identifying code violations and in some cases addressing less severe code violations such as illegal signs and illegal bulk setouts. LEEP volunteers are also actively engaged in educating citizens about ways to remain in compliance with the City ordinance. The assistance of LEEP volunteers has allowed code officers to be more proactive and shift their focus to addressing more severe violations.

LEEP currently consists of nine active members who meet on a monthly basis to discuss updates, concerns and strategies. A code representative is required to attend these meetings in addition to a member of the police department as needed to answer questions and provide education.

During this third quarter, LEEP volunteers have focused their attention to removing illegal signs. These are signs placed within the rights-of-way and on public properties. Once removed, volunteers called the number listed on the sign to make the owner aware of the City sign ordinance.

LEEP volunteers assisted at the Trash-off event that took place on July 21, 2018. They assisted with various tasks including directing traffic, passing out flyers, and handling food.

5. Revise Boards and Commissions criteria.

The City Secretary's office is in the process of reviewing the criteria and bylaws for each board and is preparing a presentation for City Council in the fall of 2018.

6. Establish a program for short-term rentals such as Air B&B.

Staff researched and gave a presentation to the City Council on short-term rentals locally and regionally on June 18, 2018. City Council requested that the item be brought back to the body for further deliberation at a future work session.

7. Police Department Update:

Crime prevention and deterrence is a primary objective of the police department. Overall, we are seeing decreases in several offense categories that we believe is a result of some aggressive proactive measures including a robbery detail, increased traffic enforcement and officer initiated close patrol of neighborhoods based on visible activity.

In a continued effort to be more transparent and hold all of our officers accountable, the Lancaster Police Department Policies have been published. These policies are recognized by the Texas Police Chief Association Best Practices and further enhances our ability to serve our community and keep Lancaster a safe and vibrant community."

OFFENSES				
	2Q	3Q	UP/DOWN	PERCENT
Assault	80	76	-4	-5.00%
Burglary Building	17	11	-6	-35.29%

Burglary Habitation	17	28	11	64.71%
Burglary Vehicle	36	49	13	36.11%
Criminal Mischief	37	60	23	62.16%
Drug Crimes	47	97	50	106.38%
DWI	20	8	-12	-60.00%
Financial Crimes	41	25	-16	-39.02%
Information Report	275	330	55	20.00%
Mental Evaluations	30	39	9	30.00%
Murder	2	2	0	0.00%
Robbery	28	8	-20	-71.43%
Runaways	18	18	0	0.00%
Sex Assault	7	6	-1	-14.29%
Theft	108	119	11	10.19%
UUMV	44	38	-6	-13.64%
ARREST				
	2Q	3Q	UP/DOWN	PERCENT
Arrest	408	545	137	33.58%
CALLS FOR SERVICE				
	2Q	3Q	UP/DOWN	PERCENT
Total Calls	16843	18470	1627	9.66%
Close Patrols	7295	6603	-692	-9.49%
House Check Request	15	36	21	140.00%
House Check Calls	97	129	32	32.99%
PATROL				
	2Q	3Q	UP/DOWN	PERCENT
Traffic Stops	2358	4519	2161	91.65%
Field Contacts	116	192	76	65.52%
WARRANTS				
	2Q	3Q	UP/DOWN	PERCENT
New Felony	22	53	31	140.91%
New Misdemeanor	31	34	3	9.68%
New Warrants Total	53	87	34	64.15%
Served	16	49	33	206.25%
ACCIDENTS				
	2Q	3Q	UP/DOWN	PERCENT
Total Accidents	116	179	63	54.31%

8. Fire Department Update:

Fire Prevention:

The Fire Marshal's offices with the assistance of on-duty shift personnel have installed 74 smoke detectors this quarter. A priority has been to fill requests the same day that they have been received and to observe the absence of smoke detectors while making emergency calls to residents.

The Fire Marshal's office has completed 116 building inspections, certificate of occupancies and plan reviews during the third quarter.

Junior Fire Chiefs Academy:

The Fire Department has completed its first Junior Fire Chiefs Academy. There are approximately 35 students per class and each have worked to learn basic firefighter/EMS/prevention knowledge. The second part of the course will begin the second week of July and a graduation is scheduled for August 2, 2018.

“Sun up, Doors up”:

This program presents a welcome posture to the citizens of Lancaster by opening Fire Department bay doors during regular business hours. Citizens are encouraged to stop by their local fire stations for visits and seek answers to their Fire or emergency medical related questions.

Emergency Medical Services:

The Fire Department has responded to 1,102 rescue and emergency medical calls this quarter.

Total Life Extending Aid: 406

This is a count of all calls in the reporting period where the response by the Lancaster Fire Department extended or improved the quality of life of the person.

Reported Fires:

Total Fire Calls - 42 or 2.55% of Incidents

The Fire Department responded to 1,643 total responses, this is every time the wheels roll on a piece of fire suppression or EMS equipment responding to a call.

9. Municipal Court Update:

The third quarter of FY 2017/2018 the Municipal Court collected revenues of \$387,553. This is a decrease of \$26,038 or 6.3% from the same period last year of \$413,591.

Dispositions for this period totaled 2,245, which is a decrease of 26.87% from the second Quarter of 3,070. This decrease is due to the large push during the second quarter of each year during Warrant Roundup which the Court normally has higher disposition rates.

There were a total of 2,457 cases filed, 3,347 trials/hearings, and 2,245 dispositions the third quarter of FY 2017/2018.

10. Quality of Life and Cultural Services Update:

In April 2018, staff held the annual family campout at Bear Creek Nature Park. Vendors included Home Depot, a Master Naturalist and Mary Kent Face Painting. Participants enjoyed a Night Hike, s'mores and ended the evening with a Movie and Hot Chocolate. After a chilly night, the guests woke up, grabbed their breakfast tacos, and went home.

In April 2018 Flashback Friday's were held featuring local bands representing music such as rock, gospel blues, and jazz. There was also great poetry featured.

First Aid/CPR/AED course was offered incorporating the latest science, and taught students to recognize and care for a variety of first aid emergencies such as burns, cuts, scrapes, sudden illnesses, head, neck, back injuries, heat and cold emergencies. Participants also learned how to respond to breathing and cardiac emergencies for victims. The successful six students received a certificate for First Aid/CPR/AED that is valid for two years.

In May 2018, Council appointed a Trails Advisory Committee. Members attended the kickoff meeting with a consultant firm Dunaway Associates to update and develop a new Hike and Bike Trails Masterplan. A tour was held on May 22, 2018 with staff, consultants and a few members of the committee to provide

informational background prior to the first meeting held that evening. A benchmark tour for the entire Advisory Committee is scheduled for August 24, 2018.

11. Visitors Center/State Auxiliary Museum Update:

Brochures for the museum are still being distributed in Travel Centers across the State.

The Buzzed Art Night event allowed those in attendance to paint an exciting photo titled “Our Family Tree”, in celebration of Valentine’s Day and Black History Month. Participants were also able to view exhibits in the museum and learn more about the rich history of the City of Lancaster.

12. Village 2020 Update City of Lancaster and Lancaster ISD Strategic Plan Update:

The Mobile Outreach Library and Technology Unit continued to visit the George Washington Carver 6th Grade Learning Center every 1st and 3rd Friday in the months of April-May 2018. Over 500 students have the opportunity to check out books and learn more about library services.

13. Parks Division Update:

Adopt a spot volunteers reported just under 24 man-hours and picked up over 4 cubic yards of litter and debris from City parks and rights-of-way.

Volunteer Group	Clean-up Area
Leading by Example	Meadowcreek Park
Brasscraft	South Lancaster-Hutchins Road
Cold Springs Church of Christ	West Main
Rusty Lemley	South Houston School Road
Church of Christ at Cedar Valley	West Wintergreen Road
Lemley & Scott	Parkerville
Boy Scout Troop 1141	Kids Square
Girl Scout Troop 305	Community Park
Johansen Lighting Products	City Park
AKA Sorority, Upsilon LAMBDA Omega	Community Park
Friends of the Library	Library Flower Bed

14. Athletics Update:

“Wellness Wednesday’s” are offered through the month of August 2018. The focus is to engage our growing community of senior citizens. Free fitness assessments, and healthy drinks or snacks are offered to all members. Lancaster residents may purchase a monthly membership for \$20.

A new Women’s Self-Defense Class was offered on Wednesdays in April 2018. It is a basic course for women, ages 13-100, in techniques for personal safety, prevention, and self-defense. Physical techniques are built around gross motor skills to escape and survive an attack, using training and repetition to prepare for possible life situation. The beginning course will establish the fundamentals of self-defense, with the continuing course adding to those basic skills already obtained. Refresher courses are also offered.

In April 2018, the Lancaster Soccer League powered by Challenger Sports held its first official games of the 2018 Spring Season.

In April 2018, The Lancaster Baseball Association RBI started their first official games of the 2018 summer with the Texas Rangers Academy! The purpose of the RBI Program is to maintain and promote the teachings of fundamentals, sportsmanship, character, and appropriate behavior among all participants.

In June 2018, the Lancaster Co-Ed Adult Kickball League (50 participants) held the first regular season spring games at City Park Baseball Complex. This league formed to teach and encourage good sportsmanship and fair play through noncompetitive athletics.

The Handles and Hoops Basketball Camp was held at the Lancaster Recreation Gymnasium on June 18 - 29, 2018. Participants learned different drills and teamwork responsibility as they transferred it to the game. After a week of passing, shooting, dribbling and rebounding 80 campers knew that they have gained better knowledge of basketball.

In June 2018, The City of Lancaster hosted the Senior Softball Tournament at Cedardale Baseball Complex. The City formed this event to provide adult softball to individuals 45 years (in 2016) or older with emphasis on a program that offers fun, sportsmanship and physical fitness to those involved.

In June 2018, the water aerobics evening class held its Water-a-thon. The event held over 31 participants that took on the challenge of working out for two hours straight.

2018	April	May	June	Total
Membership Scans	1,230	5,184	5,799	12,213
Daily Passes	35	63	354	552
Grand Total for both	12,665			

15. Recreation Division Update:

S.A.F.E. Afterschool Program

The May 2018 S.A.F.E. Afterschool Participants learned how to play volleyball from a former Division 1 volleyball player from Mississippi State! Miss Jazmyne Johnson was a four-year varsity starter at DeSoto High School and was named Honorable Mention All-District her first year and first Team All-District her sophomore season. She taught the students how to serve, spike, pass and volley.

16. Senior Services Division Update:

Senior members were presented with several educational opportunities this quarter. They participated in the educational program, "Eating Well is a SNAP" presentation from the Dallas Coalition for Hunger Solutions. They also attended a Social Security Seminar, presented by Golden Outlook Insurance Services to receive updates on Social Security. Senior members gained valuable information by the presentation of a representative with "All of Us" Precision Medicine Research Program.

The seniors were presented with several health-screening opportunities this quarter. This included monthly blood pressure and blood glucose checks provided by Crescent Medical Center Lancaster and area nursing/medical students. On June 14, 2018, Carter Eye Care Mobile Unit provided complimentary eye screening services for the senior membership.

In June 2018, senior members participated in an engaging, entertaining, informative and educational guided bus tour of African American Hidden History in Dallas, in commemoration of the Juneteenth Celebration. The tour included historical sites that were instrumental in the development of African American communities in Dallas.

17. Library Services Division Update:

In May 2018, the Lancaster Veterans Memorial Library hosted the first of three “Get Hired Lancaster” workshops. The Texas State Library and Archives Commission “Impact Grant” funded the workshops. Expansion Solutions consulting firm provided the training for individuals in the community seeking jobs.

Institutional Library Cards are offered at the library. Institutional cards allow non-resident members of local businesses to check out library items. Local businesses can submit a letter to the library requesting permission for their employee to receive institutional library cards as a corporate citizen.

Professional & Committed Workforce

Lancaster city government is an employer of choice with competitive pay that attracts an engaged, responsive, customer-oriented, innovative, and effective workforce. Some employees live in the City and all have a sense of ownership of the community. City employees feel needed and appreciated by elected officials, residents and businesses and are respectful to and appreciative of their customers and the City's governing body. The City's executive staff is engaged with residents and attends community events, upholds strong customer service, and uses technology to aid them in working smarter.

1. Continue to pursue implementation of the Compensation Policy.

We have worked collaboratively and strategically with the City Council regarding employee compensation and retention. Compensation has been an objective of the Council for the past four years. It remains a City Council objective. While we still have progress to meet our goal to be middle of our market comparable cities, we have accomplished milestones with compensation, equipment replacement, comparable benefits and creating opportunities for career progression.

In 2013 /2014, City Council approved a 3% increase to the pay plan. In 2014 /2015, City Council approved a 5% increase to the pay plan. 2015/2016 City Council approved a 2% increase to the pay plan. In 2016 /2017, City Council approved a 5% increase to the pay plan. In 2017/2018 City Council approved a 3% increase to the pay plan; totaling an 18% increase overall to the pay plan for the past four years.

2. Continue funding for Lancaster University.

We have established an annual professional level training program for all levels of employees. On March 9, 2018, the City of Lancaster closed operations to provide a full day of leadership and professional development for all city employees. Topics included in the program were customer service, servant leadership, energized support for organizational goals and objectives, as well as technical classes on software programs commonly used by employees. The program was well received by employees and many employees have commented on how grateful they were to have council support for employee development.

City Council received a copy of the highlight video and program brochure from the event.

Sound Infrastructure

The City has well-maintained streets and well-planned preventative maintenance programs for infrastructure, which includes streets, water, storm water, wastewater and other assets.

1. Continue Infrastructure Implementation Project – Pleasant Run Road Phases 1, 2, 3, & 4.

The engineering design plans have been completed and advertised this project for open bidding within the new few weeks (end of April) as this project includes limited roadway improvements for Phase 1 only (I-35E to Houston School Road). Phase two (Houston School Road to Bluegrove Road) and three

(Bluegrove Road to Dallas Avenue) is in the bid process. The award of the construction contract to McMahon Contracting, L.P. is scheduled for approval by city council on Monday, July 30, 2018.

2. Complete Airport Terminal Construction.

- a. On March 2, 2018, with cooperation between the City of Lancaster, TxDOT Aviation, KSA Engineering, and Denco Construction Specialists, a successful Groundbreaking Ceremony was held at the airport for the new terminal building project.
- b. Temporary fences, a mobile office, and gravel roads have been setup by Denco Construction to facilitate their construction process.
- c. Permits were issued on April 09, 2018.
- d. Steel has gone up.
- e. The new terminal building is expected to take 9 months for construction, with a tentative completion in December 2018.

3. Complete Golf Course Direction.

On January 29, 2018, the City Council approved a 12-month contract for the management of Country View Golf Club from Touchstone Golf, LLC. Staff continues to work with TouchStone on golf course operations. The Country View Golf Club Bar and Grill had their grand opening on Saturday, July 14, 2018. The Bar and Grill is open 7:00 a.m. to 7:00 p.m. A quarterly update and presentation is scheduled for the July 30, 2018 Special Work Session.

4. Appoint a citizens committee to develop a Capital Improvement Plan for the City.

Staff has completed the review of state laws regarding Capital Improvement Plan (CIP) committee appointment. Discussion of the Appointment of the Capital Improvements Advisory Committee is scheduled for July 30, 2018. Staff is drafting a CIP guide for City Council discussion and consideration in the fall of 2018.

5. Work with the Best Southwest Partnership to implement public transportation options.

A letter was presented by Mayor Knight, Chair of BSW Transportation Committee, and signed by the four BSW founding member city Mayors, to Michael Morris at NCTCOG.

In June 2018, the NCTCOG worked closely with consultants providing them with GIS shape file for the area around and within Lancaster. These files also included some metadata for the shape files along with other supplemental information regarding the shape file, to include information from the Mobility 2040 Plan, as well as, information regarding any nearby or planned: DART Route/stations; TexRail/Bullet Train Routes; information from a 2006 study where there appears to be a Railroad/Future Regional Rail and station shown downtown; future regional rail and a proposed station in the Lancaster CBD based on the Waxahachie Corridor Conceptual Engineering and Funding Study

6. Streets & Stormwater:

Staff completed a number of asphalt section street repairs and are working diligently to repair errors related to workmanship. Staff continues to train to ensure work is completed to obtain sustainable results.

Special Projects

1. The pavement management plan reviewed by the City attorney is currently being processed by Purchasing for the Notice to Proceed.
2. The sidewalk replacement program is ongoing with several inquiries and five residents that have used the program this quarter.

3. Mosquito Control: Standing water treatments are repeated every 15 to 30 days. Staff recently received additional mosquito dunks to treat creeks and provide to residents to prevent and maintain low levels of mosquito population that could potentially prevent increased occurrences of West Nile or the Zika Virus.

7. Water/Wastewater:

1. Staff continues a proactive approach in reducing leaks to reduce water loss. This quarter, staff replaced/installed 1,100 feet of water main.
2. Staff continues to maintain superior water quality, inventory water quality by conducting over 80 samples per quarter for exceptional water quality to citizens.
3. This quarter, staff identified and replaced 1008 feet of sewer main appearing to be in poor condition. Staff continues conducting camera inspections within manholes to ensure quality of public sewer lines within the City.

Special Projects

1. The Fats, Oil and Grease program is ongoing with 85 notices handed out this quarter.
2. Annexation Plan: We have tasked the Water/Wastewater Master Plan consultants with giving us opinion of probable cost to extend sewer to the area as indicated in the adopted service plan. Water is within Rockett CCN. The service plan does not expire until 2020. The city has the option to amend the service plan within 10 years of inception.

8. Sound Infrastructure Special Projects

1. MS4 Permit – Year 4 of our 5 year Texas Commission on Environmental Quality (TCEQ) permit was submitted and accepted by TCEQ on June 25, 2018.
2. Houston School Illumination Project – new streetlights will be installed by Oncor within the next few months as supplies (base plates) are needed before construction can begin for installation of LED lights.
3. General Design Manual – a work session within the next few months will include a presentation on changes to the general design manual and standard construction details.
4. New Traffic Signal at the intersection of Bear Creek Road and the northbound service road of I-35E – The City of Glenn Heights requested new traffic signals to be designed and installed by TxDOT on the southbound service road of I-35E. As a result, new traffic signals were installed on the northbound service road of I-35E and Bear Creek Road at no cost to the City of Lancaster. The signals were fully operational in May 2018 as construction started in December 2017.
5. TxDOT Green Ribbon Grant Project– On May 7, 2018 Staff attended a mandatory workshop at the Texas Department of Transportation are office in Mesquite. Staff received information and direction on requirements for the application, funding and criteria being used for selection of projects. The deadline for submittal is October 11, 2018. Staff will be submitting a median improvement and gateway project for SH 342 (Dallas Avenue) from Cedardale to Eighth Street.
6. Loop 9 – Loop 9 is a proposed roadway along the southern portion of the City of Lancaster's city limits. It is an element of the regional long-range transportation plan that would aid in addressing the transportation needs identified in the region. The purpose of Loop 9 is to provide a facility that would accommodate expanding transportation demands resulting from population growth and economic development in the region; increase mobility and accessibility in the region; and provide an east-west transportation facility to serve the communities in the Southern Dallas Inland Port project area.

As early as 1964, the need for a new transportation facility was identified. In 1974, Loop 9 was added to the state thoroughfare plan. In April 1995, the North Central Texas Council of Government (NCTCOG) Regional Transportation Plan included Loop 9. In 2002 the environmental impact study began by Dallas County. In 2006, TxDOT became lead on the Draft Environmental Impact Statement (DEIS). The NCTCOG Mobility 2010 Plan established the alignment analysis

which included Lancaster. The project engineering is being managed by a TxDOT consultant and TxDOT Advance Project Development. The environmental clearance was completed in September 2017 with a construction letting scheduled in March of 2022. The City received a letter from TxDOT dated March 30, 2017 requesting a resolution designating the freeway between I-35 and I-45 as State Loop 9. At the April 10, 2017 City Council Regular Meeting, Council approved a resolution to support the Texas Department of Transportation (TxDOT's) Dallas District recommendation to designate the new location freeway between I-35 and I-45 as State Loop 9. In November 2017, staff received a notice requesting contribution from the City of Lancaster for the rights-of-way acquisition that will be required for this project.

In June 2018, The City Council received a presentation on future Loop 9 and a request to cost share from the Texas Department of Transportation. Council directed staff to bring back information on the bond underwriting requirements, time frame in which to provide payment to TxDOT, and the timeframe on the project. An update is scheduled at the July 30, 2018 Special Work Session of the City Council.

7. High Speed Rail – In 2010 Texas Central Railway (TCR), a private, Texas-based company was formed for the purpose to secure environmental and technological regulatory approvals required to advance subsequent phases of the project. The project was to promote and develop the high speed passenger rail between Houston and Dallas.

In April of 2015, Texas Central Partners (TCP) the company that intends to build and operate high speed rail service between Dallas and Houston hosted multiple open house informative meetings in the Dallas to Houston corridor. Over the next two years TCP has worked with Lancaster on the alignment through our city. In September 2017, another public meeting was held in which staff was informed that right-of-way acquisition was under way. In December 2017, the draft environmental impact statement (DCIS) was released by the federal railroad administration which was a major hurdle for this project to continue moving forward.

On June 25, 2018 staff met with Texas Central Partners, TxDot, Dallas County and the City of Dallas to discuss the final location of the maintenance facility. This project is ongoing.

LANCASTER CITY COUNCIL

A City Council Special Meeting

1.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Financially Sound Government
Healthy, Safe & Engaged Community

Submitted by: Fabrice Kabona, Assistant to the City Manager

Agenda Caption:

Consider a resolution approving an Interlocal agreement with the North Central Texas Council of Government (NCTCOG) for reimbursement of Grant funds for the Solid waste and Recycling education project.

Background:

On March 12, 2018, the Lancaster City Council approved a resolution authorizing the filing of a grant application with the NCTCOG, in an amount not to exceed fifty-four thousand one hundred seventy-five dollars and forty-four cents (\$54,175.44), for the FY 2018/2019.

The City of Lancaster has been awarded the reimbursable grant in the amount of \$40,371.00, for a Solid Waste and Recycling Education Project. All project expenses up to \$40,371.00, incurred during the term of this agreement, (from the date the agreement is signed until March 31, 2019), will be fully reimbursed to the City.

This project falls under the Texas Commission on Environmental Quality (TCEQ), - Educational and Training Projects category. The City of Lancaster requested funding to assist in the expansion of the solid waste and recycling education. The goal of the proposed educational project is to increase recycling participation, reduce and eliminate illegal dumping, as well as educate citizens about the City's sanitation guidelines. With these grant funds, staff will purchase a retrofit recycling vehicle (van) that will be equipped on one side with a large flat screen TV to be viewed by event attendees outside the van; along with this vehicle, staff will acquire a mascot to assist in the promotion of recycling at various events. Additionally, staff will partner with our solid waste provider, Community Waste Disposal, to produce an educational video seeking to encourage source reduction and promote reuse and recycling; educate the public on the City's sanitation guidelines regarding cart placement and bulk and brush collection; the video will also touch on the dangers of illegal dumping and how to identify and report illegal dumping.

The source of the funds provided by TCEQ is the Solid Waste Disposal and Transportation Fees, as stated in Texas Health and Safety Code 361.013.

Operational Considerations:

The funding amount under this agreement shall not exceed \$40,371.00. All payments for necessary and reasonable actual costs incurred during the term of the agreement ending on March 31, 2019, shall be on a reimbursement basis.

Legal Considerations:

The City Attorney has reviewed and approved as to form the attached resolution and contract agreement prepared by NCTCOG.

Public Information Considerations:

This item is being considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

The City will receive 100% reimbursement for dollars spent towards the project.

Options/Alternatives:

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

Recommendation:

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

Attachments

Resolution

Exhibit "1"

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT WITH THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS (NCTCOG) FOR REIMBURSEMENT OF GRANT FUNDS FOR THE SOLID WASTE AND RECYCLING EDUCATION PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID INTERLOCAL AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster desires to enter into an interlocal agreement with North Central Texas Council of Government (NCTCOG) for the Solid waste and Recycling education project;

WHEREAS, the City and NCTCOG, is of the opinion that participation in an Interlocal agreement will be highly beneficial to the taxpayers of the local government; and

WHEREAS, after discussion and consideration, the City Council has determined that it would be in the best interest of the City and its citizens to enter into such agreement.

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

SECTION 1. That the terms and conditions of the interlocal agreement with the North Central Texas Council of Governments, attached hereto and in incorporated herein by reference as Exhibit "1", having been reviewed by the City Council of the City of Lancaster and found to be acceptable and in the best interests of the City of Lancaster and its citizens are hereby in all things approved.

SECTION 2. That the City Council of the City of Lancaster hereby authorizes the City Manager to execute said interlocal agreement with NCTCOG.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

**Interlocal Agreement
NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS and
City of Lancaster**

1. AGREEMENT PARTIES

This Interlocal Agreement ("Agreement") is entered into by and between the parties named below. Neither the Texas Commission on Environmental Quality (TCEQ) nor the State of Texas is a party to this Agreement. This Agreement, including all Attachments, represents the entire Agreement between the parties.

Funding Agency: North Central Texas Council of Governments
Herein referred to as: NCTCOG

Subrecipient: City of Lancaster
Herein referred to as: SUBRECIPIENT

2. PURPOSE

The purpose of this Agreement is to define the scope of services for this solid waste implementation project and to ensure the project meets the provisions of §361.014(b) of the Texas Health and Safety Code and the regional solid waste management plan goals and objectives.

3. SERVICES

For the Project Solid Waste and Recycle Education Project, the SUBRECIPIENT shall complete all work as specified in this Agreement and all Attachments. The following are attached and incorporated into this Agreement:

- Attachment A – Scope of Work
- Attachment B – Project Budget and Detailed Cost Sheets
- Attachment C – Supplemental Funding Standards
- Attachment D – Funding Agency Requirements for Implementation Projects
- Attachment E – Reporting Forms and Deadlines

The SUBRECIPIENT shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services and other work furnished by the SUBRECIPIENT under this Agreement.

The SUBRECIPIENT shall perform such services as may be necessary to accomplish the work required under this Agreement, in accordance with the funding agency and contractual requirements and any and all applicable law. NCTCOG may require the SUBRECIPIENT to correct and revise any errors, omissions or other deficiencies in any reports or services provided by the SUBRECIPIENT to ensure that such reports and services fulfill the purposes of this Agreement. The SUBRECIPIENT shall make the required corrections or revisions without additional cost to NCTCOG.

Neither NCTCOG's review, approval or acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement; and the SUBRECIPIENT shall be, and remain liable in accordance with applicable law for all damages to NCTCOG, including reasonable attorney's fees and court costs caused by the SUBRECIPIENT'S negligent performance of any of the services furnished under this Agreement.

The obligations of the SUBRECIPIENT under this Article are in addition to the SUBRECIPIENT'S other express or implied assurances under this Agreement or applicable law.

4. TERM OF AGREEMENT

This Agreement is effective on the date signed by the last party and shall terminate on August 31, 2019, unless terminated earlier as provided herein.

5. AVAILABILITY OF FUNDS

The source of the funds provided by the Texas Commission on Environmental Quality (TCEQ) is the Solid Waste Disposal and Transportation Fees, as stated in Texas Health and Safety Code 361.013. Due to demands upon that source for funds necessary to protect the health and safety of the public, it is possible that the funds contained in the Municipal Solid Waste Disposal Account, as proscribed in Texas Health and Safety Code 361.014(d), may be depleted or reduced prior to completion of this Agreement. The parties agree that all funding arranged under this Agreement is subject to sufficient funds in the Municipal Solid Waste Disposal Account.

This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to the receipt and availability of funds appropriate by the Texas Legislature for the purposes of this Agreement or the respective claim, suite or obligation, as applicable. In the event funding is not available, the parties further agree that NCTCOG has no further obligation to pay and SUBRECIPIENT has no further duty to perform under terms of this Agreement, and the agreement is terminated.

6. REIMBURSEMENTS AND PAYMENTS

The funding amount under this Agreement shall not exceed \$40,371.00 as detailed in Attachment B. All payments for necessary and reasonable actual allowable costs incurred during the term of the Agreement shall be on a reimbursement basis and comply with Attachment C and D. The following provisions apply to NCTCOG reimbursement of expenses:

- NCTCOG is not liable for expenses made in violation of Attachment C and D.
- NCTCOG is not liable to the SUBRECIPIENT for costs paid or performance rendered by SUBRECIPIENT before commencement of this Agreement or after termination of this Agreement.
- All costs must be incurred and paid by SUBRECIPIENT and billed to NCTCOG by March 31, 2019 in order to be eligible for reimbursement. NCTCOG is not liable for any costs paid by SUBRECIPIENT in the performance of this Agreement that have not been billed to NCTCOG by March 31, 2019.

The SUBRECIPIENT must submit a Request for Reimbursement Form at least quarterly (even if no funds were spent), but not more frequently than once a month. Except as specifically authorized by NCTCOG in writing, NCTCOG is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in this Agreement, stated guidelines, and applicable rules and regulations. Failure on the part of the SUBRECIPIENT to comply with the conditions set forth in this Agreement shall be the basis for termination of the Agreement and/or the revocation of any unexpended or inappropriately expended funds.

NCTCOG will review all materials and will not make a reimbursement payment unless all required items, including any past due progress reports or other forms, have been provided and are deemed to be accurate. NCTCOG will not reimburse or otherwise make payment for expenditures that are not authorized under this Agreement. If NCTCOG determines that an expenditure that was reimbursed is not an authorized expense, NCTCOG will request return and reimbursement of those funds from the SUBRECIPIENT or, where appropriate, the application of those funds to other authorized expense, and shall not provide any additional reimbursements to the SUBRECIPIENT until the funds are returned or are applied to other authorized expenses.

Release of Claims. As a condition of final payment or settlement, or both, the SUBRECIPIENT shall execute and deliver to NCTCOG a release of all claims against NCTCOG for payment under this Agreement.

7. TERMINATION

Termination for Cause. NCTCOG may, upon providing 10 days' written notice and the opportunity to cure to the SUBRECIPIENT, terminate this Agreement for cause if SUBRECIPIENT materially fails to comply with the Agreement including any one or more of the following acts or omissions: nonconforming work, or existence of a conflict of interest. Termination for cause does not prejudice NCTCOG's other remedies authorized by this Agreement or by law.

Termination for Convenience. NCTCOG may, upon providing 10 days' written notice to the SUBRECIPIENT, terminate this Agreement for convenience. Termination shall not prejudice any other right or remedy of NCTCOG or the SUBRECIPIENT. SUBRECIPIENT may request reimbursement for: conforming work and timely, reasonable costs directly attributable to termination as mutually agreed. SUBRECIPIENT shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination.

If, after termination for cause by NCTCOG, it is determined that the SUBRECIPIENT had not materially failed to comply with the Agreement, the termination shall be deemed to have been for the convenience of NCTCOG.

Upon receipt of a termination notice the SUBRECIPIENT shall promptly discontinue all services affected (unless the notice directs otherwise); and deliver or otherwise make available to NCTCOG all data, drawings, specifications, reports, estimates, summaries, and such other information, materials, and equipment as may have been accumulated by the SUBRECIPIENT in performing this Agreement, whether completed or in progress.

8. NOTICES, PROJECT REPRESENTATIVES AND RECORDS LOCATION

Representatives. The individual(s) named below are the representatives of NCTCOG and the SUBRECIPIENT. They are authorized to give and receive communications and direction on behalf of NCTCOG and the SUBRECIPIENT as indicated below. All communications including official Agreement notices must be addressed to the appropriate representative or his or her designee.

Changes in Representatives. Either party may change its representative by unilateral amendment.

The NCTCOG Project Representative shall not be deemed to have authority to bind NCTCOG in Agreement unless NCTCOG's Executive Director has delegated that person to have such authority. The designated NCTCOG representative will provide direction to the SUBRECIPIENT on contractual and technical matters.

Project Representative:

Ryann Cline, Environment and Development
Planner
North Central Texas Council of Governments
Environment and Development Department
P. O. Box 5888
Arlington, Texas 76005-5888
TEL : (817) 608-2363 FAX: (817) 695-9191
Email: rcline@nctcog.org

Alternate Contact to Project Representative:

Kathleen Myers, Environment and Development
Planner
North Central Texas Council of Governments
Environment and Development Department
P. O. Box 5888
Arlington, Texas 76005-5888
TEL: (817) 695-9107 FAX: (817) 695-9191
Email: kmyers@nctcog.org

The SUBRECIPIENT hereby designates the individual(s) named below as the authorized personnel to receive direction from NCTCOG, to manage the work being performed, and to act on behalf of the SUBRECIPIENT as the Project Representative in contractual and technical matters:

Project Representative:

Fabrice Kabona, Assistant to the City Manager
211 N Henry St
Lancaster, Texas 75146
TEL : (972) 218-1324 FAX: (972) 218 - 3605
Email: fkabona@lancaster-tx.com

Alternate Contact to Project Representative:

Rona Stringfellow, Assistant City Manager
211 N Henry St
Lancaster, Texas 75146
TEL: (972) 275-1722 FAX: (972) 275 - 0919
Email: rstringfellow@lancaster-tx.com

Electronic Signatures. Electronic signatures may be used for budget amendments, reports, and correspondence provided the owner of the electronic signature approves the use of their signature for that purpose.

Records Location. The SUBRECIPIENT designates the following (physical) location for record access and review pursuant to any applicable provision of this Agreement.

City of Lancaster

**211 N Henry St
Lancaster, Texas 75146**

9. COMPLIANCE WITH APPLICABLE LAWS

The activities funded under this Agreement, shall be in accordance with all provisions of this Agreement, all applicable state and local laws, rules, regulations, permits, and guidelines. The main governing standards include, but may not be limited to, the standards set forth in this Article.

- Chapters 361, 363, and 364 of the Texas Health and Safety Code
- Title 30 TAC Chapter 330, Subchapter O, TCEQ Rules
- Title 30 TAC Chapter 14, TCEQ Rules
- The Uniform Grant and Agreement Management Act, Texas Government Code, §§783.001 et. seq., and the Uniform Grant Management Standards, 1 TAC, §§5.141 - 5.167, (collectively, "UGMS").
- General Appropriations Act, 84th Regular Legislative session
- Pursuant to Chapter 391 of the Local Government Code, funds received under this Agreement may be expended only subject to the limitations and reporting requirements set forth in this Article.

10. AGREEMENT AMENDMENTS

Agreement Changes/Adjustments. NCTCOG reserves the right, in its sole discretion, to unilaterally amend this Agreement throughout the term of this Agreement to incorporate any modifications necessary. The document may be changed or adjusted by written amendment and mutual agreement of both parties for Agreement changes. Agreement changes such as changes to project representative contacts, can be documented via electronic communications and agreement by both parties. Agreement changes such as: 1) an increase or decrease in the amount of compensation to the SUBRECIPIENT; 2) an extension or shortening of the term of the Agreement; 3) a significant change, as deemed by NCTCOG, in the scope of the Agreement or the services to be performed; or, 4) any action that is beyond the authority of NCTCOG's Executive Director, would require a written amendment to the Agreement signed by both parties.

Budget Amendments. The SUBRECIPIENT must receive written consent of the NCTCOG representative for any budget changes. Any budget changes that increases the total cost in Attachment B, and not to exceed payment amount in Article 6, requires an amendment to this Agreement.

Extension of Expense Deadline. An extension of the March 31, 2019 deadline for incurring, paying, and billing all expenses to NCTCOG must be requested by the SUBRECIPIENT in writing no later than January 15, 2019. NCTCOG in its sole discretion will determine whether or not an extension of the expense deadline will be granted.

11. PROGRESS REPORTING REQUIREMENTS

The SUBRECIPIENT shall prepare and submit to NCTCOG quarterly progress, summary, and results reports in accordance with Attachment E. For any changes to the reporting due dates, the SUBRECIPIENT must obtain written prior approval for an extension from NCTCOG. All required reports must be submitted electronically to NCTCOG. Based on the quarterly progress reports submitted by the SUBRECIPIENT, an in-person meeting or conference call may be required at NCTCOG's discretion in order to advance the project if certain milestones are not being met.

12. ADDITIONAL GENERAL TERMS AND CONDITIONS

No Debt against the State. This Agreement is contingent on the continuing appropriation of funds. This Agreement shall not be construed to create debt against the State of Texas.

UGMS. Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and applicable state and federal rules and law. The parties agree that all the requirements of the UGMS apply to this Agreement, including the criteria for Allowable Costs. Additional federal requirements apply if this Agreement is funded, in whole or in part, with federal funds.

No Interest for Delayed Payment. Because the SUBRECIPIENT is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable in the case of late payments.

Audit of Funds. The SUBRECIPIENT understands that acceptance of funds under this Agreement acts as acceptance of the authority of the NCTCOG, or any successor agency, to conduct an audit or investigation in connection with those funds. SUBRECIPIENT further agrees to fully cooperate with NCTCOG or its successor in the conduct of the audit or investigation, including providing all records requested. SUBRECIPIENT shall ensure that this clause concerning the audit of funds accepted under this Agreement is included in any subcontract it awards.

Financial Records. SUBRECIPIENT shall establish and maintain financial records including records of costs of the Scope of Work in accordance with generally accepted accounting practices. Upon request SUBRECIPIENT shall submit records in support of reimbursement requests. SUBRECIPIENT shall allow access during business hours to its financial records by NCTCOG and state agencies for the purpose of inspection and audit. Financial records regarding this Agreement shall be retained for a period of three (3) years after date of submission of the final reimbursement request.

If requested by NCTCOG, the SUBRECIPIENT agrees to provide to NCTCOG the additional expense records and documentation materials, appropriate for the expense, for the time period requested. NCTCOG will provide reasonable time for SUBRECIPIENT to comply with the request for additional documentation and will allow reasonable time for SUBRECIPIENT to respond to findings of noncompliance or other issues.

Responsibility for the Scope of Work. SUBRECIPIENT undertakes performance of the Scope of Work as its own project and does not act in any capacity on behalf of the NCTCOG nor as a NCTCOG agent or employee. SUBRECIPIENT agrees that the Scope of Work is furnished and performed at SUBRECIPIENT's sole risk as to the means, methods, design, processes, procedures and performance.

Independent Contractor. The parties agree that the SUBRECIPIENT is an independent contractor. Nothing in this Agreement shall create an employee-employer relationship between SUBRECIPIENT and NCTCOG. Nothing in this Agreement shall create a joint venture between NCTCOG and the SUBRECIPIENT.

Responsibilities for Subcontractors. The SUBRECIPIENT'S contractual costs must comply with allowable cost requirements. SUBRECIPIENTS who are governmental entities must engage in contractor selection on a competitive basis in accordance with their established policies or NCTCOG's procurement guidelines. All subcontracts awarded by the SUBRECIPIENT under this Agreement shall be in accordance with the (UGMS) and other applicable procurement laws. The SUBRECIPIENT shall be responsible for the management and fiscal monitoring of all subcontractors. The SUBRECIPIENT shall ensure that all subcontractors comply with all provisions required by this Agreement. NCTCOG reserves the right to perform an independent audit of all subcontractors.

All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Scope of Work under a direct or indirect Agreement with SUBRECIPIENT shall be considered to be the acts and omissions of SUBRECIPIENT.

No Third Party Beneficiary. NCTCOG does not assume any duty to exercise any of its rights and powers under the Agreement for the benefit of third parties. Nothing in this Agreement shall create a contractual relationship between NCTCOG and any of the SUBRECIPIENT's subcontractors, suppliers or other persons or organizations with a contractual relationship with the SUBRECIPIENT.

Time is of the Essence. SUBRECIPIENT's timely performance is a material term of this Agreement.

Delays. Where SUBRECIPIENT's performance is delayed, except by Force Majeure or act of the NCTCOG, NCTCOG may withhold or suspend reimbursement, terminate the Agreement for cause, or enforce any of its other rights (termination for convenience may be effected even in case of Force Majeure or act of NCTCOG).

Conflict of Interest. SUBRECIPIENT shall have a policy governing disclosure of actual and potential conflicts of interests. Specifically, for work performed under this Agreement by SUBRECIPIENT or any related entity or individual, SUBRECIPIENT shall promptly disclose in writing to NCTCOG any actual, apparent, or potential conflicts of interest, including but not limited to disclosure of:

- i. Any consulting fees or other compensation paid to employees, officers, agents of SUBRECIPIENT, or members of their immediate families, or paid by subcontractors or subrecipients; or
- ii. Any organizational conflicts of interest between SUBRECIPIENT and its subcontractors or subrecipients under a subaward.

No entity or individual with any actual, apparent, or potential conflict of interest will take part in the performance of any portion of the Scope of Work, nor have access to information regarding any portion of the Scope of Work, without NCTCOG's written consent in the form of a unilateral amendment. SUBRECIPIENT agrees that NCTCOG has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination of this Agreement.

Quality and Acceptance. All work performed under this Agreement must be complete and satisfactory in the reasonable judgment of the NCTCOG. All materials and equipment shall be handled in accordance with instructions of the applicable supplier, except as otherwise provided in the Agreement.

Quality Assurance. All work performed under this Agreement that involves the acquisition of environmental data will be performed in accordance with a TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and Environmental Protection Agency (EPA) requirements. Environmental data includes any measurements or information that describe environmental processes, location, conditions, ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to SUBRECIPIENT's receipt of the QAPP signed by TCEQ and, if necessary, the EPA. Without prejudice to any other remedies available to TCEQ, TCEQ may refuse reimbursement for any environmental data acquisition performed prior to approval of a QAPP by TCEQ and, if necessary, the EPA. Also, without prejudice to any other remedies available to TCEQ, SUBRECIPIENT's failure to meet the terms of the QAPP may result in TCEQ's suspension of associated activities and non-reimbursement of expenses related to the associated activities.

Laboratory Accreditation. Any laboratory data or analyses provided under this Agreement must be prepared by a laboratory that is accredited by TCEQ according to 30 Texas Administrative Code Chapter 25, subchapters A and B, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 Texas Administrative Code Section 25.6.

Third Party Intellectual Property. Unless specifically modified in an amendment or waived in a unilateral amendment, SUBRECIPIENT must obtain all intellectual property licenses expressly required in the Scope of Work, or incident to the use or possession of any deliverable under the Agreement. SUBRECIPIENT shall obtain and furnish to NCTCOG and TCEQ: documentation on the use of such intellectual property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such intellectual property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such intellectual property for NCTCOG and TCEQ non-commercial purposes, and other purposes of the State of Texas.

Grant of License. SUBRECIPIENT grants to NCTCOG and TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial NCTCOG or TCEQ purpose any preexisting intellectual property belonging to the SUBRECIPIENT that is incorporated into any new works created as part of the Scope of Work, intellectual property created under this Agreement, and associated user documentation.

Insurance. Unless prohibited by law, the SUBRECIPIENT shall require its contractors to obtain and maintain during the Agreement period adequate insurance coverage sufficient to protect the SUBRECIPIENT and the NCTCOG from all claims and liability for injury to persons and for damage to property arising from the Agreement. Unless specifically waived by the NCTCOG, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.

Indemnification. TO THE EXTENT AUTHORIZED BY LAW, THE SUBRECIPIENT SHALL REQUIRE ALL CONTRACTORS PERFORMING AGREEMENT ACTIVITIES ON BEHALF OF SUBRECIPIENT TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE NCTCOG AND SUBRECIPIENT AND THEIR OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF AGREEMENT ACTIVITIES BY THE CONTRACTOR OR ITS SUBCONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THIS COVENANT SURVIVES THE TERMINATION OF THE AGREEMENT.

Payment of a Release. Neither payment by NCTCOG nor any other act or omission other than an explicit written release, in the form of a unilateral amendment, constitutes a release of SUBRECIPIENT from liability under this Agreement.

Schedule of Remedies available to the NCTCOG. The following Schedule of Remedies applies to this Agreement. In the event of SUBRECIPIENT's nonconformance, NCTCOG may do one or more of the following:

- Issue notice of nonconforming performance;
- Reject nonconforming performance and request corrections without charge to the NCTCOG;
- Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
- Suspend all or part of the Agreement activities or payments, or both, pending accepted revision of the nonconformity;
- Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
- Terminate the Agreement without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.

Opportunity to Cure. The SUBRECIPIENT will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.

Cumulative Remedies. Remedies are cumulative; the exercise of any remedy under this Agreement or applicable law does not preclude or limit the exercise of any other remedy available under this Agreement or applicable law.

The parties agree that this Agreement does not waive any sovereign immunity to which either party is entitled by law.

Survival of Obligations. Except where a different period is specified in this Agreement or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Agreement, as well as all continuing obligations indicated in the Agreement, survive for four (4) years beyond the termination or completion of the Agreement, or until four (4) years after the end of a related proceeding. A related proceeding includes any litigation, legal proceeding, permit application, or State Office of Administrative Hearings proceeding, which is brought in relation to the Agreement or which in NCTCOG's opinion is related to the subject matter of the Agreement. Either party shall notify the other of any related proceeding if notice of the proceeding has not been provided directly to that other party.

Delivery of Notice. Notices are deemed to be delivered three (3) working days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices delivered by other means are deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile transmission, email, or other commercially accepted means.

Interpretation of Time. All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday or a state or federal holiday, it is omitted from the computation.

State, Federal Law. This Agreement is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.

Severability. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall be deemed

severable (to the extent of such illegality, invalidity or unenforceability) and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect. If possible, the severed provision shall be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.

Assignment. No delegation of the obligations, rights, or interests in the Agreement, and no assignment of payments by SUBRECIPIENT will be binding on NCTCOG without its written consent, except as restricted by law. No assignment will release or discharge the SUBRECIPIENT from any duty or responsibility under the Agreement.

Venue. The SUBRECIPIENT agrees that any cause of action involving this Agreement arises solely in Tarrant County, Texas.

Publication. The SUBRECIPIENT must acknowledge the financial support of NCTCOG and TCEQ whenever work is funded, in whole or part, through this Interlocal Agreement. This includes using the following notation on the front cover, title page, surface of recycling bins or carts, vehicle wraps, vehicles, pencils, pens, T-shirts, stickers, electronic devices, all mechanical equipment, etc.:

“Prepared in cooperation with the North Central Texas Council of Governments through funding from the Texas Commission on Environmental Quality.”

Tangible items where surface space is limited may utilize the TCEQ logo or the phrase “Funded by TCEQ.” Consult with NCTCOG Project Representative to obtain TCEQ logo and for guidance on the proper display.

SUBRECIPIENT agrees to notify NCTCOG five (5) days prior to the publication or advertisement of information related to this Agreement. SUBRECIPIENT agrees not to use the NCTCOG or TCEQ logo or the NCTCOG or TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate NCTCOG or TCEQ authority.

Waiver. With the exception of an express, written waiver in the form of a unilateral amendment signed by NCTCOG, no act or omission will constitute a waiver or release of SUBRECIPIENT’s obligation to perform conforming Agreement activities. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion.

Compliance with Laws. NCTCOG relies on SUBRECIPIENT to perform all Agreement activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.

Counterparts. This Agreement may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Agreement.

Accessibility. All electronic content and documents created as deliverables under this Agreement must meet the accessibility standards prescribed in 1 Texas Administrative Code sections 206.50 and 213 for state agency web pages, web content, software, and hardware, unless NCTCOG agrees that exceptions or exemptions apply.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the Effective Date.

City of Lancaster

Signature

Opal Mauldin-Jones

Printed Name

City Manager

Title

July 30, 2018

Date

North Central Texas Council of Governments

Michael Eastland
Executive Director

Printed Name

Title

Date

ATTACHMENT A
SCOPE OF WORK

This project will help reduce illegal dumping and increase the city's recycling participation rate through education outreach efforts by utilizing expanded outreach strategies. This project will directly benefit the residents of the City of Lancaster. The funds for this project will be used to purchase a recycling education vehicle, the production of an educational video, a recycling mascot and a van wrap for the recycling education vehicle. The recycling education vehicle will be an important aspect of enhancing the city's existing solid waste education outreach efforts. The vehicle, video, and recycling mascot will be present for the city's "trash-off" events that are held on a quarterly basis. These "trash-off" events have approximately 800 vehicles per event. The vehicle, mascot and video will also be present at Lancaster Independent School District outdoor events. The City of Lancaster's recycling provider is Community Waste Disposal. This equipment will be used 100% for recycling purposes.

Tasks, deliverables, and timeline are listed below in the following format:

1. Task

a. Deliverable (Due Date)

1. Completion of grant deliverables

- a. Submit quarterly reports on timeline determined by NCTCOG (beginning September 2018)
- b. Complete all expenditures and submit reimbursement requests (March 31, 2019)
- c. Submit Release of Claims (May 15, 2019)
- d. Submit Final Report April 1, 2019 through August 31, 2019 (September 2019)
- e. Submit TCEQ Year Later Report (September 2020)

2. Purchase Equipment

- a. Purchase/order Dodge Ram ProMaster Vehicle (June 2018)
- b. Purchase/Order Recycling Mascot (June 2018)

3. Recycling Education Video

- a. Begin Video Production (June 2018)
- b. Publish and Promote Video (July to August 2018)

4. Outreach Events

- a. First trash-off event (November 2018)
- b. Second trash-off event (January 2019)
- c. Third trash-off event (March 2019)
- d. Christmas Parade (December 2018)

ATTACHMENT B
PROJECT BUDGET AND DETAILED COST SHEETS

Budget Categories	Funding Approved
1. Personnel (Salary)	\$0
2. Fringe Benefits	\$0
3. Travel (Does not include registration)	\$0
4. Supplies (unit cost of less than \$1,000)	\$0
5. Equipment (unit cost of \$5,000 or more, and Controlled Assets up to \$4,999)	\$26,006.00
6. Contractual (other than for Construction)	\$6,485.00
7. Construction	\$0
8. Detailed "Other" Expenses Budget	\$7,880.00
TOTAL Direct charges (sum of lines 1-8)	\$0
9. Indirect charges	\$0
TOTAL COST (sum of lines 1-9)	\$40,371.00

LIST IN-KIND DETAILS

NOTE: Appropriate documentation must be included in order to receive credit for any eligible in-kind items. (I.e. proof of payment, proof of value etc.).

[Click here to enter text.](#)

DETAILED BUDGET SHEET - Equipment

This budget sheet should be completed if any expenses are entered for equipment on Line 5 of the Project Budget Summary; otherwise omit. \$26,006.00

Equipment includes all non-construction related, tangible property having a unit acquisition cost of **\$5,000** or more with an estimated useful life of over one-year. All equipment purchases must be pre-approved by NCTCOG. All equipment and facilities purchased or constructed with funds provided under this Agreement shall be used for the purposes intended in the funding Agreement.

Importantly, any equipment/facilities with a per-unit value of \$5,000 or more may not be transferred or sold without prior authorization from TCEQ. Additionally, certain types of equipment are classified as "controlled assets" with costs up to and including \$4,999 and shall be maintained on the inventory system. Examples of Controlled Assets are computers, fax machines, cameras, telephones, etc.

<u>Equipment (description, type, model, etc.)</u>	<u># of Units</u>	<u>Cost per Unit</u>	<u>Total Cost</u>
Dodge Ram ProMaster	1	\$26,006.00	\$26,006.00

DETAILED BUDGET SHEET - Contractual

This budget sheet should be completed if any expenses are entered for Contractual services on Line 6 of the Project Budget Summary; otherwise omit. \$6,485.00

All Contractual expenses **must** be pre-approved by NCTCOG. Expenses included under this category should be for costs for professional services or tasks provided by a firm or individual who is not employed by the SUBRECIPIENT other than those related to construction. All local government municipal laws and regulations, including UGMS, for bidding and Contractual for services must be followed during the project period.

Any expenses (including legal fees, staff time, travel and communications) related in any way to drafting legislation, lobbying for legislation, or other political activities are **not** allowable under this program.

The following is an itemized list of the Contractual expenses associated with the funded project, with as many specifications as possible:

Contractual	Costs
Recycling Education Video Production	\$6,485.00

ATTACHMENT C

ELIGIBLE EXPENSE STANDARDS

Contractual Expenses

All outlays that fall within the “Contractual” category of the budget shall be itemized by the SUBRECIPIENT on the Reimbursement Request Form.

No Contractual expenditures are eligible for reimbursement under this Agreement, unless such Agreements' scope of work has been approved ahead of time, in writing, by NCTCOG. Any amendments to the SUBRECIPIENT'S subcontract authorization for reimbursement under this Agreement, whether or not such subcontract required NCTCOG's pre-approval, which will result in or require substantive changes to any of the tasks required to be performed under this Agreement, must be approved in writing by NCTCOG.

Contractual expenses include professional (subcontracted) services. The SUBRECIPIENT is expected to conform to the appropriate bidding and contracting laws and regulations according to the SUBRECIPIENT'S own internal policies and procedures. In addition, the SUBRECIPIENT is required to maintain documentation that the costs paid for contractual expenses (including subcontract expenses) were reasonable and necessary. Please note the specific guidance applicable to project restrictions, especially regarding projects that require a TCEQ permit or registration.

In addition to the itemized Reimbursement Request Form, the SUBRECIPIENT shall attach, for each item listed, legitimate documentation that (1) further identifies the specific cost; (2) clearly identifies the vendor or subcontractor who provided the materials or services; and (3) confirms the reimbursable materials listed.

Supporting documentation shall include a purchase order and an invoice, plus a copy of the check showing payment or bank transmittal.

Other Expenses

Any Request for Reimbursement must include an itemization of the expenses, using the Reimbursement Request Form.

No expenses under the “Other” budget category, including computer hardware or software purchases not included under the “Equipment” budget category, shall be eligible for reimbursement under this Agreement, unless approved ahead of time, in writing, by NCTCOG.

The “Other” expenses as identified in Attachment B of the Project Budget are allowed. The restrictions set forth in the Uniform Grant and Agreement Management Standards apply. All expenses budgeted under this “Other” category shall be itemized by the project SUBRECIPIENT when requesting reimbursement. Some expenses that may be appropriate include but are not necessarily limited to:

- | | |
|-------------------------------|-----------------------------|
| a. Postage/delivery | g. Office space |
| b. Telephone/Fax | h. Basic office furnishings |
| c. Utilities | i. Legal costs |
| d. Printing/reproduction | j. Vehicle maintenance |
| e. Advertising/Public notices | |
| f. Signage | |

The expenses under this budget category must receive NCTCOG's written approval prior to purchase. Again, for these “other” expenditures, documentation for reimbursement must show that the expenses

were paid (a copy of the check or bank transmittal) and shall include purchase orders, if issued, and invoices or receipts.

Other	Costs
Recycling Mascot	\$4,350.00
Van Wrap	\$3,530.00

ATTACHMENT D
FUNDING AGENCY STANDARDS FOR IMPLEMENTATION GRANTS

In addition to the standards set forth in applicable law and regulations, the standards outlined below apply to all uses of the solid waste grant funds. These funding agency standards and limitations apply to all implementation project activities funded under this Agreement. The SUBRECIPIENT is responsible for ensuring compliance with these standards. Furthermore, at the discretion of NCTCOG and the funding agency, the Texas Commission on Environmental Quality (TCEQ), may deem certain expenses ineligible that are not explicitly stated in these Funding Standards. The SUBRECIPIENT should coordinate with NCTCOG to determine eligibility of all expenses prior to incurring project expenses.

General Standards

1. The provisions of the Uniform Grant Management Standards (UGMS) issued by the Office of the Governor apply to the use of these funds, as well as the supplement financial administration provided in the program Administrative Procedures.
2. Recipients of funds under this Agreement and subcontractors shall comply with all applicable state and local laws and regulations pertaining to the use of state funds, including laws concerning the procurement of goods and services and competitive purchasing requirements.
3. Funds may not be provided through a pass-through grant or subcontract to any public or private entity that is barred from participating in state Agreements by the Texas Facilities Commission.
4. Public and private entities subject to payment of state solid waste disposal fees and whose payments are in arrears may not receive funds under this Agreement through either a pass-through grant or subcontract.
5. In accordance with §361.014(b), Texas Health and Safety Code, and 30 TAC §330.649(d), TCEQ Regulations, a project or service funded under this Agreement must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. Under this definition, the term private industry includes non-profit and not-for-profit non-governmental entities.
6. All equipment and facilities purchased or constructed with funds provided under this Agreement shall be used for the purposes intended in the funding Agreement and comply with **Attachment C**.
7. A project or service funded under this Agreement must be consistent with the NCTCOG Regional Solid Waste Plan, and must be intended to implement the goals, objectives, and priorities established in the regional plan.
8. Funds may not be used to acquire land or an interest in land.
9. Funds may not be used to supplant existing funds. In particular, staff positions where the assigned functions will remain the same and that were active at the time of the funding application or proposal, and were funded from a source other than a previous solid waste grant, may not be funded.
10. Funds may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorized employee per diem expenses for food costs incurred while on travel status.
11. Funds may not be used for payment of salaries to any employee who uses alcoholic beverages on active duty. Funds may not be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.
12. Funds may not be used for employment, Agreements for services of a lobbyist, or for dues to an organization, which employs or otherwise Agreements for the services of a lobbyist.
13. Funds may only be used for projects or programs for managing municipal solid waste.
14. Except as may be specifically authorized, funds may not be used for projects or facilities that require a permit from the TCEQ and/or that are located within the boundaries of a permitted facility, including landfills, wastewater treatment plants, or other facilities. This restriction may be waived by the TCEQ, at its discretion, for recycling and other eligible activities that will take place within

the boundaries of a permitted facility. The applicant and/or NCTCOG must request a preliminary determination from the TCEQ as to the eligibility of the project prior to the project being considered for funding by NCTCOG.

15. Projects or facilities requiring a registration from the TCEQ, and which are otherwise eligible for funding, must have received the registration before the project funding is awarded.
16. Except as may be specifically authorized, funds may not be used for activities related to the collection or disposal of municipal solid waste. This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for reducing the volume of solid waste which is to be disposed of; landfills and landfill-related facilities, equipment, or activities, including closure and post-closure care of a permitted landfill unit; or other activities and facilities associated with the disposal of municipal solid waste.
17. Funds may not be used to assist an entity or individual to comply with an existing or pending federal, state, or local judgment or enforcement action. This restriction includes assistance to an entity to comply with an order to clean up and/or remediate problems at an illegal dumpsite. However, the TCEQ may waive this restriction, at its discretion and on a limited case-by-case basis, to address immediate threats to human health or the environment, and where it is demonstrated that the responsible party does not have the resources to comply with the order.
18. Funds may not be used to pay penalties imposed on an entity for violation of federal, state, or local laws and regulations. This restriction includes expenses for conducting a supplemental environmental project (SEP) under a federal or state order or penalty. Funds may be used in conjunction with SEP funds to support the same project.

Local Enforcement. Funds may not be provided to any law enforcement agency regulated by Texas Occupational Code, Title 10, Chapter 1701, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

When funding is to be provided for salaries of local enforcement officers, the SUBRECIPIENT must certify that at least one of the officers has attended or will attend within the term of the funding the TCEQ's Criminal Environmental Law Enforcement Training or equivalent training.

Local enforcement vehicles and related enforcement equipment purchased entirely with funds provided under this Agreement may only be used for activities to enforce laws and regulations pertaining to littering and illegal dumping, and may not be used for other code enforcement or law enforcement activities. Vehicles and equipment that are only partially funded must be dedicated for use in local enforcement activities for a percentage of time equal to the proportion of the purchase expense funded.

Entities receiving funds for a local enforcement officer, enforcement vehicles, and/or related equipment for use by an enforcement officer, must investigate major illegal dumping problems, on both public and private property, in addition to investigating general litter problems on public property. Entities receiving funds to conduct a local enforcement program must cooperate with the TCEQ's regional investigative staff in identifying and investigating illegal dumping problems. Lack of cooperation with the TCEQ staff may constitute a reason to withhold future funding to that entity for local enforcement activities.

Funds may not be used for investigation and enforcement activities related to the illegal dumping of industrial and/or hazardous waste. Instances where industrial or hazardous waste is discovered at a site do not preclude the investigation of that site, so long as the intent and focus of the investigation and enforcement activities are on the illegal dumping of municipal solid waste.

Funds may not be used for purchase of weapons, ammunition, and/or HazMat gear.

Litter and Illegal Dumping Cleanup and Community Collection Events. Lake and Waterway Cleanup events may be coordinated with the Keep Texas Beautiful organization. Projects funded to clean up litter or illegal dumping on private property must be conducted through a local government sponsor. Funds may not be provided directly to a private landowner or other private responsible party for cleanup expenses.

The local government sponsor must oversee the cleanup work, or conduct the work with its own employees and equipment.

The costs for cleanup of hazardous waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ to deal with immediate threats to human health or the environment.

The costs for cleanup of Class 1 nonhazardous industrial waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ to deal with immediate threats to human health or the environment. The cleanup of Class 2 and 3 nonhazardous industrial wastes that may be found at a municipal solid waste site may be funded in conjunction with the cleanup of the municipal solid waste found at a site.

All notification, assessment, and cleanup requirements pertaining to the release of wastes or other chemicals of concern, as required under federal, state, and local laws and regulations, including 30 TAC Chapter 330, TCEQ's MSW Regulations, and 30 TAC Chapter 350, TCEQ's Risk Reduction Regulations, must be complied with as part of any activities funded under this Agreement.

All materials cleaned up using grant funds must be properly disposed of or otherwise properly managed in accordance with all applicable laws and regulations. To the extent feasible, it is recommended that materials removed from a site be reused or recycled. For projects to clean up large amounts of materials, NCTCOG should consider withholding at least ten (10) percent of the reimbursements under a pass-through grant or subagreement, until documentation is provided that the cleanup work has been completed and the materials properly managed.

Periodic community collection events to provide for collection and proper disposal of non-recyclable residential waste materials for which there is not a readily-available collection alternative, may be funded. This type of project may not include regular solid waste collection activities, such as weekly waste collection. Funded collection events may be held no more frequently than four times per year, and must only be intended to provide residents an opportunity to dispose of hard-to-collect materials, such as large and bulky items that are not picked up under the regular collection system, and might otherwise be illegally dumped by residents. To the extent practicable, community collection events should make every effort to divert wastes collected from area landfills, e.g., contain a recycling component.

Source Reduction and Recycling. Any program or project funded with the intent of demonstrating the use of products made from recycled and/or reused materials shall have as its primary purpose the education and training of residents, governmental officials, private entities, and others to encourage a market for using these materials.

Local Solid Waste Management Plans. All local solid waste management plans funded under this Agreement must be consistent with the COG's RSWMP, and prepared in accordance with 30 TAC Subchapter O, Chapter 330, TCEQ Regulations, and the Content and Format Guidelines provided by the TCEQ.

In selecting a local solid waste management plan project for funding, NCTCOG shall ensure that at least one year is available for the completion and adoption of the local plan.

Citizens' Collection Stations and "Small" Registered Transfer Stations. The design and construction of citizens' collection stations, as those facilities are defined under 30 TAC Chapter 330, TCEQ Regulations, may be funded. The costs associated with operating a citizens' collection station once it is completed may not be funded.

The design and construction of small municipal solid waste and liquid waste transfer stations that qualify for registration under 30 TAC 330, MSW Rules, may be funded. Other permitted or registered transfer stations may not be funded. A municipal solid waste transfer facility may be eligible for a registration if it serves a municipality with a population of less than 50,000, or a county with a population of less than 85,000, or is used in the transfer of 125 tons or less of municipal solid waste per day. A liquid waste transfer station may qualify for a registration if it will receive less than 32,000 gallons or less per day. The costs associated with operating a transfer station once it is completed may not be funded. The following MSW facilities may be funded:

- Notification tier municipal solid waste transfer stations that qualify under 30 TAC 330.11(g).
- Registered municipal solid waste transfer stations that qualify under 30 TAC 330.9(b)(1) through (3), or (f).
- Notification tier citizens' collection stations that qualify under 30 TAC 330.11(e)(1).
- Exempt local government recycling facilities as provided for under 30 TAC 328(a)(1).
- Notification tier recycling facilities that qualify under 30 TAC 330.11(e)(2).
- Notification tier composting facilities which qualify under 30 TAC 332.21 – 332.23.
- Notification tier liquid waste temporary storage facilities which qualify under 30 TAC 330.11(e)(5).
- Liquid waste transfer stations which qualify for registration in 30 TAC 330.9(g) and (o).
- Notification tier used oil collection facilities which qualify under 30 TAC 324.71(1) or (3).

Household Hazardous Waste Management. All household hazardous waste collection, recycling, and/or disposal activities must be coordinated with the TCEQ's HHW program staff, and all applicable laws, regulations, guidelines, and reporting requirements must be followed.

Technical Studies. All technical studies funded must be consistent with NCTCOG'S regional solid waste management plan, and prepared in accordance with Administrative Procedures provided by the TCEQ.

Educational and Training Projects. Educational and training programs and projects funded under this Agreement must be primarily related to the management of municipal solid waste, and funds applied to a broader education program may only be used for those portions of the program pertaining to municipal solid waste.

Other Types of Projects. If the TCEQ authorizes NCTCOG to fund additional types of projects, the authorization incorporated into the grant Agreement may include additional standards and restrictions that will apply to use of funds for that project or type of project.

ATTACHMENT E

REPORTING, FORMS, AND DEADLINES

The SUBRECIPIENT agrees to provide, throughout the life of the project, quarterly, final, and follow-up reports to document the project's results during and after the culmination of the project. The required reporting forms can be found at <http://www.nctcog.org/solidwastegrants>.

Quarterly Reports. The SUBRECIPIENT shall prepare and submit to NCTCOG quarterly progress reports documenting the accomplishments and units of work performed under this Agreement. The Quarterly Summary/Results Report form provided by NCTCOG will be due to NCTCOG on the dates indicated below:

	REPORTING PERIOD	DUE DATE
Quarterly Report #1	Start of Agreement - August 31, 2018	Friday, September 7, 2018
Quarterly Report #2	September 1, 2018 - November 30, 2018	Friday, December 7, 2018
Quarterly Report #3	December 1, 2018 - February 28, 2019	Friday, March 8, 2019
Quarterly Report #4	March 1, 2019– March 31, 2019	Friday, April 12, 2019
Final Report	April 1, 2019 – August 31, 2019	Monday, September 30, 2019
Year Later Follow-Up Results Report	March 31, 2019-August 31, 2020	Friday, September 11, 2020

The SUBRECIPIENT'S Reports must contain adequate descriptions of all project activities performed in order to allow NCTCOG to evaluate compliance with the provisions of this project. Performance information concerning timelines in meeting the schedule for required reports will be maintained by NCTCOG and shared as appropriate with members of the RCC. Any legal research and related legal activities shall be clearly detailed in the progress reports in order to assure NCTCOG that the activities are not prohibited. The SUBRECIPIENT shall comply with any reasonable request by NCTCOG for additional information on activities conducted in order for NCTCOG to adequately monitor the SUBRECIPIENT'S progress in completing the requirements of and adhering to the provisions of this Agreement.

Final Report. A Final Report, due Monday, September 30, 2019 in a format provided by NCTCOG. The Results Report should include information from April 1, 2019 to August 31, 2019.

Year Later Follow-Up Results Report. The Follow-up Results Report will provide cumulative results to document the impact of the project beyond the date of this Agreement. The Follow-up Results Report form will be provided by NCTCOG and will be due Friday, September 11, 2020.

LANCASTER CITY COUNCIL

A City Council Special Meeting

2.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Sound Infrastructure

Submitted by: Kellen Benbrook, Airport Manager

Agenda Caption:

Consider a resolution authorizing the City Manager to execute commercial and non-commercial leases, ground leases, and assignments and assumptions of ground leases at the Lancaster Regional Airport from August 1, 2018 to July 31, 2019.

Background:

In 2015, the City Council authorized the City Manager to sign Airport T-hangar and T-spot leases and ground lease assignments and assumptions. This was renewed in 2016 and 2017. The authorization has been working great to provide good and timely customer service for lease approvals with our tenants and future tenants. This renewal includes all the previous lease signing authorizations including commercial leases and ground leases. Adding these will fully encompass all leases at the airport and afford the same customer service level to all tenants and future tenants aboard Lancaster Regional Airport. The authorization will be active for one year.

Operational Considerations:

City commercial and non-commercial leases, ground leases, and assignments and assumptions of ground leases are utilized at Lancaster Regional Airport for contractual control of the City owned ground and buildings.

Legal Considerations:

The standard lease agreements have been reviewed and approved as to form by the City Attorney.

Public Information Considerations:

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meeting Act.

Options/Alternatives:

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

Recommendation:

Staff recommends approval of the resolution, as presented.

Attachments

Resolution

Tie-Down Lease

T-Hangar Lease

Ground Lease

Assignments & Assumptions of Ground Leases

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE COMMERCIAL AND NON-COMMERCIAL LEASES, GROUND LEASES AND ASSIGNMENTS AND ASSUMPTIONS OF GROUND LEASES AT THE LANCASTER REGIONAL AIRPORT AUGUST 1, 2018 TO JULY 31, 2019.

WHEREAS, Lancaster Regional Airport has commercial and non-commercial spaces available for lease; and

WHEREAS, Lancaster Regional Airport has ground leases for private development and assignments and assumptions for the sale of the private property; and

WHEREAS, the City Council of Lancaster, Texas, desires to pre-authorize the City Manager to sign commercial and non-commercial leases, ground leases, and assignments and assumptions of ground leases sold between private parties on a form approved by the City Attorney; and

WHEREAS, the delegation to the City Manager will assist in expediting an efficient airport operation.

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 utilize and execute commercial and non-commercial leases, ground leases, and assignments and assumptions of ground leases on behalf of the City of Lancaster, Texas for Lessees at the Lancaster Regional Airport, for the period of time from August 1, 2018 to July 31, 2019.

SECTION 2. This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provide and shall expire on July 30, 2019, unless extended by the City Council.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney



LANCASTER REGIONAL AIRPORT

Agreement for Lease of T-Spot for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this **1st day of MMMM, YYYY**, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and **FIRST LAST**, (LESSEE"), evidences the following:

I.

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

1. **Premises:** T-Spot **T-##**, located at the Airport ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the **1st day of MMMM, YYYY**. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent \$60.00 per month, due and payable in advance on the first day of each month.
 - a. All rental payments shall be delivered to LESSOR at the following address:
City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146
 - b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 10 herein. All payments not received by the 10th of each month shall be considered "past due" for purposes of incurring

late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

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

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

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

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

II.

STANDARD TERMS AND PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

7. **Security of Premises by LESSEE:** LESSEE shall furnish and utilize adequate tie-downs, chocks, and other equipment as required by the specific aircraft to secure the aircraft within the leased premises at all times the aircraft is in a state of storage. This provision shall not in any way affect the requirements set forth in section II, paragraph 4.

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

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

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

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

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

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide access to leased premises as described under section II, paragraphs 5 and 7 to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in section II, paragraph 19.

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

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

f. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such re-letting.

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

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

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

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

13. Surrender of Premises: Upon termination of this lease by either party, or by reason of default or otherwise, LESSEE shall remove itself, aircraft, and all other personal property, debris and equipment stored by LESSEE in and upon the premises. LESSEE shall, at its own expense, repair any damage cause by LESSEE'S use. LESSEE shall, upon termination of this lease, surrender the premises to LESSOR in the same condition as received, ordinary wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

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

15. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 10.

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

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

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

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

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

LESSEE: Name:
Address:
Phone:
E-Mail:

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

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

22. **Entire Agreement:** This agreement constitutes the entire understanding between the

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

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

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

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

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

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

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____

Opal Mauldin-Jones,
City Manager

ATTEST:

Sorangel O. Arenas, City Secretary



LANCASTER REGIONAL AIRPORT

Agreement for Lease of T-Hangar for Storage of Aircraft

Non-Commercial Tenants

This CONTRACT and AGREEMENT OF LEASE, made this **1st day of MMMM, YYYY**, between the City of Lancaster, Texas, a municipal corporation, ("LESSOR") and **FIRST LAST**, (LESSEE"), evidences the following:

I.

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

1. **Premises:** Hangar Row and Suite **###-1XX**, located at the Airport, and consisting of approximately **####** square feet ("Leased Premises").
2. **Uses:** The leased premises shall be used and occupied only for the storing of aircraft owned, leased, and/or legally operated by LESSEE and related equipment. The leased premises shall be used and occupied only for the personal, business, and/or private use of the LESSEE. LESSEE shall provide LESSOR with a copy of the FAA Certificate of Aircraft Registration for the aircraft to be stored under this agreement. If the registration is not in the name of LESSEE, a copy of a valid lease or other documentation showing a possessory interest in the aircraft shall be provided. LESSEE shall not store non-aviation items such as house hold goods in leased premises. LESSEE shall not use the leased premises for any on going business or commercial operations warehousing goods or services for sale to third parties.
3. **Term:** The term of this lease will be from month to month, beginning the **1st day of MMMM, YYYY**. Either party may cancel and terminate this agreement by serving thirty (30) days written notice of its election to do so.
4. **Rent:** LESSEE shall pay LESSOR as rent **\$###.00** per month, due and payable in advance on the first day of each month.
 - a. All rental payments shall be delivered to LESSOR at the following address:
City of Lancaster
Finance Department
P.O. Box 940
211 N. Henry Street
Lancaster, TX 75146
 - b. All payments not received by the 10th of each month shall constitute a default and breach of this Lease Agreement as set forth in paragraph 10 herein. All payments not

received by the 10th of each month shall be considered "past due" for purposes of incurring late charges as calculated in subsection (c) herein, and additional late charges will begin to accrue on the 11th day of each month.

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

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

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

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

II.

STANDARD TERMS AND PROVISIONS

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

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

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

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

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

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

and log entries.

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

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

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

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

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

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

7. **Security of Premises by LESSEE:** LESSEE shall furnish an adequate lock to secure the hangar doors to the leased premises. LESSEE shall furnish and utilize adequate tie-downs, chocks, and other equipment as required by the specific aircraft to secure the aircraft within the leased premises at all times the aircraft is in a state of storage. This provision shall not in any way affect the requirements set forth in section II, paragraphs 4 and 5.

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

9. **Indemnity and Hold Harmless:** LESSEE agrees to indemnify, defend, and hold LESSOR, its officers, agents, employees, or invitees harmless from and against all claims, demands, causes of actions, suits or judgments (including costs and

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

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

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

a. LESSEE shall fail to pay any installment of rent, and such failure shall continue for a period of ten (10) days following the due date of said installment.

b. LESSEE shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to LESSEE.

c. LESSEE shall fail to provide access to leased premises as described under section II, paragraphs 5 and 7 to airport administration.

d. LESSEE shall fail to provide accurate and correct contact information as set forth in section II, paragraph 19.

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

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

f. Enter upon and take possession of the premises and expel or remove LESSEE and any other person who may be occupying the premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and if

LESSOR so elects, re-let the premises on such terms as LESSOR shall deem advisable and receive the rent thereof; and LESSEE agrees to pay to LESSOR on demand any deficiency that may arise by reason of such re-letting.

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

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

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

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

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

of this lease, surrender the premises to LESSOR in the same condition as received, ordinary wear and tear excepted. LESSOR will charge a reasonable fee for cleaning and/or disposal of any items left behind upon the premises.

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

15. **Successors and Assigns:** The terms, covenants, agreements, and conditions contained herein shall be binding upon LESSEE'S heirs, successors, executors, administrators, and assignees. This provision shall not in any way affect the requirements set forth in section II, paragraph 10.

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

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

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

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

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

LESSEE: Name:
Address:
Phone:
E-Mail:

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

21. **Waiver of Attorney Fees:** LESSOR and LESSEE covenant and agree that in the event of any litigation arising between the parties to this lease, LESSEE shall be solely

responsible for payment of its attorney's fees. In no event shall LESSOR be responsible for LESSEE'S attorney's fees regardless of the outcome of the litigation.

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

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

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

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

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

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

CITY OF LANCASTER, LESSOR

LESSEE:

By: _____

Opal Mauldin-Jones,
City Manager

ATTEST:

Sorangel O. Arenas, City Secretary

GROUND LEASE

WHEREAS, the City of Lancaster (hereinafter called "City" or "Owner") is the owner of the Lancaster Regional Airport in Lancaster, Texas (the "Airport"); and

WHEREAS, the development of the Airport and its pad sites is important to the vitality of the Airport.

This Ground Lease (the "Lease") is made this **1st day of MMMM, YYYY** (the "Commencement Date") between the City and **FIRST LAST** (hereinafter called "Lessee"), which has entered into an agreement to acquire a ground lease for Hangar No. **L-XX** on the Airport property (said Hangar, together with the improvements now or hereafter located thereon or installed therein are collectively referred to herein as the "Leased Premises"), which is situated on Lot No. C of the land more particularly described on **Exhibit A** attached hereto and incorporated herein (said land comprising a portion of the Airport).

- 1. INITIAL TERM.** The term of this Lease shall be from the Commencement Date until **MMMM DD, YYYY**.
- 2. GROUND RENT.** In consideration of this Lease, Lessee agrees during each year of the term of this Lease to pay to the City a yearly ground rental ("Ground Rent"). Ground Rent will be due in advance, with the first installment due on the Commencement Date and each subsequent installment due on each anniversary of the Commencement Date. The yearly Ground Rent shall be as follows:

Years 1-3	\$ #####.##
Years 4-6	\$ #####.##
Years 7-9	\$ #####.##
Years 10-15	\$ #####.##

Any Ground Rent or any other sums due and owing by Lessee to City hereunder which is/are not paid within ten (10) days after its/their due date shall bear interest at a rate of 10% per annum until said amount due is fully paid.

- 3. EXTENSION OF TERM.** Lessor hereby grants Lessee, its successors, heirs, and assigns, two successive options to extend this Lease on the Lease remises, as existing at the times(s) when either is exercised as follows:
 - a. **First Option Period:** Five (5) years, beginning at the expiration date of the initial term.
 - b. **Second Option Period:** Five (5) years beginning at the expiration date of the first option period.

- i. As a condition for the exercise of each option, Lessee shall give Lessor written notice of Lessee's intent to exercise its option at least six (6) months prior to the expiration date of the term of the Lease, as then in effect.
- ii. All conditions and covenants contained herein shall remain in force during any extension of term pursuant to said option(s) except the provision for rental, which shall be renegotiated by the parties in advance of any extension using as a basis the standard airport ground rental rates then prevailing at Lancaster Regional Airport. During any option period, no rental shall be charged for any lease hold improvements added or constructed by Lessee, or sublessee, or successor during the term of the Lease or any option period.
- iii. Lessee's right to exercise such option is conditional on proper notice, required in Paragraph "i." of this section and is further conditional upon Lessee not being in default in the performance of its covenants undertaken by Lessee at the beginning date of the extension of the term for which such notice is given.
- iv. Lessee shall not have the right to exercise such options if this Lease has been terminated under any termination rights provided for in the Lease, or if Lessee is in default as to any provision or condition of the Lease prior to the exercise of an option granted under this section.

4. LEASEHOLD IMPROVEMENTS: During the term of this Lease, Lessee shall have the right to construct additional facilities on the Leased Premises, all of which shall be in accordance with the terms and conditions of this Lease and any applicable City code or FAA requirements (the "Leasehold Improvements"). Any Leasehold Improvements shall be completed in strict accordance with the following:

- A. Lessee shall at no time permit a lien or claim against any part of the Leased Premises to exist or to come into being arising out of the Leasehold Improvements.
- B. All costs of Leasehold Improvements, labor, work, materials, and equipment installed or placed upon the Leased Premises shall be paid for solely by Lessee.
- C. Lessee understands and agrees that any damage to the Leased Premises caused by the construction and/or installation of the Leasehold Improvements shall be repaired at Lessee's sole cost and expense.

5. UTILITIES: Utilities will be provided for as follows:

- A. **ELECTRICITY:** All electrical usage for the Leased Premises is sub-metered, and Lessee will be responsible for all electricity charges incurred at the Leased Premises.
- B. **WATER AND SEWER:** Water and sewer charges for the Leased Premises will be assessed at a \$5.00 per month minimum charge, regardless of occupancy. This minimum charge may be increased to \$7.00 per month during the last 6 years of this Lease.

6. TERMS: During the term of this Lease, the Lessee agrees to the following:

- A. To abide by all rules and regulations of the Federal Aviation Administration (the "FAA"), State of Texas, City of Lancaster, and any other duly constituted public authority having jurisdiction over the Airport.
- B. To accept the Leased Premises (as of the Commencement Date) in its "as is, where is" condition. City hereby disclaims and Lessee hereby accepts such disclaimer of any warranty (except a 12-month warranty), express or implied, of the conditions of fitness for use of the Leased Premises. Except for damage to the Leased Premises resulting from the negligence or willful misconduct of the City and/or their agents, officers or employees (for which the City shall have liability to repair and/or replace such damage), Lessee shall maintain and repair the Leased Premises during the term hereof.
- C. During the term of this Lease, Lessee shall, at its sole cost and expense, carry (i) commercial general liability insurance (in amounts determined by Lessee), which shall name the City as an additional insured and (ii) property insurance with respect to the improvements now or hereafter comprising a part of the Leased Premises, which shall be in the amount of 100% of the replacement cost of all such improvements now or hereafter comprising a part of the Project (as such replacement cost is reasonably determined by Lessee) and name City as an additional insured, loss payee. All property insurance proceeds will be payable by joint check to the City and the Lessee for the sole purpose of rebuilding the improvements to at least their condition prior to the date of the applicable damage or casualty.
- D. To furnish such equipment in and to the Leased Premises as may be necessary to properly secure Lessee's aircraft and hangar (office areas included). Lessee agrees to be solely responsible for setting brakes, placing chocks, tying down or otherwise securing Lessee's aircraft in the Leased Premises.

- E. **NOT TO HOLD CITY OR ANY OF THEIR AGENTS OR EMPLOYEES RESPONSIBLE FOR ANY LOSS OCCASIONED BY FIRE, THEFT, RAIN, WIND, HAIL, OR ANY OTHER FORCE MAJEURE EVENT, WHETHER SAID CAUSE BE THE DIRECT, INDIRECT, OR MERELY A CONTRIBUTING FACTOR IN PRODUCING THE LOSS TO ANY AIRPLANE, AUTOMOBILE, PERSONAL PROPERTY, PARTS OR SURPLUS THAT MAY BE LOCATED OR STORED IN THE LEASED PREMISES, OFFICES, APRONS, FIELD, OR ANY OTHER LOCATION AT THE AIRPORT.**
 - F. **EXCEPT AS OTHERWISE INDICATED BELOW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THEIR AGENTS, OFFICERS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITY OR LOSS RESULTING FROM CLAIMS OR COURT ACTION ARISING DIRECTLY OUT OF THE ACTS OF LESSEE, LESSEE'S AGENTS, SERVANTS, GUESTS, OR BUSINESS VISITORS, UNDER THIS LEASE OR BY REASON OF ANY ACT OR OMISSION OF SUCH PERSON ARISING FROM ANY USE OF THE AIRPORT PREMISES AND/OR FACILITIES.**
 - G. To prohibit storage of any inflammable liquids, gases, signal flares, or other similar material on the Leased Premises, or in any building on the Airport; except that such materials may be kept in aircraft housed within the Leased Premises, or in rooms or areas specifically approved for such storage by the Airport Supervisor, or in underwriter-approved safety cans.
 - H. To permit City to enter the Leased Premises with a prearranged appointment for inspection or repairs, of additions, or alterations necessary for the safety, improvement, or preservation of the Leased Premises.
 - I. City shall have, at all times during normal business hours, the right to enter into the Leased Premises and inspect Lessee's facilities and operations for the purposes of determining Lessee's compliance with its obligations under this Lease. City shall provide at least 24 hours' notice before any inspection except in cases of emergency. Notice shall be sufficient if prominently posted on the building on the Leased Premises 24 hours prior to the inspection.
- 7. ASSIGNMENTS AND SUBLETTING:** Lessee may sublet the Leased Premises or any part thereof provided Lessee delivers prior written notice thereof to the City. Lessee may assign its rights in this Lease to a third party provided the assignee shall agree in writing to assume all of the terms, covenants, and conditions of this Lease, and a duplicate original thereof shall be delivered to the City prior to the effective date of such assignment. Provided the immediately preceding sentence is satisfied,

the assignor of this Lease shall be released from any further liabilities or obligations under this Lease from and after the effective date of such assignment.

8. DEFAULT: The following shall be deemed to be events of default by Lessee under this Lease:

- A. The making by Lessee of an assignment for the benefit of its creditors;
- B. The levying on or against any part of the Leased Premises of a writ of execution or attachment which is not released or discharged within thirty (30) days thereafter;
- C. In the event proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation, or involuntary dissolution of Lessee, or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of Lessee, and proceedings are not dismissed, and any receiver, trustee, or liquidator appointed therein is not discharged within thirty (30) days after the institution of said proceedings;
- D. Any act which creates a Mechanics Lien or claim therefor against any part of the Leased Premises which is not released or discharged within thirty (30) days thereafter; or
- E. The failure of Lessee to pay any installment of Ground Rent or other charge or money obligation herein required to be paid by Lessee within twenty (20) days after written notice is given by City to Lessee, or the failure of Lessee to perform any Lessee's other covenants under this Lease not involving the payment of money within thirty (30) days after written notice is given by City to Lessee.

Upon the occurrence of any of the above uncured defaults, City may terminate this Lease and re-enter the Leased Premises with or without process of law using such force as may be necessary, change the locks or otherwise lock out Lessee and remove all persons and property from the Leased Premises. City shall not be liable for damages or otherwise by reason of re-entry or termination of this Lease. It is further understood that Lessee will, in addition to the rent and other sums agreed to be paid hereunder, pay reasonable attorney's fees incurred by the City to enforce the provisions of this Lease, or the collection of the rent due to the City. Any property belonging to Lessee or to any persons holding by, through, or under Lessee, or otherwise found upon the Leased Premises, may be removed therefrom and stored in any public warehouse at the cost of and for the account of Lessee.

9. MISCELLANEOUS PROVISIONS:

A. REMOVAL OF PERSONAL PROPERTY AND FIXTURES.

- i. Upon the termination of this Lease, Lessee shall remove all personal property from the Leased Premises and return the Leased Premises to the City in broom clean and good condition, ordinary wear and tear excepted. Lessee shall not, however, remove or be required to remove: (1) any improvements then comprising a part of the Leased Premises (including any Existing Improvements or Leasehold Improvements); or (2) any fixtures permanently or semi-permanently affixed in or to the Leased Premises, all of which are (and shall be) property of the City.
- ii. Any personal property remaining on the Leased Premises sixty (60) days after termination of this Lease for any reason shall be deemed as abandoned by Lessee and City may make any disposition of such personal property as it deems appropriate. City may charge Lessee for the reasonable costs incurred in disposing of such personal property.

B. TAXES. Lessee shall be responsible for the payment of any taxes or assessments on its furniture, equipment and personal property now or hereafter located in or on the Leased Premises. However, Lessee shall not be responsible or liable for any ad valorem or similar taxes or assessments on the land, improvements and/or fixtures now or hereafter constituting a portion of the Leased Premises.

C. ENVIRONMENTAL LAWS. Lessee's obligations under this Lease specifically include, but are not limited to, strict and timely compliance with all environmental laws. Lessee shall ensure that all operations on the Leased Premises comply with all environmental laws and orders of any governmental authorities having jurisdiction under any environmental laws. Lessee shall exercise extreme care in handling hazardous substances and shall undertake any and all preventive, investigatory, or remedial action (including emergency response, removal, containment, and other remedial action) which is either required by and applicable environmental laws or orders of any governmental authorities having jurisdiction under any environmental laws. Lessee shall exercise extreme care in handling hazardous substances and shall undertake any and all preventive, investigatory, or remedial action (including emergency response, removal, containment, and other remedial action) which is either required by any applicable

environmental laws or orders of any governmental authority having jurisdiction under such laws, or necessary to prevent or minimize property damage, personal injury or damage to the environment or threat of any such damage or injury, by releases of, or exposure to, hazardous materials in connection with the Leased Premises or operations thereon. Lessee shall immediately notify the City upon becoming aware of any leak, spill, release or disposal of hazardous substances on, under, or adjacent to the Leased Premises. In the event Lessee fails to perform any of Lessee's obligations under this paragraph, City may, but shall not be required to, perform such obligations at Lessee's expense. In performing any such obligations of Lessee, City shall at all times be deemed the agent of Lessee and shall not, by reason of such performance, be deemed to be assuming any responsibility of Lessee under any environmental law or to any other third party. The City may from time to time during the term of this Lease exercise its inspection rights in accordance with Section 6. I above to ensure Lessee's compliance with this paragraph.

- i. As used in this Lease, the term "environmental laws" means all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health and the environment.
- ii. In this Lease, the term "hazardous materials" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical, or infectious characteristics, may cause or pose a present or potential hazard to human health and to the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported, or otherwise handled on the Leased Premises. The term includes, without limitation, petroleum products or crude oil or any fraction thereof, and any and all hazardous or toxic substances, materials, or wastes as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and any other environmental laws.
- iii. If, prior to termination of this Lease, City informs Lessee in writing that Lessee is in breach of this paragraph (and such breach is not cured to the reasonable satisfaction of the City prior to the termination date of this Lease), Lessee's

obligations to the City under this paragraph shall not be terminated upon the termination of the Lease, but shall continue as an ongoing obligation.

- D. RIGHT OF FIRST REFUSAL.** At the end of the Lease term (if the Lease has not been terminated early due to a Lessee default hereunder), Lessee (or its heirs, successors, and assignees) shall be given a first right of refusal to again lease the Leased Premises on terms substantially similar to those set forth in this Lease. However, including option periods, if any, the length of such new lease and rental to be paid thereunder (which shall be based on the improved ground lease rate per the City's adopted fee schedule for the Airport) shall be mutually agreed upon, and negotiated directly with the City.
- E. CITY'S COVENANTS.** During the term of this Lease, City covenants and agrees: (a) at City's sole cost and expense, to maintain all the Airport runways, roads, lighting, instrument approaches and all common taxiways; and (b) Lessee shall have the right of ingress and egress to and from the Leased Premises by means of roadways (for automobiles) and taxiways (for aircraft), all in conformity with the rules and regulations adopted from time to time by the City, the FAA or any other state, federal or local authority.
- F. TEXAS LAW TO APPLY:** This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas.
- G. PARTIES BOUND:** This Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as otherwise expressly provided herein.
- H. LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- I. PRIOR AGREEMENTS SUPERSEDED:** This Lease constitutes the only agreement of the parties hereto and supersedes and prior understandings or written or oral agreements between the parties.

- J. **ATTORNEY'S FEES:** If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the court in the trail of such action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.
- K. **NOTICE:** Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at the respective addresses set forth below or at such other address as they shall have theretofore specified by written notice to the other. Any notice shall be deemed delivered and effective if hand delivered on the date of delivery or if mailed when deposited in the U.S. Mails, postage prepaid and properly addressed.
- L. **TIME OF ESSENCE:** Time is of the essence of this Lease.
- M. **NATURE AND EXTENT OF AGREEMENT:** This instrument and its exhibits contains the complete agreement of the parties regarding the terms and conditions of the lease of the Leased Premises by the City to Lessee, and there are no oral or written conditions, terms, understandings, or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of City and Lessee between the parties hereto as to the Leased Premises. Nothing in this Lease shall be construed to create a partnership, joint venture or association between the City and Lessee, and, except as otherwise indicated herein, this Lease shall not be construed to authorize either City or Lessee to act as agent for the other.
- N. **CAPTIONS AND HEADINGS:** The captions and headings in this Lease are for convenience and reference only, and the words contained therein shall be in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or he scope or intent of this Lease or in any way affect this lease.
- O. **AUTHORITY TO EXECUTE:** City and Lessee represent and warrant to each other that each is full authorized to enter into this Lease without the joinder of any other person, executing this lease on

behalf of each, such party corporate, partnership or joint venture action required has been taken.

[Remainder of Page Intentionally Blank]

LESSEE:

CITY OF LANCASTER:

FIRST LAST

Opal Mauldin-Jones

City Manager

Address for Notice:

Address for Notice:

PO Box 940

Lancaster, TX 75146

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on _____ by _____.

[Seal]

Notary Public Signature

My Commission expires on _____

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on _____ by _____.

[Seal]

Notary Public Signature

My Commission expires on _____

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE L-

LANCASTER REGIONAL AIRPORT

This agreement is made on _____ between _____, hereafter referred to as "ASSIGNOR", and _____, hereafter referred to as "ASSIGNEE", and the City of Lancaster, hereafter referred to as "CITY".

RECITALS

WHEREAS, Ground Lease L-__ (the "Lease"), was executed on _____ between the City of Lancaster, Texas, a Texas Municipal Corporation (the "City"), as the Lessor, and _____ as the Lessee, in said "Lease", which commenced on _____ for the "Lease" of premises known as Hangar Number L-__ located at the Lancaster Regional Airport, which "Lease" is recorded in the real property records of Dallas County, Texas.

WHEREAS, the "Assignor" now desires to assign to the "Assignee" all of his rights and interest arising under the "Lease", in and to the Hangar Number L-__ and the "Assignee" desires to accept the assignment.

NOW THEREFORE, in consideration of the sum of ____ Dollars (\$____.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the agreement of the "Assignee" set forth below, the "Assignor" hereby assigns and transfers to the "Assignee" and the "Assignee's" heirs, executors, administrators, and assigns, all of "Assignor's" right, title and interest in and to Hangar Number L-__, and all the "Assignor's" rights, title, and interest arising under the "Lease" insofar as it relates to Hangar Number L-__.

The "Assignee" accepts the assignment and, in additions, expressly assumes and agrees to perform and fulfill all of the terms, covenants and conditions, and obligations required to be kept, performed, and fulfilled by the "Assignor" under the "Lease" insofar as such obligations relate to Hangar Number L-__, including the making of all payment of ground rents due and payable to the "City" under the "Lease" when due and payable.

The "City" hereby consents to this assignment of the "Lease" and the "Assignor" and the "City" agree that the "Assignee" may pay rent directly to the City for the premises covered by the "Lease" based on the number of square feet in the Secured Premises under the "Lease". "Assignee" further agrees with "Assignor" and the "City" to comply with all of the other terms and conditions of the "Lease" insofar as they apply to the Hangar Number L-__.

"ASSIGNEE" HEREBY AGREES TO IDEMNIFY AND HOLD HARMLESS FROM ANY AND ALL EXPENSES, LIABILITIES, AND CLAIMS OF EVERY KIND, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY "ASSIGNOR" AS A RESULT OF ANY BREACH BY "ASSIGNEE" OF ITS OBLIGATIONS HEREUNDER THE "LEASE", EITHER TO "ASSIGNOR", OR TO THE "CITY".

By signing below, "City" hereby releases "Assignor" from any further liability in connection with the "Lease".

This agreement shall be binding on and inure to the benefit of the parties to this Agreement, their heirs, executors, administrators, successors in interest, and assigns,

ASSIGNOR:

ASSIGNEE:

LESSOR:

City of Lancaster

BY: _____

Name: Opal Mauldin-Jones

Title: City Manager

Date: _____

LANCASTER CITY COUNCIL

A City Council Special Meeting

3.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Healthy, Safe & Engaged Community
Sound Infrastructure
Professional & Committed City Workforce

Submitted by: Jermaine Sapp, Director of Equipment Services & Facilities

Agenda Caption:

Consider a resolution authorizing a professional services agreement with Johnson Controls, Incorporated for the replacement of Heating Ventilation and Air Conditioning (HVAC), exhaust fans, and ceiling and lighting for the Lancaster Animal Shelter in an amount not to exceed one hundred and twenty-two thousand three hundred ninety dollars (\$122,390.00) and authorizing the City Manager to execute said agreement.

Background:

The Lancaster Animal Shelter was built in 1986 and the existing building is in need of various repairs. The City desires to engage in a professional services agreement with Johnson Control Incorporated. The current building is in need of an updated air conditioning system, exhaust fans, ceiling repair and lighting for patrons and animals housed in the building.

Operational Considerations:

Lancaster Animal Shelter needs to replace the aging air-cooled chiller currently serving the building, as well as replace exhaust fans, ceiling repair and lighting that will allow better air flow throughout the building.

Legal Considerations:

The City Attorney has reviewed and approved the resolution as to form.

Public Information Considerations:

This item is being considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

Funding will not exceed one hundred twenty-two thousand three hundred ninety dollars (\$122,390.00).

Options/Alternatives:

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

Recommendation:

Staff recommends approval, as presented.

Attachments

Resolution

Exhibit "A"

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS FOR PROFESSIONAL SERVICES AGREEMENT WITH JOHNSON CONTROLS, INCORPORATED FOR REPAIRS AND HEATING AND VENTILATION AT THE LANCASTER ANIMAL SHELTER, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TWENTY-TWO THOUSAND THREE HUNDRED NINETY DOLLARS (\$122,390.00) AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Lancaster desires a professional services contract with Johnson Controls, Incorporated for the above referenced services.

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

SECTION 1. That the City Council hereby authorize a contract for professional services agreement with Johnson Controls, Incorporated for the replacement of aging HVAC (Heating, Ventilation and Air Conditioning) and various repairs for the Lancaster Animal Shelter in an amount not to exceed one hundred and twenty-two thousand three hundred ninety dollars (\$122,390.00) and authorize the City Manager to execute the Agreement, which is attached hereto and incorporated herein as Exhibit "A".

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

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

SECTION 4. That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreement in substantial compliance as depicted in Exhibit "A".

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney



Proposal

Dallas Fort Worth Irving TX Com Br
3021 W BEND DR
IRVING, TX 75063-3116
Phone: 972-869-9421
Fax: 866-656-9681

TO: City of Lancaster

211 N. Henry Street
Lancaster, TX 75146

Mr. Jermaine Sapp

Date: May 3, 2018 (revised June 12, 2018 to include LED lighting)
Project: City of Lancaster Animal Shelter
Proposal Ref: CY-Animal Shelter-8/7/17 (updated 5-3-2018 and 6-12-2018)

Dear Mr. Sapp:

Johnson Controls is pleased to provide an engineered solution for the City of Lancaster Animal Shelter. We have identified the core issues, and are prepared to provide you with a solution that can provide both comfort and ventilation to meet the requirements of the facility.

Existing Situation:

We have inspected the facility and determined that the outside air ventilation load is not being properly conditioned prior to introduction to the facility. The existing 5 ton split system currently serving the facility is unable to provide adequate ventilation levels and maintain space conditions properly. As a result, whenever the existing make-up air fan and the exhaust fans are used to remove internally generated odors, the existing air conditioning can't maintain acceptable space temperature and relative humidity conditions properly. At various times during the year (summer and winter) when the make-up air unit is utilized, the space temperature and RH conditions can't be maintained. The make-up air fan is turned off in an effort to manage comfort, and the interior static pressure becomes exceedingly negative, and the exhaust fans do not operate efficiently to remove the odors that are present.

General Recommendations:

Our recommendations include the removal of the existing make-up air fan and replacing it with a dedicated outside air unit to condition the ventilation air prior to introduction into the facility. The dedicated outside air unit will handle heating and cooling to deliver 55 degF supply air conditions to the space at all times during the year. The dedicated outside air unit is sized to match the exhaust air requirements for the space. Therefore, space pressure considerations will also be maintained, and the pressure within the Animal Shelter will remain slightly positive in order to offset and mitigate infiltration of unconditioned air.

Temperature and RH control:

We have selected a 20 ton dedicated outside air unit (manufactured by Aaon) to serve the canine and feline areas of the Animal Shelter. In the summer, the unit will have the capacity to condition entering air of 105/78 deg db/wb to a leaving air temperature of 54.26/54.06 degF d/wb. This will provide adequate cooling and dehumidification for all outside summer design conditions. In the winter, the unit will utilize gas heat to condition 20 degF entering air to 87.4 degF leaving air temperature. This will provide adequate heating to offset all skin loads during the winter. It should be noted that the dedicated

outside air unit also includes a hot gas reheat coil which is used to allow maximum dehumidification without overcooling the space and causing cold and damp conditions to develop during the peak summer season or whenever excessively high latent outdoor air loads are experienced.

The selected Aeon unit has many key features to provide long life and maintain its durable construction.

- The outside air entry to the unit is at the rear of the unit.
- A motorized 2-position 100% outside air damper is included.
- The gas heating in this unit is stainless steel, modulating gas.
- The blower motor is premium efficiency, inverter duty rated.
- The supply air fan is a 22" direct drive, backward curved, non-overloading, plenum fan.
- The unit variable speed drive is included.
- Unit pre-filters consist of a metal mesh OA pre-filter and a set of 2" pleated filters.
- D/X cooling on this unit includes hot gas bypass on both circuits to minimize short cycling and low load recycling. We include integral head pressure control.
- The condenser fans are controlled using high efficiency ECM motors.
- The cabinet is double wall construction with R-13 foam insulation.
- The condensate will be handled using a sloped stainless steel drain pan.
- Condenser coil hail guards will protect the condenser coils.

It should be noted that the standard submittals for this unit show a return air entry into the unit, this will be blanked off using the same construction as the rest of the unit.

- For controls, the Aeon unit is furnished with its own integrated controls made by Wattmaster.
- We have included an integrated BACnet MSTP card for future connection to a Building Management System.
- The list of hardware inputs and outputs on the dedicated OA unit is included in the submittal for the Aeon unit (see attached submittal).

Air Balancing Issues:

Currently, there are (3) exhaust fans that operate to remove odor and other VOC contaminants. The exhaust fans currently remove 4450 cfm of air at design. This is excessive for the square footage served. Additionally, whatever air is exhausted must also be offset by additional outside air to maintain space pressures. Therefore, it is beneficial to properly size the exhaust fans to offset the amount of air we are introducing through the dedicated outside air unit.

We have determined that 3,000 cfm of outside air, offset by 2850 cfm of exhaust air, will maintain a proper pressure balance in the space served and limit the size of the dedicated outside air unit to a 20 ton unit. Additionally, the dedicated outside air unit will be equipped with a direct drive backward inclined supply fan with an integrated variable speed drive and the (3) exhaust fans will have solid state speed controllers so that we will be able to trim and balance the airflow entering and leaving the facility.

We will furnish and install (3) new exhaust fans for this purpose, in the existing locations of the exhaust fans. These (3) exhaust fans are manufactured by Cook, and are direct drive hooded propeller fans, similar to the existing design. All three exhaust fans will be equipped with gravity backdraft dampers so that whenever a fan is not operating, it doesn't become a source of infiltration. All three exhaust fans will be furnished with pre-wired non-fused disconnect switches.

Office Area:

For the office area, we will be replacing the existing split system with a new 2-1/2 ton York split system. This is a 14 SEER system, complete with hardstart kit, 80,000 BTUH multi-position gas furnace and multi-position copper tube aluminum fin D/X coil and TXV valve. We will add the provision for minimum outside air to the new furnace/evaporator coil section from the soffit area above the front door.

Lighting Retrofit:

We will demo and remove (51) existing 2'x4' fluorescent light fixtures. We will replace the (51) light fixtures with new 2'x4' LED light fixtures complete with new LED ballasts. This work will be performed in conjunction with the balance of the mechanical installation.

Installation Team:

Our installation team is comprised of Johnson Controls (JCI) and select subcontractors.

- JCI will provide overall project management and all piping work.
- Farwell Corporation will perform all ductwork modifications.
- JMEG Electrical will provide the electrical aspects of the installation, including the lighting renovation.
- Crocker Crane will assist us in lifting the 20 ton unit into place on its curb.
- Summit Engineers will handle the air balancing needs at the end of the commissioning process.

Installation Details:

- Provide submittals and MOP procedure documents to City of Lancaster for review prior to initiating the work.
- Release equipment orders to manufacturers upon receipt of approved submittals.
- Upon receipt of equipment, we will coordinate all work through the City of Lancaster.
- We will demolish and remove the existing ductwork serving the kennel and office areas, and replace it with new fabricated ductwork for the facility.
- Remove the existing split systems for the kennel and office areas.
- Remove the three existing exhaust fans and replace with the new ones.
- We will set the new dedicated outside air unit at the rear of the facility immediately to the east of the rear entrance. The supply duct for the outside air unit will discharge vertically using a 24" tall side discharge roof curb designed for mounting on concrete. The curb will have (1) 30" wide x 16" tall duct connection on the long side.
- We will extend the supply duct from the discharge of the dedicated OA unit vertically to approximately 10' AFF and then the ductwork will turn horizontally and run into the facility. We will cut the existing exterior wall and the new ductwork will enter the facility above the height of the existing suspended ceiling.
- We will furnish new ductwork and air distribution devices for all areas of the facility.
- Seal all new ductwork as per SMACNA standards and local building codes.
- Install the new 2-1/2 ton split system for the office area, and connect outside air from an intake louver in the soffit area outside the front door to the existing return air ductwork path.
- Commission and start-up both systems and turn over all O&M documents to the City of Lancaster.
- Provide training to building operations personnel on the systems installed.
- Summit Engineers has been retained to provide final air balance for the dedicated outside air system and the associated exhaust fans. They will perform this once the equipment has been commissioned. There is no air balance needed for the office split system.

Clarifications:

- The Aeon unit will require a minimum of 92 amps MCA and 110 amps MOCP. Please confirm that the City of Lancaster has enough available power for this unit at the Animal Shelter. Our preliminary inspection of your electrical loads indicate that you do have adequate power, but we are not sure if you plan to add any other loads to the panel in the near future.
- The unit voltage is 230/3/60 power.

This proposal does not include:

- Bollards to protect the outside air unit. These will need to be installed by the City of Lancaster once the equipment is in place to protect it from accidental damage.
- Taxes.
- Permits, payment or performance bonds.

- Overtime labor.
- JCI Metasys controls. The dedicated outside air unit will be equipped with embedded Wattmaster controls and a BACnet MSTP interface to a 3rd party control system (future use).
- CAD drawings.
- Removal of existing ceiling grid and ceiling tiles or installation of the new ceiling.

We propose to furnish the materials and perform the turnkey work described above for the net price of \$122,390.00. Progress payments against a mutually agreed schedule of values will apply.

Our suggested schedule of values for the project is:

- Mobilization – 10% (invoiced at beginning of the contract)
- Equipment delivery – 50% (due when the dedicated outside air unit and exhaust fans are delivered to the site or to a craneyard in Dallas.)
- Installation – 20% (due when the units have been installed, the new ductwork is in place and the lighting renovation has been completed.)
- Commissioning – 20% (due at completion of project, once the units have been commissioned and the air balance has been completed.)

We sincerely appreciate the opportunity to continue to support and serve the City of Lancaster. Please feel free to contact Chad Young or Tom Recker with any questions or clarifications, or if we need to modify the proposed scope of work in any way.

Sincerely,

Tom Recker
Account Manager
Johnson Controls Inc.
3021 West Bend Drive
Irving, TX 75063
Cell – 214-543-6546
tom.recker@jci.com

This proposal and alternates listed below are hereby accepted and Johnson Controls is authorized to proceed with work; subject, however to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.

This proposal is valid until: July 31, 2018

City of Lancaster

Johnson Controls, Inc.

Name: _____

Name: _____

Title: City Manager _____

Title: _____

Date: July 30, 2018 _____

Date: _____

PO: _____

TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

1. **SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson Controls, Inc. (hereinafter referred to as JCI), shall be distributed and installed by others under JCI's supervision but at no additional cost to JCI. Purchaser agrees to provide JCI with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. JCI agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge JCI for any costs or expenses without JCI's written consent unless specifically noted in the statement of the scope of work or services undertaken by JCI under this agreement, JCI's obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not be limited to asbestos or PCSs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to Hazards without JCI's express written consent.
2. **INVOICING & PAYMENTS.** JCI may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Ten percent (10%) of the contract price is for engineering, drafting and other mobilization costs incurred prior to installation. This 10% shall be included in JCI's initial invoice. Purchaser agrees to pay JCI the amount invoiced upon receipt of the invoice. Waivers of lien will be furnished upon request as the work progresses to the extent payments are received. If JCI's invoice is not paid within 30 days of its issuance, it is delinquent.
3. **MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of JCI, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, JCI shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.
4. **WARRANTY.** JCI warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of ninety (90) days from delivery of said equipment, or if installed by JCI, for a period of ninety (90) days from installation. JCI warrants that for equipment furnished and/or installed but not manufactured by JCI, JCI will extend the same warranty terms and conditions which JCI receives from the manufacturer of said equipment. For equipment installed by JCI, if Purchaser provides written notice to JCI of any such defect within thirty (30) days after the appearance or discovery of such defect, JCI shall, at its option, repair or replace the defective equipment. For equipment not installed by JCI, if Purchaser returns the defective equipment to JCI within thirty (30) days after appearance or discovery of such defect, JCI shall, at its option, repair or replace the defective equipment and return said equipment to Purchaser. All transportation charges incurred in connection with the warranty for equipment not installed by JCI shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE
5. **LIABILITY.** JCI shall not be liable for any special, indirect or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.
6. **TAXES.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. In addition to the stated price, purchaser shall pay all taxes not legally required to be paid by JCI or, alternatively, shall provide JCI with acceptable tax exemption certificates. JCI shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work.
7. **DELAYS.** JCI shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond JCI's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner or other Contractors or delays caused by suppliers or subcontractors of JCI, etc.
8. **COMPLIANCE WITH LAWS.** JCI shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.
9. **DISPUTES.** All disputes involving more than \$15,000 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all legal costs and attorney's fees incurred as a result. Nothing here shall limit any rights under construction lien laws.
10. **INSURANCE.** Insurance coverage in excess of JCI's standard limits will be furnished when requested and required. No credit will be given or premium paid by JCI for insurance afforded by others.
11. **INDEMNITY.** The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the Indemnifying Party.
12. **OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.
13. **LEGAL FEES.** Purchaser agrees to pay and reimburse JCI for any and all reasonable legal fees which are incurred by JCI in the collection of amounts due and payable under this Agreement.
14. **ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
15. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon Johnson unless accepted by Johnson in writing.

LANCASTER CITY COUNCIL

A City Council Special Meeting

4.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

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

Submitted by: Bester Munyaradzi, Senior Planner

Agenda Caption:

Z18-05 Conduct a Public Hearing and consider a rezoning request from Agricultural Open (AO) to SF-4 Single Family Residential. The property is approximately 125.2 acres and is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. It is further described as Abstract 449 Arthur Eldridge, Lancaster, Dallas County, Texas.

Background:

1. **Location and Size:** The property is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. The property is approximately 125.2 acres in size.
2. **Current Zoning:** The subject property is currently zoned Agricultural Open (AO).
3. **Adjacent Properties:**
North: Mills Branch Overlay District - (Lancaster 9th Grade Center, occupied and vacant residential lots)
South: Agricultural Open - (occupied lots with houses and vacant lots)
East: Agricultural Open - (vacant Lots)
West: Planned Development - Single Family Residential # 055 - (vacant)
4. **Comprehensive Plan Compatibility:** The Future Land Use Plan of the Comprehensive Plan identifies this site as suitable for Suburban Neighborhood uses. This request is consistent with the Comprehensive Plan.

5. **Case History:**

Date	Body	Action
06/19/2018	P&Z	Z18-05 Recommended Approval

Operational Considerations:

This is a request to rezone the subject property from AO to SF-4 for the development of single family homes and associated amenities on 125.2 acres of land. The current zoning only allows for agricultural uses and a single family dwelling on five (5) acres or more. The proposed zoning change would allow up to 4 dwelling units per an acre.

Section 14.1101 of the LDC, states when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. Below is an analysis of these considerations:

Consistency with the Comprehensive Plan:

The Comprehensive Plan Future Land Use map designates this area as Suburban Neighborhood. Suburban Neighborhood is envisioned to have place types which focus on creating a variety of residential products. Primary land uses for Suburban Neighborhood includes single-family detached homes and duplexes. Secondary uses include civic and institutional uses and parks. The zoning change request is therefore consistent with the Comprehensive Plan shown on the attached Comprehensive Plan excerpt.

Potential Impact on Adjacent Development:

The properties to the north are Lancaster 9th Grade Center and vacant and occupied residential lots. The properties to the east and west are both vacant and the properties to the south are vacant and occupied residences. This property serves as an ideal location for single family homes as it is surrounded by properties with residences in the Mills Branch Overlay District, a School and Neighborhood Walmart to the north. Although the other surrounding properties are vacant, the Comprehensive Plan identifies the properties as suitable for the Suburban Neighborhood place type which supports single family residences. If zoning is approved by City Council, the proposed SF-4 development will be subject to the Lancaster Development Code, Subdivision Regulations, Parks and Open Space Master Plan, Streetscape Master Plan, Trails Master Plan and all other relevant City Codes.

Availability of utilities and access:

The subject property is served by City of Lancaster water. The applicant will have to extend sanitary sewer line to the subject property. Access to the property would be from Main Street.

Site conditions such as vegetation, topography and flood plain:

The subject property is currently undeveloped. Upon construction of this site, factors such as vegetation, topography and flood plain issues will be addressed through the civil review process.

Timing of Development as it relates to Lancaster's Capital Improvement Plan:

The City of Lancaster has no plans to provide improvement to Main Street. Main Street is shown as an 80' wide two (2) lane collector on the Master Thoroughfare Plan.

If the zoning change request is granted, the applicant has indicated that they intend to market the property to their builder clients to determine the desired land plan, lot mix and construction product mix most suitable for property and market that complies with all of the SF-4 zoning restrictions and requirements. The applicant will be required to meet the requirements for single family development as outlined by the Lancaster Development Code (LDC).

Based on the above 5 considerations and the applicant's intent, staff recommends approval of the request as it is in conformance with the Comprehensive Plan.

Legal Considerations:

This item is being considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Public Information Considerations:

On June 3 and June 10, 2018, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed 22 notifications of this public hearing to property owners within 200-feet of the subject site and zoning signs were placed on the property. There has been one (1) letter returned in favor, one (1) in opposition and one (1) neither supporting or opposing the case.

Options/Alternatives:

1. City Council may approve the proposed rezoning request, as presented.
2. City Council may approve the proposed rezoning request with changes and state those changes.
3. City Council may deny the proposed rezoning request.

Recommendation:

On June 19, 2018 the Planning and Zoning Commission recommended approval of the request as presented. Staff concurs with the Planning and Zoning Commission.

Attachments

Ordinance

Exhibit A (Zoning Exhibit)

Location Map

Comprehensive Plan Excerpt

Future Land Use Map

Zoning Change Sign

Property Owner Notification (3)

P&Z Staff Report June-19-2018

P&Z Draft Minutes June-19-2018

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING THE LANCASTER DEVELOPMENT CODE ORDINANCE NO. 2006-04-13, THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF LANCASTER, AS AMENDED, BY GRANTING A CHANGE IN ZONING FROM AGRICULTURAL OPEN (A-O) TO SINGLE FAMILY RESIDENTIAL (SF-4) FOR APPROXIMATELY 125.2 ACRES OF LAND GENERALLY LOCATED SOUTH OF MAIN STREET, EAST OF BLUE GROVE ROAD AND WEST OF BELT LINE ROAD. IT IS FURTHER DESCRIBED AS ABSTRACT 449 ARTHUR ELDRIDGE, LANCASTER, DALLAS COUNTY, TEXAS.

WHEREAS, the City of Lancaster, Texas has received a request for a zoning district change; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Lancaster, Texas in compliance with the laws of the State of Texas with references to the granting of zoning classification changes, have given the requisite notices by publication and otherwise, and have held due hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof; and

WHEREAS, the City Council of the City of Lancaster, Texas is of the opinion and finds that the Lancaster Development Code and map should be amended;

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

SECTION 1. That Zoning Case No. Z18-05, the Lancaster Development Code, the Comprehensive Plan and Map of the City of Lancaster, Texas be hereby amended to grant a change in zoning from Agricultural Open A-O to Single Family Residential SF-4, for approximately 125.2 acres, generally located south of Main Street, east of Bluegrove Road and west of Belt Line Road and being more particularly described in Exhibit "A" (Zoning Exhibit), attached hereto and made a part hereof for all purposes.

SECTION 2. Ordinance Number 2006-04-13, the Lancaster Development Code, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 3. If any article, paragraph, subdivision, clause or provision of this ordinance or the Lancaster Development Code, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision thereof, or of the Lancaster Development Code, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 4. Any person, firm or corporation violating any of the provisions of this ordinance or the Lancaster Development Code of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

SECTION 5. This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney



VICINITY MAP
NOT TO SCALE

NOTE:
APPROVAL OF THE ZONING CASE ASSOCIATED WITH THIS EXHIBIT SHALL NOT IMPLY APPROVAL OF ANY ASSOCIATED STUDY, PLAT, OR PLAN, APPROVAL OF DEVELOPMENT STANDARDS SHOWN HEREON, OR THE INITIATION OF THE DEVELOPMENT PROCESS. PLANNING & ZONING COMMISSION AND/OR CITY COUNCIL ACTION ON STUDIES, PLATS, OR PLANS RELATING TO DEVELOPMENT OF THIS PROPERTY SHALL BE CONSIDERED AS AN ACTION SEPARATE FROM ACTION TAKEN ON THIS ZONING CASE.

POINT OF BEGINNING:
AT THE NORTHWEST CORNER SAID 131.8 ACRE TRACT OF LAND, SAID CORNER BEING ON THE SOUTH LINE OF WEST MAIN STREET (AN 80 FOOT RIGHT-OF-WAY).

ZONING EXHIBIT
FOR
THE PRESERVE ON MAIN

125.150 ACRE TRACT
BEING
VOL. 3055, PG. 178 SITUATED IN THE ARTHUR
ELDRIDGE SURVEY, ABSTRACT NO. 449
IN THE
CITY OF LANCASTER, DALLAS COUNTY, TEXAS
ZONING CASE #

OWNER	APPLICANT
C.T. BECKHAM 11027 EASTVIEW CIRCLE DALLAS, TEXAS 75230 PHONE 214-368-2223	ALAN ADKINS 11027 EASTVIEW CIRCLE DALLAS TEXAS 75230 PHONE 281-387-1633

ENGINEER:
JACOBS
1999 BRYAN STREET, SUITE 1200
DALLAS, TX 75201-3136
PHONE 214-638-0145
FAX 214-638-0447
Jacobs Engineering Group Inc.
Texas Registration F-2966
PREPARED BY JAMIE MARCOUX, P.E.

I:\SLD\WFX07800\700 CAD\0728 ExhibitA Zoning Exhibit\WFX07800ESF01.dwg, 5/31/2018 8:24 AM, Marcoux, Jamie

I:\SLD\WFX07800\700_04DD\728_ Exhibits\Zoning Exhibit\WFX07800ZESP01.dwg, 5/31/2018 8:25 AM, Marcoux, Jamie

PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L1	74.86	S62° 01' 20"W
L2	97.97	S50° 37' 19"W
L3	104.50	S55° 24' 21"W
L4	46.18	S79° 27' 37"W
L5	35.07	N59° 59' 05"W
L6	32.50	N17° 00' 25"W
L7	46.80	N0° 00' 00"E
L8	45.90	N21° 00' 45"E
L9	75.89	N36° 12' 37"E
L10	126.85	N44° 22' 36"E
L11	28.40	N11° 53' 02"E

PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L12	40.22	N15° 17' 58"W
L13	48.05	N61° 44' 16"W
L14	106.01	N80° 06' 01"W
L15	58.39	N86° 23' 55"W
L16	41.83	S85° 29' 27"W
L17	47.02	S76° 29' 52"W
L18	68.56	S55° 31' 48"W
L19	65.99	S36° 35' 45"W
L20	26.97	S68° 01' 54"W
L21	41.69	N89° 17' 35"W
L22	31.18	N58° 57' 24"W

PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L23	38.68	N36° 32' 25"W
L24	34.20	N24° 39' 46"W
L25	68.88	N1° 12' 07"E
L26	39.66	N18° 16' 59"W
L27	29.58	N39° 59' 16"W
L28	76.49	N53° 19' 59"W
L29	73.02	N64° 41' 42"W
L30	51.83	N72° 39' 51"W
L31	32.80	N52° 40' 28"W
L32	76.08	N34° 49' 58"W
L33	132.93	N50° 10' 04"W

PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L34	127.91	N43° 01' 29"W
L35	176.83	N25° 12' 55"W
L36	77.46	N47° 14' 03"W
L37	165.52	N71° 24' 11"W
L38	138.92	N38° 52' 43"W
L39	37.21	N61° 59' 46"W
L40	40.21	S87° 25' 38"W
L41	50.66	S58° 11' 13"W
L42	58.07	S41° 38' 58"W
L43	77.08	S36° 59' 44"W
L44	74.00	S60° 47' 18"W

PARCEL LINE DATA		
SEGMENT	LENGTH	DIRECTION
L45	187.10	N86° 12' 41"W
L46	78.80	S79° 30' 11"W
L47	3471.50	N31° 05' 45"W
L48	275.01	N60° 01' 50"E
L49	208.73	N60° 33' 40"E
L50	781.75	N60° 10' 43"E
L52	5276.58	S31° 10' 55"E

LEGAL DESCRIPTION
125.149 ACRES

BEING A 125.149 ACRE TRACT OF LAND SITUATED IN THE ARTHUR ELDRIDGE SURVEY, ABSTRACT NO. 449, CITY OF LANCASTER, DALLAS COUNTY, TEXAS, AND BEING ALL OF A CALLED 131.8 ACRE TRACT OF LAND, CONVEYED TO J.F. RAY AND H.T. YOUNG BY DEED RECORDED IN VOLUME 3055, PAGE 178, DEED RECORDS, DALLAS COUNTY, TEXAS, SAID 125.149 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER SAID 131.8 ACRE TRACT OF LAND, SAID CORNER BEING ON THE SOUTH LINE OF WEST MAIN STREET (AN 80 FOOT RIGHT-OF-WAY);

THENCE, ALONG THE NORTHWEST LINE OF SAID 131.8 ACRE TRACT AND THE COMMON SAID SOUTH LINE OF SAID WEST MAIN STREET, THE FOLLOWING COURSES AND DISTANCES:

NORTH 60 DEGREES 01 MINUTES 50 SECONDS EAST, A DISTANCE OF 275.02 FEET TO A POINT FOR CORNER;

NORTH 60 DEGREES 33 MINUTES 40 SECONDS EAST, A DISTANCE OF 208.73 FEET TO A POINT FOR CORNER;

NORTH 60 DEGREES 10 MINUTES 43 SECONDS EAST, A DISTANCE OF 781.75 FEET TO A POINT FOR CORNER AND THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 01 DEGREES 12 MINUTES 48 SECONDS, A RADIUS OF 1159.75 FEET, AND A LONG CHORD THAT BEARS NORTH 60 DEGREES 47 MINUTES 07 SECONDS EAST, A DISTANCE OF 24.56 FEET;

ALONG SAID TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 24.56 FEET TO A POINT FOR THE NORTHEAST CORNER OF SAID 131.8 ACRE TRACT;

THENCE, SOUTH 31 DEGREES 10 MINUTES 55 SECONDS EAST, ALONG THE NORTHEAST LINE OF SAID 131.8 ACRE TRACT, A DISTANCE OF 5276.58 FEET TO A POINT FOR CORNER IN THE CENTER OF TEN MILE CREEK;

THENCE, ALONG THE CENTERLINE OF TEN MILE CREEK, THE FOLLOWING COURSES AND DISTANCES:

SOUTH 62 DEGREES 01 MINUTES 20 SECONDS WEST, A DISTANCE OF 74.86 FEET TO A POINT FOR CORNER;

SOUTH 50 DEGREES 37 MINUTES 19 SECONDS WEST, A DISTANCE OF 97.97 FEET TO A POINT FOR CORNER;

SOUTH 55 DEGREES 24 MINUTES 21 SECONDS WEST, A DISTANCE OF 104.50 FEET TO A POINT FOR CORNER;

SOUTH 79 DEGREES 27 MINUTES 37 SECONDS WEST, A DISTANCE OF 46.18 FEET TO A POINT FOR CORNER;

NORTH 59 DEGREES 59 MINUTES 05 SECONDS WEST, A DISTANCE OF 35.07 FEET TO A POINT FOR CORNER;

NORTH 17 DEGREES 00 MINUTES 25 SECONDS WEST, A DISTANCE OF 32.50 FEET TO A POINT FOR CORNER;

NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 46.80 FEET TO A POINT FOR CORNER;

NORTH 21 DEGREES 00 MINUTES 45 SECONDS EAST, A DISTANCE OF 45.90 FEET TO A POINT FOR CORNER;

NORTH 36 DEGREES 12 MINUTES 37 SECONDS EAST, A DISTANCE OF 75.89 FEET TO A POINT FOR CORNER;

NORTH 44 DEGREES 22 MINUTES 36 SECONDS EAST, A DISTANCE OF 126.85 FEET TO A POINT FOR CORNER;

NORTH 11 DEGREES 53 MINUTES 02 SECONDS EAST, A DISTANCE OF 28.40 FEET TO A POINT FOR CORNER;

NORTH 15 DEGREES 17 MINUTES 58 SECONDS WEST, A DISTANCE OF 40.22 FEET TO A POINT FOR CORNER;

NORTH 61 DEGREES 44 MINUTES 16 SECONDS WEST, A DISTANCE OF 48.05 FEET TO A POINT FOR CORNER;

NORTH 80 DEGREES 06 MINUTES 01 SECONDS WEST, A DISTANCE OF 106.01 FEET TO A POINT FOR CORNER;

NORTH 86 DEGREES 23 MINUTES 55 SECONDS WEST, A DISTANCE OF 58.39 FEET TO A POINT FOR CORNER;

SOUTH 85 DEGREES 29 MINUTES 27 SECONDS WEST, A DISTANCE OF 41.83 FEET TO A POINT FOR CORNER;

SOUTH 76 DEGREES 29 MINUTES 52 SECONDS WEST, A DISTANCE OF 47.02 FEET TO A POINT FOR CORNER;

SOUTH 55 DEGREES 31 MINUTES 48 SECONDS WEST, A DISTANCE OF 68.56 FEET TO A POINT FOR CORNER;

SOUTH 36 DEGREES 35 MINUTES 45 SECONDS WEST, A DISTANCE OF 65.99 FEET TO A POINT FOR CORNER;

SOUTH 68 DEGREES 01 MINUTES 54 SECONDS WEST, A DISTANCE OF 26.97 FEET TO A POINT FOR CORNER;

NORTH 89 DEGREES 17 MINUTES 35 SECONDS WEST, A DISTANCE OF 41.69 FEET TO A POINT FOR CORNER;

NORTH 58 DEGREES 57 MINUTES 24 SECONDS WEST, A DISTANCE OF 31.18 FEET TO A POINT FOR CORNER;

NORTH 36 DEGREES 32 MINUTES 25 SECONDS WEST, A DISTANCE OF 38.68 FEET TO A POINT FOR CORNER;

NORTH 24 DEGREES 39 MINUTES 46 SECONDS WEST, A DISTANCE OF 34.20 FEET TO A POINT FOR CORNER;

NORTH 01 DEGREES 12 MINUTES 07 SECONDS EAST, A DISTANCE OF 68.88 FEET TO A POINT FOR CORNER;

NORTH 18 DEGREES 16 MINUTES 59 SECONDS WEST, A DISTANCE OF 39.66 FEET TO A POINT FOR CORNER;

NORTH 39 DEGREES 59 MINUTES 16 SECONDS WEST, A DISTANCE OF 29.58 FEET TO A POINT FOR CORNER;

NORTH 53 DEGREES 19 MINUTES 59 SECONDS WEST, A DISTANCE OF 76.49 FEET TO A POINT FOR CORNER;

NORTH 64 DEGREES 41 MINUTES 42 SECONDS WEST, A DISTANCE OF 73.02 FEET TO A POINT FOR CORNER;

NORTH 72 DEGREES 39 MINUTES 51 SECONDS WEST, A DISTANCE OF 51.83 FEET TO A POINT FOR CORNER;

NORTH 52 DEGREES 40 MINUTES 28 SECONDS WEST, A DISTANCE OF 32.80 FEET TO A POINT FOR CORNER;

NORTH 34 DEGREES 49 MINUTES 58 SECONDS WEST, A DISTANCE OF 76.08 FEET TO A POINT FOR CORNER;

NORTH 50 DEGREES 10 MINUTES 04 SECONDS WEST, A DISTANCE OF 132.93 FEET TO A POINT FOR CORNER;

NORTH 43 DEGREES 01 MINUTES 29 SECONDS WEST, A DISTANCE OF 127.91 FEET TO A POINT FOR CORNER;

NORTH 25 DEGREES 12 MINUTES 55 SECONDS WEST, A DISTANCE OF 176.83 FEET TO A POINT FOR CORNER;

NORTH 47 DEGREES 14 MINUTES 03 SECONDS WEST, A DISTANCE OF 77.46 FEET TO A POINT FOR CORNER;

NORTH 71 DEGREES 24 MINUTES 11 SECONDS WEST, A DISTANCE OF 165.52 FEET TO A POINT FOR CORNER;

NORTH 38 DEGREES 52 MINUTES 43 SECONDS WEST, A DISTANCE OF 138.92 FEET TO A POINT FOR CORNER;

NORTH 61 DEGREES 59 MINUTES 46 SECONDS WEST, A DISTANCE OF 37.21 FEET TO A POINT FOR CORNER;

SOUTH 87 DEGREES 25 MINUTES 38 SECONDS WEST, A DISTANCE OF 40.21 FEET TO A POINT FOR CORNER;

SOUTH 58 DEGREES 11 MINUTES 13 SECONDS WEST, A DISTANCE OF 50.66 FEET TO A POINT FOR CORNER;

SOUTH 41 DEGREES 38 MINUTES 58 SECONDS WEST, A DISTANCE OF 58.07 FEET TO A POINT FOR CORNER;

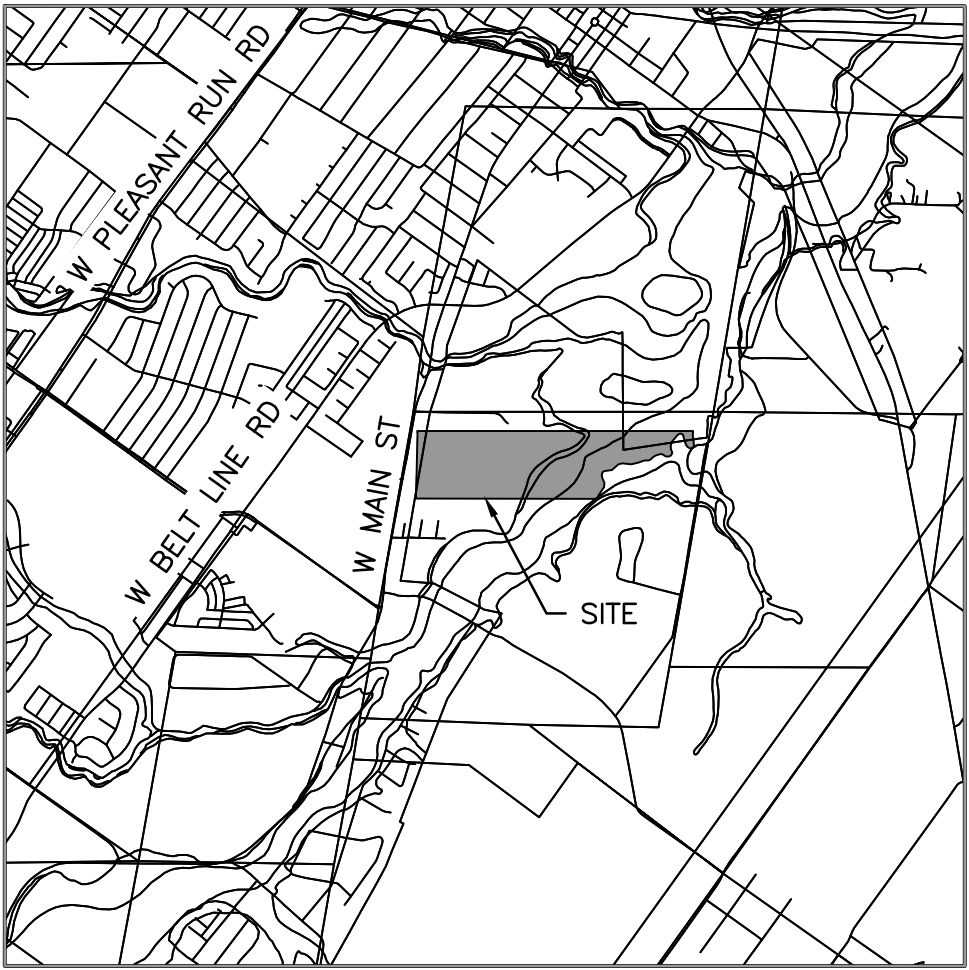
SOUTH 36 DEGREES 59 MINUTES 44 SECONDS WEST, A DISTANCE OF 77.08 FEET TO A POINT FOR CORNER;

SOUTH 60 DEGREES 47 MINUTES 18 SECONDS WEST, A DISTANCE OF 74.00 FEET TO A POINT FOR CORNER;

NORTH 86 DEGREES 12 MINUTES 41 SECONDS WEST, A DISTANCE OF 187.10 FEET TO A POINT FOR CORNER;

SOUTH 79 DEGREES 30 MINUTES 11 SECONDS WEST, A DISTANCE OF 78.80 FEET TO A POINT FOR CORNER;

THENCE, NORTH 31 DEGREES 05 MINUTES 45 SECONDS WEST, ALONG THE SOUTHWEST LINE OF SAID 131.8 ACRE TRACT, A DISTANCE OF 3471.51 FEET TO THE POINT OF BEGINNING AND CONTAINING 125.149 ACRES OF LAND MORE OR LESS.



VICINITY MAP
NOT TO SCALE

ZONING EXHIBIT FOR THE PRESERVE ON MAIN

125.150 ACRE TRACT

BEING

VOL. 3055, PG. 178 SITUATED IN THE ARTHUR
ELDRIDGE SURVEY, ABSTRACT NO. 449

IN THE

CITY OF LANCASTER, DALLAS COUNTY, TEXAS

ZONING CASE #XXXXXXX

OWNER _____

C.T. BECKHAM
11027 EASTVIEW CIRCLE
DALLAS, TEXAS 75230
PHONE 214-368-2223

APPLICANT _____

ALAN ADKINS
11027 EASTVIEW CIRCLE
DALLAS TEXAS 75230
PHONE 281-387-1633

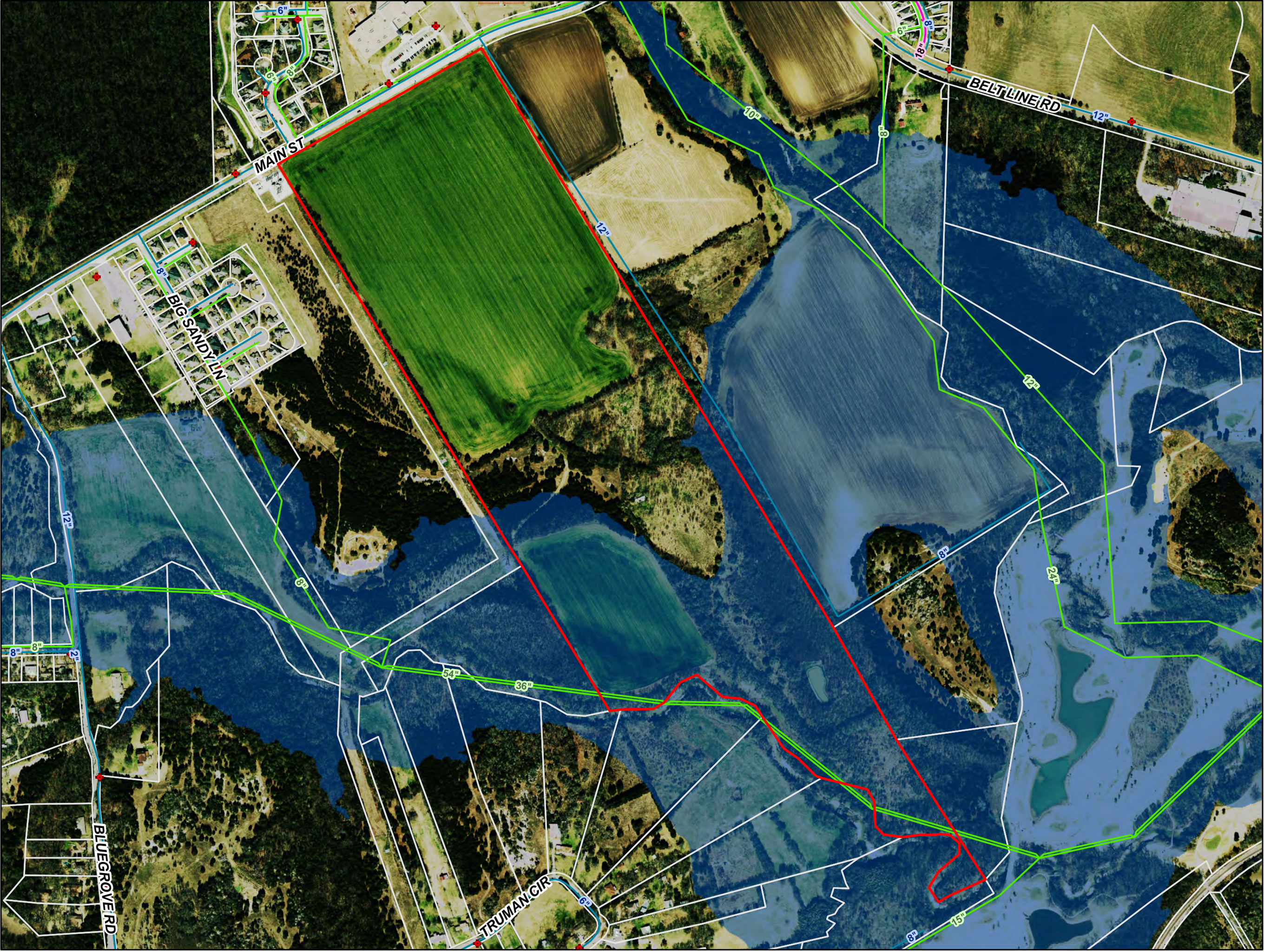
ENGINEER:

JACOBS

1999 BRYAN STREET, SUITE 1200
DALLAS, TX 75201-3136
PHONE 214-638-0145
FAX 214-638-0447
Jacobs Engineering Group Inc.
Texas Registration F-2966

PREPARED BY JAMIE MARCOUX, P.E.

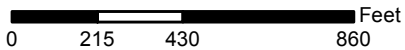
1100 W Main St
Zoned: Agricultural Open



- Fire Hydrants
- Storm Sewer Lines
- Sewer Lines
- Water Lines
- Parcels
- FEMA 100yr Floodplain



DISCLAIMER / LIMITATION OF LIABILITY
The information on this map is provided by the City of Lancaster's GIS (Geographic Information System) Division as a public service. The GIS Division is continually updating the data and attempting to provide the most accurate information possible. Such information is intended for reference only. It is the responsibility of the user to confirm any discrepancies in the data. The City of Lancaster does not guarantee the accuracy of the information, data or maps. All information is provided "As-Is" without warranty of any kind.



Rural Living

Character & Intent

Rural living is focused on areas of the community that has the ability to preserve a rural character. This includes estate residential type areas. The high-end character of this housing is primarily focused on serving the needs of executives with densities less than 2 dwelling units per acre.

Land Use Considerations

Primary Land Uses

Single-family detached homes

Secondary Land Uses

Civic & institutional uses, parks, open space

Precedent Photos



Suburban Neighborhood

Character & Intent

Suburban neighborhoods will continue to be the dominant place type in Lancaster providing a variety of residential products ranging from townhomes to single family detached. These neighborhoods would generally be formed as subdivisions with residential densities ranging from 2 to 8 dwelling units per acre..

Land Use Considerations

Primary Land Uses

Single-family detached homes, duplexes

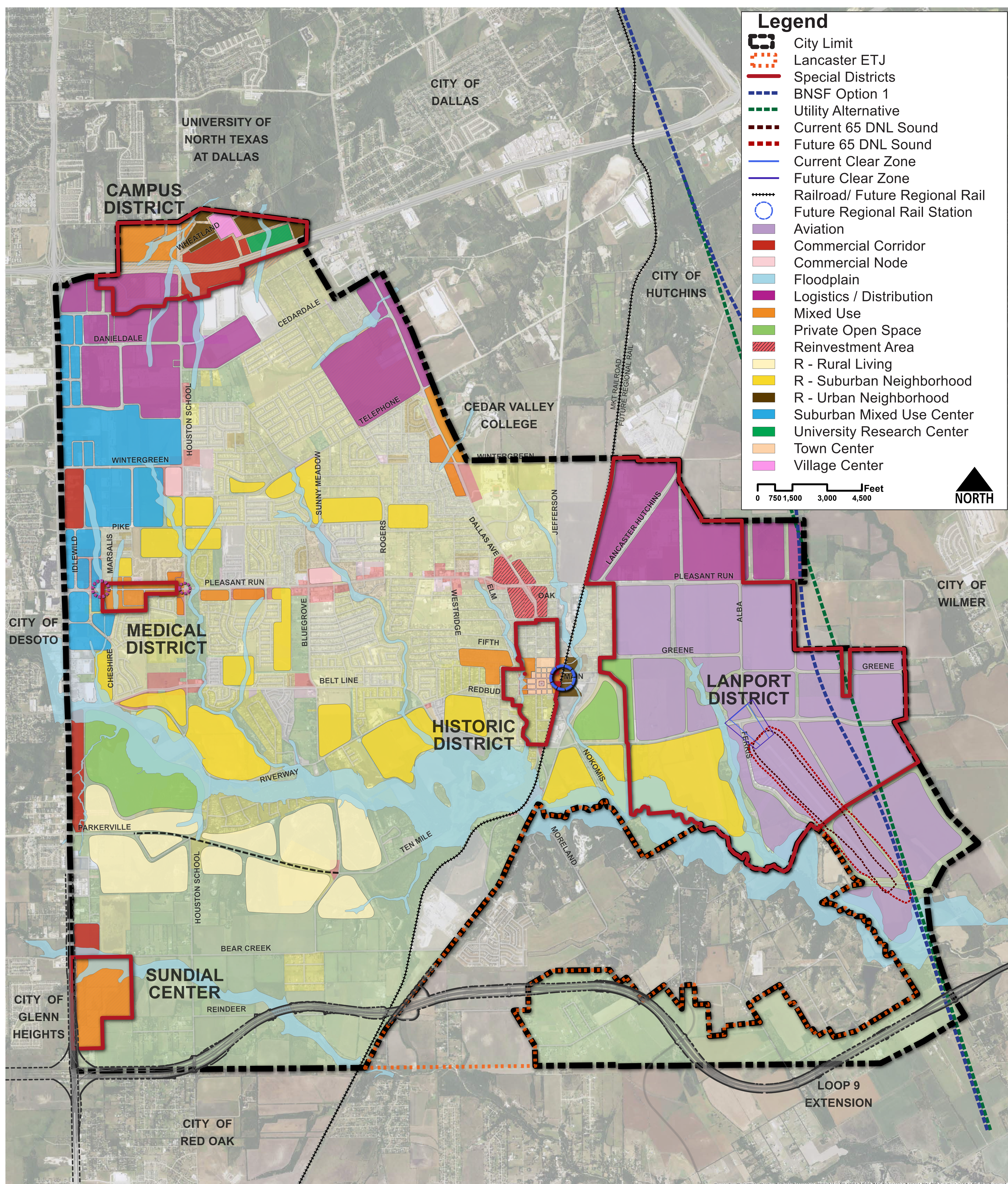
Secondary Land Uses

Civic & institutional uses, parks


Precedent Photos



Preferred Scenario





 Zoning Request
Pending
For More Information
Please Contact
PLANNING DIVISION
972-275-1722



CITY OF LANCASTER

SHINING STAR OF TEXAS

Planning Department

Date: 6/6/2018

NOTICE OF PUBLIC HEARING

TO: Property Owner

RE: **Case No. Z18-05:** to conduct a public hearing and consider a rezoning request from Agricultural Open (AO) to SF-4 Single Family Residential for single family residential uses. The property is approximately 125.15 acres and is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. It is further described as Abstract 449 Arthur Elderidge, Lancaster, Dallas County, Texas.

LOCATION: The property is located south of Main Street, east of Bluegrove and west of Belt Line Road.

EXPLANATION OF REQUEST: The applicant is requesting a zoning change request from AO to SF-4 Single Family Residential.

☒ I AM IN FAVOR OF THE REQUEST FOR THE FOLLOWING REASONS:

☐ I AM OPPOSED TO THE REQUEST FOR THE FOLLOWING REASONS:

COMMENTS:

SIGNATURE:

Murray Buchanan, COO

ADDRESS:

1109 W. Main Street

Your written comments are being solicited in the above case. Additional information is available in the Department of Planning at 211 N. Henry Street. The Planning and Zoning Commission will hold a public hearing and take action on the above case at their meeting on **Tuesday, June 19, 2018 at 7:00 pm.** The City Council will hold a public hearing and take action on the above case at their meeting on **Monday, July 30, 2018 at 7:00 pm.** Meetings are held in the City Council Chambers, City of Lancaster Municipal Center, 211 N. Henry Street, Lancaster, Texas.

Please legibly respond in ink. If the signature and/or address are missing, your comments will not be recorded. Your response must be received in the Planning Division by 5 p.m. on **Wednesday, June 13, 2018** for your comments to be recorded for the Planning and Zoning Commission's meeting. Responses received after that time will be forwarded to the Commission at the public hearing.

If you have any questions concerning this request,
please contact the Planning Division
Phone 972-218-1312
FAX 972-218-3616

RETURN BY FAX OR MAIL

City of Lancaster
Planning Division
211 N Henry St
Lancaster, TX 75146-0940

22 Notices were mailed

P.O. Box 940 | Lancaster | Texas | 75146 | 972.218.1300 | www.lancaster-tx.com



CITY OF LANCASTER'S BOARDS AND COMMISSIONS

Planning & Zoning Commission

Item 7.

Meeting Date: 06/19/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda

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

Submitted by: Bester Munyaradzi, Senior Planner

Agenda Caption:

Z18-05 Conduct a Public Hearing and consider a rezoning request from Agricultural Open (AO) to SF-4 Single Family Residential. The property is approximately 125.2 acres and is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. It is further described as Abstract 449 Arthur Elderidge, Lancaster, Dallas County, Texas.

Background:

1. **Location and Size:** The property is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. The property is approximately 125.2 acres in size.
2. **Current Zoning:** The subject property is currently zoned Agricultural Open (AO).
3. **Adjacent Properties:**
North: Mills Branch Overlay District - (Lancaster 9th Grade Center, occupied and vacant residential lots)
South: Agricultural Open - (occupied lots with houses and vacant lots)
East: Agricultural Open - (vacant Lots)
West: Planned Development - Single Family Residential # 055 - (vacant)
4. **Comprehensive Plan Compatibility:** The Future Land Use Plan of the Comprehensive Plan identifies this site as suitable for Suburban Neighborhood uses. This request is consistent with the Comprehensive Plan.

Operational Considerations:

This is a request to rezone the subject property from AO to SF-4 for the development of single family homes and associated amenities on 125.2 acres of land. The current zoning only allows for agricultural uses and a single family dwelling on five (5) acres or more. The proposed zoning change would allow up to 4 dwelling units per an acre.

Section 14.1101 of the LDC, states when reviewing a zoning change application, there are five (5) considerations that must be made when deciding on a zoning change application. Below is an analysis of these considerations:

Consistency with the Comprehensive Plan:

The Comprehensive Plan Future Land Use map designates this area as Suburban Neighborhood. Suburban Neighborhood is envisioned to have place types which focus on creating a variety of residential products. Primary land uses for Suburban Neighborhood includes single-family detached homes and

duplexes. Secondary uses include civic and institutional uses and parks. The zoning change request is therefore consistent with the Comprehensive Plan shown on the attached Comprehensive Plan excerpt.

Potential Impact on Adjacent Development:

The properties to the north are Lancaster 9th Grade Center and vacant and occupied residential lots. The properties to the east and west are both vacant and the properties to the south are vacant and occupied residences. This property serves as an ideal location for single family homes as it is surrounded by properties with residences in the Mills Branch Overlay District, a School and Neighborhood Walmart to the north. Although the other surrounding properties are vacant, the Comprehensive Plan identifies the properties as suitable for the Suburban Neighborhood place type which supports single family residences. If zoning is approved by City Council on July 30th, 2018, the proposed SF-4 development will be subject to the Lancaster Development Code, Subdivision Regulations, Parks and Open Space Master Plan, Streetscape Master Plan, Trails Master Plan and all other relevant City Codes.

Availability of utilities and access:

The subject property is served by City of Lancaster water. The applicant will have to extend sanitary sewer line to the subject property. Access to the property could be from Main Street.

Site conditions such as vegetation, topography and flood plain:

The subject property is currently undeveloped. Upon construction of this site, factors such as vegetation, topography and flood plain issues will be addressed through the civil review process.

Timing of Development as it relates to Lancaster's Capital Improvement Plan:

The City of Lancaster has no plans to provide improvement to Main Street. Main Street is shown as an 80' wide two (2) lane collector on the Master Thoroughfare Plan.

If the zoning change request is granted, the applicant has indicated that they intend to market the property to their builder clients to determine the desired land plan, lot mix and construction product mix most suitable for property and market that complies with all of the SF-4 zoning restrictions and requirements. The applicant will be required to meet the requirements for single family development as outlined by the Lancaster Development Code (LDC).

Based on the above 5 considerations and the applicant's intent, staff recommends approval of the request as it is in conformance with the Comprehensive Plan.

Legal Considerations:

This item is being considered at a Regular Meeting of the Planning and Zoning Commission noticed in accordance with the Texas Open Meetings Act.

Public Information Considerations:

On June 3 and June 10, 2018, a notice for this public hearing appeared in the Focus Daily Newspaper. Staff also mailed notifications of this public hearing to property owners within 200-feet of the subject site and zoning signs were placed on the property. There has been one (1) letter returned in favor, one (1) in opposition and one (1) neither supporting or opposing the case.

Options/Alternatives:

1. Recommend approval of the proposed SF-4 request, as presented.
2. Recommend approval of the proposed SF-4 request with changes and state those changes.
3. Recommend denial of the proposed SF-4 request, as presented.

Recommendation:

Staff recommends approval of this item, as presented.

Attachments

Location Map

Zoning Exhibit

Comprehensive Plan Excerpt

Zoning Change Sign

Resident Notification Response Letters

MINUTES

PLANNING & ZONING COMMISSION SPECIAL MEETING OF JUNE 19, 2018

The Planning and Zoning Commission of the City of Lancaster, Texas, met in a Regular Session in the Council Chambers of City Hall on June 19, 2018 at 7:00 p.m. with a quorum present to-wit:

Commissioners Present:

Cynthia Johnson
Jeremy Reed
Karen Collins

City Staff:

Bester Munyaradzi, Senior Planner
Emma Chetuya, Planner
Ashley White, Associate City Attorney

Call to order:

Commissioner Johnson called the meeting to order at 7:05 p.m. on June 19, 2018.

CONSENT AGENDA:

1. Consider approval of minutes from the Planning and Zoning Commission Joint Special Meeting held on March 27, 2018 and the Regular Meeting held on May 1, 2018.
2. PS18-03 Discuss and consider a request for approval of a Preliminary Plat for Global BTS, being Lot 1, Block A, creating one lot on approximately 22.15 acres located on the northeast corner of West Drive and Longhorn Drive. The property is described as a tract of land situated in the William Howerton Survey, Abstract No. 559, in the City of Lancaster, Dallas County, Texas.
3. PS18-08 Discuss and consider a preliminary plat for Oakmont 20/35 being 41.5 acres located at the southeast corner of N. Longhorn Drive and West Drive, a tract of land out of the William Howerton Survey, Abstract No. 559 in the City of Lancaster, Dallas County, Texas.
4. PS18-10 Discuss and consider a request for approval of a Preliminary Plat for Lincoln Estates, creating 6 lots on approximately 5.9 acres located on the northwest corner of Bear Creek Road and Houston School Road. The property is described as a tract of land situated in the Charles Bernard Survey, Abstract No. 128, in the City of Lancaster, Dallas County, Texas.
5. PS18-11 Discuss and consider a preliminary plat for I-20 Commerce Center Addition on two lots on 59.5 acres located at the northwest corner of Houston School Road and Daniieldale Road, a tract of land out of the S.B. Runyon Survey, Abstract No. 1199 in the City of Lancaster, Dallas County, Texas.
6. PS18-12 Discuss and consider a final plat for I-20 Commerce Center Addition being 59.5 acres on two lots located at the northwest corner of Houston School Road and Daniieldale Road, a tract of land out of the S.B. Runyon Survey, Abstract No. 1199 in the City of Lancaster, Dallas County, Texas.

MOTION: Commissioner Collins made a motion, and seconded by Commissioner Reed to approve consent items 1 through 6. The vote was cast 3 for, 0 against.

PUBLIC HEARING:

- 7. Z18-05 Conduct a Public Hearing and consider a rezoning request from Agricultural Open (AO) to SF-4 Single Family Residential. The property is approximately 125.2 acres and is located south of Main Street, east of Bluegrove Road and west of Belt Line Road. It is further described as Abstract 449 Arthur Elderidge, Lancaster, Dallas County, Texas.**

Planner Chetuya gave the staff report. This is a request to rezone 125.2 acres of property located south of Main Street and east of Bluegrove Road for single family dwelling units. The current zoning only allows for 1 unit to be built per 5 acres. The proposed zoning will allow up to 4 units per acre. The Comprehensive Plan, Future Land Use map designates this area as Suburban Neighborhood. Suburban Neighborhood is envisioned to have place types which focus on creating a variety of residential products. Primary land uses for Suburban Neighborhood includes single-family detached homes and duplexes. The zoning change request is therefore consistent with the Comprehensive Plan shown on the attached Comprehensive Plan excerpt. Access to the property will be from Main Street and utilities are available. Staff recommends approval of the request as presented.

The public hearing was opened and no one spoke in support or opposition of this zoning change request.

MOTION: Commissioner Reed made a motion to close the public hearing, and seconded by Commissioner Collins. The vote was cast 3 for, 0 against.

MOTION: Commissioner Reed made a motion to approve item number 7 as presented, and seconded by Commissioner Collins. The vote was cast 3 for, 0 against.

- 8. Z18-06 Conduct a public hearing and consider a Specific Use Permit (SUP) request for in-home daycare at a property addressed as 1743 O'Neal Street; Lot 7, Block B in Wellington Park North Subdivision. The property is located within the Jonathan L. Samson Survey, Abstract No. 1311 City of Lancaster, Dallas County, Texas.**

Senior Planner Bester Munyaradzi gave the staff report. This is a Specific Use Permit (SUP) request for in-home daycare at a property addressed as 1743 O'Neal Street in Wellington Park North Subdivision. The application came after a fire incident at the premise when the Fire Marshall investigating the fire alerted the operator to seek a SUP. The State requires in-home day care operators to comply with local regulations and Lancaster Development Code requires SUP for in-home daycares.

The applicant is requesting in-home daycare for eight (8) children ranging from 14 months to five (5) years of age. The operation is State licensed and has been in operation for 10 years but does not have Fire and Building permits. The applicant is therefore seeking to bring the business in compliance with the City's required permits.

The application meets the Home Occupation requirements. However, due to the number of children in the in-home daycare, Building and Fire codes classifies this in-home day care as an I-4 which requires the installation of automatic fire sprinklers. Therefore the operators/owners of the in-home daycare are required to install automatic fire sprinklers in the premise for the safety of the children and to meet the Fire code requirement. Staff recommends approval of the SUP request subject to installation of automatic fire sprinklers.

Commissioner Reed inquired on where to find the requirement for in-home daycares to obtain a specific use permit. Senior Planner Munyaradzi stated the information can be found in the Land Use Table. Commissioner Reed stated that he was not clear as to why daycare center is an excluded use from home occupations. Senior Planner Munyaradzi stated a daycare center is a large commercial day care use.

Commissioner Johnson asked how many fire sprinklers are required in the home. Senior Planner Munyaradzi noted that the number of required fire sprinklers would need the Fire Marshal's input.

Commissioner Reed asked if the Fire Marshal have a standing action on the house that if they approve the SUP the house would have to be sprinkled. Senior Planner Munyaradzi noted that the Fire Marshal will ensure the houses meet current fire code.

The applicant Taryn Walker, 1783 O'Neal Street, Lancaster TX 75134 stated that her client is seeking approval of the body. Applicant stated she was unaware of requirement prior to the meeting. Senior Planner Munyaradzi stated that the automatic sprinkler system is required when there are more than 5 children in the home.

Commissioner Johnson asked applicant if the Fire Marshall stated that the sprinkler system currently located in the house is sufficient and all they need is a larger fire extinguisher and whether the applicant had document from the Fire Marshall. Ms. Walker stated that on the day of inspection, the things she had on the sheet is what the Fire Marshall circled and then she passed around the Fire Marshall inspection checklist. Senior Planner read where it states that 14 occupancy is required to have an automatic sprinkler where there are more than 5 occupants and that the in-home daycare has more than 5 children.

Commissioner Reed asked City Attorney White if the Commissioners would be clear to approve the requirement. It was advised that based on what staff has presented, the application meets the classification of a secondary use and fulfills the residential home occupation that meets the SUP requirements.

MOTION: Commissioner Johnson made a motion to close the public hearing seconded by Commissioner Reed. The vote was cast 3 for, 0 against.

MOTION: Commissioner Reed made a motion to approve item 8 subject to the installation of the fire sprinklers under the direction of the Fire Marshall seconded by Commissioner Collins. The vote was cast 3 for, 0 against.

ACTION

9. **HLPC18-03 Consider a Certificate of Appropriateness to install double metal doors on the front of 137 Historic Town Square, three (3) masonite doors on the breezeway and one (1) single masonite door on the front that leads to the upstairs unit on the properties located at 137-143 Historic Town Square, Lancaster, Dallas County, Texas.**

Planner Chetuya gave the staff report. The applicant is requesting to install three (3) masonite doors on the breezeway and one (1) single masonite door on the front that leads to the upstairs unit on the properties located at 137-143 Historic Town Square. The design of the proposed doors leading to the upstairs unit are similar to the style of 1890s to 1930s commercial architecture. The doors along the breezeway have a small window at the top that appears like a transom although there is no transom above the doors. Although the double doors on the front of 137 Historic Town Square is made of metal, it appears to be made of wood. Staff concurs with the HLPC recommendation.

MOTION: Commissioner Collins made a motion to approve agenda item number 9, and seconded by Commissioner Reed. The vote was cast 3 for, 0 against.

10. HLPC 18-05 Discuss and consider a Certificate of Appropriateness to replace the front doors at 113 Historic Town Square, Lancaster, Dallas County, Texas.

Planner Chetuya gave the staff report. The applicant has already installed 8' high Mahogany wood doors during the month of December of 2017 because the doors were old and rotten. HLPC approved the request subject to dark brick red glass stain on the door and veneer around the doors. Staff concurs with the HLPC.

MOTION: Commissioner Collins motioned to approve item number 10 subject to dark brick red glass stain on the door and veneer around the doors seconded by Commissioner Reed. The vote was cast 3 for, 0 against.

11. HLPC 18-06 Consider a Certificate of Appropriateness to add new wood siding, replace deteriorating porch deck wood with treated wood, make porch skirt of brick and add small siding panels on property located at 405 E. Main Street, Lancaster, Dallas County, Texas.

Planner Chetuya stated gave a staff report. The applicant is requesting to add new wood siding that matches the current house siding to the existing rear laundry room because the former material is falling off a request to remove the deteriorating porch deck wood and replace it with treated wood, a request to make the porch skirt of brick to match the existing bricks on the house to cover the crawls space at the front of the house and to add smart siding panels along the bottom sides and rear of the house to cover crawl space. The HLPC recommended approval of the request as presented and staff concurs with the HLPC.

MOTION: Commissioner Reed made a motion to approve item number 11 as presented seconded by Commissioner Collins.
The vote was cast 3 for, 0 against.

MOTION: Commissioner Reed made a motion to adjourn seconded by Commissioner Collins.

The meeting was adjourned at 7:38 p.m.

ATTEST:

APPROVED:

Bester Munyaradzi, Senior Planner

Cynthia Johnson, Commissioner

LANCASTER CITY COUNCIL

A City Council Special Meeting

5.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

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

Submitted by: Bester Munyaradzi, Senior Planner

Agenda Caption:

Z18-06 Conduct a Public Hearing and consider an ordinance granting a Specific Use Permit (SUP) request for in-home daycare at a property addressed as 1743 O'Neal Street; Lot 7, Block B in Wellington Park North Subdivision. The property is located within the Jonathan L. Samson Survey, Abstract No. 1311 City of Lancaster, Dallas County, Texas.

Background:

Staff received a Specific Use Permit (SUP) request for in-home day care application for Karen's 24 Hour Childcare and Day School. The application was submitted after at the subject. At that time, the Fire Marshall was made aware that property owner was operating an in-home daycare without the City required permits. The daycare operator was informed of the need to obtain the required City permits.

While Texas Department of Family and Protective Services require in-home daycare Operators to meet local government requirements as part of the State minimum guidelines for licensing; negligence to acquire local permits is a common oversight that many in-home daycare operators make once they get State License. As a result, the City of Lancaster has 30 (thirty) in home day cares that are operating without City permits as shown on the attached list. Karen's 24 Hour Childcare and Day School is State Licensed, however, the operation does not have the required City of Lancaster Fire and Building Inspections permits to operate such a business. In addition, the Lancaster Development Code (LDC) requires in-home day cares to obtain a Specific Use Permit (SUP) in all Residential zoning districts.

Operational Considerations:

This is a request for an in-home daycare for eight (8) children ranging from 14 months to five (5) years of age (1 child 14 months old, 1 child 2 years old, 2 children 2 1/2 years old, 1 child 3 years old, 2 children 4 years old and 1 child 5 years old). Though the daycare has been licensed by the State for operation for more than 10 years; the operation was never in compliance with local requirements. The applicant is therefore seeking to bring the business in compliance with the City's required permits.

In-home daycare is classified as Home Occupation and must meet Sec. 14.402 Use Standards, Subsection (b) Residential and Lodging Use Conditions (7) Home Occupation regulations of the Lancaster Development Code which is as follows:

(7) Home Occupation Regulations

A. Incidental to Primary use. The use must clearly be incidental and secondary to the primary use of the property as a residence.

B. Employees. No more than two (2) people outside the family may be employed in the home

occupation.

C. Exterior Indication. There shall be no exterior display, exterior storage of materials, and no other exterior indication of the home occupation or variation from the residential character of the principal building.

D. Traffic. No more traffic shall be generated by such home occupation than would normally be expected in the neighborhood.

E. Parking. In addition to the off-street parking required for the residence, adequate additional off-street parking shall be provided for the vehicles of each employee and the maximum number of users the home occupation may attract, one (1) additional parking space at the rear of the house shall be provided.

F. Nuisance. No nuisance, offensive noise, vibration, smoke, dust, odors, heat, glare, or electrical disturbance shall be generated.

G. Excluded Uses. A home occupation may not be interpreted to include the following: facilities for repair of motor vehicles, small motors, daycare center, or uses which utilize flammable or hazardous materials.

The applicant's letter of intent states that 1743 O'Neal Street's primary use is residential with in-home daycare incidental to residential use. The owners of the property (Lee Don L and Karen) are the only people who are involved with the operation of the in-home daycare and no other outside employee. The letter of intent further states that despite the name of the business, this in-home daycare is operational Monday through Friday from 6:00 am to 6:30 pm and for extended hours as needed. At no time is a child permitted to remain on the premises overnight in connection with the in-home daycare.

Furthermore, the letter of intent notes that there are no exterior displays exterior storage of materials, and no other exterior indication of the home occupation or variation from the residential character of the principal building. Moreover, the applicant points out that the daycare is of no nuisance, offensive noise, vibration, smoke, dust, odors, heat, glare, or electrical disturbances on the premises or otherwise.

Staff Assessment and Comments

Exterior Indicator:

Site inspection and visitation to the subject property exhibited no exterior indication and display of in-home daycare operation from O'Neal Street view.

Traffic Circulation - Pick Up and Drop Off (Loading)

1743 O'Neal Street is in the middle of a residential block with alley served properties. Since alley served residents use alleys in and out of their properties, alley provision leaves O'Neal street free for traffic dropping and picking up children from this in-home day care. In addition, the in-home day care house is middle block with Mc Neely Street to the east and Chapman Drive on the west which makes traffic circulation in and out O'Neal Street easily manageable. As such, traffic movement in and around the subject property will not cause traffic issues for parents dropping and picking up children, residents along O' Neal Street as well the general neighborhood.

Fire Sprinklers:

As noted above, this in-home daycare cares for eight (8) children ranging from 14 months to five (5) years old (1 child 14 months old, 1 child 2 years old, 2 children 2 1/2 years old, 1 child 3 years old, 2 children 4 years old and 1 child 5 years old). Due to the ages of children in the in-home daycare, Building and Fire codes classify this in-home day care as an I-4 which requires the installation of automatic fire sprinklers. Therefore the operators/owners of the in-home daycare are required to install automatic fire sprinklers in the premise for the safety of the children and to meet the Fire code requirement.

Staff Recommendation:

Review of Home Occupation and staff assessment of the in-home daycare application shows that the applicant meets the City Home Occupation requirements for in-home daycare. However, the applicant is

required to install automatic fire sprinklers as notated above to full compliance with the City Ordinances. Staff therefore recommends approval of the request for SUP for in-home daycare at 1743 O'Neal Street on condition that the applicant installs automatic fire sprinklers for the safety of the children and as required by the Fire Department.

Legal Considerations:

This item is being considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Public Information Considerations:

Zoning signs were placed on the subject property on Friday, June 8, 2018. On June 6, 2018, notifications of this public hearing were mailed to owners that are within 200 feet of the subject property. On Thursday, June 3, 2018, a notice for this public hearing appeared in the Focus Daily Newspaper.

Staff received one letter in favor or no letter against this SUP request.

Options/Alternatives:

1. City Council may approve the request, as presented.
2. City Council may approve the request with changes and state those changes.
3. City Council may deny the request.

Recommendation:

On June 19, 2018 the Planning and Zoning Commission recommended approval of the SUP for in-home daycare subject automatic fire sprinklers installation at the premise. Staff concurs with the Planning and Zoning Commission.

Attachments

Ordinance

Location Map

List of Daycares In Lancaster

City of Lancaster Daycare Map

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF LANCASTER, TEXAS, AMENDING ORDINANCE NO. 2006-04-13, (THE LANCASTER DEVELOPMENT CODE) AND ZONING MAP OF THE CITY OF LANCASTER, AS AMENDED, BY GRANTING A SPECIFIC USE PERMIT FOR IN-HOME DAY CARE AT THE PROPERTY LOCATED AT 1743 O'NEAL STREET, CITY OF LANCASTER, DALLAS COUNTY, TEXAS AND MORE GENERALLY LOCATED ON THE NORTH SIDE OF O'NEAL STREET, APPROXIMATELY 376 FEET EAST OF CHAPMAN DRIVE BEING MORE PARTICULARLY DESCRIBED AS LOT 7, BLOCK B IN THE WELLINGTON PARK NORTH SUBDIVISION WITHIN THE JONATHAN L. SAMSON SURVEY, ABSTRACT NO. 1311 CITY OF LANCASTER, DALLAS COUNTY, TEXAS; PROVIDING FOR A SPECIAL CONDITION; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OR FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lancaster has received a request for a specific use permit; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Lancaster, in compliance with the laws of the State of Texas with reference to the granting of zoning changes, have given the requisite notices by publication and otherwise, and have held the required hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof.

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

SECTION 1. That on Zoning Case No. Z18-06, the Lancaster Development Code, the Comprehensive Plan and Zoning Map of the City of Lancaster, be hereby amended to grant a Specific Use Permit for In-Home Day Care to be operated at the property located at 1743 O'Neal Street; Lot 7, Block B in Wellington Park North Subdivision.

SECTION 2. That the following special development condition is hereby incorporated and attached and the specific use permit granted herein is conditioned on the following (1) installation of an automatic fire sprinkler system that protects the interior of the property used for in-home day care.

SECTION 3. Ordinance Number 2006-04-13, the Lancaster Development Code of the City of Lancaster, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. If any article, paragraph, subdivision, clause or provision of this ordinance or the Lancaster Development Code, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this ordinance as a whole or any part or provision thereof, or of the Lancaster Development Code, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 5. Any person, firm or corporation violating any of the provisions of this ordinance or the Lancaster Development Code of the City of Lancaster, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Lancaster, Texas, shall be subject to a fine not to exceed the sum of two thousand (\$2,000.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

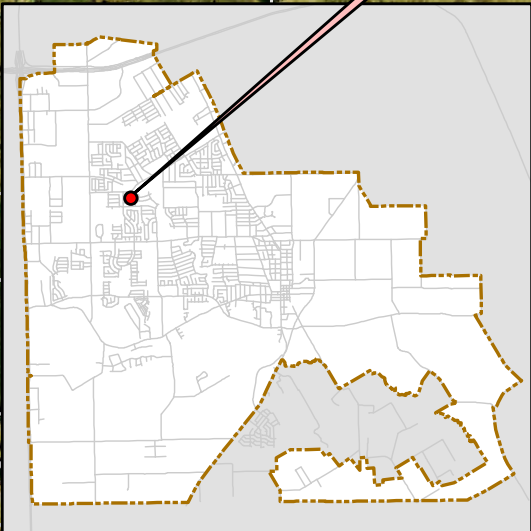
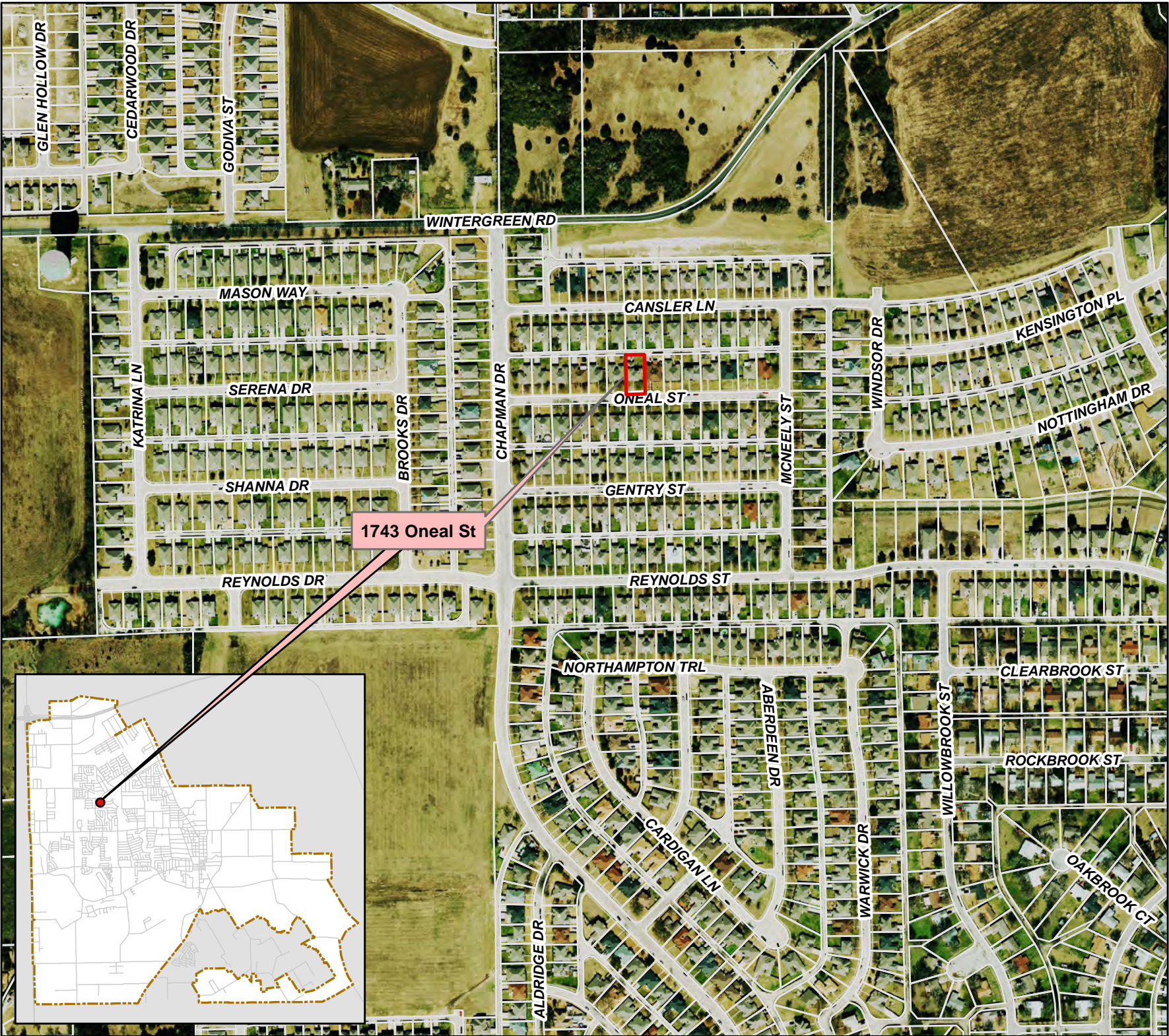
Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

1743 Oneal Street



Legend

- Parcels
- City Limits

0 100 200 400 Feet

Licensed Home Lancaster		
<u>Operation/Caregiver Name</u>	<u>Address</u>	<u>Phone</u>
Jefferson Little Learners Academy	1125 NANCY LN	225-485-8156
Juanita Hawkins Family Childcare	1408 SINGING BIRD DR	972-224-9950
Karens 24 Hour Child Care and Day School	1743 ONEAL ST	972-218-8294
Keisha's Kare Academy	1848 APOLLO LN	214-256-3640
Nana Miracle Children Learning Center	235 CHESHER RD	214-914-5418
Shawns Love and Learning Jumpstart Academy	1909 ENCHANTED LN	469-835-6829
The Children's Christian Academy	2860 SAINT JOHNS AVE	469-530-5973
Lancaster Listed Homes*		
<u>Operation/Caregiver Name</u>	<u>Address</u>	<u>Phone</u>
Francisca Salazar	1230 RIVER OAKS CIR	972-227-2397
Jacqueline Veals	1533 E SPRINGCREST CIR	469-316-1619
Karen Woodle	1158 TRACY LN	972-218-6429
Lakeitha Gipson	218 BARRY LN	214-598-1249
Loyce Bullock	741 LINDENWOOD DR	972-707-8081

Sharron Donaldson	2813 CORAL DR	214-777-2574
Sheryl Hassell	1411 GOLDEN GRASS DR	469-688-6784
Shukietra Willis-McNac	821 REA AVE	469-693-8751
Stacie Davis	1100 RIVER BEND DR APT 95	469-335-7935
Registered Lancaster Homes		
<u>Operation/Caregiver Name</u>	<u>Address</u>	<u>Phone</u>
Brenda Wyatt	2854 CORAL DR	972-274-1333
Chakeela Facion	1636 AMBERCREST DR	469-316-3925
Delores Chaney	3116 PRAIRIE ASTER DR	469-556-3977
Emma Jean Morrison	944 OAKBLUFF DR	972-523-1665
Keshawndra Floyd	2934 MARSH DR	469-556-0971
Lacey Tanae Mc Elroy	1019 BABBLING BROOK LN	469-372-0991
Linda Jackson	1513 HONEY BEE LN	817-455-5778
Nora L Porter	1405 BUMBLE BEE DR	469-664-9596
Patricia Blair	808 TAYLOR ST	972-742-2391
Shacondria D Johnson	3021 BASKIN DR	972-224-1302

Shaniqua Williams	1101 OAKBLUFF DR	972-522-8504
Sherilyn Roblow	1265 SPRING WATER DR	972-224-6442
Shondra Dison	1440 GENTLE RAIN DR	972-228-2104
Veola Green Hale	702 REA AVE	214-583-7152
Licensed Centers		

ABC Learning Center, LLC	1033 W PLEASANT RUN RD	972-275-0335
Berne Academy DCC	1311 JOHNS AVE	972-227-4431
Good Hands Child Development Center	1050 W WINTERGREEN RD	972-227-1426
KCE Champions LLC@ILTX-Lancaster	1900 PLEASANT RUN RD	817-933-6664
Kids University Learning Center	639 W WINTERGREEN RD	972-218-0808
Malik Muhammad The Little Genius Learning Center, LLC	625 W PLEASANT RUN RD	972-218-1710
Peaceful Images Child Development Center LLC	875 W PLEASANT RUN RD	972-227-7877
Peaceful Images Child Development Center LLC	1971 W PLEASANT RUN RD	972-224-2438
Powerhouse Center	954 S I 35 E	469-727-2010
Shannons Lil Angels	630 W PLEASANT RUN RD STE 104	972-275-0092
The Gardner Preparatory School II, LLC	100 N HOUSTON SCHOOL RD	972-741-4485

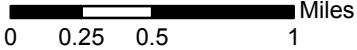
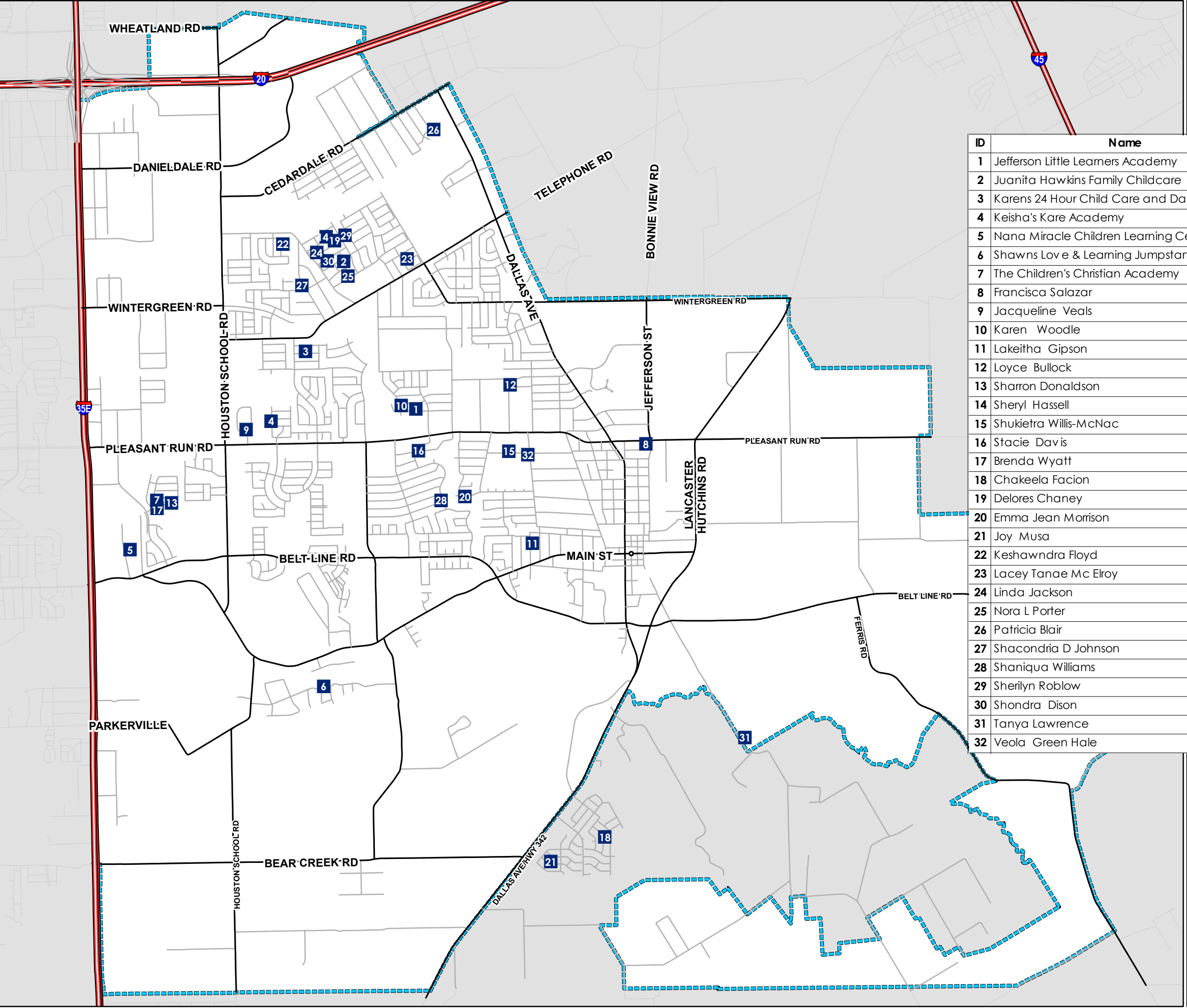
Zion Kidz Academy & Learning Center

1004 N JEFFERSON ST

972-218-9805

City of Lancaster
Day Cares

ID	Name	Address	Phone	Issue Date
1	Jefferson Little Learners Academy	1125 NANCY LN	225-485-8156	1/19/2017
2	Juanita Hawkins Family Childcare	1408 SINGING BIRD DR	972-224-9950	11/7/2007
3	Karens 24 Hour Child Care and Day School	1743 ONEAL ST	972-218-8294	4/13/2010
4	Keisha's Kare Academy	1848 APOLLO LN	214-256-3640	11/28/2017
5	Nana Miracle Children Learning Center	235 CHESHER RD	214-914-5418	2/6/2013
6	Shawns Lov e & Learning Jumpstart Academy	1909 ENCHANTED LN	469-835-6829	12/23/2015
7	The Children's Christian Academy	2860 SAINT JOHNS AVE	469-530-5973	3/31/2017
8	Francisca Salazar	1230 RIVER OAKS CIR	972-227-2397	5/24/2013
9	Jacqueline Veals	1533 SPRINGCREST CIR	469-316-1619	2/1/2018
10	Karen Woodle	1158 TRACY LN	972-218-6429	10/6/2017
11	Lakeitha Gipson	218 BARRY LN	214-598-1249	11/2/2015
12	Loyce Bullock	741 LINDENWOOD DR	972-707-8081	3/2/2018
13	Sharron Donaldson	2813 CORAL DR	214-777-2574	2/5/2018
14	Sheryl Hassell	1411 GOLDEN GRASS DR	469-688-6784	12/15/2016
15	Shukietra Willis-McNac	821 REA AVE	469-693-8751	9/19/2017
16	Stacie Davis	1100 RIVER BEND DR #95	469-335-7935	2/10/2017
17	Brenda Wyatt	2854 CORAL DR	972-274-1333	5/5/1999
18	Chakeela Facion	1636 AMBERCREST DR	469-316-3925	
19	Delores Chaney	3116 PRAIRIE ASTER DR	469-556-3977	8/4/2009
20	Emma Jean Morrison	944 OAKBLUFF DR	972-523-1665	2/6/1995
21	Joy Musa	1763 PIONEER WAY	214-484-4505	4/7/2017
22	Keshawndra Floyd	2934 MARSH DR	469-556-0971	
23	Lacey Tanae Mc Elroy	1019 BABBLING BROOK LN	469-372-0991	7/26/2017
24	Linda Jackson	1513 HONEY BEE LN	817-455-5778	
25	Nora L Porter	1405 BUMBLE BEE DR	469-664-9596	3/28/2005
26	Patricia Blair	808 TAYLOR ST	972-742-2391	1/25/2001
27	Shacondria D Johnson	3021 BASKIN DR	972-224-1302	9/16/2008
28	Shaniqua Williams	1101 OAKBLUFF DR	972-522-8504	2/24/2017
29	Sherilyn Roblow	1265 SPRING WATER DR	972-224-6442	8/28/1995
30	Shondra Dison	1440 GENTLE RAIN DR	972-228-2104	10/29/2008
31	Tanya Lawrence	940 NOKOMIS RD	972-227-8036	1/5/2001
32	Veola Green Hale	702 REA AVE	214-583-7152	



LANCASTER CITY COUNCIL

A City Council Special Meeting

6.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Sound Infrastructure

Submitted by: Andrew Waits, Interim Assistant Public Works Director

Agenda Caption:

Discuss and consider a resolution approving the terms and conditions of an agreement with McMahon Contracting L.P. for limited pavement repairs on Pleasant Run Road in an amount not to exceed one million nine hundred seventy-five thousand two hundred eighty-nine dollars and seventy-four cents (\$1,975,289.74).

Background:

Pleasant Run Road is identified for reconstruction through the pavement management program. Pleasant Run Road is a major arterial that is heavily traveled due to access from major residential subdivisions. It suffers from multiple potholes and concrete failure throughout.

The City utilized Dal-Tech Engineering, Inc. for the limit parameters including engineering services of Pleasant Run Road which was presented in three phases. City staff recommend option number two (2.) which is for Alternative Bid Number one (1.) (Phase 1. plus Additional Improvement in Phase 1.) not to exceed one million nine hundred seventy five thousand two hundred eighty nine dollars and seventy four cents (\$1,975,289.74). This phase is located on Pleasant Run Road between Interstate 35W and Houston School Road.

Operational Considerations:

Plans include saw cutting the existing concrete pavement and curbs that have been identified on the attached submittal labeled Exhibit "A". Removing concrete pavement and compaction of the subgrade will be performed prior to the concrete being replaced which will provide a smoother driving experience for residential drivers and a more sustained roadway for heavier vehicles that travel the roadway. The City of Lancaster staff will serve as the project manager and will coordinate with McMahon Contracting L.P. to ensure the pavement replacement is in accordance with the City of Lancaster design manual specifications.

Legal Considerations:

The City Attorney has reviewed and approved the resolution as to form.

Public Information Considerations:

This item is being considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

Fiscal Impact:

Funding will not exceed one million nine hundred seventy-five thousand two hundred eighty-nine dollars and seventy-four cents (\$1,975,289.74). Funding will be derived from 2007 street bonds.

Options/Alternatives:

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

Attachments

Resolution

Exhibit "A"

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN MCMAHON CONTRACTING L.P. AND THE CITY OF LANCASTER FOR LIMITED PAVEMENT REPAIR OF PLEASANT RUN ROAD IN AN AMOUNT NOT TO EXCEED ONE MILLION NINE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED EIGHTY-NINE DOLLARS AND SEVENTY-FOUR CENTS (\$1,975,289.74); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lancaster has determined, after due consideration and study, that it is in the best interests of the City to execute the Agreement ("Agreement") with McMahon Contracting L.P. for limited pavement replacement of the roadway listed in the Agreement.

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

SECTION 1. That the City Council hereby approves and accepts the terms and conditions of the Agreement with McMahon Contracting L.P., attached hereto and incorporated herein by reference as, Exhibit "A" - limited pavement replacement with cost estimates.

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

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

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney



CONSULTING CIVIL ENGINEERS / SURVEYORS
CONSTRUCTION MANAGERS

May 15, 2018

Mr. Alton Dixon,
Purchasing Agent
City of Lancaster
211 N. Henry,
Lancaster, Texas 75146

RE: Construction Contract Award Recommendation
McMahon Contracting L.P.
Bond Program – Limited Pavement Replacement
Pleasant Run Road – IH 35E to North Dallas Avenue (SH-342)
Lancaster Bid Number 2018-11
DAL-TECH Project Number 1313

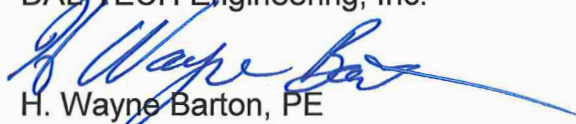
Dear Mr. Dixon,

The construction bids for Bond Program – Limited Pavement Replacement Pleasant Run Road – IH 35E to North Dallas Avenue (SH-342) were publicly opened at 3:00 PM on Thursday, May 10, 2018. The McMahon Contracting L.P. bid summary results are as follows:

1. Base Bid (Phase 1) for Project - \$1,173,099.74
2. Alternative Bid Number 1 (Phase 1 plus Additional Improvement in Phase 1) for Project - \$1,975,289.74
3. Alternative Bid Number 2 (Phases 1 & 2) for Project - \$2,283,563.24
4. Alternative Bid Number 3 (Phases 1 & 3) for Project - \$3,992,741.76
5. Alternative Bid Number 4 (Phases 1, 2, & 3) for Project - \$5,072,305.29

McMahon Contracting L.P. submitted a 5% Bid Bond with their bid. McMahon Contracting L.P.'s references were pleased with their work and would hire them again. Based upon the above factual information, DAL-TECH Engineering, Inc. hereby recommends that the construction contract for Bond Program – Limited Pavement Replacement, Pleasant Run Road IH 35E to North Dallas Avenue (SH-342) be awarded to McMahon Contracting L.P. Please feel free to contact Mr. Wayne Barton, PE if you have any questions.

Sincerely yours
DAL-TECH Engineering, Inc.



H. Wayne Barton, PE
Senior Engineer

McMahon Contracting L.P.
3019 Roy Orr Blvd.
Grand Prairie, TX 75050

Item No.	Unit of Measure	Bid Item Description	Base Bid Quantity	Base Bid Unit Price	Base Bid Extension	Alt Bid 1 Quantity	Alt Bid 1 Unit Price	Alt Bid 1 Extension	Alt Bid 2 Quantity	Alt Bid 2 Unit Price	Alt Bid 2 Extension	Alt Bid 3 Quantity
1	CY	REMOVING CONCRETE PAVEMENT (Typically 8" to 8.5") (No additional payment for removing concrete pavement with asphalt overlay)(no additional payment for removing pavement thicker than 8.5")	2,315	\$44.87	\$103,874.05	3,815	\$44.61	\$170,187.15	4,375	\$45.03	\$197,006.25	7,940
2	CY	FLEX BASE (SUBGRADE)(8"). TxDOT Item 247, Type D, Grade 2	2,315	\$91.66	\$212,192.90	3,815	\$91.58	\$349,377.70	4,375	\$92.05	\$402,718.75	7,940
3	CY	PAVEMENT (Jointed)(Reinforced)(8" Minmum)(No additional payment for High Early Stength)	2,315	\$313.25	\$725,173.75	3,815	\$313.36	\$1,195,468.40	4,375	\$314.73	\$1,376,943.75	7,940
4	LF	CURB (Monolithic)	4,320	\$1.87	\$8,078.40	6,820	\$1.87	\$12,753.40	8,975	\$2.01	\$18,039.75	13,345
5	LS	MOBILIZATION	1	\$82,760.20	\$82,760.20	1	\$146,270.20	\$146,270.20	2	\$102,448.30	\$204,896.60	2
6	LS	TRAFFIC CONTROL (Furnish, Install, Maintain, Relocate and Remove Traffic Control systems as needed.)	1	\$15,470.77	\$15,470.77	1	\$20,968.29	\$20,968.29	1	\$30,941.51	\$30,941.51	1
7	EA	CONCRETE MEDIAN (Install monolithic concrete median nose)	1	\$3,827.01	\$3,827.01	11	\$3,826.98	\$42,096.78	2	\$3,826.95	\$7,653.90	9
8	LF	SAW CUT (Full depth saw cut of existing concrete pavement, including vacuum collection and disposal of saw water sludge and dust.)	6,240	\$2.32	\$14,476.80	11,240	\$2.32	\$26,076.80	13,295	\$2.32	\$30,844.40	26,945
9	SY	GRASS (Furnish, Install and Maintain Hydromulch Grass to Match Existing Grass)	240	\$10.53	\$2,527.20	390	\$11.16	\$4,352.40	505	\$10.53	\$5,317.65	735
10	LS	SWPPP (Furnish, Install, Maintain, Relocate and Remove SWPPP systems as needed)(Inlet Protection, Rock Filter Dam, etc.)	1	\$4,718.66	\$4,718.66	1	\$7,738.62	\$7,738.62	1	\$9,200.68	\$9,200.68	1
Bid Total			\$1,173,099.74			\$1,975,289.74			\$2,283,563.24			

					Engineer's Estimate of Probale Construction Cost								
Alt Bid 3 Unit Price	Alt Bid 3 Extension	Alt Bid 4 Quantity	Alt Bid 4 Unit Price	Alt Bid 4 Extension	Base Bid Quantity	Base Bid Unit Price	Base Bid Extension	Alt Bid 1 Quantity	Alt Bid 1 Unit Price	Alt Bid 1 Extension	Alt Bid 2 Quantity	Alt Bid 2 Unit Price	Alt Bid 2 Extension
\$44.90	\$356,506.00	10,000	\$44.97	\$449,700.00	2,315	\$70.00	\$162,050.00	3,815	\$70.00	\$267,050.00	4,375	\$70.00	\$306,250.00
\$91.47	\$726,271.80	10,000	\$91.68	\$916,800.00	2,315	\$41.00	\$94,915.00	3,815	\$41.00	\$156,415.00	4,375	\$41.00	\$179,375.00
\$312.16	\$2,478,550.40	10,000	\$312.53	\$3,125,300.00	2,315	\$280.00	\$648,200.00	3,815	\$280.00	\$1,068,200.00	4,375	\$280.00	\$1,225,000.00
\$2.01	\$26,823.45	18,000	\$2.01	\$36,180.00	4,320	\$9.00	\$38,880.00	6,820	\$9.00	\$61,380.00	8,975	\$9.00	\$80,775.00
\$127,417.30	\$254,834.60	3	\$119,775.80	\$359,327.40	1	\$15,000.00	\$15,000.00	1	\$15,000.00	\$15,000.00	2	\$15,000.00	\$30,000.00
\$30,941.51	\$30,941.51	1	\$40,914.78	\$40,914.78	1	\$15,000.00	\$15,000.00	1	\$15,000.00	\$15,000.00	1	\$15,000.00	\$15,000.00
\$3,826.98	\$34,442.82	10	\$3,826.98	\$38,269.80	1	\$1,600.00	\$1,600.00	11	\$1,600.00	\$17,600.00	2	\$1,600.00	\$3,200.00
\$2.32	\$62,512.40	34,000	\$2.32	\$78,880.00	6,240	\$3.00	\$18,720.00	11,240	\$3.00	\$33,720.00	13,295	\$3.00	\$39,885.00
\$10.48	\$7,702.80	1,000	\$10.42	\$10,420.00	240	\$5.50	\$1,320.00	390	\$5.50	\$2,145.00	505	\$5.50	\$2,777.50
\$14,155.98	\$14,155.98	1	\$16,513.31	\$16,513.31	1	\$8,000.00	\$8,000.00	1	\$8,000.00	\$8,000.00	1	\$8,000.00	\$8,000.00
\$3,992,741.76				\$5,072,305.29	\$1,003,685.00			\$1,644,510.00			\$1,890,262.50		

Total amount on Bid, \$5,072,307.29. Based upon the
Unit Price and Quantities, total correct bid amount
\$5,072,305.29

Alt Bid 3 Quantity	Alt Bid 3 Unit Price	Alt Bid 3 Extension	Alt Bid 4 Quantity	Alt Bid 4 Unit Price	Alt Bid 4 Extension
7,940	\$70.00	\$555,800.00	10,000	\$70.00	\$700,000.00
7,940	\$41.00	\$325,540.00	10,000	\$41.00	\$410,000.00
7,940	\$280.00	\$2,223,200.00	10,000	\$280.00	\$2,800,000.00
13,345	\$9.00	\$120,105.00	18,000	\$9.00	\$162,000.00
2	\$15,000.00	\$30,000.00	3	\$15,000.00	\$45,000.00
1	\$15,000.00	\$15,000.00	1	\$15,000.00	\$15,000.00
9	\$1,600.00	\$14,400.00	10	\$1,600.00	\$16,000.00
26,945	\$3.00	\$80,835.00	34,000	\$3.00	\$102,000.00
735	\$5.50	\$4,042.50	1,000	\$5.50	\$5,500.00
1	\$8,000.00	\$8,000.00	1	\$8,000.00	\$8,000.00
\$3,376,922.50			\$4,263,500.00		

Attorney-in-Fact

CITY OF LANCASTER, TEXAS

CONTRACT AGREEMENT

STATE OF TEXAS)

COUNTY OF DALLAS)

THIS AGREEMENT, made and entered this 30th day of July, 2018, by and between the City of Lancaster, a municipal corporation, located in the County of Dallas and State of Texas, acting through Opal Mauldin-Jones, City Manager, authorized so to do hereafter termed OWNER, and _____ County of _____, and State of _____, hereinafter termed CONTRACTOR.

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, and under the conditions expressed in the bond bearing even date herewith, the said CONTRACTOR, hereby agrees with the OWNER to commence and complete the construction of certain improvements described as follows: **Bond Program – Limited Pavement Replacement, Pleasant Run Road (IH 35E to North Dallas Avenue)**, and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at CONTRACTOR'S own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, printed or written explanatory matter, the Specifications and addenda, as prepared by DAL-TECH Engineering, Inc. and *City of Lancaster*, herein entitled the Owner, together with the CONTRACTOR'S written proposal, the General Conditions of the Agreement, and the Performance, Maintenance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within thirty (30) days after the date of written notice to do so shall have been given him, and to be 100% of the work on which he has Base Bid (Phase 1) to be completed in 80 calendar days, Bid Alternate 1 (Base Bid and additional improvements in Phase 1) to be completed in a total of 110 calendar days, Bid Alternate 2 (Base Bid and Phase 2) to be completed in a total of 160 calendar days, Bid Alternate 3 (Base Bid and Phase 3) to be completed in a total of 160 calendar days, Bid Alternate 4 (Base Bid, Phase 2, and Phase 3) to be completed in a total of 240 calendar days from commencement of after the date of the written Notice to Proceed work, subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the Contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day above written.

The City of Lancaster, TX

OWNER CONTRACTOR

By: _____

Opal-Mauldin-Jones, City Manager

Print or Type Name

ATTEST:

Sorangel O. Arenas, City Secretary

Corporation Secretary

Title

Print or Type Name

PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF DALLAS)

KNOW ALL MEN BY THESE PRESENTS: That _____ of
the City of _____ County of _____, and State of _____
_____, as principal, and _____ authorized
under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly
bound unto the City of Lancaster, Texas (Owner), in the sum of _____
dollars (\$_____) as an appropriate measure of liquidated damages for the payment whereof,
the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors
and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the
day of _____, 20___, **Bond Program – Limited Pavement Replacement, Pleasant Run
Road (IH 35E to North Dallas Avenue)**, which contract is hereby referred to and made a part
hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal
shall faithfully perform the work in accordance with the plans, specifications, and contract
documents and shall fully indemnify and save harmless Owner from all costs and damages which
Owner may suffer by reason of Principals default, and reimburse and repay Owner all outlay and
expense which Owner may incur in making good such default, then this obligation shall be void;
otherwise to remain in full force and effect PROVIDED, HOWEVER, that this bond is executed
pursuant to the provisions of Chapter 2253 of the Texas Government Code, as currently amended,

and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specification, or drawings accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

_____	_____
Principal	Surety

By: _____	By: _____
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Title: _____	Title: _____
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Address: _____	Address: _____
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_____	_____
-------	-------

The name and address of the Resident Agent of Surety is: _____

PAYMENT BOND

STATE OF TEXAS)

COUNTY OF DALLAS)

KNOW ALL MEN BY THESE PRESENTS:

That _____, of the City of _____, County of _____, and State of _____, as principal, and authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bond unto the City of Lancaster (Owner), in the penal sum of _____ Dollars (\$_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 20____, for **Bond Program – Limited Pavement Replacement, Pleasant Run Road (IH 35E to North Dallas Avenue)**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal and its subcontractors shall well and faithfully make payment to each and every claimant (as defined in Chapter 2253, Texas Government Code, as amended) supply labor or materials in the prosecution of the work under the contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as currently amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this _____ day of _____, 20____.

Principal

Surety

By: _____

By: _____

Print or Type Name

Print or Type Name

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent of Surety is: _____

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT, _____ whose address is _____,
as PRINCIPAL, and _____, a CORPORATION
organized and existing under the laws of the State of Texas, and fully authorized to transact
business in the State of Texas, as Sureties, do hereby expressly acknowledge ourselves to be held
and bound to pay unto the city of Lancaster, Texas, hereinafter called CITY, a municipal
corporation organized and existing under the laws of Texas, at Lancaster, Dallas County, Texas,
the sum of _____ Dollars (\$ _____) in lawful money of the United
States, for the payment of which sum will and truly to be made unto said City of Lancaster, and its
successors, said PRINCIPAL AND SURETIES do hereby bind ourselves, our heirs, executors,
administrators, their assigns and successors, jointly and severally, firmly by these presents. This
bond shall automatically be increased by the amount of any Change Order or Supplemental
Agreement which increases the Contract price, but in no event shall a Change Order or
Supplemental Agreement which reduces the Contract price decreases the sum of this Bond.

THIS obligation is conditioned, however, that whereas said _____
has this _____ day of ___, 20, entered into a written Contract with the said CITY to build and
construct **Bond Program – Limited Pavement Replacement, Pleasant Run Road (IH 35E to
North Dallas Avenue)** located in the City of Lancaster, Texas, which Contract and Specifications
therein mentioned adopted by the CITY, are hereby expressly made a part thereof as though the
same were written and embodied herein.

WHEREAS, said Contract was entered into pursuant to the requirements of the CITY, and

WHEREAS, in said Contract, CONTRACTOR binds itself to use of materials and methods of
construction such that all improvements including but not limited **Bond Program – Limited
Pavement Replacement, Pleasant Run Road (IH 35E to North Dallas Avenue)** will be
initially completed free of perceptible defects and will remain in good repair and condition and
free of perceptible defects for and during the period of two (2) year after the date of acceptance
of the completed improvements by the CITY, and

WHEREAS, said CONTRACTOR binds itself to construct said improvements in such a manner and obtain inspection approvals in proper sequence as are required to obtain acceptance by the CITY and to repair or reconstruct the said improvements in whole or in part at any time within said two (2) years period to such an extent as the CITY deems necessary to properly correct all defects except those which have been caused by circumstances and conditions occurring after the time of construction over which the CONTRACTOR had no control and which are other than those arising from defect of construction by the CONTRACTOR; and

WHEREAS, after the acceptance of the improvements by the CITY, said CONTRACTOR binds itself, upon receiving notice from the CITY of the need thereof to repair or reconstruct said improvements and if the CONTRACTOR fails to make the necessary corrections, within ten (10) days after being notified, the CITY may do or have done all said corrective work and shall have recovery hereon for all expenses thereby incurred.

WHEREAS, under the Plans and Specifications, and Contract, it is provided that the CONTRACTOR will maintain and keep in good repair the work herein contracted to be done and performed for a period of Two year (2) from the date of acceptance; it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work, or labor performed by said CONTRACTOR; and in case the said CONTRACTOR shall fail to do so, within ten (10) days after being notified, it is agreed that the CITY may do said work and supply such materials, and charge to same against the said CONTRACTOR, AND SURETIES, on this obligation, and said CONTRACTOR AND SURETIES hereon shall be subject to the liquidated damages mentioned in said contract.

NOW THEREFORE, if the said CONTRACTOR, shall keep and perform its said agreement to maintain said work and keep the same in repair for the said maintenance period of Two Years (2) from the date of acceptance by the City, as provided, then these presents shall be null and void, and have no further effect, but if default shall be made by the said CONTRACTOR in the performance of his contract to so maintain and repair said work, then these presents shall have full force and effect, and said CITY shall have and recover from said CONTRACTOR and SURETIES damages in the premises, as provided, and it is further agreed that this obligation shall be a continuing one against the PRINCIPAL and SURETIES hereon, and that successive recoveries may be had thereon

for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Dallas County, State of Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in anyway affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications. This Bond complies with the provisions of Chapter 2253, Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident agent in Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, the said _____ has caused these presents to be executed by them; and the said _____ has caused these presents to be executed by its ATTORNEY-IN-FACT _____ and the said ATTORNEY-IN-FACT _____ has hereunto set his hand this the ____ day of _____, 20____.

Name: _____

Address: _____

Principal

Name: _____

Address: _____

Surety

By: _____

By: _____
Print or Type Name

Title: _____

Title: _____

The name and address of the Resident Agent of Surety is: _____

INSURANCE REQUIREMENT AFFIDAVIT

TO BE COMPLETED BY APPROPRIATE INSURANCE AGENT.

I, the undersigned agent, certify that the insurance requirements contained in this bid document have been reviewed by me with the vendor identified below. If the vendor identified below is awarded this contract by the city of Lancaster, I will be able, within ten (10) working days after being notified of such award, to furnish a valid insurance certificate to the CITY meeting all of the requirements contained in this bid.

Agent Signature

Printed Name

Name of Insurance Carrier

City

State

Zip

Phone #

Fax #

Email Address

Vendor / Contractor Name

Name of Bid

Acknowledgement

Subscribed and Sworn before me by the above named _____ on this
_____ day of _____, 20__.
(seal)

Notary Public in and for the State of _____

NOTICE TO THE AGENT

If this time requirement is not met, the City has the right to declare this vendor non-responsible and award the contract to the next lowest/responsible bidder meeting the specifications. If you have any questions concerning these requirements, please contact Alton Dixon, Purchasing Agent at 972-218-1329.

LANCASTER CITY COUNCIL

A City Council Special Meeting

7.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

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

Submitted by: Jermaine Sapp, Director of Equipment & Facilities

Agenda Caption:

Consider a resolution authorizing a professional services agreement with Siemens Industry, Incorporated for the replacement of the Building Automated System/Heating Ventilation and Air Conditioning BAS/HVAC and the pool unit at the Recreation Center, in an amount not to exceed one million three hundred sixty-four thousand dollars and five hundred and seventy-one dollars (\$1,364,571.00) and authorizing the City Manager to execute said agreement.

Background:

The Lancaster Recreation Center was built in 2001 and the existing Building Automated System BAS/HVAC is not working correctly. The City desires to engage in a professional services agreement with Siemens Industry, Incorporated. An updated Heating Ventilation and Air Conditioning System is needed to provide a cooler building to patrons.

Operational Considerations:

Lancaster Recreation Center needs to replace the aging air-cooled chiller currently serving the building, as well as replace the Pool Area Dehumidifier that will include a point-to-point system. This will require the installation of an upgraded existing Building Automated System and Implement Scheduling that will allow minimal run-time and reduce operating costs, and provide a Johnson Controls Incorporated campus network front end for building controls.

Public Information Considerations:

This item is being considered at a Special Meeting posted in accordance with the Texas Open Meetings Act.

Fiscal Impact:

Funding will not exceed one million three hundred sixty-four thousand five hundred seventy-one dollars (\$1,364,571.00).

Options/Alternatives:

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

Recommendation:

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

Attachments

Resolution

Exhibit 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS FOR PROFESSIONAL SERVICES AGREEMENT WITH SIEMENS INDUSTRY, INCORPORATED FOR A PROFESSIONAL SERVICES AGREEMENT, IN AN AMOUNT NOT TO EXCEED ONE MILLION THREE HUNDRED SIXTY-FOUR THOUSAND FIVE HUNDRED SEVENTY-ONE DOLLARS (\$1,364,571.00) AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Lancaster desires a professional services contract with Siemens Industry, Incorporated for the above referenced services.

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

SECTION 1. That the City Council hereby authorize a contract for professional services agreement with Johnson Controls, Incorporated for the replacement of the Building Automated System/Heating Ventilation and Air Conditioning BAS/HVAC and the pool unit at the Lancaster Recreation Center in an amount not to exceed one million three hundred sixty-four thousand dollars and five hundred and seventy-one dollars (\$1,364,571.00) and authorize the City Manager to execute the Agreement, which is attached hereto and incorporated herein as Exhibit "1".

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

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

SECTION 4. That the City Manager of the City of Lancaster, Texas is hereby authorized to execute the agreement in substantial compliance as depicted in Exhibit "1".

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

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

PERFORMANCE CONTRACTING AGREEMENT

between

City of Lancaster

and

**Siemens Industry, Inc.,
Building Technologies Division**

TABLE OF ARTICLES

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work by SIEMENS
6. CLIENT Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

PERFORMANCE CONTRACTING AGREEMENT

Number: SAP JOB NUMBER

Article 1 AGREEMENT

THIS PERFORMANCE CONTRACTING AGREEMENT (“Agreement”) is made this day of , (the “Effective Contract Date”, defined below), **by and between Siemens Industry, Inc., Building Technologies Division (“SIEMENS”) and the party identified below as the CLIENT.**

The CLIENT: **City of Lancaster**
211 N. Henry Street
Lancaster, TX 75146

DESIGNATED REPRESENTATIVE: Ms. Opal Mauldin-Jones
PHONE: 972-218-1304 FAX: 972-275-0919

Siemens Industry, Inc., Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, Illinois 60089

With offices at: 8850 Fallbrook Rd.
Houston, TX 77064

DESIGNATED REPRESENTATIVE: Mr. Robert McMillin
PHONE: 281-949-3000 FAX:

For Work and Services in connection with the following project (the “Project”):

City of Lancaster Performance Contracting Project

The CLIENT considered performing the following FIMs but at this time, has determined to exclude them from the Scope of Work and Services, Exhibit A:

Additional HVAC
Additional building automation upgrades
Parks and ballfield lighting
Building lighting upgrades

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement consists of this document, which includes the following articles and exhibits which are acknowledged by the CLIENT and SIEMENS and incorporated into the Agreement by this reference:

Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT's Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

Exhibits

Exhibit A	Scope of Work and Services
Exhibit B	Payment Schedule(s)
Exhibit C	Performance Assurance
Exhibit D1	Form of Certificate of Substantial Completion
Exhibit D2	Form of Certificate of Final Completion

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same, and may be modified only by a written instrument signed by both Parties.

COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **City of Lancaster]**

(Signature) by: _____

Print Name and Title: Opal Mauldin-Jones, City Manager

(Signature) by: _____

Print Name and Title: Opal Mauldin-Jones, City Manager

Agreed for **Siemens Industry, Inc.**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

PERFORMANCE CONTRACTING AGREEMENT

Article 2

Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

Acceptance means the CLIENT has signed, or is deemed to have signed, a Certificate of Final Completion.

Acceptance Date means the date on which the CLIENT signs or is deemed to have signed a Certificate of Final Completion.

Annual Performance Assurance Report means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

Annual Period means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

Annual Realized Savings means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

Applicable Law means laws, ordinances, codes, rules and regulations applicable to the Work and in effect on the Effective Contract Date.

Baseline means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

Baseline Period means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

BTU means a British Thermal Unit and is a unit of thermal energy.

Capital Off-Set Savings means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues: potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

Certificate of Final Completion means a document, in the form attached as Exhibit D2 hereto, indicating that the Work identified in Article 1 of the Scope of Work and Services-Exhibit A has been completed in accordance with the Agreement, including all items in the Outstanding Items List(s).

Certificate of Substantial Completion means a document, in the form attached as Exhibit D1 hereto, indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement. A Certificate of Substantial Completion may be accompanied by an Outstanding Items List.

CLIENT Representative means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

Construction Period means the period between the Effective Contract Date and the first day of the month following the Acceptance Date.

Construction Period Savings means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

Contracted Baseline means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

Deferred Maintenance means a sub-category of Operational Savings where Savings result from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

Deliverables shall mean collectively, (a) any Equipment and any Software Product deliverable to CLIENT from SIEMENS under or in connection with the Work, and (b) any Work Product Deliverables.

Effective Contract Date is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

Energy Conservation Measure or **ECM** means the SIEMENS Products and/or other third party equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by SIEMENS or the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

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Equipment means the installed physical equipment to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

Escalation Rate means an annual percentage increase to be applied to the previous Annual Period's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

Facility or Facilities means the **building(s)** or structure(s) where Work will be installed or implemented.

Facility Improvement Measures or FIMs means the (i) Instruments, know-how and Intellectual Property, including but not limited to methods and techniques for energy conservation, owned or licensed by SIEMENS and employed by SIEMENS to perform the Work and Services under this Agreement; and, (ii) the installation of Equipment and Software Products with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities. A FIM may include one or multiple ECMs as well as any non-conservation-related activities, means or methods.

FEMP means the Federal Energy Management Program managed by the United States Department of Energy.

FEMP Guidelines means the FEMP M&V Guidelines v. 3.0 published by FEMP as M&V Guidelines; Measurement and Verification for Federal Energy Management Projects.

Guarantee Date means the first day of the month following the date on which the CLIENT executes, or is deemed to have executed, the Certificate of Final Completion.

Guaranteed Annual Savings are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will be achieved in an Annual Period of the Performance Guarantee Period.

Guaranteed Measured & Verified Savings means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

Guaranteed Savings means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period. as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8.

Hazardous Materials refers to the definition found in Section 11.1.

Instruments means all know-how, tools and related documentation owned or licensed by SIEMENS and used by SIEMENS to install or commission Equipment and Software Products for operation at the Facility, including but not limited to tools for installing any Software Products in Equipment, performing diagnostics on Equipment as installed in the Facility as well as any reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS and used by SIEMENS to provide an ECM or a FIM. Instruments excludes Work Product Deliverables.

Intellectual Property Rights or Intellectual Property means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

IPMVP means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

kW and **kWh** means kilowatt and kilowatt hour, respectively.

Maintenance Services Program or MSP means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

Material Change means a measurable deviation in the Contracted Baseline such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

Measured & Verified Savings means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

Oil refers to the definition found in Section 11.1.

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Operational Savings means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

Outstanding Items List means a list of items in need of completion or correction that relates to the Work, or a designated portion thereof that is Substantially Complete. The absence of such items does not deprive the CLIENT of the ability to put such Work, or a designated portion thereof to beneficial use. An Outstanding Items List may be attached to a Certificate of Substantial Completion.

Parties means the CLIENT and SIEMENS.

Performance Assurance is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

Performance Assurance Services Program or PASP means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and comparing the same to the Annual Guaranteed Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

Performance Guarantee means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

Performance Guarantee Period means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

Permitted Users means the CLIENT, its employees and agents.

Savings means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

Savings Shortfall means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

Services means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

SIEMENS Pre-existing Intellectual Property means any Intellectual Property: (i) that has been conceived or developed by an employee or subcontractor of SIEMENS before SIEMENS performs any Work or Services under this Agreement; (ii) that is conceived or developed by such employee or subcontractor at any time wholly independently of SIEMENS performing the Work under this Agreement; or, (iii) if developed while performing the Work under this Agreement, where the development of Intellectual Property for the benefit of the CLIENT is not expressly identified as a FIM or part of a FIM. SIEMENS Pre-existing Property is included in all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS.

SIEMENS Product means a product, including Software Product and/or Equipment, offered for sale or license by SIEMENS or its affiliates or subsidiaries and developed prior to performing the Work or SIEMENS rendering services in connection with this Agreement. A SIEMENS Product also includes improvements or modifications to any Equipment and any Software Product developed by SIEMENS or developed as part of the Work, including any SIEMENS Product that is configured or modified for operation at a site specified by the CLIENT. Any information that is provided by the CLIENT and incorporated into a SIEMENS Product is not, by itself, a SIEMENS Product. A compilation of such information and the product of such compilation, however, is a SIEMENS Product.

Software Product means any software that is owned or licensed by SIEMENS or its affiliates and that is either separately deliverable for use in the Equipment or for use in a computer system owned by the CLIENT or delivered as firmware embedded in the Equipment.

Stipulated Savings are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT and through the application of generally accepted analytical formulae. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. When used as a methodology for representing a FIM's energy savings, such methodology is not recognized as a measurement and verification methodology under IPMVP. Therefore, where the

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IPMVP measurement methodologies are required, a methodology other than Stipulated Savings must be used to calculate energy savings.

Substantial Completion or Substantially Complete means the Work, or any identifiable portion thereof, which is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes.

Therm is a measure of energy equal to 100,000 BTUs.

Total Guaranteed Savings means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

Work means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

Work Product Deliverable means the tangible form of a report or drawing specifically developed for, commissioned by and deliverable to the CLIENT in connection with the Work to be performed by SIEMENS under this Agreement.

Article 3

General

- 3.1** The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.
- 3.2** The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with the terms and conditions of this Agreement.
- 3.3** SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.4** SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS organizational documents, any Applicable Law, or any agreements with third parties;
 - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
 - (d) To SIEMENS best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
 - (e) It is duly authorized to do business in all locations where the Work and Services are to be performed.
- 3.5** The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT's organizational documents, any Applicable Law, or any agreements with third parties;

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- (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
- (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
- (d) To the CLIENT's best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
- (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

Article 4

Performance Guarantee

4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Savings is set forth in the Performance Assurance, Exhibit C.

4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."

(a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.

(b) Costs of energy are defined in Article 6 of Exhibit C-Utility Rate Structures and Escalation Rates.

4.2 Any future Escalation Rates to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.

4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.

4.4 The CLIENT agrees to notify SIEMENS prior to or within thirty (30) days of CLIENT's knowledge of any Material Change.

4.5 Within thirty (30) days of notice of a Material Change, SIEMENS' discovery of a Material Change and with prompt notice to CLIENT, SIEMENS will either:

- (a) Require an adjustment to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
- (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Performance Assurance and the Performance Guarantee.

4.6 A Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:

- (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.
- (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
- (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.

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- (d) A Savings Shortfall shall be paid by SIEMENS within sixty (60) days following the CLIENT's acceptance of the reconciliation and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.

4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and without future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.

4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP then; (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee acts to render the Agreement in violation of Applicable Law, all Guaranteed Savings thereafter shall be determined to have been achieved and SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.

4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT under this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE BY CLIENT TO EITHER SIEMENS AND/OR A THIRD-PARTY (IN THE EVENT THAT THE CLIENT HAS FINANCED THE TRANSACTION) FOR THE AGGREGATE OF: THE PRICE, AS DEFINED IN EXHIBIT B, ARTICLE 1.1; THE PASP PAYMENTS; THE MSP PAYMENTS, IF ANY; AND, IF APPLICABLE, THE CLIENT'S COST OF FINANCING THE WORK. The CLIENT's cost of financing the Work is the cost of financing calculated either: (a) On the date that the escrow account is funded in accordance with Exhibit B, Article 1.2; or, (b) On the Effective Contract Date if the escrow requirement is expressly waived by SIEMENS.

4.9 The CLIENT represents that all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse effect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.

4.10 If the Equipment or the existing equipment is altered or moved by any person (including the CLIENT) other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense in order to determine if a Material Change has occurred.

4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:

- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to determine if a Material Change has occurred;
- (b) Provide access to any Facility where Work is to be performed;
- (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
- (d) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.

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4.12 Unless expressly contrary to Applicable Law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice and in such notice indicate that the CLIENT has selected one of the following:

- (a) The CLIENT will re-invest the avoided cost of cancellation of the PASP into Facility improvements and services that improve the overall Facility's performance and which improvements and services are implemented by SIEMENS; or,
- (b) The CLIENT will pay to SIEMENS 100% of the remaining value left in the PASP Annual Period, as a liquidated damage and not as a penalty, to compensate SIEMENS for SIEMENS' up-front costs and expenses in preparing to perform the PASP as contracted for the Annual Period. Upon cancellation of the PASP and making the liquidated damage payment, CLIENT shall have no obligation to make any further PASP annual payments defined in Table B.2 of Exhibit B.

4.13 Unless expressly contrary to Applicable Law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

Article 5

Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a workmanlike manner.
- 5.2 SIEMENS shall perform the Work during its normal hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Facility available so Work may proceed in an efficient manner.
- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by the Parties.
- 5.4 All Work Product Deliverables shall become the CLIENT's property upon receipt by CLIENT. SIEMENS may retain file copies of such Work Product Deliverables. If any Instruments are provided to the CLIENT under this Agreement, any such Instruments shall remain SIEMENS' property, including the Intellectual Property conceived or developed by SIEMENS in the Instruments. All SIEMENS' Pre-existing Intellectual Property that may be included in the Deliverables provided to the CLIENT under this Agreement shall also remain SIEMENS property including the SIEMENS Pre-existing Intellectual Property included in the Work Product Deliverables. All Work Product Deliverables and any Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. SIEMENS hereby grants the CLIENT a royalty-free (once payments due under this Agreement are paid to SIEMENS), non-transferable, perpetual, nonexclusive license to use any SIEMENS Pre-existing Intellectual Property solely as incorporated into the Deliverables and SIEMENS' Intellectual Property as incorporated into any Instruments provided to the CLIENT under this Agreement. Under such license, and following agreement to be bound to such separate confidentiality provisions that may exist between the Parties, Permitted Users shall have a right to:
 - (a) Use, in object code form only, the Software Products included in the Deliverables ("Software Deliverables");
 - (b) Make and retain archival and emergency copies of such Software Deliverables (subject to any confidentiality provisions) except if the Software Deliverable is embedded in the Equipment; and,
 - (c) Use all such Deliverables and such Instruments, provided however, the Deliverables and Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Deliverables are provided. All Deliverables provided to the CLIENT are for Permitted Users' use only for the purposes disclosed to SIEMENS, and the CLIENT shall not transfer them to

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others or use them or permit them to be used for any extension of the Work or any other project or purpose, without SIEMENS' express written consent.

5.4.1 Any reuse of such Deliverables or such Instruments for other projects or locations without the written consent of SIEMENS, or use by any party other than Permitted Users will be at Permitted Users' risk and without liability to SIEMENS; and, the CLIENT shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising therefrom.

5.4.2 In consideration of such license, CLIENT agrees not to reverse engineer any Equipment or Software Product to reconstruct or discover any source code, object code, firmware, underlying ideas, or algorithms of such Equipment or Software Product even to the extent such restriction is allowable under Applicable Law.

5.4.3 Nothing contained in this Agreement shall be interpreted or construed to convey to the CLIENT the pre-existing Intellectual Property rights of any third party incorporated into the Deliverables. CLIENT agrees to take delivery of any Software Deliverables subject to any applicable SIEMENS or third party end-user license agreement accompanying such Software Deliverable.

5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at the Facility shall not relieve others of their responsibility to the CLIENT or to others.

5.6 SIEMENS warrants that:

- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.
- (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one year after the Work is performed. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.

5.7 Warranty Limitation:

- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
- (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT's sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
- (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.

5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF

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MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of:

- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc., unless covered by the warranty provisions herein or otherwise specifically stated herein; or
- (b) The CLIENT's or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.

Article 6

CLIENT Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT's sole control so as not to disrupt the Work and Services proceeding in an efficient manner;
- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT's files for a period of fifteen (15) years from the Effective Contract Date;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) In accordance with Article 11 hereof, promptly notify SIEMENS of all known or suspected Hazardous Materials at the Facility, of any contamination of the Facility by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
- (h) Comply with Applicable Law and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
- (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Facility where the Work is to be performed;
- (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;

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- (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of Applicable Law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;
- (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
- (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.

6.2 Unless contrary to Applicable Law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.

6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT's activities or operations, the CLIENT's other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

Article 7

Changes and Delays

- 7.1 As the Work is performed, Applicable Law or conditions may change, or circumstances outside SIEMENS' reasonable control may develop, which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS' compensation and the time for performance. In the event such changes require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.**
- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties.**
- 7.3 SIEMENS may, in its sole discretion, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.**
- 7.4 SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed, for any costs and expenses of termination, and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.**

PERFORMANCE CONTRACTING AGREEMENT

Article 8

Compensation

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.
- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within thirty (30) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
- (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at times other than during SIEMENS' normal working hours, unless otherwise agreed to in Exhibit A; or
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

Article 9

Acceptance

- 9.1 When SIEMENS believes that all or an independent definable phase or portion of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
- (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will sign the Certificate of Substantial Completion and return it to SIEMENS;
 - (b) A Certificate of Substantial Completion may include, as an attachment to it, an Outstanding Items List prepared by SIEMENS;
 - (c) If the CLIENT does not concur that the Work is Substantially Complete, then, within five (5) business days of receiving the Certificate of Substantial Completion, the CLIENT shall notify SIEMENS in writing of the reasons it believes the Work is not Substantially Complete;
 - (d) If SIEMENS disagrees with the CLIENT as to whether the Work is Substantially Complete, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
 - (e) If, within five (5) business days of receiving the Certificate of Substantial Completion the CLIENT fails to sign the Certificate, and within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice of the reasons the CLIENT believes that the Work is not Substantially Complete, then in the mutual

PERFORMANCE CONTRACTING AGREEMENT

interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.

9.2 After the CLIENT signs and returns, or is deemed to have signed and returned to SIEMENS all of the Certificates of Substantial Completion relating to the Work, and after SIEMENS corrects and completes all of the items on all of the Outstanding Items Lists, if any, SIEMENS will submit to the CLIENT a Certificate of Final Completion which shall be subject to the following:

- (a) If the CLIENT concurs that all of the items on all of the Outstanding Items Lists have been completed or corrected, the CLIENT will indicate its final acceptance of the Work by signing the Certificate of Final Completion and returning it to SIEMENS;
- (b) If the CLIENT does not concur that all of the items on all of the Outstanding Items Lists have been completed or corrected, then the CLIENT shall, within five (5) business days of receiving the Certificate of Final Completion, identify the items that, it believes, were not completed or corrected;
- (c) If SIEMENS disagrees that the items identified by the CLIENT have not been completed or corrected, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with section 9.3 herein;
- (d) If, within five (5) business days of receiving a Certificate of Final Completion, the CLIENT fails to sign that Certificate, and, within the same period the CLIENT's Representative does not deliver to SIEMENS a written notice identifying the items on the Outstanding Items List(s) that, the CLIENT believes, were not completed or corrected, then the CLIENT will be deemed to have agreed to and signed and returned the Certificate of Final Completion.

9.3 Any disputes concerning the Substantial Completion or the Final Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to Final Completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

Article 10

Insurance and Allocation of Risk

10.1 SIEMENS shall maintain, at SIEMENS' expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:

- (a) Workers' Compensation at the statutory amounts and limits as prescribed by Applicable Law.
- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
 - \$1,000,000 per occurrence
 - \$1,000,000 Disease Policy
 - \$1,000,000 Each Employee
- (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS' operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
 - Products and Completed Operations
 - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse and Underground Hazards
 - Personal Injury Liability:
 - Limits of liability shall be \$1,000,000 per occurrence/aggregate
- (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:

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- \$1,000,000 per occurrence/aggregate
- (e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:
 - \$5,000,000 per occurrence/aggregate

10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.

10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Facility, and the CLIENT shall be responsible for protecting them against theft and damage.

10.4 **SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages").** Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS' performance of the Work or Services. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. **UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE LESSER OF \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT.** The preceding limit shall not apply to the CLIENT's remedy under the Performance Guarantee as such is limited by Section 4.8.

10.5

As to Patents and Copyrights:

PERFORMANCE CONTRACTING AGREEMENT

- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.
- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT's design or instructions, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 **The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.**

Article 11

Hazardous Materials Provisions

- 11.1** The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that, to the best of its knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT's representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.
- 11.2** The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials, to the best of its knowledge following due inquiry, known to be present, potentially present or likely to become present at the Facility and provided a copy of any Facility safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by Applicable Law.

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11.3 Regardless of whether Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remediating or neutralizing such Oil or Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 11.1, SIEMENS shall have the right to stop the Work until the Facility is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.

11.4 Except where expressly prohibited by Applicable Law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from the CLIENT's breach of, or failure to perform its obligations under this Article.

11.5 For purposes of this Article 11, in the context of the phrase "to the best of its knowledge following due inquiry"; "knowledge" means actual awareness of the facts by the CLIENT's directors, officers, employees or agents, or the presence of relevant information contained in the CLIENT's books or records; and, "due inquiry" means inquiry of those persons under the CLIENT's control who should have knowledge of the subject matter of such inquiry.

Article 12

Miscellaneous Provisions

12.1 Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.

12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both Parties.

12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located.

12.4 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.

12.5 Reserved.

12.6 SIEMENS' performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement

12.7 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.

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12.8 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.

12.9 In the event that Applicable Law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$Price identified in Section 1.1 of Exhibit B. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT's funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.

Article 13

Maintenance Services Program

13.1 If applicable, the scope of Services provided by SIEMENS for the Maintenance Services Program is stated in Exhibit A.

13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.

13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT's expense.

13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the Parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT's sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged on a time and materials basis, and not included in fees paid hereunder. If individual items of equipment cannot, in SIEMENS' sole determination, be properly repaired or replaced due to age, obsolescence, lack of availability of refrigerant gas, halon gas, necessary parts, materials, compatibility or otherwise, or as a result of excessive wear or deterioration, SIEMENS may, within ten (10) days of such inspection, give written notice that it is withdrawing such items from coverage under the MSP and adjust the MSP payments due hereunder accordingly.

13.5 If the removal of equipment from coverage would compromise or impair the integrity of the Work, Services or compliance with law of any system, then SIEMENS will provide a written statement thereof for execution by the CLIENT. The CLIENT's failure to execute such statement within ten (10) days will void the MSP and release SIEMENS from any further obligations with respect to the MSP.

13.6 If the MSP scope of Services provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.



February 2, 2018

City of Lancaster
Siemens Scope and Pricing for the Recreation Center Upgrades

Replace HVAC Equipment with High Efficiency Units at the Recreation Center

- Replace aging Air-Cooled Chiller serving Building
- Replace aging Pool Area Dehumidifier
- Point-to-point check out of system

Install Building Automation System (BAS) and Implement Scheduling

- Upgrade existing BAS at Recreation Center
- Schedule HVAC systems at Recreation Center to minimize runtime and reduce operating costs
- Provide a JCI campus network front end for building controls

This project is guaranteed per LG302. The pricing is firm, fixed turn-key pricing - no change orders. Includes all design, product, installation, project development, project management.

Building	FIM	Cost	Energy Savings	Ops Savings
Recreation/Community Center	BAS/HVAC	\$ 333,191	\$26,473	\$5,000
	Pool unit	\$ 854,824		15000
All Facilities above	Project Development, Project Management, M&V Set up	\$ 176,556		
Total		\$ 1,364,571	\$26,473	\$20,000

Annual Measurent & Verification price - 3% annual escalation	\$14,046
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Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of Work, the CLIENT shall pay to SIEMENS \$1,364,571.00 (plus taxes, if applicable).
- 1.2 **Timely Payments:** The CLIENT agrees to pay SIEMENS per Table B.1 below. CLIENT agrees to pay all invoices submitted by SIEMENS per Article 8 of the Agreement.

Table B.1 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Audit & Mobilization	\$ 81,874.00	6.00%	Month 1
Progress Payment #1	\$ 81,874.00	6.00%	Month 2
Progress Payment #2	\$ 136,457.00	10.00%	Month 3
Progress Payment #3	\$ 204,686.00	15.00%	Month 4
Progress Payment #4	\$ 204,686.00	15.00%	Month 5
Progress Payment #5	\$ 109,166.00	8.00%	Month 6
Progress Payment #6	\$ 136,457.00	10.00%	Month 7
Progress Payment #7	\$ 136,457.00	10.00%	Month 8
Progress Payment #8	\$ 68,229.00	5.00%	Month 9
Progress Payment #9	\$ 68,229.00	5.00%	Month 10
Progress Payment #10	\$ 68,228.00	5.00%	Month 11
Retainage & Final Payment	\$ 68,228.00	5.00%	End of Project
PROJECT TOTAL:	\$ 1,364,571.00	100%	

Article 1 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Lancaster

Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.2 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

Table B.2 – Performance Assurance Program Payment Schedule

Date	Annual Payments (\$)	Notes
Year 1	\$ 14,046.00	Year 1 Measurement & Verification
Year 2	\$ 15,024.00	Year 2 Measurement & Verification
Year 3	\$ 15,474.00	Year 3 Measurement & Verification
Year 4	\$ 15,939.00	Year 4 Measurement & Verification
Year 5	\$ 16,417.00	Year 5 Measurement & Verification
Year 6	\$ 16,909.00	Year 6 Measurement & Verification
Year 7	\$ 17,416.00	Year 7 Measurement & Verification
Year 8	\$ 17,939.00	Year 8 Measurement & Verification
Year 9	\$ 18,477.00	Year 9 Measurement & Verification
Year 10	\$ 19,031.00	Year 10 Measurement & Verification
Year 11	\$ 19,602.00	Year 11 Measurement & Verification
Year 12	\$ 20,190.00	Year 12 Measurement & Verification
Year 13	\$ 20,796.00	Year 13 Measurement & Verification
Year 14	\$ 21,420.00	Year 14 Measurement & Verification
Year 15	\$ 22,063.00	Year 15 Measurement & Verification

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: City of Lancaster

Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 3: Payment for Maintenance Services Program (MSP)

- 3.1 **Not Applicable:** Per exhibit A, Article 4, a Maintenance Service Program, (MSP) is not included in the scope of this agreement. If the Parties later agree, SIEMENS may perform maintenance services for additional fees on a Time and Materials basis or as established in a separate maintenance agreement.

Article 3 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Lancaster**

Signature: _____

Printed Name: Opal Mauldin-Jones

Title: City Manager

Date: July 30, 2018

SIEMENS: **Siemens Industry, Inc.**

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Measurement and Verification Options
Article 3	Performance Guarantee Period Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Data
Article 6	Utility Rate Structures and Escalation Rates
Article 7	Contracted Baseline Data

Table 1.1 - Total Guaranteed Savings (Units)

Performance Period	Electric Energy Saved (kWh)	Electric Power Saved (kW-mo)	Natural Gas Saved (MCF)
Annual Period 1	355,825	0	0

- 1.1 Table 1.1 above shows the Annual Total Guaranteed Savings in units for each year of the Performance Guarantee Period. In order to achieve these unit savings, the CLIENT must operate the Facility in accordance with the Contracted Baselines identified in Article 7. 2.

Table 1.2 – Total Guaranteed Savings and Operational Savings

Performance Period	Energy/Utility Savings (\$)	Operational Savings (\$)	Total Savings (\$)
Annual Period 1	\$26,473	\$20,000	\$46,473
Annual Period 2	\$27,268	\$20,600	\$47,868
Annual Period 3	\$28,086	\$21,218	\$49,304
Annual Period 4	\$28,928	\$21,855	\$50,783
Annual Period 5	\$29,796	\$22,510	\$52,306
Annual Period 6	\$30,690	\$23,185	\$53,875
Annual Period 7	\$31,611	\$23,881	\$55,492
Annual Period 8	\$32,559	\$24,597	\$57,156
Annual Period 9	\$33,536	\$25,335	\$58,871
Annual Period 10	\$34,542	\$26,095	\$60,637
Annual Period 11	\$35,578	\$26,878	\$62,456
Annual Period 12	\$36,645	\$27,685	\$64,330
Annual Period 13	\$37,745	\$28,515	\$66,260
Annual Period 14	\$38,877	\$29,371	\$68,248
Annual Period 15	\$40,043	\$30,252	\$70,295
Total	\$492,377	\$371,977	\$864,354

- 1.1a Client represents and warrants that it is paying Siemens with available capital funds pursuant to Texas Local Government Code 302.004(a-1). Accordingly, Client acknowledges that the costs of the project will not be covered solely out of the savings realized by Client under the Agreement. Client has requested Siemens to install certain measures that are related to, connected with or otherwise ancillary to the FIM's as further set forth in Exhibit A.

- 1.2 Table 1.2 shows the CLIENT'S guaranteed cost Savings for each Annual Period that are extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 6.
- 1.3 SIEMENS cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the CLIENT and SIEMENS agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period's stipulated energy/utility rate and Escalation Rates and not the Annual Period's actual utility rate.
- 1.4 The determination of energy/utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.
- 1.5 The Performance Guarantee does not operate to guarantee the Savings per-FIM. Rather, the calculation of Savings is based on aggregate performance of all of the FIMs contained in the Project. The projected value of such aggregate performance is contained in Table 1.2 above representing the Total Guaranteed Savings as monetized.

This Exhibit C, comprising 12 pages, is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **City of Lancaster, TX**
Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: **Siemens Industry, Inc.**
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 2: Measurement and Verification (“M&V”) Options

- 2.1 There are five options to measure and verify energy/utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; and, Option D - Calibrated Simulation. Options A through and including D are part of the IPMVP. Option E-Stipulated is based on industry accepted engineering standards and is the Option used for purposes of calculating Operational Savings.

Option A - Retrofit Isolation, Key Parameter Measurement: Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the FIM’s affected system(s) and/or the success of the Project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer’s specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option B - Retrofit Isolation, All Parameter Measurement: Savings are determined by field measurement of the energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option C - Whole Facility: Savings are determined by measuring energy use at the whole Facility or sub-Facility level. Continuous measurements of the entire Facility’s energy use are taken throughout the reporting period. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole Facility, or of a sub-Facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the Facility. This Option usually requires considerable skill in calibrated simulation. If applicable, the predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option E - Stipulated: This Option is the method of measurement and verification applicable to FIMS consisting either of Operational Savings or where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer’s measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the Savings stipulated will be achieved upon completion of the FIM and no further measurements or calculations will be performed during the Performance Guarantee Period. If applicable, the methodology and calculations to establish Savings value will be defined in Section 4.6 of this Exhibit C.

- 2.2 Table 2.1 below summarizes the first Annual Period’s Guaranteed Savings (See Article 1, Tables 1.1 and 1.2) utilizing the applicable Measurement and Verification Options as applied to the referenced FIMs valued pursuant to the agreed upon amounts identified in Article 6 hereof.

Table 2.1 – Savings for First Annual Period by M&V Option

FIM	Energy/Utility Savings \$						Operational Savings \$	Total Savings \$
	M&V Options							
	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	E Stipulated	Total Energy/Utility Savings	E Stipulated	
Building Automation Systems	\$5,798					\$5,798		\$5,798
HVAC Replacements	\$20,675					\$20,675	\$5,000	\$25,675
Pool Area Dehumidifier							\$15,000	\$15,000
TOTAL	\$26,473					\$26,473	\$20,000	\$46,473

- 2.3 Table 2.2 identifies the source of Operational Savings defined and quantified by the Parties. The Parties affirm that such amounts are Stipulated Savings for purposes of calculating Annual Realized Savings and acknowledge that the Guaranteed Savings identified herein have been based on CLIENT’S affirmation. OPERATIONAL SAVINGS SHALL NOT BE MEASURED OR MONITORED DURING THE PERFORMANCE GUARANTEE PERIOD.

Table 2.2 - Source of Operational Savings

FIM	Description	First Year Savings	# of Annual Periods Savings Are Applied	Annual Period Savings Begin
HVAC Replacements	Reduced labor and materials from installation of new HVAC Systems	\$5,000	15	1
Pool Area Dehumidifier	Reduced labor and materials from installation of new dehumidifier	\$15,000	15	1
Total		\$20,000		

- 2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings are incorporated into the Annual Realized Savings.

- 2.5 The Escalation Rate applicable to the Operational Savings is three percent (3%).

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED MEASUREMENT AND VERIFICATION OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

CLIENT: **City of Lancaster, TX**
Signature: _____
Printed Name: Opal Mauldin-Jones
Title: City Manager
Date: July 30, 2018

SIEMENS: **Siemens Industry, Inc.**
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 3: Performance Guarantee Period Responsibilities of the CLIENT

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative at each Facility to coordinate work and provide required data described below.
- 3.2 The CLIENT will provide SIEMENS with accurate Facility operating information as defined below and in the Contracted Baseline article of this Exhibit C during each Annual Period, within thirty (30) days of any Material Change that may increase or decrease energy usage.
- 3.3 If applicable, the CLIENT will provide SIEMENS with copies of utility bills within thirty (30) days of receipt by the CLIENT or provide access to utility vendor information to allow SIEMENS to include a utility bill analysis in the Annual Performance Assurance Report. The utility bill analysis does not take the place of the Measurement and Verification Plan identified in Article 4 of this Exhibit C and is not used to measure the Project's performance.
- 3.4 If required for the Work, CLIENT will provide telephone/data remote access, through SIEMENS Insight® software package or otherwise, as SIEMENS reasonably requests. All charges related to telephone/data line installation, activation and communication services are the responsibility of the CLIENT.
- 3.5 If required for the Work, CLIENT will provide and coordinate utility meter upgrade for interface with SIEMENS metering and data collection. All charges related for these upgrades are the responsibility of the CLIENT. (-or- shall be reimbursed to CLIENT by SIEMENS).

Article 4: Measurement and Verification (“M&V”) Plan

The following information is applicable to this Agreement:

Article 4.1 General Overview

Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.1 General Overview –

The purpose of the M&V Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each FIM which has energy/utility Savings. Savings are determined by comparing prior usage, consumption accuracy or efficiencies (defined as the “Baseline”) against the post-FIM implementation usage, consumption, accuracy or efficiencies. The Baseline usage, consumption, accuracy or efficiencies are described in this Exhibit C, Article 5. The post-FIM implementation usage, consumption, accuracy or efficiencies is defined as the Contracted Baseline and are described in this Exhibit C, Article 7.

4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.2.1 *Building Automation Systems (BAS) - Time of Day Scheduling (TOD) & HVAC Replacements*

Location(s): Recreation Center

Overview:

Siemens will install a Johnson Controls Metasys Building Automation System (BAS) to optimize the heating and cooling set point and implement scheduling at the Recreation Center. Energy savings are achieved scheduling the units to turn off during unoccupied periods. The Recreation Center operated Sunday through Saturday 4am to 11pm. Equipment schedule will be verified through continuous trending of equipment run time annually.

In addition, Siemens will replace the existing HVAC equipment at the Recreation Center with new high efficiency units which will reduce electric consumption. Verification of the electric savings shall be based on the post-retrofit efficiency (IEER) as stated by the equipment manufacturer.

Post-retrofit, if contracted baseline schedules for this equipment, as established in Article 7 of this Exhibit C, are modified by the CLIENT and result in a loss of energy savings, the Guaranteed Savings for this FIM will be deemed achieved.

Pre-Retrofit Measurement/Calculations:

$$\text{kWh}_{\text{pre}} = (12^{\text{Btu}} / \text{Ton} / \eta_{\text{Pre}, n}) * \text{Ton-hrs}_{\text{pre}}$$

Where :

kWh_{pre} = Pre-retrofit electric consumption per unit, as identified in Table 4.2.1.1

$\eta_{\text{Pre}, n}$ = Pre-retrofit Energy Efficiency Factor (IEER) for HVAC unit n per Table 4.2.1.1

$\text{Ton-hrs}_{\text{pre}} = \text{Size}_{,n} * (1 - \% \text{OEF}) * \text{EFLH}_{\text{Pre}, n}$ = Pre-retrofit ton-hours per Table 4.2.1.1

Where:

$\text{EFLH}_{\text{Post}}$ = Pre-retrofit Equivalent Full Load Hours (hours/yr) of HVAC equipment n per Table 4.2.1.1

Size = Equipment size of HVAC unit n (Tons) per Table 4.2.1.1
%OEF = Oversized equipment factor
Recreation Center = 35%

Table 4.2.1.1 – Pre-Retrofit Operating Parameters and Consumption

Location	Equipment (n)	Size (Tons)	Pre-Retrofit Efficiency (η_{pre})	Pre-Retrofit Cooling Equivalent Full Load Hours ($EFLH_{pre}$)	Pre-Retrofit Cooling Load (Ton-hrs $_{pre}$)	Pre-Retrofit Electric Consumption (kWh/yr) (kWh $_{pre}$)
Recreation Center	Air Cooled Screw Chiller	170	5.0	2,019	222,090	533,016

Post-Retrofit Measurements/Calculations:

Ton-hrs $_{post}$ = Post-retrofit ton-hours calculated through bin temperature bin analysis of post installation HVAC unit n

$$\text{Ton-hrs}_{post} = \text{Size}_{,n} * (1 - \%OEF) * EFLH_{Post, n}$$

Where :

$EFLH_{Post}$ =Post-retrofit Equivalent Full Load Hours (hours/yr) determined through bin temperature bin analysis of post installation HVAC unit n Calculated and summed for each outdoor air temperature bin shown in Table 4.2.1.2

$$EFLH = \sum ((\text{Cooling Load}\% * AOH_{post})_{BIN,n})$$

Where:

Cooling Load% = Cooling Load (%) at each outdoor air temperature bin per Table 4.2.1.2

AOH_{post} = Post-retrofit annual operating hours will be determined through continuous trending of unit status to establish each units schedule. The post-retrofit schedules will be used create a bin model of operating hours at each outdoor air temperature bin shown in Table 4.2.1.2. Bin Maker Pro or equivalent will be used to calculate the annual operating hours post-retrofit.

Table 4.2.1.2 – Outdoor Air Temperature Bins

Outdoor Air Temperature (DB °F) (BIN n)	Mid-pts (DB °F)	Annual Operating Hours (AOH)	Cooling Load (%)
100 to 102	101	Verified	108%
98 to 100	99	Verified	103%
96 to 98	97	Verified	97%
94 to 96	95	Verified	92%

92 to 94	93	Verified	87%
90 to 92	91	Verified	82%
88 to 90	89	Verified	76%
86 to 88	87	Verified	71%
84 to 86	85	Verified	66%
82 to 84	83	Verified	61%
80 to 82	81	Verified	55%
78 to 80	79	Verified	50%
76 to 78	77	Verified	45%
74 to 76	75	Verified	39%
72 to 74	73	Verified	34%
70 to 72	71	Verified	29%
68 to 70	69	Verified	24%
66 to 68	67	Verified	18%
64 to 66	65	Verified	13%
62 to 64	63	Verified	8%
60 to 62	61	Verified	3%

$$\text{kWh}_{\text{post}} = (12^{\text{Btu}}_{\text{Ton}} / \eta_{\text{Post}, n}) * \text{Ton-hrs}_{\text{post}}$$

Where:

kWh_{post} = Post-retrofit electric consumption summed for all pieces of HVAC equipment n , as identified in Table 4.2.2.1 above

$\eta_{\text{Post}, n}$ = Post-retrofit Energy Efficiency Factor (IEER) for HVAC unit n verified from manufacturer's submittal data sheets for the units at Recreation Center.

Saving Calculations:

Energy Savings (kWh/yr):

$$\text{kWh}_S = \text{kWh}_{\text{pre}} - \text{kWh}_{\text{post}}$$

Where:

kWh_S = Total annual electric savings (kWh/yr)

Cost Savings(\$/yr):

$$\$_S = \text{kWh}_S * \$/\text{kWh}$$

Where:

$\$_S$ = Total annual cost savings

$\$/\text{kWh}$ = contracted unit price for electricity at each location as per Article 6 of this Exhibit C

Article 5: Baseline Data

- 5.1 The year(s) selected as the Baseline Period starts on July 2015 and ends on June 2017. Table 5.1 outlines the utility consumption that occurred during this Baseline Period. This

Baseline Period's Facility utility consumption will be used as the reference for comparing the Facility's utility consumption during the Performance Guarantee Period in order to determine the Annual Realized Savings.

Table 5.1 – Summary of Electric and Gas Usage for Baseline Year (Jan – Dec 2016)

BUILDING	Annual Electric Energy (kWh)	Annual Electric Cost (\$)	Annual Gas Energy (CCF)	Annual Gas Cost (\$)	Total Annual Cost (\$)
Recreation Center	1,635,300	\$165,299	22,728	\$13,757	\$179,055
TOTALS	1,635,300	\$165,299	22,728	\$13,757	\$179,055

- 5.2 The operating practices during the Baseline Period determine the utility consumption shown in Table 5.1. This data indicates the operating characteristics that were in effect during the Baseline Period. The Guaranteed Savings provided under this Agreement are based on the efficiencies gained by implementing the Work and implementing the Contracted Baseline in Article 7 of this Exhibit C.

Table 5.1.1 – HVAC Setpoints

Operating Mode	Temperature Setpoints
Occupied Cooling	72 – 74 °F
Unoccupied Cooling	80° F
Occupied Heating	68 – 71°F
Unoccupied Heating	65°F

Table 5.1.2 – HVAC Operating Schedules for Recreational Center

Day of Week	Occupied Run Hours	Unoccupied Run Hours
Monday	19	5
Tuesday	19	5
Wednesday	19	5
Thursday	19	5
Friday	19	5
Saturday	19	5
Sunday	19	5
Holiday	19	5

Article 6: Utility Rate Structures and Escalation Rates

- 6.1 Utility costs used for Savings calculations will be based on the utility rates and rate escalation percentages, as provided in the table(s) below. Each escalation rate will be applied annually to the utility rate.

Most buildings audited have similar gas rates as shown above in Table 5.2. Since all other buildings have a similar rate, those rates were averaged and used for calculating savings.

Table 6.1.1 – Electricity Utility Rates

Tariff Number or Designation:	Varies
-------------------------------	--------

Utility Name:	Gexa Energy
Rate Structure:	\$0.0744/kWh
	\$9.26/kW
Rate Escalation:	3% per Annual Period

Table 6.1.2 – Natural Gas Utility Rates

Tariff Number or Designation:	Varies
Utility Name:	Gexa Energy
Rate Structure:	\$6.00/MCF
Rate Escalation:	3% per Annual Period

Article 7: Contracted Baseline Data

- 7.1 The following tables details the operating parameters that are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of facility operating parameters is the Contracted Baseline. The failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

Table 7.1.1 – HVAC Setpoints

Operating Mode	Temperature Setpoints
Occupied Cooling	72 – 74 °F
Unoccupied Cooling	80° F
Occupied Heating	68 – 71°F
Unoccupied Heating	65°F

Table 7.1.2 – HVAC Operating Schedules for Recreational Center

Day of Week	Occupied Run Hours	Unoccupied Run Hours
Monday	19	5
Tuesday	19	5
Wednesday	19	5
Thursday	19	5
Friday	15	9
Saturday	13	11
Sunday	4	20
Holiday	4	20



Certificate of Substantial Completion

PROJECT NAME:	City of Lancaster PC – Phase 1
CLIENT:	City of Lancaster, Texas
CERTIFICATE DATE (mm/dd/yyyy):	
CERTIFICATE NUMBER:	
PROJECT NUMBER:	

The following portions of the Work are at Substantial Completion in accordance with the Agreement.
(Insert unique Work item such as Facility Improvement Measure title, system name, building, etc.)

Work Item:	
Warranty Start Date (mm/dd/yyyy):	
Work Item:	
Warranty Start Date (mm/dd/yyyy):	
Work Item:	
Warranty Start Date (mm/dd/yyyy):	

The Building Technologies Division of Siemens Industry, Inc. guarantees the workmanship and materials of the above Substantially Complete Work in accordance with the Agreement.

The Work indicated above has been reviewed by the CLIENT and has been found, to the best of the CLIENT's knowledge, to be Substantially Complete. Substantial Completion is the milestone in the progress of the Work at which time the Work is sufficiently complete and available for the CLIENT to have beneficial use of the Work for its intended purpose. A list of items to be completed and corrected (if any) shall be identified as the Outstanding Items List, attached to this form, and indicated by checking the appropriate box below:

Outstanding Items List Attached: ☐ **No Outstanding Items Noted:** ☐

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the Certificate Date of this

Certificate, but within the warranty period shall be corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. agrees to complete or correct all items indicated on the Outstanding Items in a timely manner.

Building Technologies Division of Siemens Industry, Inc. Representative: _____

Signature: _____ Date: _____

The CLIENT accepts the Work indicated above as Substantially Complete and assumes possession and beneficial use of the Work on the Warranty Start Date indicated above.

CLIENT: City of Lancaster, Texas

CLIENT Representative: _____

Signature: _____ Date: _____

Note: The CLIENT shall, upon execution of this Certificate of Substantial Completion, assume all contractual responsibilities for maintenance, insurance, operation, and protection of the Substantially Complete Work in accordance with the Agreement.



Certificate of Final Completion

PROJECT NAME:	City of Lancaster PC- Phase 1
CLIENT:	City of Lancaster, Texas
CERTIFICATE DATE (mm/dd/yyyy):	
PROJECT NUMBER:	

All elements of the project Work have been reviewed by the CLIENT and have been found, to the best of the CLIENT's knowledge, to be at Final Completion. All items noted in the Outstanding Items Lists associated with Certificate(s) of Substantial Completion have been resolved, and all Work as defined in Exhibit A of the Agreement is complete.

The failure of the CLIENT to note items requiring completion or correction does not relieve the contractual responsibility of Building Technologies Division of Siemens Industry, Inc. to complete or correct the Work. Work found to require completion or correction after the date of this Certificate, but within the warranty period shall be promptly corrected in accordance with the Agreement's warranty provisions.

Building Technologies Division of Siemens Industry, Inc. has reviewed the project Work, as well as all contractual requirements, and the requirements for Final Completion have been met.

Building Technologies Division of Siemens Industry, Inc. Representative: _____

Signature: _____ Date: _____

The CLIENT accepts the project Work as meeting the requirements for Final Completion.

CLIENT: City of Lancaster, Texas

CLIENT Representative: _____

Signature: _____ Date: _____

LANCASTER CITY COUNCIL

A City Council Special Meeting

8.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda

Goal(s): Sound Infrastructure
Quality Development

Submitted by: Sean Johnson, Managing Director of Quality of Life and Cultural Services

Agenda Caption:

Discuss and consider appointments to the Hike and Bike Trails Advisory Committee.

Background:

In the 2017-2018 City Council Goals and Objectives, Council identified the objective to update the Hike and Bike Trails Master Plan. The existing Trail Master Plan was developed by Halff Associates and was adopted by City Council in 2006. Industry standards indicate and advise that Master Plans be updated at a minimum every ten years. With the recent adoption of the Lancaster Comprehensive Plan in October 2016, it was prioritized that our existing plan should be updated. After reviewing proposals from several consultants completing master plans in surrounding and survey cities, staff selected Dunaway Associates.

At the March 26, 2018 City Council Regular Meeting, City Council approved a Professional Services Agreement between the City of Lancaster and Dunaway Associates. The overall planning process for completion of the Master Plan is estimated to be 7 - 9 months and requires the appointment of a Trails Advisory Committee that will be involved in the "touch points" of every task (e.g. Kick off meeting; Benchmark Tour; Conceptual and Preliminary Trail Plan creation; etc.). There will be 8 – 10 meetings (Benchmark Tour is one full day) that will require Advisory Committee members attendance.

The Advisory Committee role is to provide input to create the updated plan. It was recommended that a 10 member committee be formed consisting of representatives from the following stakeholders groups:

1. City Council
2. Planning & Zoning Commission
3. Park Board
4. LISD Board
5. North Central Texas Council of Government (Karla Weaver, Senior Program Manager responsible for bicycle and pedestrian programs)
6. Business Stakeholders
7. Avid trail users (citizens)
8. City Planning staff

At the April 16, 2018 Work Session, City Council was briefed on the Trails Advisory Committee Master Plan member appointment process.

On April 23, 2018, the following members were appointed:

Stanley Jaglowski, Deputy Mayor Pro Tem

Mark Powell

Gretchen Weaver, Library Board

Bridgette Smith

Sean Mixon

Petra Covington, 4B/Park Board

Gregory Buchanan, LISD

John Paulus

Jeremy Reed, Planning & Zoning

Kevin Kokes, NCTCOG

On May 22, 2018, the Quality of Life and Cultural Services Department, along with Council-appointed Trails Advisory Committee members, attended the kickoff meeting with consultant firm Dunaway Associates to update and develop a new Hike and Bike Trails Masterplan.

In order to continue with the current recommend committee composition Planning and Zoning Commissioner Karen Collins has agreed to serve. Mr. Granger, LISD Superintendent has been contacted to appoint another LISD representative.

Operational Considerations:

City Council will appoint replacement advisory committee members composed of the above referenced stakeholders. Quality of Life & Cultural Services staff along with the Planning Division staff will serve as staff resources to the committee.

Public Information Considerations:

This item is being discussed and considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

LANCASTER CITY COUNCIL

A City Council Special Meeting

9.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Sound Infrastructure
Quality Development

Submitted by: Rona Stringfellow, Assistant City Manager

Agenda Caption:

Discuss and receive a presentation on the appointment of a Capital Improvements Advisory Committee (CIAC).

Background:

In the 2017/2018 City Council Goals and Objectives, the City Council identified the objective to implement the Comprehensive Plan. In 2006, the existing Water/Wastewater and Master Thoroughfare plans were last updated. The associated impact fees were updated in 2012. Impact fees and land use assumptions are recommended to be updated every five years. The aforementioned, requires a recommendation by a Council appointed Capital Improvements Advisory Committee (CIAC).

The Planning and Zoning Commission typically serves as the Capital Improvements Advisory Committee (CIAC). However, the current make-up of the Planning and Zoning Commission does not meet the membership requirement. As outlined in Chapter 395 of the Texas Local Government Code, the role of the advisory committee is as follows:

1. Advise and assist the political subdivision in adopting land use assumptions;
2. Review the capital improvements plan and file written comments;
3. Monitor and evaluate implementation of the capital improvements plan;
4. File semi-annual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and
5. Advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

The CIAC should have at least five (5) members. At least 40% must be representatives of the real estate, development, or building industries, who are not employees or officials of a city or governmental entity. Since the current makeup of the Planning and Zoning Commission does not include at least one (1) member from the above mentioned real estate, development, or building industry and does not have at least five (5) members; the City Council would need to make additional appointments to the Planning and Zoning Commission that satisfies this requirement.

If the impact fee is to be applied in the extraterritorial jurisdiction (ETJ) of the City of Lancaster, the membership must include a representative from that area, as well.

With that being said, City Council could allow the current three (3) Commissioners to serve along with the addition of an ad hoc member that is from the real estate, development, or building industries. Additionally, City Council could appoint a resident from the ETJ because the wastewater impact fee is

applicable in the ETJ.

Operational Considerations:

City Council will appoint Capital Improvement Advisory Committee (CIAC) members composed of the above reference stakeholders. Engineering staff along with Planning staff will continue to serve as staff resources.

Public Information Considerations:

This item is being discussed and considered at a Special Meeting of the City Council noticed in accordance with the Texas Open Meetings Act.

LANCASTER CITY COUNCIL

A City Council Special Meeting

10.

Meeting Date: 07/30/2018

Policy Statement: This request supports the City Council 2017-2018 Policy Agenda.

Goal(s): Financially Sound Government

Submitted by: Opal Mauldin-Jones, City Manager

Agenda Caption:

Discuss and consider a resolution adopting the City of Lancaster Proposed Budget Calendar for Fiscal Year 2018/2019.

Background:

The City Manager will present an overview of the proposed FY 2018/2019 municipal budget for all funds at a Special Work Session held on Monday, August 6, 2018 and Thursday, August 9, 2018, if needed. City Council should consider a resolution that establishes a calendar for the Fiscal Year 2018/2019 tax rate and budget. The budget calendar establishes the public hearings, dates, times and location for City Council meetings.

Operational Considerations:

Approving this resolution establishes the schedule relative to the adoption of the Fiscal Year 2018/2019 budget. The following is the proposed calendar for budget work sessions and meetings:

August 6, 2018	Special Work Session
August 9, 2018	Special Work Session (if needed)
August 13, 2018	Regular Meeting – Record vote to consider Tax Rate
August 16, 2018	Budget Town Hall Meeting, 6:30 p.m. at the Recreation Center
August 18, 2018	Budget Town Hall Meeting, 9:00 a.m. at the Recreation Center
August 20, 2018	Special Meeting (1st Public Hearing) – Tax Rate, Budget, PID's Public Hearing, CIP
August 27, 2018	Regular Meeting (2nd Public Hearing) –Tax Rate, Budget, PID's Budget Adoption
September 10, 2018	Regular Meeting – Budget Adoption, Tax Rate Adoption, CIP

Legal Considerations:

The resolution has been approved as to form by the City Attorney.

Public Information Considerations:

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

Options/Alternatives:

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

Recommendation:

Staff recommends approval of the resolution, as presented.

Attachments

Resolution

Exhibit A

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ADOPTING THE CITY OF LANCASTER PROPOSED BUDGET CALENDAR FOR THE FISCAL YEAR 2018/2019, INCLUDING THE PUBLIC IMPROVEMENT DISTRICTS, THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION (TYPE A), AND THE LANCASTER RECREATIONAL DEVELOPMENT CORPORATION (TYPE B) BUDGET; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS,

the City Council finds that it is in the best interest of the City to establish a meeting schedule relative to the adoption of Fiscal Year 2018/2019 budget; and

WHEREAS, the budget calendar established meetings at a convenient date and place; and

WHEREAS, the City Council desires to adopt a proposed budget calendar for the Fiscal Year 2018/2019 budget cycle.

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

SECTION 1. The City Council hereby adopts the Fiscal Year 2018/2019 proposed budget calendar as shown in the attached Exhibit "A." Dates are subject to adjustment due to scheduling requirements. Meetings will be posted in accordance with the Texas Open Meetings Act.

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

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

SECTION 4. That this Resolution shall take effect immediately from and after its passage in accordance with the provisions of the law, and it is duly resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 30th day of July, 2018.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

EXHIBIT A

PROPOSED FISCAL YEAR 2018/2019 BUDGET CALENDAR

August 6, 2018:	Special Work Session
August 9, 2018:	Special Work Session
August 13, 2018:	Regular Meeting – Record vote to consider Tax Rate
August 16, 2018:	Budget Town Hall Meeting, 6:30 p.m. at the Recreation Center
August 18, 2018:	Budget Town Hall Meeting, 9:00 a.m. at the Recreation Center
August 20, 2018:	Special Meeting (1st Public Hearing) – Tax Rate, Budget, PID's Public Hearing, CIP
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September 10, 2018:	Regular Meeting – Budget Adoption, Tax Rate Adoption, CIP