



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



Monday, December 7, 2020 - 7:30 PM

While the Mayor may be physically present at City Hall, the other Councilmembers will attend via video or audio link due to the COVID-19 emergency situation.

IMPORTANT NOTICE: Due to the COVID-19 (coronavirus) state of emergency and consistent with the Governor's Order regarding modifications to the Texas Open Meetings Act ("TOMA"), and executive orders regarding the public will not be admitted to the physical meeting location.

Please click the link below for forms:

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

Please click the link below to join the webinar:

https://us02web.zoom.us/join/register/tZltceGurz8oE9FdiWAAi3jMTRi_qCZywdid

The meeting will be broadcast live via video at the following address:

<http://www.lancaster-tx.com/324/Watch-Meetings>

7:30 P.M. SPECIAL WORK SESSION

CALL TO ORDER

1. Receive a presentation regarding the creation of a Campus District and Downtown District Tax Increment Reinvestment Zones (TIRZ).
2. Discuss options of permitting a second kitchen in a single-family residence or requiring a Specific Use Permit (SUP).
3. Discuss limiting the number of vehicles parked at a single-family residence.

ADJOURN SPECIAL WORK SESSION

7:45 P.M. SPECIAL MEETING:

CALL TO ORDER

PUBLIC TESTIMONY:

At this time citizens who have pre-registered before the call to order will be allowed to speak on consent or action item on the agenda, with the exception of public hearings, for a length of time not to exceed three minutes. Anyone desiring to speak on an item scheduled for a public hearing is requested to hold their comments until the public hearing on that item.

CONSENT AGENDA:

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

1. Consider a resolution approving the terms and conditions of the Texas Coalition for Affordable Power, Inc. (TCAP) professional services agreement and GEXA Energy's Commercial Electric Service Agreement for power provided on and after January 2023.
2. Consider a resolution establishing the City of Lancaster Legislative Priorities for the 87th Session of the Texas Legislature.

EXECUTIVE SESSION:

3. The City Council shall convene into a closed executive session pursuant to Section § 551.071 (1) and (2) of the Texas Government Code to discuss: City of Lancaster City Council Rules and Procedures-Censure Policy and possible future agenda items.
4. Reconvene into open session. Consider and take appropriate action(s), if any, on closed/executive session matters.

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 December 4, 2020 @ 5:00 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.



Sorangel O. Arenas
City Secretary

CITY OF LANCASTER CITY COUNCIL

City Council Special Work Session

1.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Financially Sound City Government
Sound Infrastructure
Quality Development

Submitted by: Vicki D. Coleman, Development Services Director

Agenda Caption:

Receive a presentation regarding the creation of a Campus District and Downtown District Tax Increment Reinvestment Zones (TIRZ).

Background:

City Council identified the objective to implement Tax Increment Reinvestment Zones (TIRZ) in the Campus and Downtown Districts for the fiscal year 2018/2019. The Economic Development Strategic Plan identifies Historic Town Square as a targeted site for commercial redevelopment and revitalization with high potential to create a true destination with a critical mass of retail/dining offerings for residents and visitors. Downtown is considered a significant redevelopment asset and the Campus District provides sites for freeway oriented, master-planned commercial development. Both areas provide opportunities to attract higher values. Master Plans for both districts were developed and adopted in 2006 and re-evaluated for compatibility with the 2016 Comprehensive Plan.

A Tax Increment Reinvestment Zone (TIRZ) is a method for allowing public infrastructure to be repaid over time using the increased value of the tax base as development occurs.

In August 2019, the City requested the consulting services of Insight Research Corporation to provide economic analysis in support of the potential establishment of two tax increment finance districts for the Downtown and Campus Districts to meet the City Council goal and objective of implementing TIRZ districts for key growth areas.

Insight Research Corporation has been performing economic analysis on the Downtown and Campus Districts that include ten (10) years forecasts that evaluate:

1. The potential for alternative land uses, City investment costs and tax base change depending on each area's developable capacity
2. Investment-grade tax revenue and cost/benefit analysis under several scenarios, suitable for filing TIRZ documentation.

City Council will receive a presentation regarding the Tax Increment Reinvestment Zones from Elizabeth Morris with Insight Research Corporation.

CITY OF LANCASTER CITY COUNCIL

City Council Special Work Session

2.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

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

Submitted by: Bester Munyaradzi, Senior Planner

Agenda Caption:

Discuss options of permitting a second kitchen in a single-family residence or requiring a Specific Use Permit (SUP).

Background:

As prescribed in the City Council Rules and Procedures, amended on November 16, 2020, Section D. City Council Agenda Process, Subsection 1.b., Councilmember Carol Strain-Burk requested that an item be included on this City Council Work Session for the purpose of discussing prohibiting a second kitchen in a single-family residence or requiring a SUP with certain stipulations and penalties attached in case of violation and/or ownership changes.

Currently, the Lancaster Development Code has the following definitions and standards regarding dwelling unit, family, and single-family dwelling standards:

Chapter 14 Development Code Sec. 14.1302 Definitions

(...)

Dwelling Unit: Any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boarding houses or mobile homes, trailers, motor coaches, or other recreational vehicles.

a. **Single-Family:** A building designed for and/or occupied exclusively by one (1) family as a separate dwelling unit.

b. **Duplex:** A building designed and/or occupied exclusively by two (2) families living independently of each other.

(...)

f. The determination of whether one family is living independently of another is based on one or more of the following criteria:

- 1) Separate sanitary facilities.
- 2) Separate kitchen facilities.
- 3) Separate entrances.
- 4) Separate utilities.

(...)

Family: One (1) or more persons who are related by blood, adoption or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (5) (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit, cost-sharing basis.

Chapter 14 Development Code Sec. 14.402 Use Standards

(...)

(9) Single Family Dwelling (Attached, Detached, Zero Lot Line)

A. The dwelling must be permanently attached to a permanent concrete or pier and beam foundation.

B. The primary roof pitch must be at least four (4) in 12 inches.

(...)

Research conducted from survey cities indicates that none of the survey cities permit second kitchens in a single-family home. Similar to the City of Lancaster, the survey cities also describe a single-family residence as a building designed for and/or occupied exclusively by one (1) family as a separate dwelling unit. Furthermore, family is defined as “one or more persons who are related by blood, adoption or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit, cost-sharing basis.”

This item is for City Council discussion only.

Attachments

Highlighted Section of Sec 14.1302

Highlighted Section of Sec 14.402

Establishments that contain more than four (4) coin operated machines as defined by City Ordinances and/or more than one (1) pool table are hereby defined to be commercial amusements and shall meet the requirements for such uses as set forth in this ordinance.

Commission. The Planning and Zoning Commission of the City of Lancaster, Texas.

Comprehensive Plan. The Comprehensive Plan of the City of Lancaster and includes any unit or a part of such unit separately adopted and any amendment to such plan or parts thereof.

Condominium. A multifamily dwelling unit, within which designated dwelling units are conveyed fee simple title, with an undivided interest in the building's common elements, to include, but not be limited to, halls, stairs, elevators, roof, parking space, and the land when the building is not constructed on leased land.

Conservation Development. A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features. (See Cluster Development.)

Convent or Monastery-a building or group of buildings designed to provide group housing for persons under religious vows or orders.

Court. An open unoccupied space, other than a yard, on the same lot with a building and which is bounded on two (2) or more sides by the building.

Curb Level. The level of the established curb in front of the building measured at the center of such front, or in the case of a corner lot, along the abutting street where the mean curb level is the highest. Where no curb has been established, the City Engineer shall establish such curb or its equivalent for the purpose of this Ordinance.

Day Care Center or Day Nursery. A place for the care of children. Services usually include a staff nurse and a hot meal is normally served.

Density. The ratio of dwelling units per gross acre of platted area being developed.

Director. The Director of Community Development for the City of Lancaster.

District. A zone or geographic area within the municipality within which certain zoning or development regulations apply.

Drive-In Eating Establishments. Any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises or taken away for consumption in the home or other places.

Dwelling Unit. Any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boarding houses or mobile homes, trailers, motor coaches or other recreational vehicles.

- a. **Single-Family:** A building designed for and/or occupied exclusively by one (1) family as a separate dwelling unit.
- b. **Duplex:** A building designed and/or occupied exclusively by two (2) families living independently of each other.
- c. **Triplex:** A building designed for and/or occupied exclusively by three (3) families living independently of each other.
- d. **Fourplex:** A building designed for and/or occupied exclusively by four (4) families living independently of each other.

- e. **Multiple:** A building designed for and/or occupied exclusively by five (5) or more families living independently of each other.
- f. The determination of whether one family is living independently of another is based on one or more of the following criteria:
 - 1) Separate sanitary facilities.
 - 2) Separate kitchen facilities.
 - 3) Separate entrances.
 - 4) Separate utilities.

Empty Nester Unit. A residential unit type that is targeted to singles, empty nesters and retirees, which generally requires a minimum of maintenance and is smaller than typical single family homes. (See Article V.3.1.a.1)

Exception. Relief from or variation of the provisions of these regulations, other than Use Regulations, as applied to a specific piece of property, as distinct from a Variance or rezoning, which may be granted by the Director, the Planning and Zoning Commission or the City Council as specified in this Unified Development Code. (See “Variance” and “Temporary Waiver”.)

Family One (1) or more persons who are related by blood, adoption or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (5) (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit, cost-sharing basis.

Fence. An enclosure or barrier for the purpose of enclosing space or separating lots, composed of masonry or concrete walls, excluding retaining walls; or wood, metal, or concrete posts connected by boards, rails, panels, wire, or mesh.

Filling, Retail Service Station. An establishment where gasoline, oil and grease, or automobile accessories are sold, supplied or dispensed to the vehicle trade or where motor vehicles received limited repair, are equipped for service, or where electric storage batteries are recharged and cared for, or a place where any two or more such activities are carried on or conducted as the principal use of the establishment. (The storage, sale, lease, or rental of more than one [1] boat or mobile home, or more than five [5] hauling trailers is prohibited.)

Flea Market/Second Hand Dealer/Swap Meet. The sale or trade of used merchandise customarily involving tables or space leased or rented to vendors either in the open air or in a building. This does not include a used merchandise establishment or an antique store.

Floor Area Ratio. The relationship of the gross floor area of all buildings on a lot to the total lot area. Parking structures shall be excluded in the calculation of the floor area ratio.

Frontage. All the property abutting on one (1) side of a street between two (2) intersecting streets, measured along the street line.

Garage Apartment. A dwelling unit attached to a private garage.

Garage, Community. A building or portion thereof, other than a public, private or storage garage as defined below, providing storage for motor vehicles with facilities for washing, but no other services, such garage to be in lieu of private garages within a block or portion of a block.

Garage, Commercial. A commercial garage is any premises and structures used for housing more than three (3) motor driven vehicles or where any vehicles are kept for remuneration, hire, or sale and where a retail service station may be maintained as a secondary use.

(6) Guest Quarters/Secondary Living Unit

- A. Guest quarters or secondary living unit may be allowed on a property in a residential or commercial zoning district provided that it is ancillary to the primary use and that only one such facility is provided.
- B. The area of such quarters shall not exceed 900 s.f. or 50% of the main structure, which ever is less. However, in the AO District, such quarters may be up to 1,200 s.f. in size.
- C. No such use may be sold or conveyed separately without meeting the requirements of the zoning district and the Subdivision Regulations.

(7) Home Occupation

- 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 rest 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.

(8) Portable Building - Residential

- A. On residentially zoned properties one (1) portable building shall be allowed as an accessory to a residential use on the same lot except for multi-family districts, which shall not contain portable buildings.
- B. Such building shall not exceed 160 square feet in floor area or 10 feet in height. In 2F, such building shall be limited to 100 square feet in area.

(9) Single Family Dwelling (Attached, Detached, Zero Lot Line)

- A. The dwelling must be permanently attached to a permanent concrete or pier and beam foundation.
- B. The primary roof pitch must be at least four (4) in 12 inches.

(10) Townhouse. In retail districts, townhouses must be part of an integrated master plan with retail development, and include an attractive pedestrian environment.

(11) Urban Residential

- A. Urban residential includes residential development which at least partly face streets, public sidewalks, or common open space, or which are located above retail, office or service uses.

CITY OF LANCASTER CITY COUNCIL

City Council Special Work Session

3.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

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

Submitted by: Vicki D. Coleman, Development Services Director

Agenda Caption:

Discuss limiting the number of vehicles parked at a single-family residence.

Background:

As prescribed in the City Council Rules and Procedures, amended on November 16, 2020, Section D. City Council Agenda Process, Subsection 1.b., Councilmember Carol Strain-Burk requested that an item be included on a City Council Work Session for the purpose of discussing limits on the number of vehicles parked at a single-family residence.

Currently, the City does not have any adopted standards that explicitly limit the number of vehicles that may be parked at a single-family residence. In researching the survey cities, staff was not able to identify any adopted standards that explicitly limit the number of vehicles that may be parked on-site. Currently, the Lancaster Development Code requires two enclosed parking spaces for homes. Additionally, property owners may only park on improved surfaces, such as driveways or parking pads. The number of vehicles is limited to the parking capacity of these surfaces that is accommodated by code.

Currently, the Lancaster Development Code has the following definitions regarding dwelling unit and family that impact demand for parking at a single-family residence.:

Chapter 14 Development Code

Sec. 14.1302 Definitions

(...)

Dwelling Unit. Any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boarding houses or mobile homes, trailers, motor coaches, or other recreational vehicles.

a. Single-Family: A building designed for and/or occupied exclusively by one (1) family as a separate dwelling unit.

(...)

Family: One (1) or more persons who are related by blood, adoption, or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (5) (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit, cost-sharing basis.

Section 14.604 Residential Parking

(a) Lots Less than Five Acres.

(1) Location. All required residential parking shall be located onsite.

(2) Parking in Front Yards of Residential and Agricultural. No required off-street parking space shall be located in the required front yard in any residential or agricultural district.

(3) Storage of Vehicles. On lots less than five (5) acres, trailers, motor homes, trucks (greater than 1.5 ton capacity), camper cabins, motorcycles, boats, farm machinery, inoperable motor vehicles, or similar equipment, shall not be parked or stored on any residentially or agriculturally zoned lot or on the adjacent street except when in conformance with the following provisions:

A. Such equipment shall be located beside or behind the primary structure and back from the nearest corner of the front facade of the house a minimum of 20 feet, and

B. Be wholly contained in an enclosed garage or carport; or be screened with a minimum 7-foot solid fence or landscaping, from view of public rights of way and adjoining properties, and

C. If located on a lot which is less than 2 acres, it shall be parked on an approved surface or concrete, asphalt or stabilized gravel.

D. Equipment taller than 8 feet above grade shall respect the building setback lines but may be placed up to 3 feet from an alley property line.

(...)

This item is for City Council discussion.

Attachments

Highlighted Section of Sec 14.1302

Highlighted Section of Sec 14.606

Establishments that contain more than four (4) coin operated machines as defined by City Ordinances and/or more than one (1) pool table are hereby defined to be commercial amusements and shall meet the requirements for such uses as set forth in this ordinance.

Commission. The Planning and Zoning Commission of the City of Lancaster, Texas.

Comprehensive Plan. The Comprehensive Plan of the City of Lancaster and includes any unit or a part of such unit separately adopted and any amendment to such plan or parts thereof.

Condominium. A multifamily dwelling unit, within which designated dwelling units are conveyed fee simple title, with an undivided interest in the building's common elements, to include, but not be limited to, halls, stairs, elevators, roof, parking space, and the land when the building is not constructed on leased land.

Conservation Development. A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for recreation, common open space, or the preservation of historically or environmentally sensitive features. (See Cluster Development.)

Convent or Monastery-a building or group of buildings designed to provide group housing for persons under religious vows or orders.

Court. An open unoccupied space, other than a yard, on the same lot with a building and which is bounded on two (2) or more sides by the building.

Curb Level. The level of the established curb in front of the building measured at the center of such front, or in the case of a corner lot, along the abutting street where the mean curb level is the highest. Where no curb has been established, the City Engineer shall establish such curb or its equivalent for the purpose of this Ordinance.

Day Care Center or Day Nursery. A place for the care of children. Services usually include a staff nurse and a hot meal is normally served.

Density. The ratio of dwelling units per gross acre of platted area being developed.

Director. The Director of Community Development for the City of Lancaster.

District. A zone or geographic area within the municipality within which certain zoning or development regulations apply.

Drive-In Eating Establishments. Any structure and premises specifically designed for the preparation and dispensing of food and meals for consumption either indoors or in a vehicle parked on the premises or taken away for consumption in the home or other places.

Dwelling Unit. Any building or portion thereof which is designed for or used primarily for residential occupancy, but not including hotels, boarding houses or mobile homes, trailers, motor coaches or other recreational vehicles.

- a. **Single-Family:** A building designed for and/or occupied exclusively by one (1) family as a separate dwelling unit.
- b. **Duplex:** A building designed and/or occupied exclusively by two (2) families living independently of each other.
- c. **Triplex:** A building designed for and/or occupied exclusively by three (3) families living independently of each other.
- d. **Fourplex:** A building designed for and/or occupied exclusively by four (4) families living independently of each other.

- e. **Multiple:** A building designed for and/or occupied exclusively by five (5) or more families living independently of each other.
- f. The determination of whether one family is living independently of another is based on one or more of the following criteria:
 - 1) Separate sanitary facilities.
 - 2) Separate kitchen facilities.
 - 3) Separate entrances.
 - 4) Separate utilities.

Empty Nester Unit. A residential unit type that is targeted to singles, empty nesters and retirees, which generally requires a minimum of maintenance and is smaller than typical single family homes. (See Article V.3.1.a.1)

Exception. Relief from or variation of the provisions of these regulations, other than Use Regulations, as applied to a specific piece of property, as distinct from a Variance or rezoning, which may be granted by the Director, the Planning and Zoning Commission or the City Council as specified in this Unified Development Code. (See “Variance” and “Temporary Waiver”.)

Family One (1) or more persons who are related by blood, adoption or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (5) (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a nonprofit, cost-sharing basis.

Fence. An enclosure or barrier for the purpose of enclosing space or separating lots, composed of masonry or concrete walls, excluding retaining walls; or wood, metal, or concrete posts connected by boards, rails, panels, wire, or mesh.

Filling, Retail Service Station. An establishment where gasoline, oil and grease, or automobile accessories are sold, supplied or dispensed to the vehicle trade or where motor vehicles received limited repair, are equipped for service, or where electric storage batteries are recharged and cared for, or a place where any two or more such activities are carried on or conducted as the principal use of the establishment. (The storage, sale, lease, or rental of more than one [1] boat or mobile home, or more than five [5] hauling trailers is prohibited.)

Flea Market/Second Hand Dealer/Swap Meet. The sale or trade of used merchandise customarily involving tables or space leased or rented to vendors either in the open air or in a building. This does not include a used merchandise establishment or an antique store.

Floor Area Ratio. The relationship of the gross floor area of all buildings on a lot to the total lot area. Parking structures shall be excluded in the calculation of the floor area ratio.

Frontage. All the property abutting on one (1) side of a street between two (2) intersecting streets, measured along the street line.

Garage Apartment. A dwelling unit attached to a private garage.

Garage, Community. A building or portion thereof, other than a public, private or storage garage as defined below, providing storage for motor vehicles with facilities for washing, but no other services, such garage to be in lieu of private garages within a block or portion of a block.

Garage, Commercial. A commercial garage is any premises and structures used for housing more than three (3) motor driven vehicles or where any vehicles are kept for remuneration, hire, or sale and where a retail service station may be maintained as a secondary use.

(3) Off-Site Parking Agreement.

- A. When the required off-street parking spaces are not located on the same lot with the building or use served, or when the required off-street parking spaces are provided collectively or used jointly by two (2) or more establishments, a written agreement which assures the retention of such spaces for this purpose, and for a period of not less than 2 years, shall be drawn and executed by the parties concerned, approved as to form by the City Attorney, and filed with the application for a Building Permit or Certificate of Occupancy if a change in use is involved.
- B. If the off site parking is terminated for any reason, then alternative parking meeting the standards of this Article, shall be required, or the property shall lose its Certificate of Occupancy.

(4) Parking in Front Yards of Non-Residential. In any non-residential district, the required off-street parking space may be located in the required front yard provided that it meets landscaping and screening requirements in *Article 14.800 Landscape Standards.*

(e) Lighting of Parking and Loading Areas.

- (1) Spill-Over Lighting. All lighting facilities shall be so arranged as to reflect the illumination away from any adjacent property. Such lighting facilities shall provide illumination within parking areas not to exceed a maintained average of one and a half (1.5) foot-candles at ground level, and shall distribute not more than two-tenths (0.2) of one foot-candle of light upon any adjacent residential property. (Also, see *Article 14.700, Outdoor Lighting for Non-Residential Properties.*)
- (2) Lighting as a Nuisance or Safety Hazard. All lighting facilities shall be placed, masked or otherwise arranged such that illumination or glare shall not intrude on residential property or create a hazard to motorists on any street, alley or other public way

(f) Pay Parking Lots. No charge may be made for at-grade parking spaces except for special events, unless approved by City Council as part of a Specific Use Permit.

(g) Shared Parking/Cross Access. In master planned retail centers, cross-access and shared parking agreements are required for final platting.

Sec. 14.604 Residential Parking

(a) Lots Less than Five Acres.

- (1) Location. All required residential parking shall be located onsite.
- (2) Parking in Front Yards of Residential and Agriculture. No required off-street parking space shall be located in the required front yard in any residential or agricultural district.
- (3) Storage of Vehicles. On lots less than five (5) acres, trailers, motor homes, trucks (greater than 1.5-ton capacity), camper cabins, motorcycles, boats, farm machinery, inoperable motor vehicles, or similar equipment, shall not be parked or stored on any residentially or agriculturally zoned lot or on the adjacent street except when in conformance with the following provisions:
 - A. Such equipment shall be located beside or behind the primary structure and back from the nearest corner of the front façade of the house a minimum of 20 feet, and
 - B. Be wholly contained in an enclosed garage or carport; or be screened with a minimum 7-foot solid fence or landscaping, from view of public rights-of-way and adjoining properties, and
 - C. If located on a lot which is less than 2 acres, it shall be parked on an approved surface of concrete, asphalt or stabilized gravel.

D. Equipment taller than 8 feet above grade shall respect the building setback lines but may be placed up to 3 feet from an alley property line.

- (4) Loading and Unloading. Notwithstanding other requirements of this Section, such equipment may be parked anywhere on a residential, agricultural or commercial premises not to exceed 48 hours for the purpose of loading and unloading only.
- (5) Living or Sleeping. No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on any lot not approved for such purposes.

Sec. 14.605 Off-Street Parking Requirements

(a) Off-Street Parking Requirements.

- (1) Parking Requirements. The Schedule of Off-Street Parking Requirements in Figure 3 establishes parking requirements for all zoning districts.
- (2) Notwithstanding 1 above, the maximum allowed parking on a non-single-family or duplex lot may not exceed the minimum parking requirement plus an additional 10%, without approval of an Exception by the Planning and Zoning Commission.

(b) Conventions Used in Parking Requirement Schedule.

- (1) Square Feet. "s.f." means gross square feet of building, unless otherwise noted.
- (2) Site Area Parking Requirements. The parking requirement for a use of site area is based on the net site area exclusive of parking and buildings.
- (3) Land Uses. Land uses listed under "Permitted Uses" in the accompanying schedule does not mean that this use is permitted within the City. Please refer to *Article 14.400 Permissible Uses*.

(c) Off-Street Parking Standards.

- (1) Head-In Parking. An off-street parking space shall not be located on a public street. Head-in parking adjacent to a public street wherein the maneuvering of the vehicle in parking or leaving a parking space is done directly onto a public street, shall not be allowed in non-residential zoning districts nor shall it be allowed in conjunction with multi-family residential land uses unless specifically approved as part of a special district zoning ordinance such as for the downtown.
- (2) Parking Spaces and Aisle Surfaces. All parking spaces, aisles and maneuvering areas shall have an all-weather surface, whether enclosed or unenclosed, and shall be connected by an all-weather surfaced driveway to a street or alley.
- (3) Parking Space and Aisle Dimensions. All parking spaces and aisle dimensions shall conform to FIGURE 5 OFF-STREET PARKING STANDARD DIAGRAM unless specifically approved by the City Engineer.
- (4) Site Access for Vehicles. Access to a lot or tract shall conform to the Access Control Guidelines in the Driveway Ordinance. A driveway conforming to City Driveway Standards shall be constructed for each approved access point. A permit must be obtained from the City to construct a driveway within the City.
- (5) Wheel Stops. All parking, loading spaces and vehicle sales areas on private property shall have a vehicle stopping device installed so as to prevent parking of motor vehicles in any required landscaped areas, to prevent any parked vehicle from overhanging a public right-of-way line or public sidewalk. The requirement shall apply only where spaces are adjacent to the walks, right-of-way, and landscaping. Parking shall not be permitted to overhang public right-of-way in any case.

LANCASTER CITY COUNCIL

City Council Special Meeting

1.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

Goal(s): Financially Sound City Government

Submitted by: Carey Neal, Assistant to the City Manager

Agenda Caption:

Consider a resolution approving the terms and conditions of the Texas Coalition for Affordable Power, Inc. (TCAP) professional services agreement and GEXA Energy's Commercial Electric Service Agreement for power provided on and after January 2023.

Background:

On November 19, 2020, City Council received a presentation from a representative of TCAP at a Special Meeting regarding entering into a professional service agreement and a commercial electricity agreement to provide electricity for the City.

The Texas Legislature deregulated the state's electricity market in 2001. The Cities Aggregation Power Project (CAPP) and the South Texas Aggregation Project (STAP) was formed to buy power in blocks for governmental entities. In 2010, CAPP and STAP merged to form the Texas Coalition for Affordable Power (TCAP). TCAP is a non-profit organization committed to providing electricity at the lowest possible cost to its members.

The City of Lancaster, along with 170 cities and political subdivisions, is a member of TCAP. TCAP is a non-profit corporation that leverages aggregate members' power needs to negotiate competitive electric prices for its members. TCAP has procured electricity for its members since the beginning of retail electric deregulation in Texas in 2002.

TCAP has recently introduced a new program, Strategic Hedging Program (SHP). SHP was designed as a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of the participating member cities. The program will involve a series of monthly competitive auctions.

The City of Lancaster executed a fixed rate, five-year electricity supply agreement with GEXA Energy for City facilities effective January 1, 2018, through December 31, 2022. In recent years, the electric market and the mix of available sources and supplies has changed dramatically. In order to procure electricity at a more competitive value, TCAP is offering members the opportunity to participate in a strategic hedging program (SHP).

Under this program, one-twelfth (1/12) of the annual electricity supply would be procured each month, two years forward year-to-year. In turn, this provides the lowest market pricing to reduce charges and premiums longer-term contracts must charge. SHP features a highly competitive RFP process of more than 20 vetted creditworthy suppliers. At least 4 suppliers will be in each TCAP portfolio at all times. Prices will be known to members well prior to fiscal year budgeting needs. Additionally, members will be provided with twice a year periodic off-ramps if a member desires to revert to a traditional fixed price/fixed term contract.

In order to prepare for the electric supply contract beyond 2022, the City Council may approve a professional services agreement and commercial electricity services agreement. This would authorize TCAP to function as a procurer of energy in addition to serving as an agent in negotiating contracts. If approved by City Council, the City will execute a professional services agreement between the City of Lancaster and TCAP and a commercial electricity service agreement between the City of Lancaster and GEXA Energy, LP to provide power on and after January 1, 2023.

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 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

Exhibit A

Exhibit B

RESOLUTION NO.

RESOLUTION OF THE CITY OF LANCASTER, TEXAS ADOPTING TEXAS COALITION OF AFFORDABLE POWER'S (TCAP) PROFESSIONAL SERVICES AGREEMENT AND GEXA ENERGY'S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2023.

WHEREAS, the City of Lancaster is a member of Texas Coalition For Affordable Power, Inc. ("TCAP"), a non-profit, political subdivision corporation of the State of Texas; and

WHEREAS, TCAP has previously arranged for the City to purchase power through Gexa Energy with a contract set to expire December 31, 2022; and

WHEREAS, TCAP has designed a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of its members who desire participation in a Strategic Hedging Program ("SHP") that will involve a series of monthly competitive auctions; and

WHEREAS, TCAP has prepared a Professional Services Agreement ("PSA"), attached as Exhibit A, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members who choose to participate in the SHP; and

WHEREAS, approval of the PSA is a necessary, but not sufficient, prerequisite to participation in the SHP; and

WHEREAS, the PSA is a relational contract that defines services provided by TCAP to members regardless of whether a member decides to commit to the SHP; and

WHEREAS, the industry-standard retail contract is a Commercial Electric Service Agreement ("CESA") offered by a Retail Electric Provider ("REP"); and

WHEREAS, TCAP has negotiated modifications to the current CESA between the City and Gexa Energy to reflect participation in the SHP; and

WHEREAS, the CESA that will facilitate participation in the SHP effective for power deliveries in and beyond 2023 (attached as Exhibit B) will need to be approved and signed prior to December 8, 2020; and

WHEREAS, the City desires to participate in the SHP.

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

SECTION 1. That the City Manager is authorized to sign Exhibit A, TCAP's Professional Services Agreement, and Exhibit B, Gexa Energy's CESA, and send the agreements to TCAP, 15455 Dallas Parkway, Ste 600, Addison, TX 75001.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 7th day of December, 2020.

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED:

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

Exhibit A

PROFESSIONAL SERVICES AGREEMENT BETWEEN

THE CITY OF LANCASTER AND TEXAS COALITION FOR AFFORDABLE POWER, INC.

This Professional Services Agreement (“AGREEMENT”) is made and entered by and between Texas Coalition for Affordable Power, Inc. (“TCAP”), a non-profit, political subdivision corporation, and the City of Lancaster, Texas (“MEMBER”), a TCAP member.

SECTION 1 DURATION:

This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER’s electric load included in a current TCAP procurement.

SECTION 2 PURPOSE OF AGREEMENT:

The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement (“CESA”) with a retail electric provider (“REP”) selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER’s current CESA in effect through December 31, 2022.

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:

MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP (“Energy Manager”) and to select an acceptable, cost-beneficial REP to serve MEMBER’s electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP’s Strategic Hedging Program (“SHP”), as may be authorized and defined by TCAP’s Board of Directors. If MEMBER has provided to TCAP an Authorized Election Form, TCAP’s procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in energy related matters before State agencies, the courts or legislature. TCAP will provide additional customer services to MEMBER that are defined in SECTION 5.

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive

refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power development opportunities beneficial to its MEMBERS, including renewable projects (each, a "Power Project").

2. MEMBER Procurement Options

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER'S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP's SHP, and TCAP will function as MEMBER's electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER'S CESA (the "CESA Energy Price"). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager's estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER'S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER'S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER'S CESA price.

B. Customer and Billing Services Provided by TCAP

1. REP Portal

TCAP consultants oversee the development and presentation of the REP's portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

2. REP Customer Service

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues

TCAP monitors Public Utility Commission ("PUC") and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER's annual budget estimates. TCAP will prepare an annual electricity cost estimate for

MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER'S Transmission and Distribution Service Provider ("TDSP" aka "wires company").

4. Information Services

TCAP maintains a member web site, www.tcaptx.com. In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP's Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League ("TML"). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

5. Demand Response, Distributed Generation and Cost Savings Strategy

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER's participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request, TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

6. Regulatory and Legislative Representation

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

7. Strategic Hedging

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price

by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

SECTION 6 MEMBER RIGHT OF TERMINATION:

A. Fixed-Term, Fixed-Price Contract

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

B. Strategic Hedging Program

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days prior notice of any upcoming solicitation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute ("EEI") principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages

prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

C. Participation in Power Projects

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER'S CESA, MEMBER's termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

SECTION 7 CONFIDENTIALITY:

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER's release of information so that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "Receiving Party") shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER's account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. "Authorized Parties" means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

SECTION 8 PARAGRAPH HEADINGS:

The paragraph headings contained in this AGREEMENT are for convenience only and shall is no way enlarge or limit the scope or meaning of the various and several paragraphs.

SECTION 9 COUNTERPARTS:

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10 DEFINITIONS:

"Annual Adjustment" shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project

settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

“Energy Manager” means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP’s direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP’s REP.

“Power Project” means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

“Project Addendum” means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER’S CESA.

“QSE Services Fee” means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

“Quarterly Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER’s relative contribution to TCAP load within specific ERCOT zones.

“Retail Electric Provider” or “REP” means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

“Strategic Hedging Program” or “SHP” means an energy procurement strategy approved by TCAP’s Board of Directors, overseen by TCAP’s designated consultants, and administered by TCAP’s appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the 7th day of December 2020.

MEMBER:

By: _____

Printed Name: Opal Mauldin-Jones

Title: City Manager

TCAP:

By: _____

Printed Name: _____

Title: _____

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the "**Agreement**"), is entered into between Gexa Energy, LP ("**Gexa**"), a Texas limited partnership, and the City of Lancaster ("**Customer**"). Gexa and Customer may be referred to individually as a "**Party**" or collectively as the "**Parties**".

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider ("**REP**") for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer's REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer's appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receive from Gexa is for Customer's exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a "**Scheduling Failure**") the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer's needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. ("**TCAP**"), and has entered into the Professional Services Agreement (the "**PSA**") authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP's Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP's members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer's TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

(a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the "**Term**"). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa's service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer's prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP ("**Termination Notice**"). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer's behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2022. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2022. As a result of variations in the timing of the Effective Date described in this Section 1.4 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

(b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the "**Delayed Effective Date Period**"), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the "**Delayed Effective Date Electricity Amount**"). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a) the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this

Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa's control.

(c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

(a) If Customer has elected to fix all or a portion of the Energy Price for a fixed term by providing an Authorized Election Form to TCAP in accordance with the PSA, the Energy Price shall equal the fixed price as determined by TCAP in accordance with the PSA, and the Authorized Election Form. Any portion of the Energy Price that is not fixed shall be noted in the Authorized Election Form, and shall be settled with Customer in accordance with Section 2.2 of this Agreement. If Customer has not made such an election, the Energy Price shall be determined in accordance with the PSA, as follows:

- (i) TCAP shall periodically solicit, or direct its designated Energy Manager to solicit, wholesale energy market quotes, and may direct the Energy Manager to transact at the lowest of the market quotes obtained for the purpose of serving customer's load, in accordance with the PSA (each such transacted quote, a "**Wholesale Transaction**").
- (ii) Once TCAP has directed its Energy Manager to enter into Wholesale Transactions sufficient to serve Customer's load for a given calendar year, Energy Manager and TCAP shall establish the Energy Price for that Calendar Year in accordance with those procedures outlined in the PSA, which Customer hereby acknowledges it has reviewed and accepted. TCAP shall set the Energy Price for a given Calendar Year no later than nine (9) months prior to the start of such Calendar Year. If Customer elects to participate in a project and executes the Project Addendum, the Energy Price shall include an estimate of the Project Settlement for each month of the Calendar Year in accordance with the Project Addendum.

(b) For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

2.2 Energy Price Adjustments.

- (a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Energy Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.
- (b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.

2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.

2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

3.2 Project Settlement Agent Services. Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "**Aggregator Fee**"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's

electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

4.2 Deposits and Other Security. A Party (the "**Requesting Party**") may require the other Party (the "**Providing Party**") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "**Performance Assurance**") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

SECTION 5: EARLY TERMINATION; DAMAGES

5.1 Cancellation by Customer for Insufficient Appropriations. If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "**Appropriations Failure**"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

5.2 Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.5, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "**Customer Early Termination Damages**"). The "**Retail Termination Payment**" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancellation or refusal of electric supply delivery ("**Customer Terminated Usage**") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "**QSE Services Termination Payment**" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "**Quarterly and Annual Adjustment Payment**" shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("**Wholesale Supply Failure**"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to Gexa's cancellation or refusal of electric supply delivery ("**Gexa Terminated Usage**") multiplied by (ii) the REP Services Fee specified in the REP Services Agreement (that result the "**Gexa Early Termination Damages**"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination

Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

5.5 Wholesale Transaction Termination Payment. If the Wholesale Transactions are terminated then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "**Wholesale Transaction Termination Payment**"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

SECTION 6: NOTICES AND PAYMENT

6.1 General Notice. Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

- a. If to Customer:
City of Lancaster
211 N. Henry Street
Lancaster, Texas 75146

- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

6.2 Payments. The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

- a. If to Customer:
City of Lancaster
211 N. Henry Street
Lancaster, Texas 75146

- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

SECTION 7: DEFINITIONS

7.1 Definitions. In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. **“Actual Usage”** means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.
2. **“Delivery Charges”** means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.
3. **“EEI Master Agreement”** mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.
4. **“Effective Date”** means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer’s REP to such ESI ID to Gexa.
5. **“Electricity Related Charges”** means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.
6. **“Energy Manager”** means the wholesale market participant designated by TCAP to perform the services described in the PSA.
7. **“Energy Price(s)”** means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.
8. **“ERCOT”** means the Electric Reliability Council of Texas.
9. **“ERCOT Protocols”** means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.
10. **“ESI ID(s)”** means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.5.
11. **“Expected Usage”** means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.
12. **“kWh”** means kilowatt hour.
13. **“LMP”** or **“Locational Marginal Price”** means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.
14. **“Market Rate”** means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.
15. **“Nodal Market”** means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.
16. **“Nodal Congestion”** means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.

17. **“Non-Recurring Charges”** means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer’s electric service.
18. **“PUCT”** means Public Utility Commission of Texas.
19. **“Project Settlement Payment”** means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.
20. **“QSE Services Fee”** means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.
21. **“REP Services Agreement”** means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.
22. **“REP Services Fee”** means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.
23. **“Taxes”** means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.
24. **“TCAP”** means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.
25. **“TDSP”** or **“Transmission and Distribution Service Provider”** means an entity regulated by the State of Texas, which transmits or distributes electric energy.

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Attachments:

Attachment A
Attachment B (for new TCAP Customers only)

Terms and Conditions of Service
Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER: City of Lancaster	GEXA: Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC
By:	By:
Printed: Opal Mauldin-Jones	Printed:
Title: City Manager	Title:
Date: December 7, 2020	Date:

Terms and Conditions of Service Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

A. REPRESENTATIONS AND WARRANTIES

A.1 Customer's Representations and Warranties. As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

A.2 Gexa's Representations and Warranties. As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

A.3 Forward Contract. (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("Code"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

B.1 LIMITATIONS OF LIABILITY. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

B.2 Duty to Mitigate. Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("**CUSTOMER PROTECTION RULES**") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS

SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

B.4 UCC/Disclaimer of Warranties. The electricity delivered is a “good” as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer’s ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer’s ESI ID(s). Once the electric energy is delivered to Customer’s ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

B.5 Force Majeure. Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer (“**Force Majeure Event(s)**”) may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer’s facilities, or any cause beyond such Party’s control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

C. CONFIDENTIALITY AGREEMENT

C.1 Confidentiality. Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description the information sought prior to Customer’s release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the “**Receiving Party**”) shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the “**Disclosing Party**”) except for disclosures to Authorized Parties or as required by law. “**Confidential Information**” means information in written or other tangible form which is marked as “Confidential” when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public, (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder, (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party, or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer’s account and billings. “**Authorized Parties**” means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties’ affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default (“**Event of Default**”) means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the

Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

D.2 Remedies upon an Event of Default. If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period. .

E. MISCELLANEOUS PROVISIONS

E.1 Disclaimer. This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

E.2 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

E.3 Waiver. Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

E.4 Assignment. Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations pursuant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withhold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggregator Fee .

E.6 Severability. If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

E.8 Further Assurances. The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

E.9 Emergency, Outage and Wire Service. In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

E.10 Customer Care. Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "*Applicable Law*").

E.12 No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

E.15 Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.

LANCASTER CITY COUNCIL

City Council Special Meeting

2.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

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

Submitted by: Opal Mauldin-Jones, City Manager

Agenda Caption:

Consider a resolution establishing the City of Lancaster Legislative Priorities for the 87th Session of the Texas Legislature.

Background:

The Texas Legislature meets in a regular session every two years, convening on the second Tuesday in January of every odd-numbered year. These biennial sessions are limited to 140 days. The governor can also call additional special sessions as necessary, which cannot exceed 30 days. The 87th Legislative Session is scheduled for January 12 through May 31, 2021.

Bill filing for the 87th legislative session began on November 12, 2020. Prior to the start of each legislative session, the City Council establishes legislative priorities that it considers of great importance and relevance to the City.

On November 19, 2020, at a special meeting, Council discussed the legislative priorities during the work session portion. The attached resolution will officially establish the discussed priorities and allow staff to coordinate with regional advocate affiliations such as the Best Southwest Partnership, North Texas Commission, Dallas Regional Chamber, and Texas Municipal League.

The following priority items are being proposed based on review by staff and the regional advocate affiliations such as the Best Southwest Partnership, North Texas Commission, Dallas Regional Chamber, and Texas Municipal League as having the potential to impact our organization if passed:

LOCAL GOVERNMENT ACCOUNTABILITY:

- **Support legislation that provides for enhanced local decision-making of local government including increasing the 3.5% revenue cap imposed on cities and counties to 6% or higher.**
 - Legislation in relation to Senate Bill 2 (S.B.2), is the Texas Property Tax Reform and Transparency Act of 2019, which was passed by the Texas Legislature in 2019. S.B.2 reforms the system of property taxation in three primary ways: (1) lowering the tax rate a taxing unit can adopt without voter approval and requiring a mandatory election to go above the lowered rate; (2) changes to the procedure by which a city adopts a tax rate; and (3) making several changes to the property tax appraisal process.
-

- Prior to S.B.2, the term “effective tax rate” referred to the benchmark tax rate needed to raise the same amount of maintenance and operations property taxes on existing property as the previous year, after considering changes in appraised values. S.B.2 changed the terms “effective tax rate” and “effective maintenance and operations tax rate” to “no-new-revenue tax rate” and “no-new-revenue maintenance and operations tax rate,” respectively.
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- Under pre-S.B.2 law, a city’s rollback rate was the rate necessary to raise precisely eight percent more maintenance and operations tax revenue than the year before after taking into account appraisal fluctuations. The debt service component of the tax rate is then added to the product of the effective maintenance and operations rate and 1.08. In addition to changing the terminology from “rollback rate” to “voter-approval rate,” S.B.2 lowers the multiplier used in the rate calculation from 8 percent to 3.5 percent for cities that aren’t considered to be “special taxing units,” which is nearly every Texas city. Additionally, the term “rollback tax rate” was changed to “voter-approval tax rate.”
-

- **Support legislation repealing HB 2439, which unnecessarily prohibited cities from regulating building products, materials, or methods used in the construction of residential or commercial structures.**

- This legislation became effective on September 1, 2019. HB 2439 relates to certain regulations adopted by governmental entities for the building products, materials, or methods used in the construction or renovation of residential or commercial buildings. HB 2439 prevents local governments from regulating the materials used for new construction, maintenance, and renovations. Instead of localized rules regarding building products and methods, the new law sets nationally accepted codes as the only standards for cities to regulate construction within their boundaries. For cities, this regulation has the potential of causing long-term effects on the value of homes within the community. Builders and Developers are only required to use materials and products approved under the Model National Standards Code. (Example prohibits requiring masonry materials for residential properties).
-

- **Support repealing portions of HB 3167, to provide that the governing body may delegate to one or more officers or employees of the municipality to approve, deny, or conditionally approve plans and to allow for an applicant at their discretion to waive the deadline for a response, including allowing the applicant to request an extension on a plat application for greater than 30 days, not exceeding 90 days, to be accepted/approved by the municipality.**

- HB 3167 became effective September 1, 2019, and relates to the county and municipal approval procedure for land development applications.
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- This bill relates to county and municipal approval procedures for land development applications, known as the 30-day shot clock.
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- The bill amends Local Government Code Chapter 212, which relates to subdivision platting. The bill seems to insert a “site plan” and “site development plan” into the subdivision plat approval process.
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- Prior to the bill cities and developers could work together to ensure plans were in compliance with local regulations and vision.
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- The process was regulated to thirty (30) days unless the developer voluntarily without an inquiry requested to delay the project. Currently, this legislation will cost developers more in fees, because without the ability to review and work with developer plans must be denied & resubmitted if they don’t adhere to regulations.
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- **Support legislation which would provide an expedited process for voluntary annexations by petition between municipalities and property owners, as well as legislation that would provide a path to involuntarily annexation of property for a city.**

- Before the approval of S.B.6, December 2017, Texas granted broad annexation power to all of its home-rule cities.
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- S.B.6 required landowner or voter approval of annexations in the state's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process.
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- In 2019, H.B. 347 completely closed the book on unilateral annexations in every county. The bill ends most unilateral annexations by any city, regardless of population or location. Specifically, the bill makes most annexations subject to the three consent annexation procedures that allow for annexation: (a) on request of each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, the petition of landowners; and (3) authorizes certain narrowly-defined types of annexation (e.g., city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure.
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- The loss of planning and financial control may bring massive problems to transportation, utilities, and land use planning.
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- Property to be annexed must be in a city's extraterritorial jurisdiction and must touch the existing city limits. Most agree that a city may not annex "islands" of municipal territory. It is very common that a petitioner's property is across a road or a short distance from the existing city limits.
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- Historically, that's never been a problem. A home rule city could have included the road pursuant to the unilateral annexation authority granted by its charter, and a general law city had a statute (Local Government Code Sec. 43.103) allowing it to include the road. However, H.B. 347 took both away.
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- Local Gov't Code Sec. 43.1055. Annexation of Roads and Rights-of-Way: "Notwithstanding any other law, a municipality may by ordinance annex a road or the right-of-way of a road on request of the owner of the road or right-of-way or the governing body of the political subdivision that maintains the road or right-of-way under the procedures prescribed by Subchapter C-1."
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- **Support legislation to provide additional funding through the Municipal Court Building and Security Fund and Municipal Court Technology Fund, Support legislation to impose additional state fees or costs on municipal court convictions or require municipal courts to collect fine revenue for the state, and allow a more equitable way of distributing court fines that would result in a higher percentage of fines being kept local, where the laws are enforced, the court is held, and the fines collected.**

- The Texas Code of Criminal Procedures requires funding programs for municipalities under 850,000 population that are covered through fees collected by the municipal court.
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- **Municipal Court Building and Security Fund: Art. 102.017. Court Costs; Courthouse Security Fund; Municipal Court Building Security Fund; Justice Court Building Security Fund.**

- (a) A defendant convicted of a felony offense in a district court shall pay a \$5 security fee as a cost of court. (b) A defendant convicted of a misdemeanor offense in a county court, county

court at law, or district court shall pay a \$3 security fee as a cost of court. A defendant convicted of a misdemeanor offense in a justice court shall pay a \$4 security fee as a cost of court. The governing body of a municipality by ordinance may create a municipal court building security fund and may require a defendant convicted of a misdemeanor offense in a municipal court to pay a \$3 security fee as a cost of court.

• **Municipal Court Technology Fund: Art. 102.0172. Court Costs; Municipal Court Technology Fund:**

- The governing body of a municipality by ordinance may create a municipal court technology fund and may require a defendant convicted of a misdemeanor offense in a municipal court or municipal court of record to pay a technology fee not to exceed \$4 as a cost of court.
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• **Support legislation that would impact local sourcing of sales and use taxes for internet orders and support legislation that would help increase revenue sources for cities.**

- H.B. 1525 and H.B. 2153, passed in the 2019 legislative session, raise concern for cities regarding sourcing of sales and use taxes for online orders. H.B. 1525 requires online marketplaces, such as eBay, Amazon, or Etsy, to collect sales taxes on marketplace sales, instead of potentially requiring each individual seller on that marketplace to bear the burden of collecting the sales tax. Additionally, it requires the sales taxes associated with marketplace sales to be sourced to the destination to which the marketplace goods are shipped.
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- H.B. 2153 gave remote sellers the option to either collect and remit the actual sales taxes owed based upon the rate at the shipping destination or instead collect a simplified “single local use tax rate” of roughly 1.75 percent on all sales.
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- In 2020 the comptroller proposed amendments to the administrative rules pertaining to local sales and use tax collection in order to harmonize the rules and the statute following the passage of H.B. 1525 and H.B. 2153. Under the proposed rules, sales taxes on intrastate internet orders wouldn’t automatically be sourced to the community where the place of business receiving the order is located. Instead, the rules provided that an internet order would not be received at a place of business of the seller, meaning that sales taxes on those orders instead were sourced either to the location where the order was fulfilled, or the location where the purchased items were delivered to the consumer.
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- The adopted rule provides that orders received via a shopping website or software application are received at a location that is not a place of business in the state. The ultimate impact on cities where orders are sourced are, under the provisions governing where a sale is consummated, certain internet purchases may change from being sourced to the location where the order was deemed to have been received. The new rule provides that orders are sourced to the location where the order is fulfilled or the location where the order is received by the purchaser, depending on the exact circumstances. By comparison, nothing in the rule changes the sourcing of orders placed in person in Texas; in-person orders at a place of business in Texas are consummated at the place of business, regardless of where the order is fulfilled. We have been working with other cities in North Texas that may be impacted by the comptroller’s rule change.
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• **Support legislation that could assist cities with additional sources of revenue due to the effects of COVID-19.**

- Hotel/Motel Tax: The City’s hotel occupancy tax is 7%; which covers hotels, motels, and bed and breakfasts, as well as condominiums, apartments and houses rented for less than 30 consecutive days. Due to the health pandemic, the hotel/motel industry has seen a decrease in occupancy; which decreases revenue collected by cities. Legislation is expected to be presented to amend the Tax Code Chapter 351 to recognize the impact of COVID-19 to

possibly increase or adjust municipal tax rates during a state or national disaster.

- Legislation to increase individual item tax; such as beer or cigarettes are other options for municipalities to gain additional revenue.
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- **Support legislation to amend SB295/HB940 to further define unlawful tethering of dogs and implement a more enforceable penalty that does not limit an officer's ability to enforce the law.**

- Texas Health and Safety code, § 821.077, "Unlawful Restraint of Dogs", was created in 2007, to establish requirements for restraining a dog to ensure the safety and health of the animal and community. The Texas Animal Control Association, LEO's, and prosecutors maintain the law is unenforceable due to confusing language and a mandatory 24-hour warning period that limits officers immediate enforcement of this statute, thereby preventing them from intervening in a critically unsafe situation. This bill will address the following changes:
 - (a) The tethering device must allow the dog access to a shelter of adequate size to allow the dog to stand erect, to turn easily and to sit and lay down in a comfortable and normal position and constructed in such a manner as to keep the dog dry and protected from exposure to extreme temperatures. (b) The tethering device must allow the dog access to shade from direct sunlight and potable drinking water. (c) The length of the tethering device must be at least five times the length of the dog as measured from the tip of the dog's nose to the base of the dog's tail or twelve feet whichever is greater. (d) The tethering device must be attached to a collar or harness constructed of nylon, leather, or similar material properly fitted to the dog. (e) The tethering device must have swivels on both ends to prevent the dog from becoming entangled. (f) The tethering device cannot be made of metal chain links more than a quarter of an inch thick or have any weights attached to it. (g) The tethering device must be capable of keeping the dog from: (i) leaving the owner's property; (ii) entering within six feet of a public sidewalk, road, or highway; or (iii) reaching an object or hazard that poses a risk of injury or strangulation to the dog.
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- **Support legislation relating to limit the governor's power to control the sale, transportation, and use of weapons and ammunition during a declared state of disaster or state of emergency.**

- H.B. 26 : Weapons: This legislation would eliminate the governor's authority to: (1) limit the sale, dispensing, or transportation of firearms during a state of disaster; and (2) issue directives on the control of the sale, transportation, and use of weapons during a state of emergency.
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- **Support legislation to include a positive diagnosis of SARS-CoV-2 or COVID-19 to workers' compensation statute.**

- H.B. 34– Disease Presumption: This legislation would, among other things, add a diagnosis of SARS-CoV-2 or COVID-19 by a test approved by the CDC to the workers' compensation disease presumption statute.
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- **Support legislation to exempt emergency preparation items from sales and use tax.**

- H.B. 89– Sales Tax Exemption: This legislation would exempt the following from sales and use taxes as "emergency preparation items": (1) medical or other face masks used to protect the nose and mouth of a person wearing the mask from potential contaminants, or from transmission of particles from the person wearing the mask; (2) disposable gloves the primary purpose of which is to act as a protective barrier to prevent the possible transmission of disease; and (3) disinfectant cleaning supplies, including bleach products and sanitizing wipes.
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- **Support Legislation to establish an Emergency Powers Board during a declared state of disaster or public health disaster.**
 - H.B. 173– Emergency Powers Board: would: (1) establish the Emergency Powers Board to provide oversight during a declared state of disaster, including a declared public health disaster; (2) provide that the Board is made up of the governor, lieutenant governor, the speaker of the house, the chair of the Senate State Affairs Committee; and the chair of the House State Affairs Committee; (3) provide that after the eighth day after the date the governor issues an executive order, proclamation, or regulation related to a declared state of disaster or public health disaster, the Board, by a majority vote, may set an expiration date for the order, proclamation, or regulation; (4) the board may meet by telephone conference, video conference, or other similar telecommunication method provided that the requirements of the Open Meetings Act are met; and (5) if an executive order, proclamation, or regulation issued by the governor has an expiration date set by the governor and not modified by the Board that is on or after the 22nd day after the date the order, proclamation, or regulation is issued, the governor shall convene a special legislative session to determine whether any legislation is necessary to implement, modify, or repeal the order, proclamation, or regulation.
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- **Support legislation that repeals the provision that prohibits cities from adopting a requirement that establishes a maximum sales price for privately produced housing.**
 - H.B. 84 Home and Residential Lot Sales Price: would repeal the provision in current state law that prohibits a city from adopting a requirement that establishes a maximum sales price for a privately produced housing unit or residential building lot.
-

WATER AND INFRASTRUCTURE

- **Support legislation continuing to implement and adequately fund the Texas State Water Plan to meet the water supply needs associated with future population growth and the economic development of the State.**
 - The Texas Water Plan is based on future conditions that would exist in the recurrence of a drought. During the regional water planning process, regional water planning groups estimate the costs of water management strategies such as conservation, groundwater development, and new reservoirs that, in the event of a recurrence of a drought of record, would need to be implemented to meet the needs of their region. Once the planning groups have recommended water management strategies, they administer a survey to estimate the amount of state financial assistance that local and regional water providers will require implementing projects associated with those strategies.
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- Local governments have traditionally provided the majority of the financing for water-related infrastructure projects. Water providers finance projects primarily through municipal debt on the open bond market and less frequently with cash or private equity sources such as banks. While the traditional funding mechanisms will continue to assist with the financing of water projects, additional means are necessary to meet Texas' water needs.
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TRANSPORTATION

- **Support legislation maintaining existing law relating to eminent domain authority to allow planning and development of new and/or expanded transportation corridors including highways, high-speed rail, commuter rail, freight rail, and transit.**
 - The current **Texas Government Code: Chapter 2206 Eminent Domain**: Limitations on Purpose and Use of Property Acquired Through Eminent Domain. Sec. 2206.001. Limitation on Eminent Domain for Private Parties or Economic Development states in Sec. 2206.001 (c)(1)-(3) "This section does not affect entities authorized by law to take private property

through the use of eminent domain for transportation projects, including but not limited to, railroads, airports, or public roads or highways. (3) water supply, wastewater, flood control, and drainage projects”.

- Currently, the law protects cities from taking eminent domain of property for the use of transportation projects. Accordingly, if a city requires a property for a transportation project, the City is constrained only by the statutory provisions that grant it condemnation authority (and any other relevant statutes) and the limitations imposed by the constitution and case law. A city is free of the additional limitations imposed by section 2206.001(b).
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- **Support legislation reinstating and implementing all transportation “tools” necessary for the Texas Department of Transportation (TxDOT) to stimulate the economy and create jobs through planning, design, and construction of transportation projects including toll roads, tolled managed lanes, and facilitate the funding of these projects via concessions and any other financing avenues available, including public-private partnerships (P3s) and Comprehensive Development Agreements (CDA).**
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- **Support legislation continuing efforts to recapture all of Texas’ federal transportation tax dollars that are currently disbursed to other states, and provide additional funding to the Texas Department of Transportation (TxDOT) for transportation projects that would support regionally appropriate highway improvement and rail as components.**

- TxDOT is seeking legislation to address fair share for federal funding for the state of Texas in regard to the Federal Highway Trust Fund. Texas congressional leaders are urging fellow congressional lawmakers to address a longstanding inequity in the share of federal transportation funding Texans receive compared to what the state contributes in federal fuel taxes. According to the Federal Highway Administration, in fiscal year 2019 Texas will receive only 95 cents in transportation funding for every dollar Texans paid directly into the Highway Trust Fund. Texas contributes more to the Federal Highway Trust Fund than any other state and received proportionately less than any other state. Texas also is the only state that effectively received none of the multi-billion-dollar general fund transfer provided to the Highway Trust Fund in fiscal year 2019.
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- **Support legislation to allow a city to lower prima facie speed limits from 30 to 25 miles per hour without the need for a traffic study**

- A city may lower the state-mandated speed limit by performing an engineering and traffic investigation and determining that the prima facie speed limit is unreasonable or unsafe for that road. TEX. TRASP, CODE § 545.353. If requested by the school, the city must hold a public hearing at least once each calendar year to consider prima facie speed limits on a highway in the city, including a state highway, near the school or institution of higher education. TEX. TRASP, CODE § 545.357.
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- Before lowering the speed limit, the city must follow the “Procedures for Establishing Speed Zones,” and consider width and condition of the pavement, the usual traffic at the affected area, and other circumstances. The only instance in which a city may lower a speed limit without a traffic study, to as low as 25 miles per hour, is if the road is in an urban district, is less than four lanes, and is not a state highway.
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- **Support legislation allowing for greater flexibility by cities to fund local transportation projects; amend or otherwise modify state law to help cities fund transportation projects; or provide cities with additional funding options and resources to address transportation needs that the state and federal governments are unable or willing to address.**
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SOCIAL JUSTICE

- **Support legislation that provides funding for training programs for local police departments to be administered locally including certification opportunities for first responders to improve criminal justice and responses to adverse situations.**
 - **Support BO's LAW- Botham Jean Act (Bo's Law):** This legislation is aimed to close the loophole in the Mistake of Fact Law (Section 8.02 of the Texas Penal Code) which provides a loophole for defendant to commit an act due to a mistaken belief in fact and not be convicted for that act. The law allows for a defense to kill another individual and not be charged for their murder. Bo's Law would also, amend the Castle Doctrine (SB 378) to protect the victim, not the perpetrator. The current law is subjective.
 - (S. B.158): Body Camera Law-Currently, body camera law defines a Private Space- a location where a person has a reasonable expectation of privacy which includes a person's (victim's) home. Officers can use their discretion to turn off their camera when in a domestic violence victim's home or an abuse incident at home where a child is present. This also excludes the information from an open records request. Make amendments to S.B. 158, and the ability for law enforcement to turn off their camera in a private space; what constitutes a private space.

 - Police in-car video falls under the current law as a public place. The continuous recording of a video is critical for context and evidentiary purposes. If passed, the bill will prevent an officer from turning off a camera unless it is seized as evidence. This will allow courts to review the uninterrupted footage during an investigation and will allow the Judicial Court to make a determination of what is critical and what is not allowed by law enforcement when on a scene. A penalty for law enforcement will be allocated for officers who intentionally turn their body cameras off; this should be considered as tampering with evidence.
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- **Support the George Floyd Act-Texas Legislative Black Caucus (TLBC):** The George Floyd Act was introduced by the Texas Legislative Black Caucus. A comprehensive piece of criminal justice legislation named in honor of George Floyd, a native of Houston who died by a police officer's use of unnecessary force this past May. The George Floyd Act is the product of a series of town halls the TLBC held following Floyd's tragic death to discuss dismantling any systemic racism written into our state laws and policies.
 - The legislation is authored by Rep. Senfronia Thompson and will be sponsored in the Senate by our Senator, Senator Royce West. The legislation aims at eliminating the no-knock warrants and limit the use of force by officers requiring them to attempt to de-escalate the situation. The bill will aim to build on the Sandra Bland Act passed by the Legislation in 2017.

- The legislation will consist of banning chokeholds across the state and require law enforcement officers to intervene or render aid if another officer is using excessive force while on the job.

- The following provisions are related to the legislation's impact on cities:

 - **With respect to officer liability:**
 - (a) provide that a person may bring an action for any appropriate relief against a peace officer who, under the color of law, deprived the person or caused the person to be deprived of any rights under the Texas Constitution, provided that such action is brought not later than two years after the day the cause of action accrues; (b) provide that statutory immunity or a limitation on liability, damages, or attorney's fees does not apply to the action described in (1)(a), above, and a court shall award reasonable attorney's fees and court costs to a prevailing plaintiff and if judgment is entered in favor of the

defendant, the court may award reasonable attorney's fees and costs to the defendant only for defending claims the court finds frivolous; (c) provide that qualified immunity or the defendant's good faith but erroneous belief in the lawfulness of the defendant's conduct is not a defense to an action brought under (1)(a), above; and (d) require a public entity, including a city, to indemnify a peace officer employed by the entity for liability incurred by and a judgment imposed against the officer in an action brought under (1)(a), above, except that the entity shall not be required to indemnify the peace officer if the officer was convicted for the conduct that is the basis for the action;

◦ **With respect to the duties and powers of a peace officer:**

- (a) amend current law to provide that a peace officer has the discretion on whether or not, if authorized, to: (i). interfere without a warrant to prevent or suppress a crime; or (ii). arrest offenders without warrant so that they may be taken before the proper magistrate or court and be tried; (b) provide that a peace officer shall: (i) identify as a peace officer before taking any action within the course and scope of the officer's official duties unless the identification would render the action impracticable;(ii) intervene if the use of force by another peace officer: 1. violates state or federal law or a policy of any entity service by the other officer; 2. puts any person at risk of bodily injury, unless the officer reasonably believes that the other officer's use of force is immediately necessary to avoid imminent harm to a peace officer or other person; or 3.is not required to apprehend or complete the apprehension of a suspect; and 4. shall provide aid immediately to any person who needs medical attention, including a person who needs medical attention as a result of the use of force by a peace officer; (c) provide that a defendant may not be convicted of an offense related to controlled substances on the testimony of person acting covertly on behalf of a law enforcement agency unless the testimony is corroborated by evidence tending to connect the defendant with the offense committed;
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◦ **With respect to issuing citations in lieu of arrest for misdemeanor offenses:**

- (a) provide that the Texas Southern University, in consultation with other law enforcement organizations, shall publish a model policy related to the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only, that includes the procedure for a peace officer, upon a person's presentation of appropriate identification, to verify the person's identity and issue a citation to the person; (b) provide that each law enforcement agency shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only, provided that such policy meets the requirements of the model policy described in (3)(a), above; (c) provide that a law enforcement agency may adopt the model policy developed under (3)(a), above; (d) provide that, with the exception of certain assault offenses and for the offense of public intoxication, a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only or arrest a person who commits one or more offenses punishable by fine only; (e) provide that a peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor punishable by fine only, other than an offense of public intoxication, shall, instead of taking the person before a magistrate, issue a citation to the person; (f) provide that a peace officer who is charging a person, including a child, with committing certain assault offenses that are a misdemeanor, punishable by fine only, may, instead of taking the person before a magistrate, issue a citation to the person; (g) provide that a peace officer may not arrest, without warrant, a person found only committing one or more misdemeanors related to certain traffic offenses that are punishable by fine only, and in such instances shall issue a written notice to appear to the person; (4) With respect to de-escalation and proportionate response: (a) provide that a law enforcement agency shall adopt a detailed written policy regarding the use of force by peace officers that

must: (i) emphasize the use of force in a manner proportionate to the threat posed and to the seriousness of the alleged offense; (ii) mandate that deadly force is only to be used by peace officers as a last resort; and (iii) affirm the sanctity of human life and the importance of treating all persons with dignity and respect; (b) provide that a law enforcement agency may adopt the model policy on use of force developed by the Texas Commission on Law Enforcement and described in (6)(a), below;

◦ **With respect to disciplinary procedures in certain cities:**

- (a) require a civil service commission to implement a progressive disciplinary matrix for infractions committed by police officers that consists of a range of progressive disciplinary actions applied in a standardized way based on the nature of the infraction and the officer's prior conduct record, and such matrix must include: (i) standards for disciplinary actions related to use of force against another person, including the failure to de-escalate force incidents in accordance with departmental policy; (ii) standards for evaluating the level of discipline appropriate for uncommon infractions; and (iii) presumptive actions to be taken for each type of infraction and any adjustment to be made based on a police officer's previous disciplinary action; (b) make changes to the meet and confer provisions applicable to police officers to provide that certain cities that have adopted a meet and confer agreement but are not subject to civil service rules or collective bargaining shall implement a progressive disciplinary matrix as described in (5)(a), above, for its police officers, and that such agreement may not conflict or supersede a rule concerning the disciplinary actions that may be imposed under the disciplinary matrix; (c) provide that a hearing examiner in a city subject to civil service rules must presume a disciplinary action applied to a police officer under a progressive disciplinary matrix is reasonable unless the facts indicate that the department inappropriately applied a category of offense to the particular violation; and (d) make changes to the collective bargaining statute to provide that a city that has adopted a collective bargaining agreement but is not subject to civil service rules shall implement a progressive disciplinary matrix as described in (5)(a), above, for its police officers, and that such agreement may not conflict with an ordinance, order, statute, or rule related to disciplinary actions that may be imposed on its police officers under a disciplinary matrix implemented by the city;
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◦ **With respect to use of force:**

- (a) provide that the Texas Commission on Law Enforcement shall develop and make available to all law enforcement agencies a model policy and associated training materials regarding the use of force by peace officers; (b) make changes to the instances in which a person, including a peace officer and a person in the presence of and at the direction of a peace officer, may be justified in using nonlethal force in connection with making or assisting in making an arrest or search, or preventing or assisting in preventing escape after an arrest, (c) make changes to instances in which a peace officer or a person in the presence of and at the direction of a peace officer may be justified in using deadly force in connection to making an arrest or preventing escape after an arrest; (d) provide that the use of force against a person in connection with making or assisting in making an arrest or search, or preventing or assisting in preventing an escape after an arrest, is not justified if the force is used in a manner that impedes the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth; and (e) repeal the Penal Code provision that provides that a peace officer or a person other than a peace officer acting in the officer's presence and direction has no duty to retreat before using deadly force in connection with making an arrest or preventing escape after arrest.
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OTHER INFRASTRUCTURE

- **SUPPORT: Developing plans and compiling resources needed for greater broadband connectivity to enhance access to public education, healthcare, employment, news, and information.**
 - In Texas, new laws from the 2019 legislative session will bring further attention to the digital divide. House Bill 1960 establishes the Governor's Broadband Development Council, whose members will represent various stakeholders and areas of expertise, to research the progress of broadband development and identify barriers to deployment in underserved areas. HB 2422 requires the Texas Department of Transportation to provide online notice of certain highway construction projects so broadband providers can explore joint trenching opportunities, and Senate Bill 14 allows electric coops to use existing easements for broadband and fiber.

 - The Classroom Connectivity Initiative—a public-private partnership seeking to increase access to affordable broadband for Texas public schools; nearly 275,000 Texas students need more bandwidth for digital learning.
-
- **Support legislation making beneficial amendments to the equity appraisal statute; close the “dark store” theory of appraisal loophole, and require mandatory disclosure of real estate sale prices. Texas Tax Code Sec. 23.01.**
 - This issue has become problematic for Texas cities in recent years is the shift from appraisal based on a market approach to appraisals based on an equity approach. County appraisal districts have typically relied on a market approach to appraisals which is primarily based on actual sales prices. Commercial property owners are challenging this by filing lawsuits, based on S.B. 841, stating their properties should be appraised based on how similar properties are valued. S.B. 1342 and S.B.240 were filed in the past to address issues related to equity appraisal.

- Even though property tax appraisals must, by law, be based on market value, and even though sales price is arguably the best evidence of market price, appraisal districts are prevented by current law from having easy access to sales price data. Sales price disclosure legislation is generally defeated because the sales price is frequently opposed by real estate interest on various grounds. One argument using sales price disclosure for appraisal purposes is that actual sale price often reflects ancillary financial deals between buyer and seller.

- Mandated sales price disclosure could be beneficial to cities if it made appraisals more accurate, thus taking some ammunition away from property tax critics who claim that the entire property taxing system is flawed.

- Mandatory sales disclosure might be beneficial to cities if it made appraisals more accurate. Big Box Store Retailers have attracted the attention for arguably their stores should be appraised based on the “dark store” theory of property valuation. The “dark store” theory is that store should be appraised as if they were “dark” or shuttered; as the properties would be difficult to sell because big box store designs likely would not appeal to a prospective purchaser.

- **Support legislation authorizing a City Council to opt-in to requiring residential fire sprinklers in newly constructed single-family dwelling.**
 - Mandatory installation has significant developer cost impacts. Allowing a city to “opt-in” creates opportunity.

BUSINESS COMPETITIVENESS

- **Support legislation to maintain funding for the Skills Development Fund grants to improve workforce training including 60X30TX, 300X300, and continuing investment in Small Business Development Centers (SBDC) to support small businesses.**
 - The 60x30TX was launched in 2015 with a clear and bold vision to be among the highest-achieving states in the country. 60x30TX is a roadmap to help Texas reach that future through higher education. The strategic plan contains four broad goals; each goal contains a set of targets that will move the state toward reaching one or more goals.
 - The Overarching Goal:60x30-By 2030, at least 60 percent of Texans ages 25-34 will have a certificate or degree.
 - The Completion Goal-By 2030, at least 500,000 students in that year will complete a certificate, associate, bachelor's, or master's from an institution of higher education in Texas.
 - Marketable Goal-By 2030, all graduates from Texas public institutions of higher education will have completed programs with identified marketable skills.
 - Student Debt Goal-By 2030, undergraduate student loan debt will not exceed 60 percent for first-year graduates of Texas public institutions.

The following is legislation that we recommend for Council to oppose:

OTHER INFRASTRUCTURE

- **Oppose legislation that limits or eliminates the current flexibility of the Major Events Reimbursement Program as a tool for the cities to attract or host major events and conventions.**
 - The Major Reimbursement Program formally known as Major Events Trust Fund permits local governments to apply to the State for the establishment of a Major Events Reimbursement Fund to help pay for certain eligible cost associated with conducting specifically-named major events if all statutory and administrative requirements are met pursuant to Article 5190.14, Section 5A, Vernon's Texas Civil Statutes. The legislation transformed the administration of the program from the Texas Comptroller of Public Accounts to the Economic Development and Tourism Office within the Office of the Governor (OOG) during the 84th Legislation Session with the effective date of September 1, 2015.
 - **Oppose legislation that limits the Type of incentives available to a city or that would limit any use of incentives by a City.**
 - **Oppose legislation that would increase the cost or slow the delivery of materials needed for public and critical infrastructure projects.**
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LOCAL GOVERNMENT ACCOUNTABILITY

- **Oppose legislation that further erodes local control as it pertains to retirement issues.**
- **Oppose legislation that requires candidates for a city office to declare party affiliation in order to run for office.**
 - A new effort to politicize the non-partisan nature of city government in Texas. H.B. 2919 by Sanford. H.B. 2919 would have required candidates for mayor and city council to declare a party affiliation and run as partisans in their elections. Representative Sanford refiled his bill in 2019, but the bill (H.B. 3432) once again did not receive a committee hearing.

- **Oppose legislation that eliminates any of the current uniform election dates.**
 - Prior to 2005, most city elections had to be held on one of four uniform election dates. In 2005, the legislature passed H.B. 57, which deleted the February and September election dates, leaving only two uniform election dates: (1) the second Saturday in May and (2) the first Tuesday after the first Monday in November.

- S.B. 100, implemented the federal Military and Overseas Voter Empowerment (MOVE) Act of 2009. The MOVE Act, among other things, requires that ballots be transmitted to military and overseas voters 45 days prior to an election held in conjunction with a federal election to ensure that military and overseas voters would have ample time to return their ballots.

- **Oppose legislation that imposes additional state fees or costs on Municipal court convictions or require municipal courts to collect fine revenue for the state.**
- **Oppose legislation that imposes new property tax or sales tax exemptions that substantially erode tax base.**
- **Oppose legislation attempts by the state legislature to further preempt cities' or counties' ability to govern and raise funds as determined necessary (i.e., revenue caps), or penalize municipalities who increased taxes above the existing cap due to COVID-19 expenses.**
- **Oppose legislation for Unfunded mandates placed on our local municipalities that are veiled as solutions for education funding.**
- **Oppose legislation that attempts to limit or prohibit the authority of city, county, and/or school district officials to use public funds to communicate with legislators and state agencies, as well as pay membership dues to organizations that hire lobbyists.**
 - Senate Bill 29: A reform measure that would prohibit any political subdivision including cities, counties, school districts, and transportation authorities from hiring contract lobbyists to influence legislation specifically related to taxation, bond elections, tax-supported debt, and ethics or receives money from the state of Texas from paying for lobbyists. It also blocks payments to people closely connected to lobbyists through business or by relation. Further, state contractors are also banned from using state dollars to pay for lobbying.

- S.B.29 enforces limitations for cities from advocating to elected officials or lobbyists. Local government lobbyists often protect the interests of residents against private lobbyists. If local governments could not lobby the Legislature, future legislation that constituted an unfunded mandate could further cost taxpayer money.

- **Oppose legislation that increases revenues paid to the State of Texas by local governments as a result of the State of Texas increasing fines, fees, or charges to local governments including, but not limited to, the 2% administrative fee all municipalities pay to the state for the collection and distribution of local sales taxes and municipal court fees.**
- **Oppose legislation that would erode the authority of a city to be adequately compensated**

for the use of its rights-of-way and/or erode municipal authority over the management and control of rights-of-way, including by state or federal rules or federal legislation.

- **Oppose legislation that increases revenues paid to the State of Texas by local governments as a result of the State of Texas increasing fines, fees, or charges to local governments including, but not limited to, the 2% administrative fee all municipalities pay to the state for the collection and distribution of local sales taxes and municipal court fees.**
- **Oppose legislation that would erode municipal authority related to development matters, including with respect to the following issues: annexation, eminent domain, public right-of-way, zoning, and building codes.**
- **Oppose legislation that imposes additional state fees or costs on Municipal court convictions or require municipal courts to collect fine revenue for the state.**
- **Oppose legislation that would eliminate any of the current uniform election dates.**

TRANSPORTATION, BUSINESS COMPETITIVENESS, AND EDUCATION

- **Oppose legislation that attempts to impose a state tax on jet fuel.**
- **Oppose legislation that impairs the flexibility of local government to utilize all economic development tools currently available.**
- **Oppose legislation that would be discriminatory or otherwise damage Texas as a business-friendly state.**
- **Oppose legislation of unfunded mandates placed on our local municipalities that are veiled as solutions for education funding.**

Operational Considerations:

Staff will coordinate with similarly situated municipalities to advocate the position of the city related to the legislative priorities.

Legal Considerations:

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

Public Information Considerations:

This item is being considered at a special meeting of the City Council posted in accordance with the Texas Open Meetings Act.

Options/Alternatives:

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

Recommendation:

Staff recommends approval of the resolution, as presented.

Attachments

Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER ESTABLISHING THE CITY OF LANCASTER 2021 LEGISLATIVE PRIORITIES FOR THE 87th SESSION OF THE TEXAS LEGISLATURE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, beginning January 12, 2021, the Texas Legislature will convene in its biennial 140-day session; and

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

WHEREAS, is more important than ever to establish priorities among the items considered so as to maximize the City's impact on legislation that may affect its citizens.

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

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

SECTION 2. That the City of Lancaster adopts the following general principles in respect to the 87th Texas Legislative Session: to support legislation which preserves local determination and oppose legislation which reduces local control by municipal government; to oppose any attempt to reduce annexation authority; to specifically monitor closely any proposed legislation which would adversely impact city funding sources, especially related to lowering caps on ad valorem valuation increases, tax increment financing districts, or Type A or Type B (4A or 4B) corporations; and to work with other similarly situated municipalities and with the Texas Municipal League on items of mutual interest.

SECTION 3. That this resolution shall be in full force and effect from and after its passage and approval and it is accordingly so resolved.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 7th day of December, 2020

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

CITY OF LANCASTER CITY COUNCIL

City Council Special Meeting

3.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

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

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

The City Council shall convene into a closed executive session pursuant to Section § 551.071 (1) and (2) of the Texas Government Code to discuss: City of Lancaster City Council Rules and Procedures-Censure Policy and possible future agenda items.

Background:

Executive Session matters.

LANCASTER CITY COUNCIL

City Council Special Meeting

4.

Meeting Date: 12/07/2020

Policy Statement: This request supports the City Council 2020-2021 Policy Agenda

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

Submitted by: Sorangel O. Arenas, City Secretary

Agenda Caption:

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

Background:

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