



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



**Monday, July 11, 2016 - 7:00 PM**

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**CALL TO ORDER**

**INVOCATION:** Ministerial Alliance

**PLEDGE OF ALLEGIANCE:** Councilmember Clyde C. Hairston

**CITIZENS' COMMENTS:**

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

**CONSENT AGENDA:**

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

1. Consider approval of minutes from the City Council Special Meeting held on June 6, 2016.
2. Consider a resolution declaring unopposed candidate in District 4 in the August 6, 2016 Special Municipal Election elected to office; canceling the election in single member District 4; providing for all other provisions of Resolution No. 2016-06-33, as amended, ordering the election to remain in full force and effect.  
  
Considera una resolución declara sin oposición al candidato en el distrito 4 en el 6 de Agosto, 2016 elección municipal especial elegido; cancelación de la elección en el distrito de miembros solo distrito 4; establecer para todas las otras disposiciones de la resolución no. 2016-06-33, ordena la elección especial que permanecerán en pleno vigor y efecto, y proporcionar una fecha efectiva.
3. Consider a resolution adopting City Council Goals and Objectives contained in the June 2016 City Council Strategic Planning.
4. Consider a resolution approving the Rising Star Aviation Holdings, LLC Estoppel Letter for ground leases.
5. Consider a resolution approving the terms and conditions of a professional services agreement with Public Safety Corporation (PSC) for alarm registration, tracking and billing.



6. Consider a resolution approving the terms and conditions of the 2016 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds Sharing and Fiscal Agency Agreement between the City of Lancaster and the County of Dallas, Texas to provide funds to prevent and control crime and to improve the criminal justice system.
7. Consider a resolution authorizing the purchase of a 2017 7500 International 12 yard dump truck from International through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed one hundred forty-three thousand four hundred twenty dollars (\$143,420).
8. Consider a resolution authorizing the purchase of a Case CX130 excavator and Husqvarna FS520 concrete saw from ASCO Equipment through an interlocal agreement with Houston-Galveston Area Council (HGAC) in an amount not to exceed one hundred thirty-nine thousand and thirty-two dollars (\$139,032).
9. Consider a resolution authorizing the purchase of two (2) Chevrolet Silverado 1500 regular cab trucks and three (3) Chevrolet Silverado 1500 crew cab trucks from Freedom Chevrolet through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed one hundred thirty-five thousand three hundred eighty dollars (\$135,380).

**ACTION:**

10. Consider a Resolution approving the terms and conditions of a License Agreement by and between the City of Lancaster and Quik-Trip Corporation for the installation and maintenance of a monument entry feature and landscaping improvements within the Pleasant Run Road right-of-way for the Quik-Trip development.
11. Discuss and consider a resolution granting a request for Special Exceptions pursuant to Sections 14.504 (a) 3 and 14.505 (a) (3) (2), height and articulations; to provide a Special Exception for increased height and reduced horizontal and vertical articulation on the future Industrial site located on the southeast corner of Longhorn Drive and West Drive.
12. Discuss and consider a resolution authorizing the award of Bid #2016-5 for reconstruction for Lancaster- Hutchins Road and Rogers Avenue, to Pavecon Public Works in an amount not to exceed one million nine hundred sixty-five thousand nine hundred seventy-five dollars and sixty-three cents (\$1,965,975.63).

**ADJOURNMENT**

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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.

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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.

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



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

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

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

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### **Certificate**

**I hereby certify the above Notice of Meeting was posted at the Lancaster City Hall on July 8, 2016 @ 1:30 p.m. and copies thereof were provided to the Mayor, Mayor Pro-Tempore, Deputy Mayor Pro-Tempore and Council members.**



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Sorangel O. Arenas  
City Secretary



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

Item 1.

**Meeting Date:** 07/11/2016

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

**Submitted by:** Sorangel O. Arenas, City Secretary

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#### **Agenda Caption:**

Consider approval of minutes from the City Council Special Meeting held on June 6, 2016.

#### **Background:**

Attached for your review and consideration are minutes from the:

- City Council Special Meeting held June 6, 2016.

#### **Attachments**

June 6, 2016 Minutes

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## MINUTES

### LANCASTER CITY COUNCIL MEETING OF JUNE 6, 2016

The City Council of the City of Lancaster, Texas, met in a called Special session in the Council Chambers of City Hall on June 6, 2016 at 5:00 p.m. with a quorum present to-wit:

**Councilmembers Present:**

Mayor Marcus E. Knight  
Deputy Mayor Pro Tem Stanley Jaglowski  
Mayor Pro Tem Carol Strain-Burk  
Clyde C. Hairston

**Councilmembers Absent:**

Marco Mejia  
Nina Morris

**City Staff Present:**

Opal Mauldin-Robertson, City Manager  
Rona Stringfellow, Assistant City Manager  
Kay Brown, Community Relations Coordinator  
Dori Lee, Human Resources Director  
Jermaine Sapp, Director of Equipment Services and Facilities  
Baron Sauls, Finance Director  
Alton Dixon, Purchasing Agent  
Mayra A. Ortiz, Assistant City Secretary  
Sorangel O. Arenas, City Secretary

**Call to Order:**

Mayor Knight called the meeting to order at 5:02 p.m. on June 6, 2016.

**Consent Agenda:**

City Secretary Arenas read the consent agenda.

- 1 Consider a resolution declaring a vacancy and ordering a Special Election for Councilmember District 4 of the City Council of the City of Lancaster, Texas; providing for administration by Dallas County election administrator; providing for presiding election judge and an alternate presiding judge; providing for early voting; providing application for ballot by mail.

Considere la posibilidad de una resolución que declara una vacante y se ordena una Elección Especial para el concejal del Distrito 4 del Ayuntamiento de la ciudad de Lancaster Texas; proveer para la administración por administrador de elecciones del condado de Dallas; que prevé el presidente del tribunal electoral y un suplente juez presidente; proveer para la votación anticipada; proporcionando solicitud de voto por correo.

**MOTION:** Mayor Pro Tem Strain-Burk made a motion, Councilmember Hairston to approve item 1. The vote was cast 4 for, 0 against [Mejia, and Morris were absent].

Mayor Knight shared that candidate packets for the Special Election are available in the City Secretary's office.

**MOTION:** Mayor Pro Tem Strain-Burk made a motion, Councilmember Hairston, to adjourn. The vote was cast 4 for, 0 against [Mejia, and Morris were absent].

The meeting was adjourned at 5:04 p.m.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 2.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Civic Engagement

**Submitted by:** Sorangel O. Arenas, City Secretary

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#### **Agenda Caption:**

Consider a resolution declaring unopposed candidate in District 4 in the August 6, 2016 Special Municipal Election elected to office; canceling the election in single member District 4; providing for all other provisions of Resolution No. 2016-06-33, as amended, ordering the election to remain in full force and effect.

Considera una resolución declara sin oposición al candidato en el distrito 4 en el 6 de Agosto, 2016 elección municipal especial elegido; cancelación de la elección en el distrito de miembros solo distrito 4; establecer para todas las otras disposiciones de la resolución no. 2016-06-33, ordena la elección especial que permanecerán en pleno vigor y efecto, y proporcionar una fecha efectiva.

#### **Background:**

Resolution No. 2016-06-33, approved by City Council on June 6, 2016, ordered the special municipal election for Saturday, August 6, 2016 in accordance with State law. Following the deadlines for an application for a place on the ballot and for the declaration of write-in candidates, single member District 4 is an uncontested district.

Texas Election Code states that in single member district, the City Council may cancel the district election if:

- 1) a candidate for an office that is to appear on the ballot in that district is unopposed; and
- 2) if no proposition is to appear on the ballot.

The deadline for write-in candidates was July 7, 2016 at 5:00 p.m. The Election Code states that the City Secretary must provide to the City Council a certification that a candidate for office is unopposed. The Certification of Unopposed Candidate is attached for the following candidate: Spencer W. Hervey, Jr. (District 4) is unopposed. Further, there are no write-in candidates, and no propositions are on the ballot.

#### **Operational Considerations:**

Upon receiving the Certification of Unopposed Candidate, the City Council may declare the unopposed candidate elected to office, thereby obviating the need for the election in single member District 4. Although the statute requires the City Secretary make the certification to the City Council, the City Council is given discretion in declaring unopposed candidate elected and may hold the election regardless of the unopposed status of the candidate.

#### **Legal Considerations:**



The City Attorney has reviewed and approved the resolution declaring the unopposed candidates.

**Public Information Considerations:**

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

**Options/Alternatives:**

1. Council may accept the Certification of Unopposed Candidate and approve the resolution as presented. This action will cancel the District 4 election.
2. Council may reject the Certification of Unopposed Candidate and the resolution. This action will result in the District 4 election being on the ballot. Voters eligible to cast a ballot would be able to vote for the unopposed candidate.

**Recommendation:**

Staff recommends that City Council accept the Certificate of Unopposed Candidate for District 4 and approve the resolution declaring the unopposed candidate, Spencer W. Hervey, Jr., elected to office, thus canceling the election.

**Attachments**

Certification of Unopposed Candidate - English

Resolution - English

Certification of Unopposed Candidate - Spanish

Resolution - Spanish

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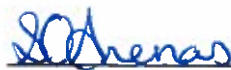
Certification of Unopposed Candidate  
by the City Secretary

STATE OF TEXAS  
COUNTY OF DALLAS  
CITY OF LANCASTER

I, the undersigned, Sorangel O. Arenas, certify that I am the City Secretary of the City of Lancaster, Texas, and the authority responsible for preparing the ballot for the August 6, 2016 special municipal election. I further certify that no proposition is to appear on the ballot at the special municipal election, no person has made a declaration of write-in candidacy, and the following candidate is unopposed:

Spencer W. Hervey, Jr., District 4

WITNESS MY HAND AND SEAL OF OFFICE in Lancaster, Texas, this 7<sup>th</sup> day of July, 2016.



Sorangel O. Arenas,  
City Secretary  
City of Lancaster, Texas

Seal





**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, DECLARING UNOPPOSED THE CANDIDATE IN DISTRICT 4 IN THE AUGUST 6, 2016 SPECIAL MUNICIPAL ELECTION ELECTED TO OFFICE; CANCELLING THE SPECIAL MUNICIPAL ELECTION IN SINGLE MEMBER DISTRICT 4; PROVIDING FOR POSTING THE RESOLUTION AT POLLING PLACES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the special municipal election was called for August 6, 2016 in Resolution No. 2016-06-33 for the purpose of electing Councilmember for District 4 to fill an unexpired term ending May 2017;

**WHEREAS**, the City Secretary has certified in writing that there is no proposition on the ballot, that no person has made a declaration of write-in candidacy, and that the candidate for District 4 on the ballot are unopposed for election to office; and

**WHEREAS**, under these circumstances, Subchapter C, Chapter 2, Election Code, authorizes the City Council to declare the candidate elected to office and cancel the special municipal election for the single member District 4.

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

**SECTION 1.** That the special municipal election for a councilmember for a single member district, District 4, is hereby cancelled, and the city secretary is directed to cause a copy of this resolution to be posted on Election Day at each polling place that would have been used in the special municipal election.

**SECTION 2.** That the candidate for councilmember District 4, who is hereby unopposed in the August 6, 2016 special municipal election, is declared elected to office, subject to the qualifications under state law and the home rule charter, and shall be issued a certificate of special municipal election following the time of the special municipal election and canvass thereof: Spencer W. Hervey, Jr., District 4

**SECTION 3.** That the provisions contained in Resolution No. 2016-06-33, as amended, ordering the August 6, 2016 special municipal election including, but not limited to the publication and posting of notice and providing early voting dates, times and locations, are hereby cancelled; and that the City Secretary is directed to cause a copy of this Resolution to be posted on election day at each polling place used or would have been used in the general municipal election.

**SECTION 4.** That should any word, phrase, paragraph, or section of this resolution be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this resolution as a whole, or any part or provision thereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the resolution as a whole.

**SECTION 5.** That this resolution shall take effect immediately from and after its adoption and it is so resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**



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Robert E. Hager, City Attorney



La certificación de candidatos sin oposición  
por la Secretaria de la Ciudad

ESTADO DE TEXAS  
CONDADO DE DALLAS  
CIUDAD DE LANCASTER

Yo, el abajo firmante, Sorangel O. Arenas, certifico que yo soy la Secretario Municipal de la Ciudad de Lancaster, Texas, y la autoridad encargada de preparar el boleta para el 6 de Agosto, 2016 elección municipal especial . Además, certifico que ninguna proposición puede ser que aparezca en el boleta de la elección, ninguna persona ha hecho una declaración de la escritura en la candidatura, y el candidato siguiente por unanimidad:

Spencer W. Hervey, Jr., Distrito 4

FE DE MI FIRMA Y SELLO DE LA OFICINA en Lancaster, Texas, el día 7 de Julio, 2016.



Sorangel O. Arenas  
Secretaria de la Ciudad  
Ciudad de Lancaster, Texas

Sello



## **RESOLUCION NO.**

**RESOLUCIÓN DEL CONSEJO DE LA CIUDAD DE LANCASTER, TEXAS, QUE DECLARA SIN OPOSICIÓN EL CANDIDATO EN EL DISTRITO 4, EN AGOSTO 6, EL AÑO 2016 ELECCIÓN MUNICIPAL ESPECIAL ELEGIDO PARA UN CARGO; CANCELACIÓN DE LAS ELECCIONES MUNICIPAL ESPECIAL EN UNIPERSONAL DISTRITO 4; PROPORCIONAR POR FIJAR LA SOLUCIÓN DE CASILLA; Y PROPORCIONAR UNA FECHA EFECTIVA.**

**POR CUANTO**, la elección municipal especial, fue llamado para el 6 de Agosto, 2016, Resolución No. 2016-06-33 con el fin de elegir a un concejal para el distrito 4 para llenar un termino no vencido que finaliza en Mayo de 2017;

**POR CUANTO**, la Secretaría del Ayuntamiento ha certificado por escrito que no hay una propuesta en la papeleta, que ninguna persona ha hecho una declaración de candidatura de escritura-en, y que el candidato para el Distrito 4, en la papeleta son sin oposición para la elección de cargos; y

**POR CUANTO**, en estas circunstancias, subcapítulo C, Capítulo 2, Código de Elecciones, autoriza al Ayuntamiento una declaración de que el candidato elegido para el cargo y cancelar la elección municipal especial para los miembros individuales en el Distrito 4

**AHORA, POR LO TANTO, SE RESUELVE EL CONSEJO MUNICIPAL DE LA CIUDAD DE LANCASTER, TEXAS:**

**SECCIÓN 1.** Que la elección municipal especial para un concejal de un distrito único miembro, Distrito 4, queda cancelada, y la secretaria de la ciudad está dirigida a causar una copia de esta resolución que será publicado el día de elecciones en cada lugar de votación que habría sido utilizado en la elección general municipal.

**SECCIÓN 2.** Que el siguiente candidato para concejal del Distrito4, es por este medio sin oposición en el 6 de Agosto, 2016 elección municipal especial, se declara elegido para un cargo, sin perjuicio de las calificaciones bajo la ley estatal y la carta de la regla casa, y deberá se emitirá un certificado de elección municipal especial que siguió a la hora de la elección municipal especial y escrutinio de los mismos:

Spencer W. Hervey, Jr., Distrito 4



**SECCIÓN 3.** Que las disposiciones contenidas en Resolución No. 2016-06-33, modificada, ordenando el 6 de Agosto, 2016 elección municipal especial , incluyendo, pero no limitado a la publicación y publicación de la notificación y que proporcionan fechas de votación anticipada, horas y lugares, son por este medio cancelado; y que la Secretaría del Ayuntamiento se dirige a causar una copia de esta Resolución que se publicó, el día de la elección en cada lugar de votación utilizado o se habría utilizado en la elección general municipal.

**SECCIÓN 4.** Eso debería cualquier palabra, frase, párrafo o sección de esta resolución se consideró inconstitucional, ilegal o no válida, la misma no afectará a la validez de esta resolución en su totalidad, o cualquier parte o disposición de los mismos que no sea la parte así lo decide inconstitucional, ilegal o no válida, y no afectará a la validez de la resolución en su conjunto.

**SECCIÓN 5.** La presente resolución comenzará a regir inmediatamente desde y después de su adopción y se haya solucionado.

**DEBIDAMENTE ORDENADO** por el Consejo Municipal de la Ciudad de Lancaster, Texas el día de hoy 11 de Julio, 2016.

**DOY FE:**

\_\_\_\_\_  
Sorangel O. Arenas, Secretaria de la Ciudad

**APROBADO:**

\_\_\_\_\_  
Marcus E. Knight, Alcalde

**APROBADA EN FORMA:**

\_\_\_\_\_  
Robert E. Hager, Abogado de la Ciudad



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

Item 3.

**Meeting Date:** 07/11/2016

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

**Goal(s):**

- Financially Sound, City Government
- Healthy, Safe & Vibrant Community
- Sound Infrastructure
- Quality Development
- Civic Engagement
- Professional and Committed City Workforce

**Submitted by:** Opal Mauldin-Robertson, City Manager

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#### **Agenda Caption:**

Consider a resolution adopting City Council Goals and Objectives contained in the June 2016 City Council Strategic Planning.

#### **Background:**

City Council conducted its annual strategic planning session June 14 and 15, 2016. Following Council's planning session, Julia Novak (The Novak Consulting Group) compiled information from Council's discussions into a report that defines the five year Goals, Strategies, Mission Statement and Vision 2027 for the City.

#### **Operational Considerations:**

Council goals and strategies provide the foundation to match City resources with priorities and help provide efficient services to citizens. Formal adoption of the goals and strategies is a "best practice" that establishes a clear, unified message for staff and the community.

The 2016/2017 goals were identified as follows:

**Financially Sound Government** - The City has a long-range financial plan and has prudent fiscal policies and processes in place. It has met or exceeded all fund reserve goals, has funds available to address the needs of the community, and responsibly manages its debt. The community continues to move toward a more competitive tax rate.

**Quality Development** - The City encourages high quality construction in its housing, commercial buildings and public facilities. The City employs sustainable building practices and encourages conservation and the use of alternative energy sources. The City has a diverse housing stock with walkable neighborhoods and other high quality neighborhood amenities. A diversity of commercial businesses includes corporate business parks and distribution facilities, which make use of the expanded airport, rail, and highway system. Retail areas have grown because of growth in industrial, commercial and residential development.

1. Develop a "Land Bank" strategy for City property.
2. Develop a plan to show Developers the opportunities for Building Custom Homes
3. Create and implement a retail strategy so we are clear on what types of retail development the City wants to attract



4. Downtown TIF – Build a new City Hall
5. Complete Comprehensive Plan – Implementation Strategy
6. Review Economic Development Policy
7. Review existing Incentive Policy

**Healthy, Safe, & Vibrant Community** - Lancaster is a place where we enhance public safety in our neighborhoods. The community unites at city-wide events and participates in recreational and cultural activities that keep residents involved and engaged in their respective neighborhoods. Compassionate enforcement personnel help to sustain vibrant residential and business communities. All residents have access to Parks and leisure facilities where they live.

**Professional & Committed Workforce** - Lancaster city government is an employer of choice with competitive pay that attracts an engaged, responsive, customer-oriented, innovative, and effective workforce. Some employees live in the City and all have a sense of ownership of the community. City employees feel needed and appreciated by elected officials, residents and businesses and are respectful to and appreciative of their customers and the City's governing body. The City's executive staff is engaged with residents and attends community events, upholds strong customer service, and uses technology to aid them in working smarter.

1. Lancaster University – Establish a professional level training program for all levels of employees
2. Continue Compensation Policy – Commitment to average of Survey Cities - Progression

**Sound Infrastructure** - The City has well-maintained streets and well-planned preventative maintenance programs for infrastructure; including streets, water, storm water, wastewater and other assets.

1. Infrastructure Project - Pleasant Run Road Phases 1, 2 & 3.
2. Complete Golf Course Assessment
3. Implement Facility and Infrastructure needs Assessment for future Bond issuance
4. Complete the Fleet Maintenance Facility

**Civic Engagement** - The City provides a variety of opportunities for involvement through special events, boards and commissions, youth and parent volunteer opportunities in recreation, sports teams, City elections, Civic Academies, Schools and City-wide celebrations.

**Legal Considerations:**

The City Attorney has approved as to form the adopting resolution.

**Public Information Considerations:**

This item is being considered at a meeting noticed in accordance with the Texas Open Meetings Act.

**Options/Alternatives:**

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

**Recommendation:**

Staff recommends the adoption of the report as presented.

**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, ADOPTING CITY COUNCIL GOALS AND OBJECTIVES CONTAINED IN THE JUNE 2016 CITY COUNCIL RETREAT REPORT, AS ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES AS EXHIBIT "A"; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council met in a strategic planning session June 14 and June 15, 2016 to review, discuss and refine City Council's vision and mission for the City of Lancaster; and

**WHEREAS**, after discussion and consideration, the City Council updated the five year goals and strategies for the City of Lancaster which identifies a foundation of principles upon which the community will continue to prosper; and

**WHEREAS**, the City Council desires to adopt the City Council Retreat Report prepared by The Novak Consulting Group following the strategic planning session and the goals, strategies, Mission Statement and Vision 2027 contained in said report;

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

**SECTION 1.** That the City Council Goals and Objective contained in the June 2016 City Council Retreat Report, attached hereto and incorporated herein by reference as Exhibit "A", having been reviewed by the City Council of the City of Lancaster, Texas, and found to be acceptable and in the best interest of the City and its citizens, be, and the same is hereby, in all things approved and adopted.

**SECTION 2.** That any prior resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution, except as noted herein, be, and the same are hereby, repealed and revoked.

**SECTION 3.** That this resolution shall take effect immediately from and after its adoption and it is accordingly so resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

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Robert E. Hager, City Attorney



# **City of Lancaster**

## **City Council Retreat**

**June 14 – 15, 2016**





The Lancaster, Texas City Council held a retreat on June 14 and 15, 2016. The purpose of the retreat was to focus on their role and effectiveness as a governing body, discuss how they can work together better, and improve staff and council relations. Over the course of the two days, the Council reviewed their current Work Plan and identified goals and operational priorities for the upcoming year. The retreat was facilitated by Julia Novak from The Novak Consulting Group.

### **Day One – Setting the Stage & Introductions**

Attending the meeting were:

- Marcus E. Knight, Mayor
- Carol Strain-Burk, District 1, Mayor Pro Tem
- Stanley Jaglowski, District 2, Deputy Mayor Pro Tem
- Marco Mejia, District 3
- Clyde Hairston, District 5
- Nina Morris, District 6
- Opal Robertson, City Manager
- Rona Stringfellow, Assistant City Manager
- Angie Arenas, City Secretary

### **Councilmember Expectations**

Each of the councilmembers shared their expectations for the retreat.

- Marco – Short and long term vision; set goals. Have frank conversations.
- Carol – Recommit to existing goals and strategize how to take projects/“big ideas” and move them forward in order to make a difference in the community.
- Nina – Long term vision – get short-term goals accomplished. Let’s see what’s new!
- Stanley – Refocus and recommit overlapping/carryover goals (uncompleted goals) and find ways to overcome challenges that stand in the way of completing goals.
- Clyde – See existing goals implemented; catch up and learn how to serve the City better
- Mayor Knight – Galvanize around why we are here. What our purpose is and how to make our community better. Focus on opportunities to develop and redevelop. Reflect and Project.
- Opal – Get work plan/direction from the City Council and provide objective policy information.
- Angie – Get direction from Council goals so staff can carry out new goals.
- Rona – Direction on new goals



### **Our Most Successful Projects**

The Council was asked to share examples of their “most successful” projects during their time with the City.

#### *Success – The What*

- 2012 Tornado Recovery
- Public Safety Building & Amphitheater
- Life Center Renovation & Fire Stations
- Collaboration on New High School
- Mindset – Positive Community Development – Success Breeds Success
- Vehicle Equipment Replacement Program
- Learning TML
- City & School District Relations
- UNFI Signature ProLogis
- The Tribute Development
- Joint Water Project with Dallas
- Responding to Financial Impact of SW Bell Loss
- Seeds Planted – harvesting the crops of the people before us!
- Financial Stability – policies, fund balance, CAFR, audit, bond rating, debt restructuring
- DART Rail Station
- Going paperless

#### *Success – The Why*

- Location, Synergy, Accomplishment
- City as a whole comes for Quality of Life
- Mindset Shift
- Identified Funding – made it work!
- Shared Experiences – applied locally
- Catalyst for more – helped us
- Creative, holistic financial review – political will
- Build in success
- Allows us to do more
- Pull together
- Progress, recognition, accomplishment

#### *Ingredients for Success*

- Working together (council, staff, community)
- Political will
- Accountability
- Think Big – Creativity
- Take Risks
- Making tough financial decisions
- Ambition
- Follow the Vision
- Communication
- Wanting More (being greedy)
- Business friendly
- Be tough – patient
- See what others can’t

### **Governing Body Roles and Effectiveness**

The Council discussed the results of the pre-retreat survey regarding governance roles and how the Council can increase their individual and collective effectiveness as a governing body. Specifically, they discussed what is working well and how the Council can govern (even) more effectively.



The Council discussed the different governance roles each Councilmember must play:

- strategic thinker/visionary
- trustee/steward
- representative/constituent advocate
- community builder
- decision-maker
- oversight

The group was asked to reflect on three questions relating to governance:

- *Which role do you naturally gravitate towards?*
- *What role does the Council, as a body, seem to gravitate towards?*
- *Where should the Council spend more time in order to enhance effectiveness?*

The results of the pre-retreat survey, which are included below, were discussed and shared with the Council. Based on the survey, while these roles may not come naturally, there was consensus that the Council may need to begin paying more attention to its roles as a strategic thinker and community-builder.

*Roles Behaviors & Values – Lancaster, Texas 2016*

*Pre -Retreat Survey Results*

*Novak and Nalbandian, March 2016*

<b>Governance Roles</b>	<b>Which governance roles come most naturally to you?</b>	<b>Which governance roles do you think the governing body, as a body, gravitates towards?</b>	<b>To enhance its effectiveness, which roles could the group pay more attention to?</b>
<b>Strategic/Vision – Big Picture Thinker</b>	3	4	1
<b>Trustee – Steward</b>	2	3	5
<b>Representative – Constituent Advocate</b>	1	2	3
<b>Community Builder – Bringing People Together</b>	4	6	2
<b>Decision-Maker</b>	5	1	4
<b>Oversight</b>	6	5	6

The Council was asked to provide examples on how they can take a more active role in each of the different governing roles.



**Strategic/Vision**

Strategic planning, comp plan, education, knowledge, quarterly update – stay focused

**Community Building**

Town hall meetings, community events (council attendance)

**Decision-Maker**

Work sessions, council meetings, trainings, town hall meetings

**Steward**

Budget process, constituent advocate, listen, council meetings, one-on-one communication with staff and follow through with staff

**Oversight**

Staff accountability, review quarterly updates, performance evaluations

***The Council was asked: How does paying more attention to strategic thinking (big picture) and community building roles make the council more effective?***

- Need both elements to be successful and do our jobs
- Focus for getting things done
- We can't be effective without seeing the big picture
- Impact on the long term
- SMART goals

***The Council was asked: What gets in your way or what are the distractions keeping the Council from achieving its goals?***

- Outside influences
- Competing interests
- Patience
- Money
- Unachievable goals
- Unclear communication/direction
- Alternate agenda
- Losing sight of our purpose
  - The Mayor reminded the Council of their purpose - *"The purpose of the body is to establish goals, vision, and policies."*
- Negativity

***Maslow's Hierarchy of Needs***

The facilitator reviewed Maslow's Hierarchy of Needs with the group and reminded everyone of the importance of the Council's role in meeting the needs in the community and continually raising the bar. The governing body can't get complacent and rest on their laurels.





The Council was asked to come up with examples of services, amenities, and programs provided for residents that directly impact or address the issues Maslow identified.

- Esteem – recognition, awards, national awards
- Social – parks, recreations, events
- Safety – police, fire, buildings, roads, codes
- Physiological – water, sewer

### Council Staff Relations

There have been changes on the City's Executive Team as well as the City Council over the past year. The Council discussed their current relationship with City staff, whether their expectations were being met, and how staff can best support the City Council.

### Council Concerns

The Council expressed the following current concerns with City Management:

- Education and onboarding of new employees
- Being made aware of new hires
- Taking time for thoroughness and accuracy

### Council's Processes & Interactions

The Council participated in a pre-retreat survey regarding their current satisfaction levels with council processes and interactions with staff and each other. The results were shared and discussed at the retreat.



Statement	Strongly Agree	Agree	Disagree	Strongly Disagree	Total Agree	Total Disagree
Council Meetings are efficient and respectful.	40%	60%	0%	0%	100%	0%
Individual members of the Council treat one another with respect.	20%	60%	20%	0%	80%	20%
I feel respected by my fellow elected officials.	20%	80%	0%	0%	100%	0%
The Council is working well together.	25%	75%	0%	0%	100%	0%
We have done a good job staying focused on the priorities we established last year.	25%	50%	0%	25%	75%	25%
The work of the Council is fast-paced and exciting.	0%	75%	0%	25%	75%	25%
I believe the Council spends too much time on unimportant details.	0%	20%	60%	20%	20%	80%

### *How we are Working Together as a Group*

The Council spent some time discussing how they were working together as a group and their interaction with the Executive Management Team. Specifically, they were asked to share:

- What's Working Well for the Council
- Where Council Be Doing Better
- What is Going Well with the Executive Team
- What Could Staff Do More/Better or Different to Support the Council



<p><b>What's Working Well for Council</b></p> <ul style="list-style-type: none"> <li>• Keeping focus on vision</li> <li>• Sticking to plan</li> <li>• Measuring progress</li> <li>• Communicating better</li> <li>• Working together</li> <li>• Matured as a body</li> <li>• Driven – wanting more</li> </ul>	<p><b>Where Could the Council Be Doing Better</b></p> <ul style="list-style-type: none"> <li>• Attendance at public events</li> <li>• Doing more together as a group (conferences, etc.)</li> <li>• Education – take advantage of professional development opportunities (distance learning)</li> <li>• Better balance in tasking staff – giving opportunity to follow through</li> <li>• Do something fun together – Council sometimes and sometimes include staff</li> </ul>
<p><b>What is Going Well with the Executive Team</b></p> <ul style="list-style-type: none"> <li>• Responsive</li> <li>• Buy-in to Council vision</li> <li>• Working well together</li> <li>• Commitment – they work hard</li> <li>• Give us reasoned explanations – help us consider different perspectives</li> <li>• Able to provide informed answers</li> <li>• Notified of events in a timely manner</li> <li>• Attend community events</li> <li>• Fiscal responsibility</li> </ul>	<p><b>What Could Staff Do More/Better or Different to Support the Council</b></p> <ul style="list-style-type: none"> <li>• More comprehensive background information on agenda items</li> <li>• Planning/Scheduling options for important events</li> <li>• Look at notification and follow-up methods</li> <li>• Electronic notifications</li> <li>• Opal needs to hold her team to a greater level of accountability</li> <li>• Being open to new ideas – creative solutions</li> </ul>

### *How to Modify the Council Work Plan*

The members of the Governing Body expressed some confusion as to how they could modify the approved Council Work Plan. The following processes were discussed.

#### *Current Work Plan Process:*

1. An idea is shared with staff for research (by a Councilmember)
2. Staff drafts a memo (White Paper) back to the appropriate Councilmember; the memo is shared with the full Council (the memo is prepared within 7-10 days)
3. Requester can ask for it to be discussed at a Work Session
4. The full Council then discusses at a Work Session

#### *Citizen Service Request Process:*

1. An email or phone call is used to report the issue
2. The issue is logged by the City Manager
3. The issue is routed to the appropriate department
4. Department enters response; system generates monthly report
5. Within 7-10 days, staff responds to Councilmember



*Council needs to identify:*

- What problems are we solving?
- What does success look like?
- What is the appropriate level of responsiveness?

*The Council spent time discussing the current Staff/Council communication process:*

- What does Council need a response on?
  - When it relates to a Council goal?
  - Operational Requests only?

The Council agreed that the current volume is problematic. Staff asked that the Council trust them on compliance issues. The Council discussed that they needed to be better about the questions they ask for follow up and research. It was discussed that the amount of requests being asked of staff was taking them away from their other duties.

***Problem Statement (from staff): The requirement to report public safety incidents has become increasingly difficult. The request to provide individual informational needs is interfering with critical incidents.***

Opal shared that the changes asked for by the Council last year have become increasingly difficult for staff to implement. At times, it is pulling staff members off active crime scenes because they have to contact her or the Police/Fire Chief and then they are contacting the City Council. She also explained that they are notifying the Council before the crime/incident has been fully investigated regardless of whether or not there has been a media inquiry.

In the past, the Council had been notified of high profile public safety incidents when there was a media inquiry or loss of life.

### **Day Two - Council Staff Relations**

On Wednesday, June 15, 2016, the Lancaster City Council began day two of their retreat and continued discussions regarding Council Staff Relations, specifically regarding notification of public safety incidents, CSRs, and the quantity of memos councilmembers have been requesting of staff.

The Council concluded their public safety discussion and determined when and what type of incidents they wanted to be notified regarding.

The following was determined:

- Loss of Life – Notification within 48 hours
- Use of Weapon – Notification within 48 hours
- Three Alarm Structure Fires – Notification within 48 hours
- Media inquiries – trump everything; the City Manager will contact the Council ASAP
- Sexual Assault – Quarterly Crime Update
- The Council will continue receive the Quarterly Crime Update



The Council also stressed that they did feel it was important to know what was happening in the community and in their districts, but did not want staff pulled away from active crime scenes. They felt 48 hours was an appropriate compromise. The facilitator reviewed the online Police Blotter with the Council and showed them how they could personally access the public safety information themselves, 24 hours a day, and provide the same information and resource to their constituents.

They also agreed that non-emergency issues could wait until Monday.

***Problem Statement (from Staff) – The increase in Council service requests and informational memos is creating a resource allocation issue for staff and negatively impacting Council/staff relations.***

	CSRs	Memos
Mayor	15	11
District 1	96	58
District 2	104	70
District 3	18	21
District 4	1	1
District 5	7	0
District 6	2	3

*\*Council-submitted CSRs are generated by both councilmembers and submitted on behalf of constituents.*

The Council discussed the importance of responding to their constituent requests and what was being asked of staff. It was determined that all constituent requests should be passed along to staff, but that the number of memos staff is asked to research and write needed to be managed better. They also discussed that they needed to hold each other accountable (“peer accountability”).

Each month, the City Manager’s office will provide a report that shows the number of CSRs and memos requested by District.

In an effort to manage Council Inquiries, the following was decided:

- Self-management on inquiries to Council ideas
- All citizen concerns-generated CSRs – absolutely pass along
- Council-initiated CSRs – track separately, self-manage
- Monthly report on CSRs and memos

In regards to the memos and requesting research, the Council said that before they ask staff to do this, they should ask the question - *Is this going to enhance the City of Lancaster?* There was also discussion about doing their own research before asking staff to do it for them. The Council was also reminded that they could request to have an item of interest put on a Work Session agenda for discussion.

The Mayor shared that engaging staff on constituents’ concerns is a given. This may mean having staff handle the issue directly with the citizen or having staff provide the information back to the Councilmember for follow-up.



### **Remembering our History – Claiming our Future**

In 2015, the Council did an exercise where they were asked to reflect on the history of the community. During this year's retreat the Council revisited and refreshed their work and came up with a theme for each decade in preparation for claiming and visioning the future for the City.

- Pre-1975 – Transformative Times
- 1975-1984 – The Decade of Contradiction
- 1985-1994 – Emerging Inclusivity and Engagement
- 1995-2004 – The Decade of Resiliency
- 2005–Present – The Decade of Progress
- 2015–2025 – The Decade of Renaissance

### *The Council Legacy*

How does the City Council hope that this next decade will be characterized in the future? The Council defined the next decade as one of renaissance.

#### **2015-2025 – The Decade of Renaissance**

- Financial stability restored for City government
- The decade our daytime population increased
- Industrial Job Growth
- New City Hall Built on the Square
- Schools Recognized for Excellence
- Thriving Medical District (diverse)
- Upscale Residential Development
- Engaged Community
- Thriving Town Square
- Runways and Airport Expansion – financially solvent airport that generates revenue
- Sustainable environment
- Forward-Thinking Government
- Enhanced Park System and Trails
- Safe Community
- A Staple in the Metroplex
- Destination Community
- Curb Appeal/Entries Beautified
- Excellent Infrastructure



*Sharing a Common History*

	Pre-1975	1975-1984	1985-1994	1995-2004	2005 to present
<b>People</b>	<ul style="list-style-type: none"> <li>• A Bledsoe</li> <li>• J.D. Hall</li> <li>• Bonnie &amp; Clyde</li> <li>• Roderick Rawlins</li> <li>• Professor White – popular teacher at Rocky Crest</li> <li>• Mayor Edwards</li> </ul>	<ul style="list-style-type: none"> <li>• Green Brothers</li> <li>• Dr. Krebs opened hospital in 1983</li> <li>• Superintendent Elsie Robinson</li> <li>• Jacques Reeves (Dallas Cowboy)</li> <li>• Ellen Clark</li> </ul>	<ul style="list-style-type: none"> <li>• Mayor Waldrop 1st female Mayor</li> <li>• City Council</li> <li>• Gov. Ann Richards</li> <li>• Carolyn Morris</li> <li>• Nancy Moffat community activist</li> </ul>	<ul style="list-style-type: none"> <li>• Carol Strain-Burk</li> <li>• MPT Daniels</li> <li>• Mayor Tillotsen</li> <li>• Vic Buchanan – first AA City Councilmember</li> <li>• Martha Wallace</li> <li>• H.S. Stevens – Chair of 4B</li> <li>• Clyde Hairston appointed as the City's Chaplain</li> </ul>	<ul style="list-style-type: none"> <li>• Mike Anderson Stainback</li> <li>• Current City Council</li> <li>• James Daniels</li> <li>• Michael McFarland (School superintendent)</li> <li>• Marcus Knight</li> <li>• Mayor Tillotsen</li> <li>• Richard Allen</li> <li>• Clyde Hairston is 1st Mayor Pro Temp</li> <li>• Marco Meija 1st Hispanic Councilmember</li> </ul>
<b>Actions</b>	<ul style="list-style-type: none"> <li>• Founded City (A Bledsoe)</li> <li>• Named for School (JD Hall)</li> <li>• LISD</li> <li>• Bank Robbery (Bonnie &amp; Clyde)</li> <li>• Cedar Valley College Opened</li> <li>• The Square was where the action was</li> <li>• School System was considered an elite school system</li> </ul>	<ul style="list-style-type: none"> <li>• Green Brothers donated land</li> <li>• School District Designation</li> <li>• Revitalization from Urban Renewal</li> <li>• Businesses put money into Urban Renewal</li> </ul>	<ul style="list-style-type: none"> <li>• Initiated Rezoning</li> <li>• Founding member of Best Southwest Partnership</li> <li>• Lancaster Chapter of NAACP</li> <li>• Rudat Study</li> </ul>	<ul style="list-style-type: none"> <li>• New Urbanism</li> <li>• Rezoning around incentives</li> <li>• Single member districts ordered by Court</li> <li>• Drain of bond from 1994 tornado</li> </ul>	<ul style="list-style-type: none"> <li>• Rezoning request on undeveloped property</li> <li>• Neighborhood Wal-Mart</li> <li>• Recruitment and partnership with Prologis</li> <li>• First female City Manager and Police Chief</li> <li>• Extended airport runway</li> <li>• Design criteria for development districts</li> <li>• I-35 Redevelopment (Home Depot, etc.)</li> <li>• Inland Park</li> </ul>



Events	<ul style="list-style-type: none"> <li>• Settled family (A Bledsoe)</li> <li>• JD Hall historic school designation</li> <li>• Bonnie &amp; Clyde robbed a bank</li> <li>• LISD Schools integrated without incident</li> <li>• Fire on town square</li> <li>• Rebuilt after the fire</li> <li>• LISD schools organized</li> <li>• First black school administrator</li> <li>• Churches were strong and supportive</li> </ul>	<ul style="list-style-type: none"> <li>• Green Brothers land became the airport</li> <li>• Hospital opened (1983)</li> <li>• Adopted Council Manager Form of Government</li> <li>• First Baptist Church Landmark</li> <li>• WA Strain Farms Landmark</li> <li>• DART voted down in 1983 – why Lancaster doesn't have Rail</li> <li>• School Bond defeated</li> </ul>	<ul style="list-style-type: none"> <li>• I-35 visioning process and corridor improvements</li> <li>• 1994 Tornado</li> <li>• Lost over 200 homes in tornado</li> <li>• Loss of Town Square (we've yet to recover)</li> </ul>	<ul style="list-style-type: none"> <li>• Mills Branch Subdivision</li> <li>• Prologis Park</li> <li>• Daniieldale Road Extension</li> <li>• Alpha Medical Center</li> <li>• 500-year Flood of 2004</li> <li>• SW Bell changed business model – lost 50% of sales tax</li> <li>• Grant for land for Veterans Park</li> <li>• Built Recreation Center</li> </ul>	<ul style="list-style-type: none"> <li>• Wal-Mart opened</li> <li>• Prologis opened!</li> <li>• Tornado of 2012</li> <li>• New high school dedicated</li> <li>• High school football stadium</li> <li>• Bear Creek Nature Park</li> </ul>
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### Strategic Planning – Council Initiatives

During the Strategic Planning portion of the retreat, the Council had the opportunity to review the City's existing work plan and discuss their priorities for the upcoming year. Each Councilmember was asked to discuss their most important policies and initiatives they wish to pursue to further the City's vision. As a group they developed priorities for the upcoming year.

Before the strategic planning process began, the Council participated in a SWOC analysis. They were asked to share what they believed were the strengths, weaknesses, opportunities and challenges of the organization and community. The City's Senior Management team participated in the exercise on Monday, June 13. The Council had the opportunity to see the staff's responses and elaborate further.

Staff and the Council's responses can be seen in the following chart:



*Community & the Organization*

What are the <b>STRENGTHS</b> of the organization?	What are the <b>WEAKNESSES</b> of the organization?
<ul style="list-style-type: none"> <li>• Achieve positive outcomes</li> <li>• Growing</li> <li>• Versatile staff – able to wear many hats</li> <li>• Care</li> <li>• Clarity in our mission</li> <li>• Knowledgeable</li> <li>• Spirit of cooperation</li> <li>• Identifying and accepting of challenges</li> <li>• Specialization – able to perform technical tests</li> <li>• Responsive to community needs</li> <li>• Transparent</li> <li>• Has the feel of a small town (strength &amp; weakness)</li> <li>• Professional</li> <li>• People make it happen</li> <li>• Intentional</li> <li>• Making progress</li> <li>• Ownership</li> <li>• Work ethic</li> <li>• Dedication</li> <li>• Tenured staff – institutional knowledge</li> </ul>	<ul style="list-style-type: none"> <li>• Consistent trust</li> <li>• Pull for elected leaders to focus on details versus the big picture</li> <li>• Assume people know</li> <li>• Conflict between loyalty and integrity; long term relationships can get in the way</li> <li>• Relative youth/inexperience</li> <li>• Stretched thin</li> <li>• Leave no room for mistakes – no safety net</li> <li>• Need to clarify outcome/intent throughout the organization</li> <li>• Communication</li> <li>• Lack of organizational engagement – “just a job”</li> <li>• Gossip</li> <li>• Lack of transparency</li> <li>• Turnover</li> <li>• Compensation not competitive</li> <li>• Need for training/onboarding of new employees</li> </ul>
What are the <b>OPPORTUNITIES</b> the community needs to seize?	What are the <b>CHALLENGES</b> facing the community?
<ul style="list-style-type: none"> <li>• Growing Tax Base</li> <li>• Conservation of green space</li> <li>• Growth in logistics in industry</li> <li>• Vacant dirt</li> <li>• Loop-9</li> <li>• Incorporating arts &amp; culture</li> <li>• Income – pockets of wealth</li> <li>• Diversity industry</li> <li>• Make good decisions with land</li> <li>• School District STEM Program</li> <li>• Connection to Faith Community residents attend event outside City limits</li> <li>• Public private partnerships</li> <li>• Destination Events (4<sup>th</sup> of July, Bike events, etc.)</li> <li>• Make good decisions with our vacant land use development</li> <li>• New Brand</li> <li>• Access to Public Transportation</li> <li>• Community of Logistics</li> <li>• Downtown</li> <li>• Quality</li> <li>• Historic Town Square</li> <li>• To identify what you want to be</li> <li>• Creating a good value proposition</li> <li>• Become a premiere City</li> <li>• Redevelopment</li> <li>• New development</li> </ul>	<ul style="list-style-type: none"> <li>• Overcoming perceptions and assumptions people have about us</li> <li>• Revitalization of Dallas</li> <li>• Diversity – challenge of perception</li> <li>• Lack of diverse housing – no custom home developments</li> <li>• High speed rail</li> <li>• Infrastructure</li> <li>• Perceptions of the schools</li> <li>• Lack of diverse job base</li> <li>• Transient population</li> <li>• Apathy</li> <li>• Spending power of residents</li> <li>• Contentment breeds complacency</li> <li>• Bedroom community – lack of citizen engagement</li> <li>• Image</li> <li>• Revenue gap legislation</li> <li>• Retaining current residents – keeping our best!</li> <li>• Attracting young families</li> <li>• Core is people – need to remember this as we develop</li> <li>• Convincing folks to take a chance on Lancaster</li> </ul>



### Update and Input

The City Manager provided an overview of the status of the current work plan and shared input from the City's Executive Team.

The City Manager also identified the following items as key priority projects (carryover items) that staff will continue to work on over the course of the next year. They will remain in the work plan:

- Continue Compensation Policy
- Downtown/TIF/City Hall
- Complete Comprehensive Plan Implementation Strategy
- Review Existing Incentive policy
- Review Economic Development Policy
- Complete Golf Course Assessment
- Implement Facility Assessment
- Complete Fleet Maintenance Facility

### Initiatives & Priorities

Each Councilmember was asked to discuss the policies and initiatives they wished to pursue to further the City's vision. The ideas and suggestions shared by each councilmember and staff member is reflected below. Items in **bold** text are part of the 2016-2017 work plan.

Key Performance Areas	Policy, Project, or Adjustment
Financially Sound City Government	<ul style="list-style-type: none"> <li>• Water Bill Assistance Program - 1</li> <li>• Explore Grant Opportunities (low income, home repairs, etc.) - 1</li> <li>• Review Investment and Cash Management Policy - 0</li> </ul>
Civic Engagement	<ul style="list-style-type: none"> <li>• Develop an Arts Council to promote beautification (through private funding) - 1</li> <li>• Better relationship with the Chamber of Commerce - 4</li> <li>• Promotion of Boards &amp; Commission (expand upon qualifications) - 0</li> <li>• Educate the public more/better (bring awareness to events) - 0</li> </ul>
Healthy, Safe, and Vibrant Community	<ul style="list-style-type: none"> <li>• Develop Public Private Partnerships for enhanced park and recreation amenities - 2</li> <li>• Develop a wellness program - 1</li> <li>• Review the City Manager's plan to hire a Police Chief - 0</li> <li>• Consider the purchase of fire ladder truck - 0</li> <li>• Develop a strategy to deal with dogs at large - 2</li> <li>• Litter Abatement Program - Cleaner City - 1</li> </ul>
Professional and Committed City Workforce	<ul style="list-style-type: none"> <li>• <b>Continue Compensation Policy – (Carryover Priority)</b></li> <li>• <b>Downtown/TIF/City Hall - (Carryover Priority)</b></li> <li>• <b>Complete Comprehensive Plan Implementation Strategy - (Carryover Priority)</b></li> <li>• <b>Review Economic Development Policy - (Carryover Priority)</b></li> <li>• <b>Review Existing Incentive policy - (Carryover Priority)</b></li> <li>• <b>Lancaster University – establish professional-level training program for all levels of employees – 6</b></li> </ul>
Quality Development	<ul style="list-style-type: none"> <li>• <b>Develop a Land Bank Strategy for City Property - 6</b></li> <li>• <b>Develop a plan to show developers the opportunities for building custom homes - 4</b></li> <li>• <b>Create and implement a retail strategy so we are clear about what types of retail we want to attract - 6</b></li> <li>• Revisit the Streetscape Master Plan - 2</li> </ul>



	<ul style="list-style-type: none"> <li>• Focus on Hospital District TIF – 0</li> <li>• Campus District &amp; Medial District - 0</li> <li>• Strategy to market campus district &amp; TIF - 0</li> <li>• Become a Certified Local Government – 2</li> <li>• The best for our tax dollars – 2</li> <li>• Develop &amp; commit to plan for infrastructure to I-20/Houston Sch. North for hotel - 2</li> </ul>
Sound Infrastructure	<ul style="list-style-type: none"> <li>• <b>Complete Golf Course Assessment – (Carryover Priority)</b></li> <li>• <b>Implement Facility Assessment – (Carryover Priority)</b></li> <li>• <b>Complete Fleet Maintenance Facility – (Carryover Priority)</b></li> <li>• <b>Infrastructure Project Pleasant Run Road Phases 1, 2, &amp; 3 – 4</b></li> <li>• Build a Parking Lot (paid) for public transportation lot (move towards public transportation) – 2</li> <li>• I-35 Overhaul – 1</li> <li>• Streetscape Phase 1 - 0</li> </ul>

### Operationalizing Priorities

The Council was asked to reflect on the potential Initiatives (projects, policies, and adjustments) identified by the governing body and discuss if there is anything else that needs to be considered to move the City forward.

As a continuation of the discussion on strategic planning the Council was asked to vote on their top operational priorities. Five items rose to the top – which will become their priority areas for the next year. The voting is reflected in the chart above.

The City Manager provided input and feedback on the potential initiatives the Council identified.

The Council was asked to articulate the following for each of their five top initiatives/issues:

- What is the problem that needs to be solved?
- What does success look like?

### 2016 – 2017 New Council Initiatives

The Council and Executive Staff were asked to state the problem(s) for each key priority area and to identify what success looks like.

#### 1. Develop a “Land Bank” Strategy for City Property

Problem(s):

- Having additional land for development and redevelopment projects
- Additional economic development incentive opportunities

Success looks like:

- Inventory of available properties
- Owner and potential for ownership – value of each property/zoning of each property
- Identify which properties can be obtained
- Developing a grading system to categorize land use (commercial, retail, residential, etc.)
- Criteria for identifying properties to acquire
- Funding for properties



**2. Develop a Plan to show Developers the Opportunities for Building Custom Homes**

Problem(s):

- Lack of diverse higher-end custom home developments
- Addressing perception of community
- Retention of current residents seeking to move up to next home
- Attracting residents from workforce (current employers)
- More competitive in attracting higher wage earners to live here

Success looks like:

- Upscale/custom home development
- Gated community
- Aggressive marketing and outreach program to brokers
- Developers highlighting our natural resources

**3. Create and implement a retail strategy so we are clear about what types of retail we want to attract**

Problem:

- Lack of retail desired by citizens and governing body.

Success:

- Select a consultant to partner with the City to create and implement a recruitment strategy.

**4. Infrastructure Project Pleasant Run Road Phases 1, 2, & 3**

Problem(s):

- Complaints on street repairs
- Increased mobility/safety
- Streetscape beautification
- Increased/enhanced economic development opportunities
- Better design for storm water and drainage

Success looks like:

- Happy citizens
- Beautification
- Cohesive roadway/smooth riding
- Improves pedestrian mobility
- Walkable community
- Opportunities for economic stimulus in the areas affected

**5. Lancaster University – establish professional-level training program for all levels of employees**

Problem(s):

- Educating the workforce
- Better customer relations



- Giving staff the opportunity to be “in the know”
- Assist staff in understanding their role in the “big picture”
- Help with relationships with senior staff
- Promotes teamwork
- Better understanding with vision and goals

Success looks like:

- Increased knowledge translates to more job satisfaction
- More informed interpretation of LDC, etc.
- Working better together with staff and policymakers
- Self-confidence

### **Closing/Wrap Up**

Each Council and staff member was asked to share what they had learned, enjoyed the most about the retreat or was looking forward to this next year.

- Carol – Exciting to know that we still have our current goals, and that we are on the same page and that we have new goals to work on during this renaissance.
- Clyde – Glad to be in the know. Good to know we have more in common. Just looking forward to implementing these goals and really seeing what success is.
- Rona – I am laser focused this year; I told Opal my goal this next year is to check all these items off of my list.
- Angie – I’m glad to get direction from the council and to know what we’ll be working on accomplishing together this year.
- Opal – I appreciated the SWOC Analysis and glad to see the Council embrace the vision. This was an opportunity to further engage and work together. I’m excited about the future.
- Marco – I enjoyed the last few days and setting goals together. It’s nice to reflect and see what has been accomplished over the last 6 years. It’s been a pleasure to see what’s been done.
- Stanley – I really like the five goals we set during the session. What I like is that the main topic intertwines with the other. We’re working on pushing Lancaster forward in a positive fashion.
- Mayor Knight– Thank you to everybody. When people think about strategic planning they cringe, but I appreciate everyone’s willing attitude. I hope everyone really marinate on the idea of the Decade of Renaissance; I believe the spirit is ripe. Let’s just be about it. Let’s get it done and support each other and lift one another up. In a year’s time, we’ll be back and pleased with what we’ve accomplished. Thank you, Julia, for what you’ve done.

Mayor Marcus Knight adjourned the 2016 Lancaster City Council Retreat at 1:26 p.m.



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 4.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Financially Sound, City Government

**Submitted by:** Mark Divita, Airport Manager

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#### **Agenda Caption:**

Consider a resolution approving the Rising Star Aviation Holdings, LLC Estoppel Letter for ground leases.

#### **Background:**

Rising Star Aviation Holdings, LLC, has ground leases L-44, 45, 46, 47, & 52, for aircraft hangars at Lancaster Regional Airport. They are currently refinancing their loan. The bank is requesting an estoppel letter as part of the closing process to clarify terms between parties. No terms in the ground leases, will be affected by this estoppel letter. The attached estoppel letter has been prepared by the City.

#### **Operational Considerations:**

The City's airport ground lease program is used for private entities, to build infrastructure on the airport that becomes City property upon expiration of the ground lease. This estoppel letter has been prepared and reviewed to ensure no adverse affects to the City.

#### **Legal Considerations:**

The estoppel letter was prepared and approved as to form by the City Attorney.

#### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open Meeting Act.

#### **Options/Alternatives:**

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

#### **Recommendation:**

Staff recommends approval of the resolution as presented.

#### **Attachments**

Resolution

Estoppel Letter

Loan Docs

Loan Docs

Loan Docs



Loan Docs

Loan Docs

Loan Docs

Loan Docs

Loan Docs

Loan Docs

Loan Docs

Loan Docs

L-44 Ground Lease

L-45 Ground Lease

L-46 Ground Lease

L-47 Ground Lease

L-52 Ground Lease

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ESTOPPEL LETTER WITH RESPECT TO GROUND LEASES, AS MODIFIED, L-44, L-45, L-46, L-47 AND L-52 GENERALLY LOCATED AT THE LANCASTER REGIONAL AIRPORT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Lancaster Regional Airport executed ground lease agreements with Rising Star Aviation Holdings, LLC ("Rising Star"); and

**WHEREAS**, Rising Star negotiated a refinancing of their existing loan from Guaranty GBT & Trust, N.A., including the leasehold estate established by the Lease; and

**WHEREAS**, it is in the best interests of the citizens of the City of Lancaster, Texas to execute this Estoppel Letter to enable Rising Star to secure a refinancing of its existing loan.

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

**SECTION 1.** The Estoppel Letter attached hereto as Exhibit "A" is fully incorporated herein by reference as if fully recited has been reviewed by the City Council of the City of Lancaster, Texas and is found to be acceptable and in the best interests of the City and its citizens and the same be hereby adopted.

**SECTION 2.** That the City Manager is hereby authorized to execute the Estoppel Letter.

**SECTION 3.** The Recitals are incorporated fully herein by reference.

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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



**CITY OF LANCASTER**

**ESTOPPEL LETTER**

As of \_\_\_\_\_, 2016

Guaranty GBT & Trust, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
Attn: Mike Merritt

Gentlemen:

The City of Lancaster, Texas, a municipal corporation, organized and existing under the laws of the State of Texas ("City") is the sole and present owner of certain real property located in Dallas County, Texas which property is described more particularly in **Exhibit "A"** attached hereto and made a part hereof ("Property"). The Property is subject to those certain Lease and Operating Agreements between the City, as Lessor, and Rising Star Aviation Holdings, LLC, a Texas limited liability company ("RSAH"), as Lessee, (as modified and amended from time to time, the "Lease"), as evidenced by those certain Memorandums of Lease and Operating Agreements each dated April 5, 2010, filed of record April 6, 2010, under County Clerk's Instrument Numbers: 201000082842, 201000082843, 201000082844, 201000082845, 201000082846 and 201000082847, of the Real Property Records of Dallas County, Texas.

We are aware that Guaranty GBT & Trust, N.A. ("GBT"), intends to make a loan to RSAH in the principal sum of \$500,000.00 (the "Loan") in order to refinance the existing indebtedness on the leasehold interest in the Property. The Loans will be secured by, among other things, a deed of trust lien on all right, title and interest of RSAH under the Lease. The promissory note, the deed of trust and all other documents and instruments referred to therein or executed in connection with the Loans are hereinafter called the "Loan Documents".

We believe that the proposed financing will materially benefit the Property. Therefore, by executing the enclosed copy of this letter and returning it to the undersigned, City hereby specifically states as follows:

1. A true, accurate and complete copy of the Lease and all amendments thereto is attached hereto as **Exhibit "B"** and made a part hereof. The term of the Lease commenced on March 1, 2010 and extends to February 29, 2040, unless its termination date is modified pursuant to Section 4.29 of the Lease.
2. City takes notice of the Loan Documents and the subordinate and inferior lien provided for therein being impressed solely against the leasehold interest of RSAH in the Property.



3. To the best of City's actual knowledge, the Lease has not been modified, altered or amended except as described herein.
4. City has no actual knowledge of the existence of any lien against the Property other than that created by the Lease and any lien for taxes as may be provided by law.
5. City will give to GBT, at the address of GBT specified in this letter or at such other address as GBT may hereafter designate in writing to City, prompt written notice of any default by Lessee under the Lease simultaneously with the giving of such notice to Lessee, and GBT shall have the right, but not the obligation, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make such payment as may be necessary or appropriate to cure any such default so specified. City shall not exercise City's right to terminate the lease without first giving GBT the notice provided for herein and affording GBT the right to cure such default as provided for herein.
6. For the purposes of this letter, any notice to GBT may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in United States mail, postage prepaid, registered, or certified mail, return receipt requested, addressed to GBT at the above-described address.
7. If GBT or a third party (provided such third party is approved by City in accordance with the terms of the Lease for approval of an assignee) succeeds to the interest of Lessee in and to the Lease and the Property by means of foreclosure under the Loan Documents, by means of a transfer in lieu of such foreclosure, or by any other means due to the failure or inability of Lessee to pay the Loan secured by the Loan Documents, City shall thereafter accept, recognize and treat GBT or such approved third party as the Lessee under the Lease and City shall continue to perform all of its obligations under the Lease. GBT may thereafter, with the written consent of the City, which consent shall not be unreasonably withheld or delayed, assign its leasehold right, title, and interest in and to the Lease. For purposes hereof and any applicable law, and without limitation as to other grounds for City withholding consent, it shall be deemed to be reasonable for City to withhold its consent when any one or more of the following apply:
  - (a) the proposed assignee is of a character or of a reputation or is engaged in a business which is not consistent with the master or strategic plan of the Lancaster Regional Airport as determined by City;
  - (b) the proposed assignee has not demonstrated sufficient financial responsibility or creditworthiness to the satisfaction of City in light of the duties, obligations, and responsibilities of the Lessee under the Lease at the time when the consent is requested;



Guaranty GBT & Trust, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
As of \_\_\_\_\_, 2016  
Page 3

(c) the proposed assignee's intended use of the demised premises as defined in the Lease is inconsistent with the Lease;

(d) the proposed assignment would cause City to be in violation of another lease or agreement to which City is a party or to which City or the Lancaster Regional Airport is subject (including, without limitation, any grant agreements or grant assurances of the Federal Aviation Administration or any other governmental entity or agency);

(e) if at any time consent is requested or at any time prior to the granting of consent, Lessee is in default under the Lease or would be in default under the Lease but for the pendency of a grace or cure period; or

(f) the proposed assignee does not intend to occupy the entire demised premises as described in the Lease and conduct its business therefrom for a substantial portion of the then remaining term of the Lease.

For purposes hereof and any applicable law, and without limitation as to other grounds for City delaying consent, it shall be deemed to be reasonable for City to delay its consent for a period of forty-five (45) days after the receipt by City of all information requested by City regarding or in connection with the proposed assignment and the proposed assignee.

8. To the actual knowledge of City no rent has been paid more than thirty (30) days in advance of its due date.
9. In the event of any inconsistency between the terms and conditions of the Lease and the terms and conditions hereof, the terms and conditions of the Lease shall govern and control.
10. The City hereby certifies that the legal description attached hereto as Exhibit "A" is a true and correct legal description, to the best of its knowledge, of all property which the City leases to RSAH under the Lease.
11. City hereby represents and warrants that the certifications made herein are made with proper authority and that GBT is entitled to rely upon them.

EXECUTED as of (although not necessarily on) \_\_\_\_\_, 2016.

ATTEST:

CITY OF LANCASTER, TEXAS

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

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



Guaranty GBT & Trust, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
As of \_\_\_\_\_, 2016  
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AGREED TO:

RISING STAR AVIATION HOLDINGS, LLC,  
A Texas limited liability company

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

GUARANTY GBT & TRUST, N.A.

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



Guaranty GBT & Trust, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
As of \_\_\_\_\_, 2016  
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THE STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_           §

      This instrument was acknowledged before me on \_\_\_\_\_, 2016, by  
\_\_\_\_\_, \_\_\_\_\_ of the City of Lancaster, a municipal corporation, on behalf  
of said corporation.

\_\_\_\_\_  
Texas Notary Public

Commission expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed name of Notary

THE STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_           §

      This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of Rising Star Aviation Holdings, LLC, a  
Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Texas Notary Public

Commission expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed name of Notary



Guaranty GBT & Trust, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
As of \_\_\_\_\_, 2016  
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THE STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_           §

      This instrument was acknowledged before me on \_\_\_\_\_, 2016, by  
\_\_\_\_\_, \_\_\_\_\_ of Guaranty GBT & Trust, N.A., on behalf  
of said GBT.

\_\_\_\_\_  
Texas Notary Public

Commission expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed name of Notary



## **EXHIBIT "A"**

### Property Description



**EXHIBIT "B"**

Ground Lease and all Amendments



## **AGREEMENT REGARDING MISTAKES AND CLERICAL ERRORS**

LENDER: GUARANTY BANK & TRUST, N.A., and/or its Successors or Assigns  
BORROWER: RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company  
GUARANTORS: JEFF P. HOWLE, DEAN FLOWERS, JAMES DOLLAR and GEROGE SHEBAN  
LOAN AMOUNT: \$500,000.00 COMMERCIAL REAL ESTATE LOAN  
DATE: June \_\_\_\_\_, 2016

Dear Borrower:

Please evidence your consent and agreement to the following, by your execution of this instrument in the space provided below:

In the event of the documents evidencing and/or securing the above referenced loan (the "Loan") misstate or inaccurately reflect the true and correct terms and provisions of the Loan and said misstatement or inaccuracy is due to unilateral mistake on the part of the Lender, mutual mistake on the part of the Lender, Borrower and/or such Guarantor or clerical error, then in such event Borrower and/or such Guarantor shall upon request by Lender in order to correct such misstatement or inaccuracy, execute such new documents or initial such corrected original documents as Lender may deem necessary to remedy said inaccuracy or mistake and Borrower's or such Guarantor's failure to initial or execute such documents as requested shall constitute a default under the Note and Security Interest securing the Loan.

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EXECUTED effective as of the day and year first above written.

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

**GUARANTORS:**

\_\_\_\_\_  
JEFF P. HOWLE

\_\_\_\_\_  
DEAN FLOWERS

\_\_\_\_\_  
JAMES DOLLAR

\_\_\_\_\_  
GEORGE SHEBAN



## **COLLATERAL ASSIGNMENT OF MANAGEMENT AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF MANAGEMENT AGREEMENT (this "Assignment"), is made and entered into as of June \_\_\_\_, 2016, by and among RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company ("Borrower"), GUARANTY BANK & TRUST, N.A. (the "Bank"), and AIRSPACEDFW, LLC, a Texas limited liability company ("Manager").

### **RECITALS**

A. Borrower is the owner of approximately 63,064 square feet of hanger space in a total of five buildings located in Lancaster, Dallas County, Texas, being a multi-tenant aircraft hanger complex at the Lancaster Regional Airport (the "Mortgaged Property").

B. Manager is the managing agent of the Mortgaged Property pursuant to a Management Agreement dated April \_\_\_\_, 2010, between Borrower and Manager (the "Management Agreement").

C. Pursuant to that certain Loan Agreement by and between Bank and Borrower dated as of June \_\_\_\_, 2016 (the "Loan Agreement"), the Bank shall make a loan to Borrower in the amount of \$500,000.00 (the "Loan"). Any capitalized term used in this Assignment and not otherwise defined herein shall have the meaning set forth in the Loan Agreement. The Loan will be evidenced by a Promissory Note and will be secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the "Security Instrument"), which encumbers the Mortgaged Property.

D. Borrower is willing to collaterally assign its rights under the Management Agreement to the Bank as additional security for the Loan.

E. Manager is willing to consent to this Assignment and to attorn to the Bank upon an Event of Default by Borrower under the Loan Documents which shall be continuing, and perform its obligations under the Management Agreement for the Bank, or its successors in interest, or to permit the Bank to terminate the Management Agreement without liability.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, the Bank and Manager agree as follows:

1. Borrower hereby transfers, assigns and sets over to the Bank, its successors and assigns, as additional collateral, all right, title and interest of Borrower in and to the Management Agreement. Manager hereby consents to the foregoing assignment. The foregoing assignment is being made by Borrower to the Bank as collateral security for the full payment and performance by Borrower of all of its obligations under the loan documents evidencing and securing the Loan. However, except as otherwise provided in this Assignment, until the occurrence of and during the continuance of an Event of Default, Borrower may exercise all rights as owner of the Mortgaged Property under the Management Agreement. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall automatically terminate upon the release of the Security Instrument as a lien on the Mortgaged Property.

2. Borrower and Manager represent and warrant to the Bank that (a) the Management Agreement is unmodified and is in full force and effect, (b) the Management Agreement is a valid and binding agreement enforceable against the parties in accordance with its terms, and (c) neither party is in default in performing any of its obligations under the Management Agreement.

3. Borrower hereby covenants with the Bank that during the term of this Assignment: (a) Borrower shall not transfer the responsibility for management of the Mortgaged Property from Manager to any other person or entity without the prior written consent of the Bank, which consent will not be unreasonably withheld; (b) Borrower shall not terminate or materially amend any of the terms or provisions of the Management Agreement without the prior written consent of the Bank, which consent will not be unreasonably withheld; and (c) Borrower shall give the Bank written notice of any written notice that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Mortgaged Property.



4. Upon receipt by Manager of written notice from the Bank that an Event of Default has occurred and is continuing, the Bank shall have the right to exercise all rights as owner of the Mortgaged Property under the Management Agreement.

5. After the occurrence of an Event of Default which shall be continuing, the Bank (or its nominee) shall have the right at any time thereafter to terminate the Management Agreement, without cause and without liability, by giving written notice to Manager of its election to do so. The Bank's notice shall specify the date of termination, which shall not be less than thirty (30) days after the date of such notice.

6. On the effective date of termination of the Management Agreement, Manager shall turn over to the Bank all books and records relating to the Mortgaged Property (copies of which may be retained by Manager, at Manager's expense), together with such authorizations and letters of direction addressed to tenants, suppliers, employees, banks and other parties as the Bank may reasonably require. Manager shall cooperate with the Bank in the transfer of management responsibilities to the Bank or its designee. A final accounting of unpaid fees (if any) due to Manager under the Management Agreement shall be made within sixty (60) days after the effective date of termination, but the Bank shall not have any liability or obligation to Manager for unpaid fees or other amounts payable under the Management Agreement which accrue before the Bank (or its nominee) acquires title to the Mortgaged Property, or the Bank becomes a mortgagee in possession.

7. Manager's address for notice is AirSpaceDFW, LLC, Attn: Ryan Cox, 215 E. Freeman Street, Suite 105, Duncanville, Texas 75116. All notices to be given by the Bank to Manager shall be given in the same manner as notices to Borrower pursuant to the notice provisions contained in the Security Instrument.

8. Manager agrees that:

(a) (i) any fees payable to Manager pursuant to the Management Agreement are and shall be subordinated in right of payment, to the extent and in the manner provided in this Assignment, to the prior payment in full of the Indebtedness, and (ii) the Management Agreement is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Security Instrument and the other loan documents evidencing and securing the Loan and to all advances heretofore made or which may hereafter be made pursuant to the Security Instrument (including all sums advanced for the purposes of (x) protecting or further securing the lien of the Security Instrument, curing defaults by Borrower under the Security Instrument, or (y) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property);

(b) if, by reason of its exercise of any other right or remedy under the Management Agreement, Manager acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Security Instrument;

(c) until Manager and Borrower receive written notice of an Event of Default which is continuing, Manager shall be entitled to retain for its own account all payments made under or pursuant to the Management Agreement;

(d) after Manager and Borrower receive written notice of an Event of Default which is continuing, Manager will not accept any payment of fees under or pursuant to the Management Agreement without the Bank's prior written consent;

(e) if, after Manager and Borrower receive written notice of an Event of Default which is continuing, Manager receives any payment of fees under the Management Agreement, or if Manager receives any payment or distribution of any kind from Borrower or any other person or entity in connection with the Management Agreement which Manager is not permitted by this Assignment to retain for its own account, such payment or other distribution will be received and held in trust for the Bank and unless the Bank otherwise notifies Manager, will be promptly remitted, in cash or readily available funds, to the Bank, properly endorsed to the Bank, to be applied to the principal of, interest on and other amounts due under the loan documents evidencing and securing the Loan in such order and in such manner as provided in the Loan Agreement.



Manager hereby irrevocably designates, makes, constitutes and appoints the Bank (and all persons or entities designated by the Bank) as Manager's true and lawful attorney in fact with power to endorse the name of Manager upon any checks representing payments referred to in this subsection;

(f) Manager shall notify (telephonically, followed by written notice) the Bank of Manager's receipt from any person or entity other than Borrower of a payment with respect to Borrower's obligations under the loan documents evidencing and securing the Loan, promptly after Manager obtains knowledge of such payment; and

(g) during the term of this Assignment, Manager will not commence, or join with any other creditor in commencing, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, without the Bank's prior written consent.

9. Borrower agrees that after Borrower receives written notice of an Event of Default which is continuing, it will not make any payment of fees under or pursuant to the Management Agreement without the Bank's prior written consent.

10. This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Borrower, the Bank and Manager have executed this Assignment as of the day and year first above written.

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

**BANK:**

GUARANTY BANK & TRUST, N.A.

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

**MANAGER:**

AIRSPACEDFW, LLC, a Texas limited liability company

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



## CONSENT AND CERTIFICATE OF MEMBERS

THIS CERTIFICATE is executed by the undersigned, who hereby certifies, effective as of June \_\_\_\_, 2016 (the "Effective Date"), as follows with respect to RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (the "Company").

1. The Company is duly organized and validly existing under the laws of the State of Texas. The undersigned Members (herein so called) are the custodians of the Company's records, and the undersigned are authorized representatives of the Company and have personal knowledge of the Company's records and each of the matters specified herein.

2. The powers of the Company are exercised by or under the control of, and the business and affairs of the Company are managed by, the Members of the Company, and that as of the date of this certification, the undersigned Members constitute all of the Members of the Company.

3. No officers have been formally appointed by the Company.

4. The following is a true, correct and complete list of all of the Members of the Company:

James Dollar  
Dean A Flowers  
Jeff P. Howle  
George Sheban

5. Attached hereto as Exhibit A is a true, complete and correct copy of the Certificate of Formation of the Company (the "Certificate of Formation"), and all amendment thereto, which have not been amended or revoked and is in full force and effect.

6. Attached hereto as Exhibit B is a true, complete and correct copy of the Regulations of the Company (the "Regulations"), with all amendments thereto, which have not been amended or revoked and is in full force and effect.

7. DEAN A. FLOWERS (the "Authorized Member"), is authorized and directed to do any and all things deemed necessary or advisable in the best interest of the Company, at his sole discretion, to (i) borrow, as a cosignor or otherwise, from time to time from GUARANTY BANK & TRUST, N.A. ("Lender") such sums of money as the Authorized Member shall in its sole discretion deem necessary or advisable, (ii) mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber or deliver to Lender any property now or hereafter owned by the Company or in which the Company now or hereafter may have an interest, including without limitation, all of the Company's real property and personal property (tangible or intangible) as security for the payment of any sums borrowed by the Company from Lender, any other further indebtedness of the Company to Lender at any time owing, or the payment of any sums borrowed by an affiliate of the Company or an owner of the Company and any other future indebtedness of such party to Lender at any time, (iii) to subordinate, in all respects, any and all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from any person or entity to the Company, together with any and all security therefore, to all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from such person or entity to Lender, (iv) to guaranty any and all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from any person or entity to Lender, (v) to draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Company or in which the Company may have an interest, and either receive cash for the same or cause such proceeds to be credited to the Company's account with Lender, or to cause such other disposition of the proceeds derived therefrom, and (vi) to renew, extend, increase, decrease, amend or modify any of the foregoing; all upon such terms and conditions as the Authorized Member so acting shall in its sole discretion deem necessary or advisable.



8. The Authorized Member is authorized in the name of, and on behalf of the Company, to do and perform, or to cause to be done and performed, all acts and things as the Authorized Member shall deem necessary, advisable or appropriate to implement the foregoing resolutions, and to execute and deliver all such agreements, certificates, instruments or documents of every character, including without limitation, promissory notes, deeds of trust, security agreements, pledge agreements, collateral assignments, guaranty agreements, modification agreements, and to do and perform, or cause to be done and performed, any other acts and things as the Authorized Member shall deem necessary, advisable or appropriate to comply with the purposes and intent of the foregoing resolutions and to consummate the transactions contemplated therein.

9. The Authorized Member is authorized to execute all of the foregoing agreements, certificates, instruments or documents without the joinder of the any other officer, manager or member.

10. The Company will promptly notify Lender in writing at 100 West Arkansas St., Mt. Pleasant, Texas 75455, Attn: Mike Merritt (or such other addresses as Lender may designate from time to time) prior to any (i) change in the Company's name, (ii) change in the Company's assumed business name(s), (iii) change in the management or control of the Company, (iv) change in the Company's principal office address, (v) change in the Company's state of organization, (vi) conversion of the Company to a new or different type of business entity, or (vii) change in any other aspect of the Company that directly or indirectly relates to any agreements between the Company and Lender. No change in the Company's name or state of organization will take effect until after Lender has received notice thereof. Notwithstanding anything contained herein to the contrary, the foregoing provisions shall not be construed to allow the Company to make any of the foregoing changes in contravention of any of the terms and provisions of any documents executed and entered into by and between the Company and Lender.

11. Any and all actions regarding the foregoing resolutions taken with Lender by the Authorized Member or any of the Members, managers, officers or representatives of the Company for and on behalf of, and in the name of the Company, prior to this certificate are hereby ratified, confirmed, and approved in all respects and for all purposes. This certificate shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to Lender and receipt acknowledged by Lender in writing at Lender's address set forth in Section 10 above (or such other address as Lender may designate from time to time). Any such notice shall not affect any of the Company's agreements or commitments in effect at the time notice is given.

12. All taxes and fees required to maintain the Company's existence have been paid before delinquency and that no such taxes or fees are delinquent. No proceedings are pending for the dissolution, voluntarily or involuntarily, of the Company. The Company is in existence.

13. The Company's offices, assets and operations are (and have always been) located solely and entirely within the State of Texas. The Company's assets and business operations are currently limited to the ownership of the Property.

14. This certificate does not conflict with the Regulations or the Certificate.

15. This certificate may be executed in several identical counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts shall constitute but one and the same instrument.

16. For the purposes of this certificate, a facsimile transmission hereof may be accepted and relied upon by Lender or other parties for all purposes, and any facsimile copy shall be binding upon each signatory hereto. Each signatory hereto agrees, however to cause "ink signed originals" of this certificate to be executed and delivered to Lender as soon as practicable but in any event within ten (10) days from the date hereof.

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IN WITNESS WHEREOF, I have hereunto set my hand effective for all purposes as of the Effective Date.

**MEMBERS:**

---

JAMES DOLLAR

---

DEAN A. FLOWERS

---

JEFF P. HOWLE

---

GEORGE SHEBAN



**EXHIBIT A**

CERTIFICATE OF FORMATION

[FOLLOWS THIS COVER PAGE]



**EXHIBIT B**

REGULATIONS

[FOLLOWS THIS COVER PAGE]



## CLOSING CERTIFICATE

Before me, the undersigned notary public, on this day personally appeared the undersigned, who with full and complete knowledge that if it were not for the truth and accuracy of the statements set forth herein, the Loan (as hereinafter defined) would not be made and the proceeds of the Loan would not be advanced, and after being by me first duly sworn, upon oath, did depose, state, certify and affirm as follows:

1. Capacity. The undersigned, \_\_\_\_\_, is the authorized President of RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company ("Borrower"). The undersigned guarantors, JEFF P. HOWLE, DEAN FLOWERS, JAMES DOLLAR and GEORGE SHEBAN(individually, a "Guarantor" and collectively, the "Guarantors"), are acting in their individual capacity as guarantors of the Loan. Borrower and each of the Guarantors are each sometimes referred to herein as an "Obligated Party".

2. Purpose of Certificate. This Certificate is given to induce GUARANTY BANK & TRUST, N.A. ("Lender"), to extend a commercial real estate loan (the "Loan") to Borrower as evidenced by that certain Promissory Note dated of even date herewith (the "Note"), executed by Borrower payable to Lender in the stated principal amount of \$500,000.00, and as governed by that certain Loan Agreement dated of even date herewith (the "Loan Agreement"), between Borrower, Lender and Guarantors. The Loan is being extended to refinance the purchase of a leasehold estate (the "Leasehold Estate") in approximately 1.799 acres of real property located in Lancaster, Dallas County, Texas, and more particularly described on Exhibit A attached hereto (the "Land"), presently improved with approximately 63,064 square feet of hanger space in a total of five buildings on the Land (the "Improvements") (the Leasehold Estate and the Improvements are sometimes referred to collectively herein as the "Property"). The Loan is secured by, among other things, that certain Deed of Trust (With Security Agreement and Assignment of Rents) dated of even date herewith (the "Deed of Trust"), executed by Borrower, as grantor, for the benefit of Lender, and covering the Property. The Note, the Loan Agreement, the Deed of Trust and all of the other agreements, documents and instruments now or hereafter evidencing, governing, securing or guaranteeing any portion of the indebtedness evidenced by the Note or the performance and discharge of the obligations related thereto, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof, are collectively referred to herein as the "Loan Documents".

3. Organizational Status. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. There exists no default or event which, with the passage of time or giving of notice or both, would constitute a default under the organizational and other governing documents of Borrower or Guarantors.

4. Solvency. No Obligated Party (a) is insolvent, has been adjudicated insolvent or applied for the appointment of a trustee or receiver of its business, estate or assets or any substantial part thereof, or any of the Property, or (b) has commenced any liquidation, reorganization, debt adjustment or other proceedings under any bankruptcy law or other similar law for the relief of debtors. No such proceeding has been commenced against any Obligated Party. No receiver or similar officer has been appointed for any of the Property or the estate of any Obligated Party, and no Obligated Party has made an assignment, statutory or otherwise, for the benefit of creditors. There has been no levy or execution or any attachment or similar process against the interest of any Obligated Party in the Property. No Obligated Party has admitted, in writing, its inability to pay its debts as such debts mature. There are no outstanding liens, suits, garnishments or court actions pending against any Obligated Party which would result in the liquidation, termination or dissolution of any Obligated Party, or which would render any Obligated Party bankrupt. Borrower will not be rendered insolvent by its execution and delivery to Lender of the Note and the other Loan Documents, and the capital remaining in Borrower thereafter is not now and will not become so unreasonably small as not to permit Borrower to carry on its business and transactions and all businesses in which it is about to engage. Borrower does not intend to nor does it believe it will incur debts beyond its ability to pay as they mature and the value of Borrower's assets, at a fair valuation, is greater than the sum of its liabilities.

5. Financial Data. All financial statements delivered to Lender regarding each Obligated Party and the Property in connection with the Loan have been prepared in accordance with accurate accounting principles consistently applied and fairly represent the financial conditions of such Obligated Party as of the dates specified in such statements and there has been no material adverse change thereto since such date. All representations and warranties contained in



the Loan Documents and other applications and information submitted for purposes of obtaining the Loan, made by or on behalf of any Obligated Party are true and correct in all material respects. In connection with Borrower's application for the Loan or the negotiations leading to Lender's agreement to make the Loan, no Obligated Party nor any agent of any Obligated Party has made any untrue statement of material fact, or omitted to state any material fact which, in light of the circumstances under which it was made, is or was necessary to make any statement made not misleading.

6. Proceedings. There are no actions, suits or proceedings filed, pending or threatened, in any court or before or by any governmental authority against any Obligated Party or the Property, which, if decided against any Obligated Party or the Property, would have a material adverse impact on such Obligated Party or on the value or use of the Property or on any of the obligations, covenants, or representations in the Loan Documents. Borrower has received no notification that it is in violation of any requirement of any governmental authority, and Borrower is not in violation of any court order. Except as expressly and specifically referred to in the Loan Documents, (a) Borrower has good and indefeasible title, free and clear of all security interests, liens, claims and encumbrances (other than those of Lender) to all of the property to or in which it has granted Lender a security interest, lien or encumbrance pursuant to the Loan Documents, and (b) such security interests, liens and encumbrances granted to Lender are valid security interests, liens and encumbrances of their recited priority and dignity, and upon proper filing and recordation of the appropriate Loan Documents, shall be properly perfected.

7. Authorization. The execution, delivery and performance by Borrower of the Loan Documents has been duly authorized by all necessary action on behalf of Borrower, and such actions do not and will not violate, breach or constitute a default under any agreement, judgment, order, law, rule or regulation to which Borrower is a party or by which Borrower is bound. The execution, delivery and performance by each Guarantor of its respective guaranty has been duly authorized by all necessary action on behalf of such Guarantor and such actions do not and will not violate, breach or constitute a default under any agreement, judgment, order, law, rule or regulation to which such Guarantor is a party or by which such Guarantor is bound.

8. Enforceability. The Loan Documents were executed and delivered by Borrower to Lender in good faith and in exchange for a reasonably equivalent value. Upon execution and delivery thereof, the Loan Documents will be valid and binding obligations of each of the Obligated Parties, as applicable, enforceable in accordance with their respective terms, and the payment or performance thereof will be subject to no offsets, claims or defenses, except to the extent that enforceability thereof may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting the enforceability of creditors' rights in general.

9. Loan Purpose. The Loan is a business loan transaction in the stated maximum amount solely for the purpose of carrying on the business of Borrower and none of the proceeds of the Loan will be used for personal, family or agricultural purposes. The proceeds of the Loan will be used by Borrower solely and exclusively for the purposes described above and in the Loan Documents. Borrower is not in the business of purchasing or carrying margin stock or of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any loan and/or advances made by Lender to or for the benefit of Borrower hereunder will be used to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

10. Relationship. The relationship between Borrower and Lender is solely that of borrower and lender, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of borrower and lender.

11. Experience. The principals of Borrower are knowledgeable business persons with experience in real estate transactions and real estate financing, and in its transactions with Lender, Borrower and its principals have been represented by legal counsel independent of Lender and independent of counsel for Lender.

12. Approval. No further consent or approval of any governmental authority or any regulatory body to the execution, delivery or performance of the Loan Documents is required by law.



13. Disclosures Regarding Property. With respect to the Property, the undersigned hereby certifies as follows:

a. There are no mechanic's or materialmen's liens, delinquent taxes or assessments, lienable bills or other claims constituting or which constitute a lien on the Property, or any part thereof.

b. The Property and the use thereof contemplated by Borrower comply and will comply with all applicable restrictive covenants, zoning ordinances and building codes, all applicable health and environmental laws and regulations, and all other applicable laws, rules and regulations.

c. The sanitary water supply, storm and sanitary sewers, water lines and electric, telephone and other necessary utility facilities are available or will be made available to the Property with adequate capacity to service its intended use, at or within the boundary lines of the Property.

d. The Property is free and clear from all liens and security interests, except the liens and security interests created by the Loan Documents. The Property is not subject to any financing statements filed in any public office except for the financing statements related to the Loan Documents.

e. The Property is not the homestead of any Obligated Party.

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EXECUTED effective as of June \_\_\_\_\_, 2016.

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

**GUARANTORS:**

\_\_\_\_\_  
JEFF P. HOWLE

\_\_\_\_\_  
DEAN FLOWERS

\_\_\_\_\_  
JAMES DOLLAR

\_\_\_\_\_  
GEORGE SHEBAN

\* \* \* \* \*

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

This instrument was subscribed and sworn to before me on the \_\_\_\_\_ day of June, 2016, by \_\_\_\_\_, President of RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

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

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

[ S E A L ]



\* \* \* \* \*

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

This instrument was subscribed and sworn to before me on the \_\_\_\_\_ day of June, 2016, by JEFF P. HOWLE, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

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

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

[ S E A L ]

\* \* \* \* \*

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

This instrument was subscribed and sworn to before me on the \_\_\_\_\_ day of June, 2016, by DEAN FLOWERS, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

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

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

[ S E A L ]

\* \* \* \* \*

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

This instrument was subscribed and sworn to before me on the \_\_\_\_\_ day of June, 2016, by JAMES DOLLAR, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

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

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

[ S E A L ]



\* \* \* \* \*

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

This instrument was subscribed and sworn to before me on the \_\_\_\_\_ day of June, 2016, by GEORGE SHEBAN, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

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

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

[ S E A L ]



**EXHIBIT A**

PROPERTY DESCRIPTION

TO BE ATTACHED



\_\_\_\_\_, 20\_\_\_\_

GUARANTY BANK & TRUST, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
Attention: Mike Merritt

Re: Declaration of Rising Star Hangers of Lancaster Condominium dated as of April 12, 2010, recorded as Instrument No. 201000088261 in the Real Property Records of Dallas County, Texas, as amended and modified from time to time (the "Declaration")

Ladies and Gentlemen:

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (the "Borrower"), as the owner of 32 airplane hangers (the "Applicable Units") located within the Lancaster Regional Airport (the "Project") as described in the Declaration, has applied for a loan (the "Loan") to be evidenced by a promissory note payable to GUARANTY BANK & TRUST, N.A., a national banking association, its successors and assigns ("Lender") and to be secured, in part, by a lien on the Units, which lien shall be in favor of Lender. Capitalized terms used herein, to the extent not otherwise defined, shall have the same meanings as in the Declaration.

The undersigned currently constitute all the board of directors of RISING STAR HANGERS OF LANCASTER CONDOMINIUM ASSOCIATION, a Texas nonprofit corporation (the "Association") and, in connection with the matters set forth below, do hereby certify to the Lender as follows:

1. The terms and provisions of the Declaration (including the Bylaws of the Association and any other exhibit attached to the Declaration) have not been amended or modified, and are in full force and effect.
2. Borrower is reflected on the books of the Association as being the sole owner of the Applicable Units.
3. The current Budget for the Association is attached hereto as Exhibit A.
4. The Association has not performed, nor is performing, any work or services chargeable in whole or in part to the Borrower under the provisions of the Declaration, and all such work or services has been paid except for the following: **None**.
5. With respect to the Applicable Units, there are no unpaid or otherwise outstanding amounts due for any of the following (collectively referred to as the "Assessments": (i) annual operating assessments, (ii) special assessments, (iii) special individual Unit assessments, or (iv) any other assessments or amount that are due and payable to the Association pursuant to the terms and provisions of the Declaration.
6. To the best of the undersigned's knowledge, with respect to the Applicable Units, as of the date hereof, neither the Borrower nor the Applicable Units are in default under the terms and provisions of the Declaration, and no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by the Borrower under the Declaration.



7. There are no set-offs, claims, counterclaims or defenses that have been asserted, or are otherwise known by the Association, against the enforcement of the obligations of the Borrower under the Declaration.

8. There has been no suspension of rights or imposition of penalties with respect to the Applicable Units, nor has any such suspension or imposition been threatened or pending.

9. The certificate of insurance evidencing the Association's property and liability insurance coverage is attached hereto as Exhibit B. The Association hereby agrees to name Lender as additional loss payee under such property insurance and as an additional insured under such liability insurance, and to accord Lender all rights otherwise accruing to mortgagees pursuant to the Declaration.

10. Attached hereto as Exhibit C is a true, complete and correct copy of the Articles of Incorporation of the Association, as of the date hereof.

11. The Association is in existence in the state of its incorporation, as evidenced by the certificate of good standing and/or certificate of existence from the Secretary of State or other applicable governmental authority of the State of Utah attached hereto as Exhibit D, and the Association is duly qualified to transact business and is in good standing in the State of Utah.

12. The Association acknowledges this instrument as, among other things, Lender's written request to receive all notices, including notices of default or foreclosure with respect to the Applicable Units, financial reports and other correspondence as is to be provided to, or as may be requested by, a Mortgagee pursuant to the Declaration. The Association agrees to provide copies of all notices, financial statements and other correspondence given Borrower under the Declaration or under this instrument to Lender at the following address:

GUARANTY BANK & TRUST, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
Attention: Mike Merritt

or such other address as Lender shall designate in writing; and all such notices shall be in writing and shall be considered as properly given if given in the same manner and in accordance with the terms and provisions of the Declaration.

13. The undersigned representatives of the Association are duly authorized and fully qualified to execute this instrument on behalf of the Association thereby binding the Association. As of the date hereof, the Association's directors are \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

14. There have been no Board of Director consents that have been adopted by the Association within the past twenty-four (24) months.

15. The Association understands and acknowledges that Lender will receive as part of the security for the Loan a Mortgage encumbering Borrower's fee interest in the Applicable Units and in the rents, issues and profits of the leases therein (the "Mortgage"), and that Lender (and persons or entities to whom the Mortgage may subsequently be assigned) is relying upon the certification contained herein in making the Loan. Upon delivery by Lender of a copy of its recorded encumbrance, the Association will recognize Lender to be an "Institutional Lender".

16. In the event that Lender succeeds to the interest of Borrower, Lender's rights in the Association shall be the same as Borrower's before Lender succeeded to the interest of Borrower;



provided, however, that Lender shall not be bound by any amendment or modification of the Declaration made without Lender's written consent.

17. In the event Borrower shall fail to perform or observe any of the terms, conditions or agreements in the Declaration, the Association shall give written notice thereof to Lender, and Lender shall have the right (but not the obligation) to cure such default.

The Association acknowledges and agrees that Borrower and Lender (and their respective successors and assigns) shall be entitled to rely on the Association's certifications set forth herein.

(Signature page follows)



IN WITNESS WHEREOF, the Association has executed this instrument effective as of this \_\_\_\_\_ day of June, 2016.

RISING STAR HANGERS OF LANCASTER  
CONDOMINIUM ASSOCIATION, a Texas nonprofit  
corporation

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

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

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



EXHIBIT A

Budget

(Current Association Budget follows this cover page)



EXHIBIT B

Certificate of Insurance

(Certificate of Insurance - Property and Liability follows this cover page)



EXHIBIT C

Articles of Incorporation

(The Articles of Incorporation of the Association follows this cover page.)



EXHIBIT D

Certificate of Good Standing/Existence

(The Certificate of Good Standing/Existence (Utah)  
for the Association follows this cover page.)



**After recording, return to:**  
**HIGIER ALLEN & LAUTIN, P.C.**  
 2711 N. Haskell Ave., Suite 2400  
 Dallas, Texas 75204  
 Attn: Ryan S. Foster

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**LEASEHOLD DEED OF TRUST**  
**(With Security Agreement and Assignment of Rents)**

STATE OF TEXAS                   §  
COUNTY OF DALLAS         §

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED, RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (hereinafter called "Grantor", whether one or more), whose mailing address is \_\_\_\_\_, Attn: \_\_\_\_\_, for and in consideration of the debt hereinafter described, has granted, bargained, sold, transferred, assigned, and conveyed, and by these presents does grant, bargain, sell, transfer, assign and convey, in trust unto KIRK L. LEE, as trustee, and unto his, her or their successors or substitutes in the trust hereby created (such trustee and any successors or substitutes being hereinafter collectively called "Trustee"), and unto the Trustee's assigns, forever, all and singular the property of Grantor, both real and personal, situated in the County of Dallas and State of Texas, which is described as follows:

Grantor's interest in: those certain Lease and Operating Agreements between the City of Lancaster ("Landlord"), as Lessor, and Grantor, (as modified and amended from time to time, the "Ground Lease"), as evidenced by those certain Memorandums of Lease and Operating Agreements each dated April 5, 2010, filed of record April 6, 2010, under County Clerk's Instrument Numbers: 201000082842, 201000082843, 201000082844, 201000082845, 201000082846 and 201000082847, of the Real Property Records of Dallas County, Texas, and the leasehold estate created by the Ground Lease (the "Leasehold Estate") covering the land described on **Exhibit A** attached hereto and made a part hereof by this reference for all purposes; together with all improvements thereon or hereafter placed thereon with all equipment, fixtures and articles of personal property now or hereafter attached to or used in and about the buildings and other improvements located upon the property; all renewals or replacements thereof or in substitution therefor, whether or not the same are or shall be attached to the property in any manner; all building materials and equipment now or hereafter delivered to the property and intended to be installed therein; all plans and specifications for the property; all deposits, funds, accounts, reserve accounts, escrow accounts (to the extent permitted by applicable law), instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith); all contract rights and all declarant's rights pertaining to the land and all rights arising under the restrictive covenants applicable to the land; and all notes or chattel paper and all supporting obligations arising from or by virtue of any transactions related to the property; all permits, licenses, certificates and other rights and privileges obtained in connection with the property; all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein; all proceeds (including premium refunds) payable or to be payable under any policy of insurance relating to the property; all proceeds arising from the taking of all or a part of the real property or any rights appurtenant thereto, for any public or quasi-public use under any law,



or by right of eminent domain, or by private or other purchase in lieu thereof; all of the oil, gas and minerals, in, on or under the land; all royalties, water rights and wind rights related to the land; and all other rights and interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the above-described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress and all reversionary rights or interests of Grantor with respect to such property.

It is hereby agreed that to the extent permitted by law all of the foregoing personal property and fixtures (hereinafter collectively referred to as "Collateral") are to be deemed and held to be a part of and affixed to the real property. In the event the estate of the Grantor in and to any of the above-described property is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease, and if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Leasehold Deed of Trust (the "Deed of Trust") in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. The foregoing described real and personal property is hereinafter collectively called the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property unto the Trustee and his or her successors or substitutes forever, Grantor hereby binds itself and its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto the Trustee and his or her successors and substitutes, against every person lawfully claiming or to claim the same or any part thereof.

This conveyance is made in trust, however, to secure and enforce the payment of that certain Promissory Note dated of even date herewith (hereinafter called the "Note"), executed by Grantor, payable to the order of GUARANTY BANK & TRUST, N.A. (hereinafter called "Beneficiary"), whose address is 100 West Arkansas St., Mt. Pleasant, Texas 75455, Attn: Mike Merritt, in the stated principal amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), bearing interest, being payable and maturing as more particularly set forth therein. The Note evidences, among other indebtedness, the loan governed by that certain Loan Agreement of even date herewith (the "Loan Agreement"), by and between Grantor and Beneficiary, among others. The Note, the Loan Agreement, this Deed of Trust and all of the other agreements, documents and instruments now or hereafter evidencing, governing, securing or guaranteeing any portion of the indebtedness evidenced by the Note or the performance and discharge of the obligations related hereto or thereto, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof, are collectively referred to herein as the "Loan Documents".

This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit or account of Grantor, as contemplated by any covenant or provision herein contained or contained in the Note or any of the Loan Documents, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Grantor may hereafter become indebted to Beneficiary for further sums, and any security given or pledged in connection with any such other indebtedness or hereafter owing by Grantor to Beneficiary shall likewise secure all indebtedness evidenced by the Note and this Deed of Trust. All indebtedness secured hereby shall be payable at Beneficiary's address above, and, unless otherwise provided in the instrument evidencing such indebtedness, shall bear interest at the same rate per annum as the Note bears, from the date of accrual of such indebtedness until paid. If the Note or any other indebtedness secured hereby shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection following default or after maturity, whether matured by the expiration of time or by any option given to the Beneficiary to accelerate the maturity, Grantor agrees to pay Beneficiary's reasonable attorneys' and collection fees, and such fees shall be a part of the indebtedness secured hereby.

To better secure payment of such indebtedness, Grantor does hereby covenant, warrant and represent to and agree with Beneficiary and with the Trustee as follows:



1. **Address.** Grantor's mailing address as shown in the first paragraph hereof is true and correct.
2. **Payment.** Grantor will pay all of the indebtedness secured hereby, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note or any other instrument evidencing, securing, or pertaining to such indebtedness, or evidencing any renewal or extension of such indebtedness, or any part thereof, and further, Grantor shall punctually and properly perform all of Grantor's covenants, obligations, and liabilities hereunder and under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness, or any part thereof.
3. **Title.** Grantor has in its own right good, and indefeasible title in its leasehold estate as set forth in the policy of title insurance insuring the lien of this Deed of Trust, except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the indebtedness hereby secured, except as otherwise provided herein, and has full right to make this conveyance, and with respect to each Grantor who is an individual, no part of the Mortgaged Property constitutes any part of his business or residential homestead.
4. **Insurance.** Grantor will keep all insurable Mortgaged Property insured against the risks covered by policies of fire and extended coverage insurance and such other risks as Beneficiary may require, such insurance to be written in form and with companies acceptable to Beneficiary, with loss made payable to Beneficiary by mortgagee clauses of standard form, and will deliver the policies of insurance to Beneficiary promptly as issued; and in case Grantor fails to do so, Beneficiary, at its option, may procure such insurance at Grantor's expense. In the event the Mortgaged Property, or any portion thereof, lies within a flood plain, a flood prone area or any designated flood hazard area, Grantor shall, in addition to the foregoing insurance, obtain and maintain flood insurance in form and with companies acceptable to Beneficiary, with loss made payable to Beneficiary by mortgagee clauses of standard form. All renewal and substitute certificates of insurance shall be delivered at the office of Beneficiary, premiums paid, at least ten (10) days before termination of policies theretofore delivered to Beneficiary. If renewal policies are not so delivered to Beneficiary, Beneficiary, while not obligated, may obtain the required insurance on behalf of Grantor (or insurance in favor of Beneficiary alone) and pay the premiums thereon. Beneficiary may rely upon any cancellation notice from any insurance carrier of any policy of insurance furnished pursuant to this provision and may, but shall not be obligated, to obtain the required insurance as authorized herein and such coverage shall continue in the company selected by Beneficiary, and Grantor shall pay on demand the premiums for such coverage notwithstanding the fact that Grantor may have procured separate or additional coverage to that obtained by Beneficiary. In case of any loss or casualty, (a) if Grantor is in default hereunder, Beneficiary, at its option, shall be entitled to receive and retain all proceeds of the insurance policies, and shall apply the proceeds to the indebtedness secured hereby or Beneficiary may, at its option, apply such proceeds to restore the Mortgaged Property, and (b) if Grantor is not in default hereunder, Grantor may, at its option, apply such proceeds to the indebtedness secured hereby or apply such proceeds to the restoration of the Mortgaged Property. If Grantor elects to apply such proceeds to the restoration of the Mortgaged Property, such restoration shall be promptly completed in accordance with plans and specifications approved by Beneficiary, and the costs and expenses thereof, to the extent they exceed the proceeds of the insurance policies, shall be borne by Grantor.
5. **Taxes.** Grantor will pay all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable (unless such payments are made by Beneficiary as hereinafter provided), and, if Grantor fails to do so, the Beneficiary may pay them (but shall have no obligation to do so), together with all costs and penalties thereon, at Grantor's expense. Grantor shall not re-finance any of the taxes and assessments against or affecting all or any portion of the Mortgaged Property using any method which maintains a superior lien on or charge against the Mortgaged Property, and Grantor shall execute, deliver and record no documents or instruments which assign, re-finance, renew or continue the lien securing or arising in connection with any taxes or assessments against all or any portion of the Mortgaged Property. Provided however, that, upon strict compliance by Grantor of the requirements stated below, Grantor may, in lieu of paying such taxes and assessments as they become due and payable, contest the validity thereof in good faith and by appropriate proceedings; and pending such contest Grantor shall not be deemed in default hereunder because of such nonpayment, if (a) prior to delinquency of the asserted tax or assessment, Grantor furnishes the Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as therein stipulated secured by a deposit in cash, or security acceptable to Beneficiary, or with surety acceptable to Beneficiary, in the amount of the tax or assessment being contested by Grantor, and a reasonable additional sum to pay all possible



costs, interest and penalties imposed or likely to be incurred in connection therewith, (b) Grantor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final, and (c) in any event, each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

6. **Reserve Funds.** At the request of Beneficiary, Grantor shall create a fund or reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Mortgaged Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Beneficiary, less all sums paid previously to Beneficiary therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent, such sums to be held by Beneficiary, without interest, unless interest is required by applicable law, for the purposes of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Grantor to Beneficiary on or before the date when such premiums, taxes, and assessments shall become delinquent. Transfer of legal title to the Mortgaged Property shall automatically transfer title to all sums deposited with Beneficiary under the provisions hereof or otherwise.

7. **Condemnation.** All judgment, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Beneficiary, who shall apply the same to the indebtedness secured hereby, first to interest accrued as of the date of application of the condemnation proceeds and then to principal outstanding, provided however, in the event Grantor is not in default hereunder, Grantor may apply proceeds to the indebtedness secured hereby or may apply same to restore the Mortgaged Property, to the extent, but only to the extent, that such restoration is commercially feasible. Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. In the event Beneficiary, as a result of any such judgment, decree or award, believes that the payment of any indebtedness or performance of any obligation secured by this Deed of Trust is impaired, Beneficiary may, after any applicable notice, cure or grace period, declare all of the indebtedness secured hereby immediately due and payable.

8. **Defense of Title.** If, while this trust is in force, the title of the Trustee to, or the interest of Beneficiary in, the Mortgaged Property hereby conveyed or any part thereof, shall be endangered or shall be attacked directly or indirectly, Grantor hereby authorizes Beneficiary, at Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Grantor shall immediately pay all such taxes, or cause same to be paid or reimburse Beneficiary for the payment of same immediately upon written notice from Beneficiary. Grantor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and stating that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

9. **Reimbursement.** If, in pursuance of any covenant contained herein or in any other instrument executed in connection with the Loan evidenced by the Note or in connection with any other indebtedness secured hereby, Beneficiary shall expend any money chargeable to Grantor or subject to reimbursement by Grantor under the terms of such covenant or agreement, Grantor will repay the same to Beneficiary immediately upon demand at the place where the Note or other indebtedness secured hereby is payable, together with interest thereon at the rate of interest payable under the Note or on account of such other indebtedness in the event of a default thereunder from and after the date of Beneficiary's expenditure. The sum of each such payment shall be added to the indebtedness hereby secured and thereafter shall form a part of the same, and it shall be secured by this Deed of Trust and by subrogation to all of the rights of the person or entity receiving such payment.



10. **Maintenance of Property.** Grantor will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end; but Grantor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property; and Grantor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

11. **Prohibition of Transfer or Encumbrance.** The sale, transfer, disposition or encumbrance, whether by operation of law or otherwise, of all or any part of the Mortgaged Property (other than items of personalty which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new) without the written consent of Beneficiary shall constitute a default hereunder. Grantor shall not grant any easement or encumbrance or impose any restriction whatsoever with respect to any of the Mortgaged Property without the joinder therein of Beneficiary, nor shall Grantor rent or lease any of the Mortgaged Property for any purpose whatsoever without the prior written consent of Beneficiary. In the event Grantor is a corporation or a limited liability company, it agrees that the sale, conveyance, hypothecation, transfer or disposition of more than ten percent (10%) of its issued and outstanding capital stock or ownership interests, without the prior written consent of Beneficiary, shall constitute a default; or, that in the event Grantor is a limited or general partnership, or a joint venture, a change of any general partner or any joint venturer, either voluntarily or involuntarily, or the sale, conveyance, transfer, disposition or encumbrance of any such general partner or joint venture interests or of more than twenty percent (20%) of the partnership or venture interests, without the prior written consent of Beneficiary, shall constitute a default. In the event Beneficiary should consent to any sale or conveyance of the Mortgaged Property, Grantor will not sell all or any portion of the Mortgaged Property unless the purchaser, as a part of the consideration, either (a) expressly agrees to assume the payment of the indebtedness hereby secured, or (b) expressly agrees that the title and rights of purchaser are and shall remain unconditionally subject to all of the terms of this Deed of Trust for the complete fulfillment of all obligations of the Grantor hereunder, and the deed effecting such transfer shall expressly set forth such agreement of the purchaser.

12. **No Discharge Upon Transfer.** If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness hereby secured in the same manner as with Grantor without in any way vitiating or discharging Grantor's liability hereunder or upon the indebtedness hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the indebtedness hereby secured, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

13. **Default in Payment or Performance** Upon the occurrence (beyond any applicable notice, cure or grace period) of any "Event of Default" (herein so called and as defined in the Loan Agreement), Beneficiary, at its option, without further notice, may pursue any rights and remedies it may have hereunder or at law, or in equity, including without limitation, filing suit on the Note and/or enforcing the power of sale granted herein, and Beneficiary may, without limitation, declare the entire indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable.

14. **Sale by Trustee.** If Grantor pays the Note and other debt that may be owing, or causes same to be paid, and keeps and performs each and every covenant, condition and stipulation contained herein and in the Note, then this Deed of Trust shall become null and void; otherwise to be and remain in full force and effect. If there is a default hereunder, or under the Note or the Loan Agreement, then the Note, together with all other sums secured hereby, shall at the option of the Beneficiary, become at once due and payable without demand, notice or judicial hearing except as may be required by law (such requirement of law being hereby waived to the extent permitted by law), and the Trustee, when requested to do so by the Beneficiary after such default, shall sell the Mortgaged Property, at public auction, to the highest bidder, for cash at the county courthouse of the county in Texas in which the Mortgaged Property or any part thereof is situated as herein described in the area in such courthouse designated for real property foreclosure sales in accordance with applicable law (or in the absence of such designation, in the area set forth in the notice of sale hereinafter described), between the hours of 10:00 o'clock A.M. and 4:00 o'clock P.M., on the first Tuesday of any



month, after giving notice of the time, place and terms of said sale, and of the property to be sold in accordance with applicable laws in the State of Texas in effect at the time such notice is given, provided however, such sale shall begin at the time stated in such notice or within three (3) hours thereafter.

Notice of such proposed sale shall be given by posting written notice of the sale at the courthouse, and, except as otherwise permitted or required by applicable law, by filing a copy of the notice in the office of the county clerk of the county in which the sale is to be made at least twenty-one (21) days preceding the date of the sale. If the property to be sold is situated in more than one county, a notice shall be posted at the courthouse and filed with the county clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be *prima facie* evidence of the fact of service.

Any notice that is required or permitted to be given to Grantor may be addressed to Grantor at Grantor's address as stated above. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at the address of Grantor as is shown by the records of Beneficiary. The Trustee may appoint any attorney-in-fact or agent to act in his or her stead as Trustee to perform all duties of the Trustee authorized herein. Grantor authorizes and empowers the Trustee to sell the Mortgaged Property, together or in lots or parcels, as the Trustee shall deem expedient; to receive the proceeds of said sale; and to execute and deliver to the purchaser or purchasers thereof good and sufficient deeds of conveyance thereto by fee simple title, with covenants of general warranty, and Grantor binds himself or herself to warrant and forever defend the title of such purchaser or purchasers. The proceeds of such sale shall be applied in the following order:

- (a) to the payment of all necessary costs and expenses incident to the execution of said trust, including a reasonable fee to the Trustee not exceeding five percent (5%) of the gross proceeds of the sale of the Mortgaged Property;
- (b) the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note;
- (c) the remainder, if any, to Grantor or such other person or persons entitled thereto by law.

15. **Appointment of Receiver.** Upon the commencement of any action to enforce the lien herein given, Beneficiary shall have the additional right to have a court of competent jurisdiction appoint a receiver to take possession of the Mortgaged Property. This provision is a right created by this contract and is cumulative of, and shall not affect in any way, the right of the Beneficiary to the appointment of a receiver given the Beneficiary by law.

16. **Election of Remedies.** Upon the occurrence of a default hereunder, Beneficiary shall have the option to proceed with foreclosure in satisfaction of such delinquent or then matured debt, either through the courts or by directing the Trustee to proceed as if under a foreclosure, conducting the sale as herein provided and without declaring the whole debt due, and provided that if said sale is made because of such default, such sale may be made subject to the unmatured part of the Note and debt secured by this Deed of Trust; such sale, if so made, shall not in any manner affect the unmatured part of the debt secured by this Deed of Trust, it being the purpose to provide for a foreclosure and the sale of the Mortgaged Property for any matured portion of said debt, without exhausting the power of foreclosure, and to sell the Mortgaged Property for any other part of said debt whether matured at the time or subsequently maturing.

17. **Prerequisites to Sale.** In case of any sale hereunder, all prerequisites to the sale shall be presumed to have been performed, and in conveyance given hereunder, all statements of facts or other recitals made therein as to any of the following, shall be taken in all courts of law or equity as *prima facie* evidence that the facts so stated or recited are true; i.e., the nonpayment of money secured; the request to the Trustee to enforce this trust; the proper and due appointment of any substitute trustee; the advertisement of sale or time, place and manner of sale; or any other



preliminary fact or thing. Trustee shall not be liable for any action taken or omitted to be taken by Trustee in good faith and reasonably believed to be within the discretion or power conferred upon Trustee by this Deed of Trust and shall be answerable only for losses occurring through his or her gross negligence or willful misconduct. Grantor agrees to save and hold the Trustee and Beneficiary harmless from all loss and expense, including reasonable attorneys' fees, costs of a title search or abstract, and preparation of survey, incurred by reason of any action, suit or proceeding (including an action, suit or proceeding to foreclose or to collect the debt secured hereby) in and to which Trustee or Beneficiary may be or become a party by reason hereof, including but not limited to, condemnation, bankruptcy and administration proceedings, as well as any other proceeding wherein proof of claim is required by law to be filed or in which it becomes necessary to defend or uphold the terms of this Deed of Trust, and in each such instance, all money paid or expended by Trustee or Beneficiary, together with interest thereon from date of such payment at the rate set forth in said Note or at the legal rate, whichever is higher, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Grantor.

18. **Substitute Trustee.** Beneficiary may, at its option, appoint a successor or substitute Trustee without any formality or notice (except as may be required by law) other than a designation in writing of such appointment to such successor or substitute trustee who shall thereupon become vested with and succeed to all the powers and duties named herein, the same as if the successor or substitute had been named original Trustee herein; such right to appoint a successor or substitute trustee shall exist as often and whenever the Beneficiary desires. If the Beneficiary is a corporation, it may act through any authorized officer or by any agent or attorney-in-fact properly authorized by any such officer.

19. **Waiver of Deficiency Statute.** To the extent permitted by law, Grantor expressly waives and relinquishes any and all rights and remedies under Sections 51.003, 51.004 and 51.005 of the Texas Property Code, as amended or re-codified ("**Deficiency Statutes**"), including without limitation, the right to seek a credit against or offset of any deficiency judgment based on the fair market value of the Mortgaged Property sold at any judicial or non-judicial foreclosure; and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and/or any other party obligated on the indebtedness secured hereby equal to the difference between the amount owing on the indebtedness secured hereby and the foreclosure sales price. Alternatively, in the event the foregoing waiver is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by any of the Deficiency Statutes: (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but not later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including without limitation, brokerage commissions, title insurance premiums, cost of a survey, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including without limitation, utilities expenses, property management fees, security, taxes and assessments (without duplication), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property and taking into consideration the factors set forth above.

20. **No Waiver.** The exercise of any option given under the terms of this Deed of Trust shall not be considered a waiver of the right to exercise any other option herein; and the filing of a suit to foreclose this Deed of Trust, either on any matured portion of the debt or for the whole debt, shall never be considered an election of remedies so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Deed of Trust, preclude the prosecution of a later suit thereon.

21. **Creation of Landlord - Tenant Relationship.** Any sale of the Mortgaged Property under this Deed of Trust shall, without further notice, create the relation of landlord and tenant at sufferance between the purchaser at



such sale as landlord, and Grantor as tenant; and upon failure to surrender possession thereof, Grantor may be removed by a writ of possession at suit by the purchaser.

22. **Disaffirm Encumbrances.** The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such easement or rental, lease or other contract.

23. **Beneficiary May Bid.** Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any Trustee's or foreclosure sale hereunder.

24. **Right of Entry.** The Grantor agrees, to the full extent that Grantor lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Grantor, Grantor's successors and assigns; and, holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as the Grantor, Grantor's successors or assigns, might at the time do and may exercise all rights and powers of the Grantor, in the name, place and stead of the Grantor, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

25. **Release.** Any part of the Mortgaged Property may be released by the Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lien holder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the indebtedness secured hereby is completely paid.

26. **Waiver of Marshalling, Etc.** To the extent that Grantor may lawfully do so, Grantor agrees that Grantor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or any other matter whatsoever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatsoever. Grantor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 43 of the Texas Civil Practices and Remedies Code of the State of Texas, pertaining to the rights and remedies of sureties. Grantor further waives, to the extent permitted by law, the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisal before sale of any portion of the Mortgaged Premises, commonly known as Appraisal Laws, and (b) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the debt secured hereby or creating or extending a period of redemption from any sale made in collection of said debt, commonly known as Stay Laws and Redemption Laws.

27. **Assignment of Rents, Royalties, Etc.** (a) All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "**Rents**") are hereby assigned, transferred, conveyed and set over to Beneficiary, to be applied by Beneficiary in payment of the principal and interest and all other sums payable on the Note, and any other indebtedness secured hereby. Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents as trustee for the benefit of Beneficiary, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums then due and payable on the Note and payment of all other indebtedness secured hereby and then due and payable; next to the performance and discharge of



the obligations of Grantor hereunder and under the other Loan Documents; and next to the payment of all costs and expenses related to the ownership, operation, management, repair and leasing of the Mortgaged Property, including without limitation, insurance premiums, property taxes, ordinary repairs, maintenance and security, and reasonable reserves therefor. Thereafter, Grantor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents.

(b) Upon receipt of a notice from Beneficiary that each such lessee under any leases of the Mortgaged Property is directed to pay to Beneficiary all Rents thereafter accruing (a "Lessee Notice"), each lessee under the leases is hereby authorized and directed to pay directly to Beneficiary all Rents thereafter accruing and the receipt of Rents by Beneficiary shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee of a Lessee Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Beneficiary and each such lessee shall be entitled to rely on such Lessee Notice and shall have no liability to Grantor for any Rents paid to Beneficiary after receipt of such Lessee Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. GRANTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO BENEFICIARY HEREUNDER, AND GRANTOR HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY BENEFICIARY CONTEMPLATED BY THIS ASSIGNMENT.

(c) Upon or at any time after the occurrence of Event of Default, Grantor hereby agrees that Beneficiary shall have the right (in its sole discretion), to deliver the Lessee Notice as herein provided directing each lessee to pay directly to Beneficiary the Rents due and to become due under its lease and attorn in respect of all other obligations thereunder directly to Beneficiary. Rents so received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (a) all expenses of operating the Property; and all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable, and (b) the indebtedness secured hereby. In no event will the provisions of this Section 27 reduce the indebtedness secured hereby except to the extent, if any, that Rents are actually received by Beneficiary and applied upon or after said receipt to the indebtedness secured hereby in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor, Rents so received by Beneficiary or any part thereof. Grantor, upon the occurrence of an Event of Default, hereby authorizes Beneficiary, at Beneficiary's option, to enter and take possession of the Mortgaged Property and to manage and operate the same; to collect as herein provided all or any Rents accruing therefrom and from the Mortgaged Property; to let or relet the Mortgaged Property or any part thereof; to cancel and modify any leases, evict tenants and bring or defend any suits in connection with the possession of the Mortgaged Property, in Beneficiary's own name or Grantor's name, pursuant to the terms of the leases; to make repairs as Beneficiary deems appropriate; and to perform such other acts in connection with the management and operation of the Mortgaged Property as Beneficiary, in Beneficiary's discretion, may deem proper. For this purpose, Grantor hereby irrevocably constitutes and appoints Beneficiary and any officer of Beneficiary, as Grantor's true and lawful attorney-in-fact, coupled with an interest, with full power of substitution to take any and all of the foregoing actions and any or all other actions designated by Beneficiary for the proper management and preservation of the Mortgaged Property.

(d) Grantor shall (a) submit any and all proposed leases to Beneficiary for approval prior to the execution thereof, except that Grantor may lease individual units in the Mortgaged Property to bona fide third-party tenants, for market rate rents and using industry-standard lease contracts or otherwise on leases and terms approved by Beneficiary in advance in writing, (b) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any lease, (c) maintain each of the leases in full force and effect during the term thereof, (d) appear in and defend any action or proceeding in any manner connected with any of the leases, (e) deliver to Beneficiary true, correct and complete copies of each of the leases, and (f) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the leases as Beneficiary may from time to time request.



(e) Without Beneficiary's prior written consent, Grantor shall not (a) do or knowingly permit to be done anything to impair the value of any of any leases, (b) except for security or similar deposits, collect any of the rent more than one (1) month in advance of the time when the same becomes due under the terms of any lease, (c) discount any future accruing rents, or (d) amend, modify, rescind, conceal, surrender, assign, or terminate any of the leases, except in the ordinary and prudent operation of the Mortgaged Property.

(f) These presents shall not be deemed or construed to constitute Beneficiary as a "mortgagee in possession" of the Mortgaged Property or to obligate Beneficiary to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under any of the leases of the Mortgaged Property.

28. **No Subordinate Mortgage.** Grantor will not, without the prior written consent of Beneficiary, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property (hereinafter called "**Subordinate Mortgage**"). In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

(a) That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision thereof;

(b) That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary;

(c) That the Rents and Profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operation and/or maintenance of the Mortgage Property; and

(d) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

29. **Payment of Outstanding Liens.** To the extent that proceeds of the Note are used to pay any outstanding liens, charges or encumbrances against or affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interest and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

30. **Usury Savings Provisions.** It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as hereinafter defined), or applicable United States federal law to the extent that such law permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law. For purposes of this provision, "**Indebtedness**" shall mean all indebtedness evidenced by the Note, and all amounts payable in the performance of any covenant or obligation in any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the subject matter of the Loan Documents, or any part of such indebtedness. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received in respect of the Indebtedness, including by reason of the acceleration of the maturity or the prepayment thereof, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate (as hereinafter defined) shall



be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, refunded to Grantor), and the provisions of the Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term hereof, then Grantor and Beneficiary agree that Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Lawful Rate, either credit such excess interest against the Indebtedness then owing by Grantor to Beneficiary and/or refund such excess interest to Grantor. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor or crediting such excess interest against the Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged, taken, reserved or received by Beneficiary for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated or spread, using the actuarial method, throughout the stated term of the Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note or any other part of the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. The terms and provisions of this paragraph shall control and supersede every other term, covenant or provision contained herein, in any of the other Loan Documents or in any other document or instrument pertaining to the Indebtedness.

31. **Maximum Lawful Rate; Ceiling Election.** As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all fees, charges and any other value whatsoever made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Beneficiary is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note or any other part of the Indebtedness, Beneficiary will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Beneficiary will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Beneficiary may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303, or under other applicable law by giving notice, if required, to Grantor as provided by such applicable law now or hereafter in effect.

32. **No Subsequent Waiver.** No waiver of any default on the part of Grantor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Deed of Trust shall be invalid or unenforceable, the unsecured portion of the indebtedness shall be completely paid prior to the payment of the remaining



and secured portion of such indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

33. **Security Agreement.** (a) With respect to any of the Collateral governed by the Uniform Commercial Code of the State of Texas (hereinafter called the "Code"), this Deed of Trust shall constitute a security agreement between Grantor as the debtor and Beneficiary as the secured party, and Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and shall bear all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, then ten (10) days notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code. Additionally, but not in lieu of any other rights held by Beneficiary, Beneficiary may offset against any accounts or sums of Grantor held by Beneficiary up to the full amount of the indebtedness secured hereby, as the same becomes due.

(b) **Notice of Name, Etc.** Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, identity, or structure, and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any Mortgaged Property described or referred to herein.

(c) **Fixtures.** Should some of the items of Mortgaged Property described herein be goods that are or are to become fixtures related to the real estate described herein, it is intended that, as to any such goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of the Grantor, as debtor, is as stated above.

34. **Corporate Existence.** Grantor, if a corporation, agrees that as long as it is the owner of the Mortgaged Property, it will do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation under the laws of the state of its incorporation.

35. **Successors and Assigns.** The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and to any substitute Trustee. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The term "Grantor" shall include in their individual capacities, and jointly, all parties hereinabove named as Grantor. The term "Beneficiary" shall also include any lawful owner, holder, pledgee or assignee of any indebtedness secured hereby. The duties, covenants, conditions, obligations and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor if more than one, and Grantor's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust (other than Beneficiary), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Deed of Trust.

36. **Compliance with Regulations.** Grantor further agrees to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Grantor or the Mortgaged Property or any part thereof. Grantor warrants, covenants and agrees to comply with all restrictions; restrictive covenants; condominium by-laws, regimes and declarations; and/or all other rules or regulations, governmental, public or private, applicable to the Mortgaged Property and the operation or ownership thereof.



37. **Texas Law.** This instrument is executed in Texas and shall be governed by and construed in accordance with the laws of the State of Texas, except to the extent such laws have been preempted by federal laws, in which case federal laws as applied in Texas shall govern.

38. **Restrictive Covenants and Owner's Associations.** (a) Grantor shall not enter into, execute, file, modify or amend any restrictive covenants against or encumbering all or any part of the Mortgaged Property or any portion thereof without obtaining the prior written consent and approval of Beneficiary, and absent any agreement of the Beneficiary to the contrary, any such restrictive prior written covenants hereafter arising shall be subject, subordinate and inferior to this Deed of Trust. Prior to the execution and any filing thereof, Grantor shall provide to Beneficiary for its consent and approval, copies of the certificate of formation, bylaws and all other constituent documents for any homeowner's association applicable to the Mortgaged Property. Any restrictive covenants shall provide that Beneficiary may, but shall not be obligated to, exercise and enjoy all of Grantor's rights and privileges under the restrictive covenants, including without limitation, the rights, privileges and powers of the declarant under the restrictive covenants, including plan approval rights, amendment rights, rights to appoint or designate member of the board of directors, architectural control committee or other board, committees or similar bodies provided under the restrictive covenants. Any liens arising under the restrictive covenants to secure performance or the payment of assessments or other charges shall be subordinate and inferior to this Deed of Trust, and the restrictive covenants shall provide that Beneficiary shall not be responsible for any assessments or similar charges accruing against any portion of the Mortgaged Property that it may own from time to time after foreclosure or otherwise. Any restrictive covenants shall provide that Beneficiary shall not under any circumstances be responsible for any operating deficit or shortfall with respect to the restrictive covenants or owner's association, or for any construction or development obligations for any community amenities, common areas, common amenities or otherwise. Without Beneficiary's prior written consent and approval, no restrictive covenants shall apply to any land other than the Mortgaged Property and the Mortgaged Property shall not be part of a master subdivision or larger community. Notwithstanding any consent by Beneficiary or any subordination by Beneficiary of this Deed of Trust to any restrictive covenants or similar encumbrance upon the Mortgaged Property, Beneficiary shall not be deemed to have consented to or subordinated this Deed of Trust with respect to any provision which is contrary to the foregoing protective covenants unless Beneficiary expressly and specifically waives the provisions of this section in writing with a specific reference to this Section 38 of this Deed of Trust. Upon any foreclosure under this Deed of Trust, Beneficiary shall at its option be entitled to cancel and disaffirm, and shall not be bound by, any provision in any such restrictive covenants or similar encumbrance or in any homeowner's association document which are contrary to the foregoing mortgagee protective covenants. Upon execution and filing, as applicable, Grantor shall provide to Beneficiary copies of the certificate of formation, bylaws and all other constituent documents for the owner's association, and shall at all times provide Beneficiary with copies of all modification or amendments thereto, and copies of all meeting minutes, resolutions, consents in lieu of meetings and other official actions by the board, architectural control committee and any similar board or committee. Grantor shall at all times keep Beneficiary apprised of all meetings, elections and all similar actions by the owner's association, architectural control committee and all similar boards or committees of the owner's association.

(b) Grantor hereby collaterally assigns all of the rights, interests, benefits and privileges of Grantor under any restrictive covenants or any similar documents applicable to the land described on **Exhibit A** attached hereto, including all declarant's rights and all similar rights or benefits (collectively, "**declarant's rights**"), as additional security for the Note and the other indebtedness secured hereby, and Grantor hereby grants to Beneficiary a security interest in and to Grantor's right, title and interest in and to all of said declarant's rights. Upon the occurrence of an Event of Default, Beneficiary shall be entitled to exercise all rights and remedies afforded a secured party under the Texas Uniform Commercial Code, as amended, with respect to all or any part of the said declarant's rights. Any foreclosure of the lien of this Deed of Trust by Beneficiary (or transfer or conveyance in lieu of foreclosure), may, at Beneficiary's option, in accordance with Section 9.604 of the Texas Business and Commerce Code, also constitute a foreclosure of Beneficiary's security interest in and to Grantor's declarant's right (or such portion thereof as Beneficiary may elect in its sole discretion). Beneficiary may provide notice of its exercise of any of the foregoing rights and remedies by filing written notice thereof in with the county clerk where the Mortgaged Property is situated. Beneficiary does not, however, assume any of Grantor's duties, liabilities or obligations under or with respect to Grantor's declarant's rights or any restrictive covenant. Nothing contained herein and no foreclosure under this Deed of Trust (or any conveyance in lieu thereof), shall be deemed an assumption by Beneficiary unless and until Beneficiary has elected to assume any such duties, liabilities or obligations by written instrument filed with the county clerk where the Mortgaged Property is



situated. Upon the request of Beneficiary, Grantor will promptly deliver all documents pertaining to the declarant's rights, including any amendments to the restrictive covenants applicable to the Mortgaged Property, any homeowner's association documents and any architectural control committee documents. As long as this Deed of Trust shall remain in effect, Grantor shall at all times comply with all of the restrictive covenants applicable to the Mortgaged Property.

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EXECUTED effective as of June \_\_\_\_\_, 2016.

**GRANTOR:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

\* \* \* \* \*

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

This instrument was acknowledged before me on the \_\_\_\_\_ day of June, 2016, by \_\_\_\_\_, President of RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

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

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

[ S E A L ]



**EXHIBIT A**

PROPERTY DESCRIPTION

[TO BE ATTACHED]



**ENVIRONMENTAL CERTIFICATE**  
**(With Covenants, Representations and Warranties)**

The undersigned, RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company ("Owner"), hereby executes this Environmental Certificate for the purpose of inducing GUARANTY BANK & TRUST, N.A. ("Lender"), to make a commercial real estate loan (the "Loan") to Owner, in the maximum principal amount of \$500,000.00, which Loan is evidenced in part by that certain Promissory Note dated of even date herewith (the "Note"), executed by Owner, payable to the order of Lender, which Note is secured by a deed of trust dated of even date herewith ("Mortgage"), executed by Owner for the benefit of Lender, encumbering certain real and personal property as therein described, including the land more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

1. **Representations, Covenants and Warranties.** Owner hereby represents, covenants and warrants to Lender and its successors and assigns, as follows:

(a) To the best of Owner's knowledge, neither the Property nor the Owner are the subject of any pending or threatened investigation or inquiry by any federal, state, local or other governmental authority ("Governmental Authority") or are subject to any remedial obligations under any applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws, rules and regulations pertaining to health or the environment ("Applicable Laws"), including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1987, as amended ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act.

(b) To the best of Owner's knowledge, Owner is not required to obtain any permits, licenses or authorizations to construct, occupy, operate or use any portion of the Property by reason of any Applicable Laws.

(c) Owner has not received notice from any Governmental Authority that (i) hazardous substances, solid wastes, asbestos or other substances known or suspected to pose a threat to health or the environment ("Hazards") have been disposed of or otherwise released on or to the Property or exist on or within any portion of the Property, (ii) prior use by Owner or the prior owners of the Property, has occurred, which violates any Applicable Laws, or (iii) the use which Owner makes or intends to make of the Property will result in the disposal or release of any hazardous substance, solid waste or Hazards on, in or to the Property. The terms "hazardous substance" and "release" shall each have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall each have the meanings specified in RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further that, to the extent that the laws of the State of Texas establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" which is broader than that specified in either CERCLA, RCRA or other federal law, such broader definition shall apply.

(d) To the best of Owner's knowledge, there are no on-site or off-site locations where hazardous substances, solid wastes or Hazards from the Property have been stored, treated, recycled, or disposed of.

(e) To the best of Owner's knowledge, there has been no litigation brought or threatened nor any settlement reached by or with any parties alleging the presence, disposal, release, or threatened release, of any hazardous substance, solid wastes or Hazards from the use or operation of the Property.

(f) Owner has not received notice from any Governmental Authority that the Property is on any federal or state "Superfund" list, or subject to any environmentally related liens.

(g) Neither Owner nor, to the actual knowledge of Owner, any tenant of any portion of the Property, has received any notice from any Governmental Authority with respect to any violation of any Applicable Laws.



(h) Owner shall not cause any violation of any Applicable Laws, nor permit any tenant of any portion of the Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Property.

All of the foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof through and as of the date of the final payment of all indebtedness owed by Owner to Lender and the final performance of all obligations under all instruments evidencing, governing, securing or relating to such indebtedness, with the same force and effect as if made each day throughout such period, and all of such covenants shall survive such payment and performance.

2. **Covenant to Clean Up and Notify.** Owner shall clean up and remove hazardous substances, solid wastes or Hazards on, in, from or affecting any portion of the Property and which were created prior to or during Owner's ownership of the Property (a) in accordance with all Applicable Laws, (b) to the satisfaction of Lender, and (c) in accordance with the orders and directives of all Governmental Authorities. Owner shall (x) give notice to Lender immediately upon (i) Owner's receipt of any notice from any Governmental Authority of a violation of any Applicable Laws or acquiring knowledge of the receipt of any such notice by any tenant of any portion of the Property, and (ii) acquiring knowledge of the presence of any hazardous substances, solid wastes or Hazards on the Property in a condition that is resulting or could reasonably be expected to result in any adverse environmental impact, with a full description thereof; (y) promptly comply with all Applicable Laws requiring the notice, removal, treatment, or disposal of such hazardous substances, solid wastes or Hazards and provide Lender with satisfactory evidence of such compliance; and (z) provide Lender, within thirty (30) days after demand by Lender, with a bond, letter of credit, or similar financial assurance evidencing to Lender's satisfaction that sufficient funds are available to pay the cost of removing, treating, and disposing of such hazardous substances, solid wastes or Hazards and discharging any assessments that may be established on the Property as a result thereof.

3. **Site Assessment.** If Lender shall ever have reason to believe, in its reasonable opinion, that there are hazardous substances, solid wastes or Hazards affecting any of the Property, Lender (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of a default under the Mortgage or any other document executed in connection with the Loan, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition that could result in any liability, cost, or expense to the owner, occupier, or operator of the Property or any portion thereof, arising under any Applicable Laws. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Owner that do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of hazardous substances, solid wastes and Hazards on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Owner will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Lender shall make the results of such Site Assessments fully available to Owner, which (prior to a default under the Mortgage or any other document executed in connection with the Loan) may, at its election, participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Owner upon demand of Lender.

4. **Indemnity and Hold Harmless.** Owner hereby defends, indemnifies and holds harmless Lender, its employees, agents, shareholders, officers and directors (collectively, the "Indemnified Parties"), from and against any claims, demands, obligations, penalties, fines, suits, liabilities, settlements, damages, losses, costs or expenses (including without limitation, attorney and consultant fees and expenses, investigation and laboratory fees and expenses, cleanup costs, and court costs and other litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release, threatened release, removal or production of any hazardous substances, solid wastes or Hazards which are on, in, from or affecting any portion of the Property, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous substances, solid wastes or Hazards, (c) any lawsuit brought or threatened, settlement reached,



or ordered by any Governmental Authority relating to such hazardous substances, solid wastes or Hazards, and/or (d) any violation of any Applicable Laws, or demands of Governmental Authorities, or violation of any policies or requirements of Lender, which are based upon or in any way related to such hazardous substances, solid wastes or Hazards, regardless of whether or not any of the conditions described under any of the foregoing subsections (a) through (d), inclusive, was or is caused by or within the control of Owner; provided, however, that such conditions must have been created prior to or during Owner's ownership of the Property. Owner agrees, upon notice and request by any Indemnified Party, to contest and defend any demand, claim, suit, proceeding or action with respect to which Owner has hereinabove indemnified and held the Indemnified Party harmless and to bear all costs and expenses of such contest and defense. Owner further agrees to reimburse any Indemnified Party upon demand for any costs or expenses incurred by any Indemnified Party in connection with any matters with respect to which Owner has hereinabove indemnified and held the Indemnified Party harmless. The provisions of this paragraph shall be in addition to any other obligations and liabilities Owner may have to Lender at common law, in equity or under documentation executed in connection with the Loan, and shall survive the closing, funding and payment in full of the Loan, as well as any foreclosure of the Loan or granting of any deed in lieu of foreclosure and the recordation of any release or partial release of the lien of the Mortgage.

5. **Lender's Right to Remove Hazardous Materials.** Until the Note is repaid in full, Lender shall have the right, but not the obligation, without in any way limiting Lender's other rights and remedies under the Mortgage, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with, any hazardous substances, solid wastes or Hazards on or affecting the Property following receipt of any notice from any person or entity asserting the existence of any hazardous substances, solid wastes or Hazards pertaining to the Property or any part thereof that, if true, could result in an order, notice, suit, imposition of a lien on the Property, or other action or that, in Lender's sole opinion, could jeopardize Lender's security under the Mortgage. All reasonable costs and expenses paid or incurred by Lender in the exercise of any such rights shall be secured by the Mortgage and shall be payable by Owner upon demand.

6. **Reliance and Binding Nature.** Owner acknowledges that Lender has and will rely upon the representations, warranties, covenants and agreements herein set forth in closing and funding the Loan, and that the execution and delivery of this certificate is an essential condition but for which Lender would not close or fund said Loan. The representations, warranties, covenants and agreements herein contained shall be binding upon Owner, its successors, assigns and legal representatives and shall inure to the benefit of Lender, its successors, assigns and legal representatives.

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EXECUTED effective as of June \_\_\_\_\_, 2016.

**OWNER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited  
liability company

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



**EXHIBIT A**

PROPERTY DESCRIPTION

TO BE ATTACHED



## **LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement") is executed and entered into as of June \_\_\_\_, 2016, by and between GUARANTY BANK & TRUST, N.A. ("Lender"), and RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company ("Borrower").

### **PRELIMINARY STATEMENTS**

A. Borrower has applied to Lender for a commercial real estate loan not to exceed the principal amount of \$500,000.00 (the "Loan"), in order to refinance the purchase of a leasehold estate (the "Leasehold Estate") in approximately 1.799 acres of real property located in Lancaster, Dallas County, Texas, and more particularly described on **Exhibit A** attached hereto (the "Land"), presently improved with approximately 63,064 square feet of hanger space in a total of five building on the Land (together with all other buildings, structures or improvements now or hereafter, during the term of the Ground Lease (as hereinafter defined) situated on the Land, the "Improvements") (the Leasehold Estate and the Improvements are sometimes referred to collectively herein as the "Property"), and the Loan will be secured by, among other things, a first lien covering the Property; and

B. Lender is willing to make the Loan to Borrower subject to the terms and conditions stated in this Agreement.

NOW, THEREFORE, for and in consideration of Lender's agreement to make the Loan to Borrower and the mutual covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Borrower and Lender hereby agree as follows:

1. **Commitment of Lender.** Upon the terms and subject to the conditions and limitations set forth in this Agreement, Lender will advance the proceeds of the Loan to Borrower in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Note (as hereinafter defined) or in any of the other Loan Documents (as hereinafter defined), Lender's commitment shall not exceed the lesser of (a) the stated principal amount of the Note, or (b) twenty-five percent (25.00%) of the appraised value of the Property according to an approved appraisal. Notwithstanding anything herein or in any of the other Loan Documents to the contrary, Lender shall have no obligation to make any advance under the Loan, if after any such advance is made, it would cause Lender to be in violation of any statute, rule or regulation applicable to Lender. Lender's commitment hereunder is not revolving and any principal payment or prepayment hereunder may not be reborrowed.

2. **Loan Documents.** Borrower agrees to execute or cause to be executed contemporaneously herewith or immediately hereafter all of the following documents:

- (a) Promissory Note (the "Note") payable to Lender in the amount of \$500,000.00;
- (b) Deed of Trust (with Security Agreement and Assignment of Rents) ("Deed of Trust") covering the Property;
- (c) UCC-1 Financing Statements;
- (d) Four (4) Guaranty Agreements executed by each of JEFF P. HOWLE, DEAN FLOWERS, JAMES DOLLAR, and GEORGE SHEBAN (each individually referred to herein as a "Guarantor", and collectively as the "Guarantors");
- (e) Environmental Certificate;
- (f) Closing Certificate;
- (g) Statute of Frauds Notice;



(h) Attorney Invoice and Representation Disclaimer Letter; and

(i) Such other documents, certificates, affidavits and agreements that Lender may require prior to advancing proceeds of the Loan.

This Agreement and all of the foregoing and such other agreements, documents and instruments now or hereafter evidencing, governing, securing or guaranteeing any portion of the indebtedness evidenced by the Note or the performance and discharge of the obligations related hereto or thereto, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof, are collectively referred to herein as the "Loan Documents".

3. **Conditions to Closing.** The obligation of Lender to close the Loan and to advance the proceeds of the Loan shall be subject to the prior or contemporaneous occurrence or satisfaction of each of the following conditions precedent:

(a) Borrower shall have executed (or caused to be executed) and delivered to Lender each of the Loan Documents, and all other requirements of Lender shall have been satisfied.

(b) Borrower shall provide Lender with evidence that all necessary action on the part of Borrower has been taken with respect to the execution and delivery of this Agreement, the Loan Documents and the consummation of the Loan transaction, so that this Agreement and all of the other Loan Documents shall be valid and binding upon Borrower and each other person or entity executing and delivering any of the Loan Documents. Such evidence shall include certified organizational documents, certified resolutions, certificates of incumbency and Certificates of Existence and Good Standing for Borrower and each such other person or entity as applicable.

(c) Borrower shall have furnished to Lender customer identification information, verification and such other information and supporting documentation regarding Borrower, each Guarantor, and each person with authority or control with respect to Borrower and each Guarantor, as Lender shall reasonably require for purposes of complying with the provisions of the Bank Secrecy Act (31 U.S.C. 5311 *et. seq.*), as amended by the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56), and Lender's policies and procedures implemented in accordance therewith.

(d) Borrower, at Borrower's expense, shall have provided to Lender an appraisal of the Property in a form and by an appraiser acceptable to Lender, showing the value of the Property, to be equal to or greater than \$2,000,000.00, and Lender shall have received a review of such appraisal with results acceptable to Lender.

(e) Borrower, at Borrower's expense, shall have provided to Lender an environmental assessment of the Land prepared by consultants and with results acceptable to Lender.

(f) Borrower, at Borrower's expense, shall have provided to Lender (i) a current survey of the Land, prepared by a certified surveying engineer, containing a metes and bounds perimeter description of the Land, showing the location of all easements and all other matters of record, certifying that no improvements encroach upon any easements or other encumbrances affecting the Land, certified to Lender, and otherwise in a form approved by Lender, and (ii) evidence that no part of the Land lies in, and the Improvements are not situated in, a flood hazard location except as approved by Lender and subject to the flood insurance requirements in the Deed of Trust.

(g) Borrower, at Borrower's expense, shall have provided to Lender a loan policy of title insurance in the full amount of the Loan, insuring the lien of the Deed of Trust as a first and prior lien upon the Land, and containing no exceptions except for those approved by Lender, in its sole discretion.



(h) Borrower shall have provided Lender with evidence that the following insurance policies and coverages are in force in accordance with Section 6 hereof: Borrower's comprehensive general liability insurance, "all risk" property insurance (including fire and extended coverage), and such additional insurance coverages as Lender may require.

(i) Borrower shall have provided to Lender copies of the existing Leases (as hereinafter defined), including, without limitation, the Ground Lease (each containing a metes and bounds description of the Land), and Lender shall have received (i) an estoppel certificate from the landlord of such Ground Lease, in form and substance reasonably satisfactory to Lender.

(j) Borrower shall have provided to Lender a fully executed copy of that certain Property Management Agreement by and between Borrower and AirSpace ("AirSpace") (the "Property Management Agreement"), and Lender shall have received an Assignment of Management Agreement duly executed by AirSpace, and Borrower.

(k) Borrower shall have provided to Lender (i) a duly executed Condominium Association Certificate from Rising Star Hangers of Lancaster Condominium Association, a Texas nonprofit corporation (the "Homeowner's Association") with respect to the condominium created pursuant to that certain Declaration of Rising Star Hangers of Lancaster Condominium dated as of April 12, 2010 (the "Condominium Declaration") executed by Borrower, as declarant, recorded as Instrument No. 201000088261 in the Real Property Records of Dallas County, Texas, as amended and modified from time to time, and (ii) fully executed copies of all of the formation and organization documents relating to the Homeowner's Association, including but not limited to the fully-executed Proxy Agreement (as defined in Section 5 hereof), in form and substance satisfactory to Lender.

#### 4. Leases.

(a) Borrower hereby represents and warrants that all tenant leases (if any) demising all or any part of the Property (collectively, the "Leases"), including, without limitation, those certain Lease and Operating Agreements between the City of Lancaster (the "Landlord"), as lessor, and Borrower, as lessee, (as modified and amended from time to time, the "Ground Lease"), as evidenced by those certain Memorandums of Lease and Operating Agreements each dated April 5, 2010, filed of record April 6, 2010, under County Clerk's Instrument Numbers: 201000082842, 201000082843, 201000082844, 201000082845, 201000082846 and 201000082847, of the Real Property Records of Dallas County, Texas, are in full force and effect and there are no defaults under any of the Leases (other than immaterial defaults in the ordinary course of business), and all conditions to the effectiveness or continuing effectiveness of any of the Leases required to be satisfied as of the date of this representation have been satisfied.

(b) From and after the date hereof and at all times during the term of the Loan:

- (i) (w) there shall exist no event of default under any of the Leases, (x) Borrower shall promptly notify and timely deliver to Lender copies of all notices provided by Landlord or any tenant under any of the Leases, including without limitation notices of events of default or notices of bankruptcy, (y) Borrower shall not (1) amend, modify, terminate, cancel or surrender the Ground Lease or (2) materially amend, modify, terminate, cancel or surrender any other Leases, without Lender's prior written consent, and (z) Borrower hereby covenants and agrees that Borrower shall at all times during the term of the Loan comply with all terms and conditions of the Leases;
- (ii) Borrower shall not cause the Ground Lease to be subordinated to any mortgage, encumbrance or lien without Lender's prior written consent; and
- (iii) each new tenant lease and/or renewal of an existing tenant lease shall either (A) be on a form of tenant lease and with rents approved by Lender in writing, and with tenants meeting criteria approved by Lender in writing; or (B) with tenants, on a form of tenant lease, and



with rents and terms, approved by Lender in writing on a lease-by-lease basis, and in each case, prior to execution by Borrower. Each tenant lease shall contain written provisions acceptable to Lender protecting Lender's interest in the Property and provisions whereby all of the rights, title and interest of the tenant are subordinated to the liens and security interests granted in the Loan Documents. Borrower shall deliver to Lender executed counterparts of each tenant lease promptly upon the execution thereof by Borrower and the tenant. Further, at the option of Lender, with respect to each tenant lease, Borrower shall provide to Lender a subordination agreement in form acceptable to Lender, in recordable form and duly signed by Borrower and the tenant.

(c) Notwithstanding anything to the contrary contained in the Loan Documents, Borrower shall have the right to enter into Leases without Lender's approval or consent, provided (i) the economic terms of the Lease conform to those of the market for hanger space situated in Dallas County, but not less than \$\_\_\_\_\_ per square foot, (ii) the initial term is not longer than five (5) years, (iii) the leased premises are not in excess of fifteen percent (15.0%) of the rentable square feet of the Project and the Lease represents less than fifteen percent (15.0%) of the revenue of the Project and (iv) the Lease is in the form previously approved by Lender without material modification.

## **5. Condominium Regime.**

(a) Borrower hereby represents and warrants to Lender that the Homeowners Association has been formed as a non-profit corporation under the laws of the State of Texas, the board of directors have been, or will be, appointed or elected in accordance with the requirements of the Condominium Declaration and applicable law and all officers contemplated by the Condominium Declaration and the bylaws of the Homeowners Association have been, or will be, properly appointed or elected, as the case may be. Borrower shall cause the Homeowners Association to comply with the terms and provisions of the Loan Documents with respect to matters capable of performance by it. In addition, at all times Borrower shall grant Lender an irrevocable proxy (the "Proxy Agreement") with respect to Borrower's voting rights in the Homeowners Association, which shall be exercised, if at all, after the occurrence and during the continuation of an Event of Default.

(b) Borrower hereby represents and warrants to Lender that the Condominium Declaration (i) complies with all state law requirements, including, without limitation, Title 7, Chapter 82 of the Texas Property Code, (ii) complies with all other applicable federal laws and/or governmental regulations, and (iii) is sufficient under Texas law to permit each Condominium (herein so called) created thereby to be sold to third parties. Borrower is the "Declarant" under the Condominium Declaration and no rights or interests of the Declarant have been assigned or encumbered except pursuant to the Loan Documents and none will be without the prior written consent of Lender. There are no material agreements relating to the Condominium other than the Condominium Declaration, the articles and bylaws of the Homeowners Association and the rules and regulations of the Homeowners Association ("Condominium Documents"), and individual sale contracts pertaining to a Condominium. As of the date hereof, the Condominium Documents have not been amended or supplemented other than pursuant to that certain First Amendment to Declaration of Rising Star Hangers of Lancaster Condominium dated as of July 25, 2013, executed by Borrower, recorded as Instrument No. 20130023889 in the Real Property Records of Dallas County, Texas, and true and correct copies thereof have been delivered to Lender. After the date hereof, Borrower will not amend or supplement or consent to the amendment or supplement of the Condominium Documents unless Lender first approves such amendment or supplement in writing, which approval shall be given or withheld in Lender's good faith business judgment. Borrower shall at all times (i) exercise its rights and powers as Declarant and as a "unit owner" (as defined in Title 7, Chapter 82 of the Texas Property Code) strictly in accordance with the Condominium Documents and Title 7, Chapter 82 of the Texas Property Code, and (ii) shall take all steps and action necessary to assure that all officers and directors of the Homeowners Association appointed or elected by Borrower or any principal or affiliate of Borrower, exercise their rights and powers in accordance with Title 7, Chapter 82 of the Texas Property Code and consistent with their fiduciary duties to the unit owners.

(c) Prior to exercising any appointment, designation, reservation, approval or consent right with respect to any matter for which Borrower has such rights under the Condominium Declaration, Borrower shall obtain the prior written approval of Lender (which approval shall not be unreasonably withheld or delayed).



(d) Borrower hereby covenants and agrees that Borrower shall pay any and all assessments that arise under the Condominium Declaration when due.

(e) Borrower hereby covenants and agrees that Borrower shall not enter into a contract for the sale of any Condominium without the prior written approval of Lender.

6. **Insurance.** Borrower covenants and agrees to maintain (or cause to be maintained) the following insurance policies and coverages in force: (i) "all risk" commercial property insurance (including fire and extended coverage, (ii) Borrower's commercial liability insurance with such minimum coverage requirements (on an aggregate and a per occurrence basis) as may be required by Lender, and (iii) such additional insurance coverages as may from time to time be reasonably required by Lender and is customary for similar properties in the county where the Property is situated. Each insurance policy required hereunder or under the Deed of Trust shall be in form and amounts, and issued by insurers reasonably satisfactory to Lender, shall provide for thirty (30) days prior written notice of cancellation to Lender, and shall each name Lender as additional insured, additional loss payee and with mortgagee clauses in favor of Lender, as applicable.

7. **Financial Reporting.** Borrower hereby covenants and agrees to timely deliver to Lender the financial statements, reports and information described on **Schedule 1** attached hereto and made a part hereof, all in form and showing such information and detail, and together with such supporting documents, as Lender may require. All of such financial statements and reports shall be prepared in accordance with sound acceptable accounting principles and procedures, consistently applied, and shall in all respects present a true, correct, complete and fair representation of the financial condition of the reporting party. All financial statements shall be prepared and certified as to accuracy by an independent certified public accountant acceptable to Lender, or the chief financial officer or other knowledgeable representative of the reporting party acceptable to Lender.

8. **No Distributions; Dividends.** Until the Loan is paid in full, Borrower shall not (a) directly or indirectly make any distributions or declare or pay any dividends on, or in respect of any partnership interest, shares of its capital stock, membership interest, or other ownership interests, or (b) make any other payment to any partner, shareholder, member, investor or other lender in, of or to Borrower, with respect to the transactions arising out of or in connection with the Property.

9. **Origination Fee.** In consideration of Lender's origination of the Loan to Borrower contemplated hereby, Borrower agrees to pay to Lender, prior to or simultaneously with the execution of this Agreement, \$5,000.00, as an origination fee.

10. **Debt Service Coverage Ratio.**

(a) From and after date hereof, the Property shall generate and maintain a Debt Service Coverage Ratio (as hereinafter defined) of at least 1.30 to 1.00, tested and determined quarterly, by Lender based on Borrower's operating statements.

(b) The term "**Debt Service Coverage Ratio**" means Net Operating Income (as hereinafter defined) for each calendar quarter (the "**Measurement Period**"), divided by Debt Service Requirements (as hereinafter defined) with respect to the Measurement Period.

(i) The term "**Net Operating Income**" shall mean the net operating income of Borrower from the regular rental payments made by the tenants actually occupying space within the Property pursuant to written leases, as reflected on Borrower's financial statements, after deductions for, on a trailing twelve (12) month basis, operating expenses (including leasing commissions) and reasonable reserves, but before deductions for (x) depreciation, amortization and any other non-cash deduction allowed to Borrower for income tax purposes, and (y) any and all principal, interest or other costs paid under or with respect to the Loan; all as approved by Lender in Lender's reasonable discretion. At Lender's option, the calculation of "Net Operating Income" shall exclude any and all rental payments made by any tenants under any lease that has been in default for thirty (30) days or more.



(ii) The term "Debt Service Requirements" shall mean any and all principal or interest payments scheduled with respect to the Loan, to the extent such are to be due and owing during such period (and irrespective of whether or not such payments were timely made). At Lender's option, "Debt Service Requirements" shall include any and all principal or interest payments scheduled with respect to any other debt secured by the Property, to the extent such are to be due and owing during the subject period (and irrespective of whether or not such payments were timely made). Provided, however, that at Lender's option, for purposes of determining Debt Service Requirements, debt service for the Loan and any such other debt shall be calculated based upon a 8-year amortization; and the Loan and such other debt shall be deemed to be bearing interest at the interest rate applicable under the Note.

(iii) Borrower shall provide at any time of determination, written evidence and documents to Lender indicating the calculations and backup information for the Debt Service Coverage Ratio. Lender shall be entitled to request and require such other backup documentation, including but not limited to, certified financial information, as may be required by Lender in order to satisfy itself as to the correct calculation of the Debt Service Coverage Ratio for each Measurement Period.

11. **Collateral Assignment of Ancillary Contracts.** As additional security for payment of the Loan, Borrower hereby transfers and assigns to Lender all of Borrower's right, title and interest in and to, but not Borrower's obligations under, each of the following as they are related to the ownership, operation, use and enjoyment of the Property: (a) each management contract and service agreement; (b) all plans, specifications, drawings, floor plans, site plans and schematics; (c) all licenses, permits and authorizations from any governmental authority, including the certificate of occupancy; and (d) any commitment relating to a permanent loan or any other credit facility intended to re-finance the Loan.

12. **Event of Default.** The occurrence of any of the following shall constitute an event of default hereunder (an "Event of Default"):

(a) Borrower shall fail to pay when due any installment of principal or interest or any other monetary obligation arising under the Note or any of the other Loan Documents and such failure shall continue for ten (10) days after written notice thereof from Lender to Borrower.

(b) Any representation or warranty made by Borrower or any Guarantor (Borrower and each of the Guarantors are sometimes referred to herein as an "Obligated Party") in any of the Loan Documents or in any certificate, report, notice or financial statement furnished at any time in connection with the Note shall be false, misleading or erroneous in any material respect when made.

(c) Any Obligated Party shall fail to perform, observe or comply with any non-monetary covenant, agreement or term contained in the Note or any of the other Loan Documents and such failure shall continue for thirty (30) days after written notice thereof from Lender to Borrower, or, if such failure cannot reasonably be cured within said thirty (30) day period, for such longer period of time (not to exceed an additional sixty (60) days, so long as Borrower commences such cure during said initial thirty (30) day period and thereafter diligently prosecutes its completion.

(d) Any Obligated Party shall commence a voluntary proceeding seeking liquidation, reorganization or other relief with respect to their debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of them or a substantial part of their property or shall consent to any such relief or to the appointment of or taking possession by any such official in such a proceeding commenced against them or shall make a general assignment for the benefit of creditors or shall generally fail to pay their debts as they become due or shall take any action to authorize any of the foregoing.

(e) Any involuntary proceeding shall be commenced against any Obligated Party seeking liquidation, reorganization or other relief with respect to their debts under any bankruptcy,



insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for them or a substantial part of their property, and such involuntary proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

(f) If any one or more of the Loan Documents shall be terminated, revoked, or otherwise rendered void or unenforceable, in any case, without Lender's prior written consent.

(g) If any Obligated Party shall allow the levy against all or any part of the Property of any execution, attachment, sequestration or other writ which is not vacated within sixty (60) days after the levy.

(h) The sale, encumbrance or other unauthorized transfer of all or any portion of the Property without Lender's prior written consent.

(i) If Borrower fails to comply with any material requirements of any governmental authority within thirty (30) days after Borrower shall have received written notice thereof.

(j) If any portion of the Improvements is demolished, destroyed, or substantially damaged, or any portion of the Land or Improvements is taken or threatened to be taken by eminent domain, so that in any event, in Lender's sole judgment, the same cannot be restored or rebuilt with estimated insurance proceeds, condemnation awards or other available funds to the condition existing prior to such demolition, destruction, damage or taking within a reasonable period of time.

(k) The rendering of one or more judgments or decrees for the payment of money, against any Obligated Party, and such judgment or decree has not been vacated, bonded or stayed by appeal or otherwise, for a period of sixty (60) consecutive days after the date of entry.

(l) A lawsuit or other proceeding shall be filed against any Obligated Party and such lawsuit or proceeding shall not be dismissed within ninety (90) days of such filing, and Lender reasonably determines, in its sole discretion, that the lawsuit or proceeding, the cost of defense and the allegations contained therein shall materially impair the ability of such Obligated Party to pay the indebtedness evidenced by the Note and the Loan Documents.

(m) Any Obligated Party shall default beyond any applicable grace or cure period in the payment of any other debt or obligation other than the Loan and the Note, or shall default in the performance of any other material agreement binding upon such Obligated Party or their respective assets or properties.

(n) The death, dissolution or merger of any Guarantor, or if any Guarantor should purport to revoke his (their) guaranty or terminate his (their) liability thereunder.

(o) If there is a change in the direct or indirect control, management or ownership of Borrower.

(p) If any insurance policy required in this Agreement or in the Deed of Trust shall lapse, expire or terminate for any reason without a replacement policy being in force in compliance herewith.

(q) If Lender in good faith (i) believes that an act, event, condition or circumstance exists or has occurred that would materially and adversely affect the Property or the business, operations, condition (financial or otherwise), or assets of any Obligated Party, the ability of any Obligated Party to perform its obligations under any of the Loan Documents to which it is a party or by which it is bound, or the enforceability of any of the Loan Documents, or (ii) deems itself insecure.



(r) If any default, event of default, or breach (however such terms may be defined but, in each case, only after expiration of any applicable grace or notice period) shall occur under the Property Management Agreement.

(s) If there exists an event of default under the Ground Lease beyond any applicable notice and/or cure period set forth therein, or if there exists a condition under the Ground Lease, which with the giving of notice or the passage of time, or both, would constitute an event of default under the Ground Lease.

(t) If the Borrower or the Landlord amends the Ground Lease in any material respect, or modifies, terminates, cancels or surrenders the Ground Lease, without Lender's prior written consent, or if the Borrower or Landlord cause the Ground Lease to be subordinated to any mortgage, encumbrance or lien without Lender's prior written consent.

13. **Remedies.** Upon the occurrence of an Event of Default, Lender shall have the immediate right, at the sole discretion of Lender and without further notice or demand (a) to declare the entire unpaid balance of the Note and all accrued but unpaid interest at once immediately due and payable (and the same shall be at once immediately due and payable and the same may be collected forthwith), (b) to foreclose and enforce all liens and security interests securing payment thereof, and (c) to exercise any of Lender's other rights, powers, recourses and remedies under the Note or any of the other Loan Documents, or at law or in equity. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of any Obligated Party shall not affect Lender's right to declare an Event of Default and to exercise its rights and remedies.

14. **Indemnification.** Each Obligated Party, jointly and severally, agrees to indemnify, defend and hold Lender and its shareholders, employees, officers, directors, agents and attorneys harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency and expense (including interest, penalties, attorneys' fees and amounts paid in settlement) to which Lender or its shareholders, employees, officers, directors, agents and attorneys may become subject arising out of or based upon a default or breach of contract by Borrower hereunder, or arising out of or in connection with the Property or Lender's agreement to extend the Loan to Borrower.

15. **Additional Principal Amounts.** Lender in its sole and absolute discretion may, but is not required to, increase the principal balance of this Loan by the amount of any other indebtedness owed by Borrower to Lender, including but not limited to any indebtedness evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise. Borrower hereby agrees that, should Lender increase the principal balance of the loan pursuant to the provisions hereof, Borrower shall repay the additional principal amount together with interest at the interest rate applicable under the Note.

16. **Expenses.** Borrower shall pay all out-of-pocket expenses (including without limitation, the reasonable fees and expenses of counsel for Lender) in connection with the negotiation, preparation, execution, filing, recording, correction, modification and supplement of the Loan Documents, the making, servicing, administration, and collection of the Loan, the evaluation, appraisal and environmental assessment of the Property, and title searches, endorsements to the Lender's loan policy of title insurance and tax certificates with respect to the Property.

17. **Usury Savings Provisions.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as hereinafter defined), or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law. For purposes of this provision, "Indebtedness" shall mean all indebtedness evidenced by the Note, and all amounts payable in the performance of any covenant or obligation in any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Documents, or any part of such indebtedness. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received in respect of the Indebtedness, including by



reason of the acceleration of the maturity or the prepayment thereof, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate (as hereinafter defined) shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term hereof, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either credit such excess interest against the Indebtedness then owing by Borrower to Lender and/or refund such excess interest to Borrower. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Indebtedness then owing by Borrower to Lender. All sums contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated or spread, using the actuarial method, throughout the stated term of the Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note or any other part of the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. The terms and provisions of this paragraph shall control and supersede every other term, covenant or provision contained herein, in any of the other Loan Documents or in any other document or instrument pertaining to the Indebtedness.

18. **Maximum Lawful Rate; Ceiling Election.** As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all fees, charges and any other value whatsoever made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note or any other part of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303, or under other applicable law by giving notice, if required, to Borrower as provided by such applicable law now or hereafter in effect.

19. **Notices.** Any notice or demand required hereunder shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Borrower or Lender, as the case may be, at the address set out hereinbelow, or at such other address as such party may hereafter deliver in accordance herewith. Any other method of delivery or demand shall be effective only when actually received by the recipient thereof. If and when included within the term "Borrower" or "Lender" there is more than one person, all shall jointly arrange among themselves for their joint execution and delivery of a notice to the other specifying some person at some specific address for the receipt of all notices, demands, payments or other documents. All persons included within the terms "Borrower" or "Lender," respectively, shall be bound by notices, demands, payments and documents given in accordance with the provisions of this paragraph to the same extent as if each had received such notice, demand, payment or document.



20. **Governing Law and Venue.** THE NOTE AND THIS AGREEMENT ARE EXECUTED AND DELIVERED IN CONNECTION WITH A LENDING TRANSACTION NEGOTIATED AND CONSUMMATED IN TITUS COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. BORROWER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS IN TEXAS, (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THE NOTE, THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS BROUGHT IN THE DISTRICT COURT OF TITUS COUNTY, TEXAS, OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TEXARKANA DIVISION, (C) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM, AND (D) AGREES THAT ANY LEGAL PROCEEDING AGAINST ANY PARTY TO ANY OF THE LOAN DOCUMENTS ARISING OUT OF OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS MAY BE BROUGHT IN ONE OF THE FOREGOING COURTS.

21. **Relief in Bankruptcy.** Borrower hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, in the event Borrower shall (a) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended, (b) be the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (c) file or be the subject of any petition seeking any reorganization rearrangement, composition, adjustment, liquidation, dissolution, or similar relief under any present or future state act or law relating to bankruptcy, insolvency or other relief for debtors, (d) have sought or consented to or acquiesced to any appointment of any trustee, receiver, conservator, or liquidator, or (e) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such part for any reorganization, rearrangement, composition, adjustment, liquidation, dissolution, or similar relief under any present or future federal or state act of law relating to bankruptcy, insolvency or relief for debtors, Lender shall thereupon be entitled to relief from the automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided herein, in any of the other Loan Documents, and as otherwise provided by applicable state and federal law.

22. **Survival; Parties Bound.** All representations, warranties, covenants and agreements made by or on behalf of Borrower in connection herewith shall survive the execution and delivery of the Loan Documents, shall not be affected by any investigation made by or on behalf of Lender, and shall bind Borrower and its successors, trustees, receivers and assigns and inure to the benefit of the successors and assigns of Lender and any participants in the Loan. The term of this Agreement shall be until the later of the final maturity of the Note and the payment of all amounts due under the Loan Documents and the termination of any obligation of Lender to advance the proceeds of the Loan.

23. **Counterparts.** This Agreement may be executed in several identical counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts shall constitute but one and the same instrument.

24. **Severability.** If any provision of any of the Loan Documents shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

25. **Loan Participations.** Borrower and each Guarantor acknowledge and agree that Lender reserves the right to sell or offer to sell participation interests in the Loan and the Loan Documents to one or more participants. Borrower and each Guarantor authorizes Lender to disseminate any information that it has pertaining to the Loan, including without limitation financial statements and credit reports and other information relating to Borrower, any Guarantor, any of their respective principals, or otherwise relating to the Property, to any participant or prospective participant in the Loan.

26. **Captions.** The headings and captions appearing in the Loan Documents have been included solely for convenience and shall not be considered in construing the Loan Documents.



27. **Entire Agreement.** This instrument embodies the entire agreement between the parties relating to the subject matter hereof (except documents, agreements and instruments delivered or to be delivered in accordance with the express terms hereof), supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by Borrower and Lender and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

[REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS]



EXECUTED effective as of the day and year first above written.

**LENDER:**

GUARANTY BANK & TRUST, N.A.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CONSENT**

The undersigned hereby join(s) in the execution of this Agreement to evidence his (their) consent and agreement to the terms and conditions contained herein.

**GUARANTORS:**

\_\_\_\_\_  
JEFF P. HOWLE

\_\_\_\_\_  
DEAN FLOWERS

\_\_\_\_\_  
JAMES DOLLAR

\_\_\_\_\_  
GEORGE SHEBAN



**ADDRESSES FOR NOTICES**

**LENDER:**

GUARANTY BANK & TRUST, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
Attn: Mike Merritt

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_



## **SCHEDULE 1**

### **Reporting Requirements**

Borrower and Guarantor, as applicable, agree to deliver to Lender the following statements and reports:

- (a) Quarterly financial statements for Borrower within forty-five (45) days of each calendar quarter end, commencing with the quarter ending in June 30, 2016, which are internally prepared and certified by the chief financial officer or chief executive officer of Borrower;
- (b) Federal income tax returns annually for Borrower within forty-five (45) days of filing with the IRS, but in any event by November 15th of the filing year, commencing with the returns filed for the 2015 tax year; and
- (c) Upon request, such additional financial information or statements regarding Borrower, any Guarantor or the Property as may be requested by Lender.

Corporate or partnership financial statements shall each include a balance sheet, income statement and statement of changes in owner's equity. Personal financial statements shall include a balance sheet, statement of cash flows and a statement of contingent liabilities. Tax returns provided shall be true and correct copies of the tax returns filed with the IRS, together with all schedules and attachments thereto.



**EXHIBIT A**

PROPERTY DESCRIPTION

TO BE ATTACHED



**PROMISSORY NOTE**

\$500,000.00

MOUNT PLEASANT, TEXAS

June \_\_\_\_, 2016

FOR VALUE RECEIVED, the undersigned, RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (whether one or more, "Maker"), hereby unconditionally promises to pay to the order of GUARANTY BANK & TRUST, N.A. (together with its successors and assigns and any subsequent holder of this Promissory Note, "Payee"), as hereinafter provided, the principal sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), or so much thereof as may be advanced by Payee from time to time hereunder to or for the benefit or account of Maker, together with interest thereon at the rate of interest hereinafter provided, without right of offset and otherwise in strict accordance with the terms and provisions hereof.

1. **Interest.** Interest shall accrue on the principal balance from day to day outstanding under this Promissory Note (this "Note") at a rate equal to the lesser of:

- (a) The Maximum Lawful Rate (as hereinafter defined); or
- (b) Commencing on the date hereof and continuing through the Adjustment Date (as hereinafter defined), a fixed rate of interest equal to five percent (5.00%) per annum; and
- (c) Commencing on June \_\_\_\_, 2020 (the "Adjustment Date"), and continuing thereafter through the maturity hereof, a fixed rate of interest (the "Adjusted Rate") determined by Payee as of the Adjustment Date, equal to one percent (1.00%) in excess of the "prime rate" as announced, published and so designated in the Money Rates Section of the Wall Street Journal on the Adjustment Date (or the immediately preceding day on which said rate is published if the rate is not published on such date); provided, however, that the Adjustable Rate shall not at any time be less than five percent (5.00%) per annum or greater than seven percent (7.00%) per annum.

Interest on the indebtedness evidenced by this Note shall be computed on the basis of a three hundred sixty-five (365) day year (366 during leap years) and shall accrue on the actual number of days elapsed for any whole or partial month in which interest is being calculated.

2. **Payment.** This Note shall be due and payable on demand, or if demand is not sooner made, as follows:

- (a) Commencing on July \_\_\_\_, 2016, and continuing on the same day of each successive calendar month thereafter through and including the Adjustment Date, even monthly installments of principal and accrued but unpaid interest each in an amount equal to \$ \_\_\_\_\_, shall be due and payable; and commencing on July \_\_\_\_, 2020, and continuing on the same day of each successive calendar month thereafter through maturity, even monthly installments of principal and accrued but unpaid interest shall be due and payable in an adjusted installment amount determined by Payee as of the Adjustment Date. The adjusted installment amount shall be the amount determined by Payee to be necessary to amortize the then-outstanding principal balance hereof over the remainder of a 8-year amortization period which started on the date of this Note, at the Adjusted Rate applicable hereunder; and
- (b) The entire outstanding principal balance hereof and all accrued but unpaid interest shall be finally due and payable on June \_\_\_\_, 2024 (the "Maturity Date"), or upon the earlier maturity hereof, whether by acceleration or otherwise; provided, however, on or before such date, this Note shall be due and payable as follows:

All payments under this Note made to Payee shall be made at Payee's banking offices in Titus County, Texas, or at such other place as the Payee may from time to time designate in writing, in lawful money of the United States of America which shall be legal tender in payment of all debts at the time of payment. Maker may prepay all or any part of the principal of this Note at any time and from time to time prior to maturity without premium or penalty, and interest



shall cease to accrue on any amounts so prepaid, and any such prepayment of principal shall be applied in the inverse order of maturity to the last maturing installments of principal under this Note. Any payment, whether a regularly scheduled installment, a prepayment or otherwise, shall, unless otherwise agreed or required by applicable law, be applied first to accrued but unpaid interest, then to the reduction of the outstanding principal balance, then to any late charges, and then to any unpaid collection costs. Maker hereby agrees to accept Payee's calculation of interest payable hereunder absent manifest mathematical error. If any payment on this Note shall become due on a Saturday, Sunday or any other day which is a banking holiday, such payment shall be made on the next succeeding business day which is not a banking holiday, and such extension of time shall in each such case be included in computing interest due hereunder. The indebtedness evidenced by this Note is not a revolving credit, and principal borrowed hereunder and repaid may not be reborrowed.

3. **Loan Documents; Security.** This Note evidences, among other indebtedness, the loan governed by that certain Loan Agreement of even date herewith ( the "Loan Agreement"), by and between Maker and Payee, among others. Payment hereof is secured by, among other things, that certain Deed of Trust (With Security Agreement and Assignment of Rents) of even date herewith (the "Deed of Trust"), executed by Maker, as grantor for the benefit of Payee, covering certain real property located in Dallas County, Texas and reference is hereby made to said Deed of Trust for a description of the security and the liens therein granted and the rights of Maker and Payee thereunder. This Note, the Loan Agreement, Deed of Trust and all of the other agreements, documents and instruments now or hereafter evidencing, governing, securing or guaranteeing any portion of the indebtedness evidenced by this Note or the performance and discharge of the obligations related hereto or thereto, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof, are collectively referred to herein as the "Loan Documents".

4. **Default and Remedies.** Upon the occurrence of any "Event of Default" (herein so called), as such term is defined in the Loan Agreement, Payee shall have the immediate right, at the sole discretion of Payee and without notice or demand (a) to declare the entire unpaid balance of this Note and all accrued but unpaid interest at once immediately due and payable (and the same shall be at once immediately due and payable and the same may be collected forthwith), (b) to foreclose and enforce all liens and security interests securing payment hereof, and (c) to exercise any of Payee's other rights, powers, recourses and remedies under this Note or any of the other Loan Documents, or at law or in equity.

5. **Attorneys' Fees and Costs.** If Payee retains an attorney-at-law in connection with any default or at maturity or to collect, enforce or defend this Note or any part hereof, or any of the other Loan Documents, in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or otherwise, Maker agrees to pay all costs and expenses of enforcement, including but not limited to, Payee's reasonable attorneys' fees, whether or not any legal action shall be instituted.

6. **Late Charge.** At the option of Payee, Maker shall pay a "late charge" in the amount of five percent (5%) of any installment on this Note when such installment is not paid within ten (10) days following the date such installment is due, in order to cover the additional expenses involved in handling delinquent payments.

7. **Post Maturity Rate.** The post maturity rate on this note is the lesser of (a) Maximum Lawful Rate or (b) two percent (2.0%) per annum above the Note rate in effect at the time of final maturity. Maker will pay interest on all sums due after final maturity whether by acceleration or otherwise, at that rate.

8. **Usury Savings Provisions.** It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as hereinafter defined), or applicable United States federal law to the extent that such law permits Payee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law. For purposes of this provision, "Indebtedness" shall mean all indebtedness evidenced by this Note, and all amounts payable in the performance of any covenant or obligation in any of the other Loan Documents or any other communication or writing by or between Maker and Payee related to the transaction or transactions that are the subject matter of the Loan Documents, or any part of such indebtedness. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received in respect of the Indebtedness, including by reason of



the acceleration of the maturity or the prepayment thereof, then it is Maker's and Payee's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Payee shall be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if this Note has been paid in full before the end of the stated term hereof, then Maker and Payee agree that Payee shall, with reasonable promptness after Payee discovers or is advised by Maker that interest was received in an amount in excess of the Maximum Lawful Rate, either credit such excess interest against the Indebtedness then owing by Maker to Payee and/or refund such excess interest to Maker. Maker hereby agrees that as a condition precedent to any claim seeking usury penalties against Payee, Maker will provide written notice to Payee, advising Payee in reasonable detail of the nature and amount of the violation, and Payee shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Maker or crediting such excess interest against the Indebtedness then owing by Maker to Payee. All sums contracted for, charged, taken, reserved or received by Payee for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated or spread, using the actuarial method, throughout the stated term of this Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note or any other part of the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Payee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration. The terms and provisions of this paragraph shall control and supersede every other term, covenant or provision contained herein, in any of the other Loan Documents or in any other document or instrument pertaining to the Indebtedness.

9. **Maximum Lawful Rate; Ceiling Election.** As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Payee in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Payee to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all fees, charges and any other value whatsoever made in connection with the transaction evidenced by this Note and the other Loan Documents. To the extent that Payee is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note or any other part of the Indebtedness, Payee will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Payee to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Payee will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Payee may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303, or under other applicable law by giving notice, if required, to Maker as provided by such applicable law now or hereafter in effect.

10. **Waiver.** EXCEPT AS SPECIFICALLY PROVIDED IN THE LOAN DOCUMENTS TO THE CONTRARY, MAKER AND ANY SURETY, ENDORSER OR GUARANTOR OF THIS NOTE SEVERALLY AND EXPRESSLY (A) WAIVE AND RELINQUISH PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF NONPAYMENT OR NONPERFORMANCE, PROTEST, NOTICE OF PROTEST, NOTICE OF INTENT TO ACCELERATE, NOTICE OF ACCELERATION, GRACE, DILIGENCE IN COLLECTING THIS NOTE OR ENFORCING ANY SECURITY THEREFOR, OR ANY OTHER NOTICES OR ANY OTHER ACTION, AND (B) CONSENT TO ALL RENEWALS, EXTENSIONS, REARRANGEMENTS AND MODIFICATIONS WHICH FROM TIME TO TIME MAY BE GRANTED BY PAYEE WITHOUT NOTICE AND TO ALL PARTIAL PAYMENTS HEREON, WHETHER BEFORE OR AFTER MATURITY, WITHOUT PREJUDICE TO PAYEE. PAYEE SHALL SIMILARLY HAVE THE RIGHT TO DEAL IN ANY WAY, AT ANY TIME, WITH ONE OR MORE OF THE FOREGOING PARTIES WITHOUT NOTICE TO ANY OTHER PARTY, AND TO GRANT ANY SUCH PARTY ANY EXTENSIONS OF TIME FOR PAYMENT OF ANY OF SAID INDEBTEDNESS, OR TO GRANT ANY



OTHER INDULGENCES OR FORBEARANCES WHATSOEVER, WITHOUT NOTICE TO ANY OTHER PARTY AND WITHOUT IN ANY WAY AFFECTING THE PERSONAL LIABILITY OF ANY PARTY HEREUNDER.

11. **Governing Law and Venue.** THIS NOTE IS EXECUTED AND DELIVERED IN CONNECTION WITH A LENDING TRANSACTION NEGOTIATED AND CONSUMMATED IN TITUS COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. MAKER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY (A) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS IN TEXAS, (B) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS BROUGHT IN THE DISTRICT COURT OF TITUS COUNTY, TEXAS, OR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TEXARKANA DIVISION, (C) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM, AND (D) AGREES THAT ANY LEGAL PROCEEDING AGAINST ANY PARTY TO ANY OF THE LOAN DOCUMENTS ARISING OUT OF OR IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS MAY BE BROUGHT IN ONE OF THE FOREGOING COURTS.

12. **Waiver of Jury Trial.** MAKER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS NOTE OR ANY OF THE LOAN DOCUMENTS, OR ANY CONDUCT, ACT OR OMISSION OF PAYEE OR MAKER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH PAYEE OR MAKER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH PAYEE OR MAKER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

13. **Notices.** Any notice or demand required hereunder shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Maker or Payee, as the case may be, at the address set out hereinbelow, or at such other address as such party may hereafter deliver in accordance herewith. Any other method of delivery or demand shall be effective only when actually received by the recipient thereof. If and when included within the term "Maker" or "Payee" there is more than one person, all shall jointly arrange among themselves for their joint execution and delivery of a notice to the other specifying some person at some specific address for the receipt of all notices, demands, payments or other documents. All persons included within the terms "Maker" or "Payee," respectively, shall be bound by notices, demands, payments and documents given in accordance with the provisions of this paragraph to the same extent as if each had received such notice, demand, payment or document.

14. **Successors and Assigns.** This Note and all the covenants, promises and agreements contained herein shall be binding upon and shall inure to the benefit of Maker and Payee, and their respective successors and assigns.

15. **Time is of the Essence.** Time is of the essence with respect to all provisions of this Note and the other Loan Documents.

16. **Joint and Several Liability.** Should this Note be signed or endorsed by more than one person and/or entity, all of the obligations herein contained shall be considered the joint and several obligations of each maker and endorser hereof.

17. **Termination.** This Note may not be terminated orally, but only by a discharge in writing signed by Payee at the time such discharge is sought.



EXECUTED effective as of the day and year first written above.

**MAKER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

**ADDRESSES FOR NOTICES**

**PAYEE:**

GUARANTY BANK & TRUST, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
Attn: Mike Merritt

**MAKER:**

RISING STAR AVIATION HOLDINGS, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_



## PROXY AGREEMENT

THIS PROXY AGREEMENT (this "Agreement"), dated as of June \_\_\_\_, 2016, is between Rising Star Aviation Holdings, LLC, a Texas limited liability company (the "Borrower"), and Guaranty Bank & Trust, N.A., its successors and assigns (the "Lender").

### WITNESSETH:

WHEREAS, to induce Lender to accept condominium units as eligible collateral under a \$500,000.00 loan to Borrower (the "Loan"), as evidenced by a promissory note and all other security documents related thereto entered into as of June \_\_\_\_, 2016 (collectively, the "Loan Documents"). Borrower desires to grant Lender an irrevocable proxy to exercise Borrower's voting rights in the Rising Star Hangers of Lancaster Condominium Association, a Texas nonprofit corporation (the "Association") upon the occurrence of an Event of Default (as defined below).

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the parties, intending to become legally bound, hereby agree as follows:

1. Definitions. The following terms shall have (unless otherwise provided elsewhere in this Agreement) the following respective meanings (such meanings being equally applicable to both the singular and plural form of the terms defined:

"Agreement" shall mean this Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Event of Default" shall have the same meaning as set forth in the Loan Documents.

"Termination Date" shall mean the date on which all obligations under the Loan Documents have been completely discharged.

2. Representations and Warranties. Borrower represents and warrants to Lender that:

(a) Borrower has the right and requisite authority to grant the irrevocable proxy to Lender as provided herein.

(b) The execution, delivery and performance by Borrower of this Agreement has been duly authorized, and this Agreement constitutes a legal, valid and binding obligation of Borrower enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equitable principles.

The representations and warranties set forth in this Section 2 shall survive the execution and delivery of this Agreement.

3. Covenants. Borrower and Lender covenant and agree that until the Termination Date:

(a) Borrower will take all action required of it by the terms of this Agreement and as Lender from time to time may reasonably request in order to provide to Lender the benefits of the irrevocable proxy created by this Agreement and, upon execution of this Agreement, will promptly execute, acknowledge and deliver the form of notice attached hereto as Exhibit A to the Secretary of the Association in order to give notice to the Association of the irrevocable proxy granted pursuant to the terms of this Agreement upon the occurrence and continuance of an Event of Default.

(b) Lender will take all action required of it by the terms of this Agreement and promptly execute, acknowledge and deliver the following notices:



(i) upon the occurrence and continuance from time to time of any Event of Default, Lender shall deliver the form of notice attached hereto as Exhibit B to the Secretary of the Association in order to give notice to the Association that an Event of Default has occurred and Lender has Borrower's irrevocable proxy to exercise Borrower's voting rights in the Association until all Events of Default have been cured, and

(ii) in the event that all Events of Default have been remedied in accordance with the terms of the Loan Documents, Lender shall deliver the form of notice attached hereto as Exhibit C to the Secretary of the Association to give the Association notice that Lender's irrevocable proxy to exercise Borrower's voting rights in the Association is not currently effective.

(c) Notwithstanding anything contained herein to the contrary, Lender's notice that its irrevocable proxy is not currently effective, as set forth in subparagraph (b)(ii) above shall not limit Lender's continuing rights to exercise the rights granted herein upon the occurrence of a subsequent Event of Default.

#### 4. Defaults and Remedies.

(a) Upon the occurrence of an Event of Default and during the continuation of such Event of Default, until such Event of Default is cured, then or at any time after such declaration (provided that such declaration is not rescinded by the Lender) and following written notice to Borrower, Lender (personally or through an agent) is hereby authorized and empowered to:

(i) exercise Borrower's voting rights in the Association, and

(ii) otherwise act with respect to the voting rights in the Association as though Lender was the outright owner thereof, Borrower hereby irrevocably constituting and appointing Lender as the proxy and attorney-in-fact of Borrower, with full power of substitution to do so; provided, however, Lender shall not have any duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so.

5. Waiver. No delay on Lender's part in exercising any right hereunder, and no notice or demand which may be given to or made upon Borrower by Lender with respect to any right hereunder, shall constitute a waiver thereof, or limit or impair Lender's right to take any action or to exercise any right hereunder, without notice or demand, or prejudice Lender's rights as against Borrower in any respect.

6. Assignment. Borrower may not assign this Agreement or any rights or obligations hereunder and any such attempted assignment shall be null and void. Lender may assign this Agreement or any rights or obligations hereunder to any person or entity succeeding to its interest hereunder or otherwise authorized to act for Lender.

7. Termination. Immediately following the payment of all obligations under the Loan Documents, except as otherwise provided herein, all of Borrower's obligations hereunder shall at such time automatically terminate.

#### 8. Miscellaneous.

(a) Lender may execute any of its duties hereunder by or through agents or employees.

(b) Neither Lender nor any of its officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct.

(c) THIS AGREEMENT SHALL BE BINDING UPON BORROWER AND ITS ASSIGNS, AND SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, LENDER AND ITS SUCCESSORS, AND ASSIGNS, AND SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN



ACCORDANCE WITH, THE INTERNAL LAWS IN EFFECT IN THE STATE OF UTAH WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAWS, AND NONE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT MAY BE WAIVED, ALTERED, MODIFIED OR AMENDED EXCEPT IN WRITING DULY SIGNED FOR AND ON BEHALF OF LENDER AND BORROWER.

9. Severability. If for any reason any provision or provisions hereof are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or effect those provisions of this Agreement which are valid.

10. Notices. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon a party by another party, or whenever any of the parties desires to give or serve upon the other a communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and either shall be delivered in person with receipt acknowledged or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to Lender, at

Guaranty Bank & Trust, N.A.  
100 West Arkansas St.  
Mt. Pleasant, Texas 75455  
Attention: Mike Merritt

(b) If to Borrower, at

Rising Star Aviation Holdings, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(c) If to Association, at

Rising Star Hangers of Lancaster Condominium Association

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing, by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given or served on the date on which personally delivered, with receipt acknowledged, or three business days after the same shall have been deposited in the United States mail. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

11. Section Titles. The Section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

12. Counterparts. This Agreement may be executed in counterparts, which shall, collectively and separately, constitute one agreement.



13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[The balance of this page is intentionally left blank.]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC,  
a Texas limited liability company

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

**LENDER:**

GUARANTY BANK & TRUST, N.A.

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

Acknowledged and agreed to for the  
limited purposes set forth herein:

Rising Star Hangers of Lancaster Condominium Association,  
a Texas nonprofit corporation

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



**EXHIBIT A**

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

This letter constitutes notice that a Proxy Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, between RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (the "Borrower"), and GUARANTY BANK & TRUST, N.A., a national banking association, its successors and assigns (the "Lender"), granting an irrevocable proxy to Lender of Borrower's voting rights in the \_\_\_\_\_ upon the occurrence of an Event of Default (as defined in the Agreement) was entered into.

Upon receipt of notice, in the form attached hereto as Exhibit B, from Lender that an Event of Default has occurred, all voting rights exercised by Lender should be regarded as if exercised by Borrower pursuant to the irrevocable proxy granted to Lender (which proxy will be effective on the date referenced in such notice), until notice is received from Lender that such Event of Default has been cured to its satisfaction. When all Events of Default have been cured, all voting rights in the Association will once again be exercised by Borrower, subject to the Agreement.

Sincerely,

RISING STAR AVIATION HOLDINGS, LLC,  
a Texas limited liability company

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

Attachment - Exhibit B - Form of Notice



**EXHIBIT B**

[Date]

\_\_\_\_\_, Secretary  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

This letter constitutes notice that an Event of Default has occurred pursuant to the terms of the Proxy Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, between RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (the "Borrower"), and GUARANTY BANK & TRUST, N.A., a national banking association, its successors and assigns (the "Lender"). According to the terms of the Agreement, Lender possesses an irrevocable proxy to vote Borrower's voting rights in the \_\_\_\_\_ until all such Events of Default have been cured. Such irrevocable proxy became effective on the date first set forth above.

Sincerely,

\_\_\_\_\_



**EXHIBIT C**

[Date]

\_\_\_\_\_  
\_\_\_\_\_, Secretary  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

This letter constitutes notice that all Events of Default under the Proxy Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, between RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company (the "Borrower"), and GUARANTY BANK & TRUST, N.A., a national banking association, its successors and assigns (the "Lender"), have been cured. According to the terms of the Agreement, Lender's irrevocable proxy to exercise Borrower's voting rights in the \_\_\_\_\_ is no longer effective and all such voting rights may be exercised by Borrower, subject to Lender's continuing rights under the Agreement.

Sincerely,

\_\_\_\_\_



**STATUTE OF FRAUDS NOTICE**

Of even date herewith, GUARANTY BANK & TRUST, N.A. ("Lender"), and RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company ("Borrower"), and JEFF P. HOWLE, DEAN FLOWERS, JAMES DOLLAR and GEORGE SHEBAN (individually, a "Guarantor" and collectively, the "Guarantors") have executed and entered into several instruments, agreements and documents relating to a \$500,000.00 commercial real estate loan from Lender to Borrower which is guaranteed by the Guarantors. In connection therewith, and pursuant to §26.02 of the Texas Business and Commerce Code, Lender, Borrower and Guarantors hereby agree as follows:

**The written documents, agreements and instruments referred to above represent the final agreements between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.**

[REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS]



EXECUTED effective as of June \_\_\_\_\_, 2016.

**LENDER:**

GUARANTY BANK & TRUST, N.A.

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

**BORROWER:**

RISING STAR AVIATION HOLDINGS, LLC, a Texas limited liability company

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

**GUARANTORS:**

\_\_\_\_\_  
JEFF P. HOWLE

\_\_\_\_\_  
DEAN FLOWERS

\_\_\_\_\_  
JAMES DOLLAR

\_\_\_\_\_  
GEORGE SHEBAN



## LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement"), made and entered into this 14 day of March, 2010, by and between the *CITY OF LANCASTER*, a Texas Home-rule Municipal Corporation ("City" or "Lessor") and *RISING STAR AVIATION HOLDINGS, L.L.C.*, a Texas Limited Liability Corporation ("Lessee").

### WITNESSETH:

WHEREAS, City is the owner and operator of the Lancaster Municipal Airport ("Airport") which is located in the City of Lancaster, Dallas County, State of Texas; and

WHEREAS, Lessee desires to lease, develop, and use the Airport Property particularly described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to operate a maximum of twelve (12) commercial business units for use as private airport hangars, as generally provided in the plat attached hereto as Exhibit B; and

WHEREAS, Lessee desires to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act, codified in Chapter 82 of the Texas Property Code, and to establish a unit leasehold-owners association—Rising Star Hangars of Lancaster Condominium Association No. 1—to manage and maintain the Property; and

WHEREAS, in accordance with the provisions contained within this agreement, City desires to allow Lessee to use and operate private airport hangars on the Property, to provide for leasehold interests on the Property, and to establish an association to manage and maintain the Property.

NOW, THEREFORE, for and in consideration of the rental payments, covenants, promises, and agreements contained herein, and for other good and valuable consideration, City and Lessee agree as follows:

### ARTICLE 1. DEFINITIONS

*Airport* means the Lancaster Municipal Airport, located at 730 Ferris Road, Suite 102, Lancaster, Texas 75146.

*Airport ALP* means the Lancaster Municipal Airport's Airport Layout Plan.

*Hazardous Materials* is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

*Improvements* means approximately twelve (12) hangar Units, utilities, water line and any related alterations located, or to be located, on the Premises.



*Premises* means the real property described in Exhibits A and B, which is owned by the City and leased to Lessee.

*Public Facilities* means the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft.

*Site Plan* means, for purposes of this Agreement, the area depicted in the attached Exhibit B, including hangars and related improvements.

*Sponsor* means the City of Lancaster, Texas.

## **ARTICLE 2. PREMISES**

- 2.1 City hereby leases to Lessee, and Lessee hereby leases from City, in accordance with the terms and conditions of this Agreement, the Premises.
- 2.2 Lessee warrants and represents that Lessee has carefully and completely examined and inspected the entire Premises, is fully informed of the condition of the Premises, and is completely satisfied as to the suitability of the Premises for all of the activities contemplated by this Agreement. Lessee accepts possession of the premises as is, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by the ordinances of the City of Lancaster.

## **ARTICLE 3. USE OF PREMISES**

- 3.1 Lessee has established a condominium regime pursuant to the Texas Uniform Condominium Act whereby Lessee will operate condominium units ("Units") for use as private aircraft hangars, and sell leasehold interests in each unit to third-party purchasers. Such Units shall be sold by Lessee subject to the terms and conditions of this Lease and any conveyance instruments shall clearly acknowledge that third party purchasers are bound by this Agreement. In addition, Lessee is granted the use and occupancy of the Premises for all uses allowed for a commercial aeronautical activity, as provided by the Minimum Standards for Commercial and Noncommercial Operators ("Airport Minimum Standards"); however, any owner of a leasehold interest, sublessee or tenant of Lessee may use and occupy the Premises solely for the storage of its privately owned aircraft (whether one or more) and any and all activities associated with maintaining and operating such aircraft, including, but not limited to, flight personnel, offices and aircraft maintenance areas related thereto in accordance with the Airport Minimum Standards.
- 3.2 Lessee agrees not to engage in any other activity on the Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or



occupy the Premises in any manner contrary to the Airport ALP or Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.

3.3 Prohibited Products, Services, and/or Uses: The following conduct is expressly prohibited on the Premises:

- A. Promotion or sale of commercial or retail products and/or services;
- B. Possession or use of any products, performance of any services, and any other uses prohibited by law;
- C. Use of hangar or office space for any activity unrelated to aviation, other than as an incidental or temporary uses as shall be reasonably approved by the Airport Manager.

In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive right, other than the exclusive use of the Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Premises.

3.4 Use of Airport: Lessee may use, in common with others, the existing and future aeronautical and Public Facilities at the Airport, subject to and in full compliances with all applicable rules and regulations. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

3.5 Ingress and Egress: Lessee, its employees, guests, patrons, suppliers, vendors, sublessees, purchasers of leasehold interests, and invitees shall have the right of ingress and egress to and from the Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Premises.

3.6 Quite Enjoyment: Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Premises and privileges granted for the term of this Agreement free from hindrance or interruption by City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Premises, provided same do not materially adversely affect Lessee's ability to access and use the Premises.



## ARTICLE 4. TERM

- 4.1 Initial Term: The initial term of this Lease shall be thirty (30) years commencing on March 1, 2010, and ending on February 29, 2040, unless sooner terminated in accordance with the provisions hereof. This Lease shall become effective on March 8, 2010.
- 4.2 Extension of Term:
- A. City hereby grants Lessee, its successors, and assigns, two consecutive options to extend this Lease on the Leased Premises, as existing at the time(s) when either is exercised, as follows:
    - (1) First Option Period: Five (5) years, beginning at the expiration date of the initial term.
    - (2) Second Option Period: Five (5) years, beginning at the expiration date of the First Option Period.
  - B. As a condition for the exercise of each option, Lessee shall give City written notice of Lessee's intent to exercise its option at least six (6) months prior to the expiration of the date of the term of the Lease, as then in effect.
  - C. All conditions and covenants contained herein shall remain in force during any extension of term pursuant to said option(s), except the provision for rental, which shall be renegotiated by the parties in advance of any extension, using as a basis thereof the standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport. During any option period, rental shall be charged for any leasehold improvements added or constructed by Lessee, or any sublessee or successor during the term of the Lease or any option period based on standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport.
  - D. Lessee's right to exercise such option is conditional on proper notice, required in Paragraph B of this Subsection 4.2, and is further conditional upon Lessee not being in default in the performance of its covenants undertaken by Lessee, at the beginning date of the extension of the term for which such notice is given.
  - E. Lessee shall not have the right to exercise such options if this Lease has been terminated for any reason or reasons, or Lessee is in default as to any provision or condition of the Lease prior to the exercise of an option granted under this section.
  - F. At the end of forty (40) years (being the initial term, the first option period and the second option period), the Lessee, its successors, and assigns shall be given the first right of refusal to again lease the improvements at the going fair market value. Length of lease and price shall be mutually agreed upon, and negotiated directly with the City.



- 4.3 Ownership of the Improvements shall revert to City at no cost to City upon expiration of the Initial Lease Term and any approved extension of the lease term ("Term") of this Agreement. However, at the end of the Term, City shall retain the right to require that Lessee demolish and/or remove any non-structural alterations to the Improvements, the construction of which had not been previously approved by City, or any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default, noticed by City to Lessee, existing at the end of the Term, and restore the Improvements as nearly as possible to their original condition and character as of the date of the issuance of any certificate of occupancy, ordinary wear and tear excluded. Lessee may transfer the Improvements upon receipt from City of appropriate consents as described hereinafter. **Lessee's right to transfer the use and enjoyment of the Improvements shall be expressly conditioned upon Lessee's and any transferee's obtaining appropriate consent to such transferee's use and enjoyment of the Premises through an approved sublease or assignment of this Lease pursuant to Articles 21 and 22.**

## ARTICLE 5. RENT

- 5.1 For the use and occupancy of the leased premises herein granted, Lessee agrees to pay City the sum of eleven cents (\$0.11) per square foot per year for the first three years of the term hereof. At the beginning of the fourth year of the term hereof, and every five years thereafter until the beginning of the twenty-fifth year, the rental payments shall be adjusted (from eleven cents (\$0.11) per square foot per year at the beginning of year four), upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index as of the end of the preceding year of the term hereof. If the Area Consumer Price Index shall have decreased or remained the same, the lease rate shall remain the same. At the beginning of the twenty-fifth year of the term, the rental payment shall be the greater of: (1) the lease rate at the end of the twenty-fourth year of the term adjusted upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index; or (2) eighteen cents (\$0.18) per square foot.
- 5.2 The rentals provided shall be payable in advance in equal monthly installments beginning March 1, 2010. The parties hereto agree that the premises leased hereby are fifteen thousand nine hundred sixty (15,960) square feet and that the initial rental sums due hereunder are one hundred forty-six and 30/100 Dollars (\$146.30) per month or one thousand seven hundred fifty-five and 60/100 Dollars (\$1,755.60) per year for the first three (3) years hereof. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind.
- 5.3 A late charge of 5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 20<sup>th</sup> day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of 5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. All payments shall be made to City of Lancaster and sent to the attention of the



Finance Department at P.O. Box 940, Lancaster, Texas 75146. The failure to make any payment when due may result in a termination of the Agreement as provided in 11.

## **ARTICLE 6. FEES**

- 6.1 Lessee will pay, and will provide in its written lease agreement with any Sublessee, that Sublessee shall pay all applicable fees as established by the City of Lancaster.

## **ARTICLE 7. RIGHTS AND PRIVILEGES OF LESSEE**

City does hereby grant to Lessee and Lessee does take from City the following rights and privileges:

- 7.1 Lessee and/or its sublessees may install in or upon the Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee and/or any of its sublessees located on the Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee and/or its sublessees. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee, any sublessee, or any customer of Lessee unless due to the willful misconduct to City.
- 7.2 Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Airport Minimum Standards in order to engage in the authorized Activities.
- 7.3 Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement within five (5) days of termination or expiration of this Agreement. City may purchase personal property of Lessee at the termination of the Lease which the City deems essential to operation of Airport at the-then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.



## ARTICLE 8. RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances, City reserves the following rights and privileges:

- 8.1 City Authority: While the Airport Manager has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- 8.2 Airport Development: City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of Premises. City shall provide advance notice of any closures to the extent possible.
- 8.3 Aerial Approaches: City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee or any sublessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- 8.4 War, National Emergency, Riot, or Natural Disaster: During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- 8.5 Access to the Premises: City and/or its representatives shall have the right to enter the Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.



- 8.6 Performance of Acts: All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by representative or delegate of City.
- 8.7 Exercising Rights: No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee or its sublessee nor shall such exercise by grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.

## **ARTICLE 9. OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided, Lessee shall have the following obligations:

- 9.1 Conduct: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- 9.2 Disturbance: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport.
- A. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.
- B. Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely effect the environment or do anything or permit anything to be done that would violate any federal, state, or local regulations. Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Premises and shall neither use, allow the use of, nor occupy Premises for any improper, immoral or unlawful purpose.
- 9.3 Hazardous Materials: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable EPA, TCEQ and local regulations. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Premises unless Lessee has complied with the following:
- A. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.



- B. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and order relating to health, safety and protection of persons, the public, and/or the environment.
- C. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Premises as authorized by this Agreement.
- D. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Premises are not being used nor have the Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.
  - 1. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, Lessees or sublessees or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
  - 2. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Manager of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.
- E. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
- F. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials from the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City within thirty (30) days of City's demand for payment. If City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Premises and/or the Airport, Lessee shall reimburse City for all costs and expenses



incurred in so doing. In its sole discretion, City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.

- G. Immediately upon receipt thereof, Lessee shall provide City with copies of any notices, claims, complaints, demands, lawsuits, hearing, investigations, or governmental requests for information relating to the environmental condition on or of the Premises and/or Hazardous Materials on, in, under or emanating from the Premises during Lessee's occupancy thereof.

- 9.4 Storage, Handling, and Dispensing of Fuels, Gasolines and Lubricants: Fueling requirements are governed by the Lancaster Code of Ordinances.

The storage of fuels, gasolines, and lubricants in bulk quantities shall be limited to City's fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's or Sublessee's installation, operation and maintenance of a fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee and Sublessee must abide by all applicable federal, state and local regulations pertaining to the storage, handling, and dispensing of aviation fuels, gasolines and lubricants.

- 9.5 Utilities: Lessee shall directly procure and promptly pay for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Premises during the term of this Agreement.

- 9.6 Taxes, Assessments, and Fees: Lessee shall pay and discharge all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Premises, the Improvements locate thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination.

- 9.7 Costs, Expresses, and Other Charges: Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.

- 9.8 Maintenance: Lessee agrees during the initial term of this agreement and any option periods to assume the entire responsibility, cost and expense for repair and maintenance



on the Leased Premises and all improvements, including any hangar buildings and slabs, and to maintain the Leased Premises and improvements in a good condition.

- A. Lessee shall keep the interior and exterior (including all structural and non-structural) portions of the Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Premises in good order and condition and will make all necessary repairs to the Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair.
- B. Lessee agrees to keep the premises in a clean and orderly condition and appearance.
  - 1. Lessee shall not cause or allow any outdoor storage of materials, goods supplies, or equipment.
  - 2. Lessee shall further be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.
- C. Lessee agrees to provide and maintain all obstruction lights and similar devices or safety equipment required by law, to keep in effect such insurance (replacement value) on the premises as may be required by City.
- D. Lessee further agrees to submit to City for its written approval the plans and specifications for any major repairs, construction, alteration, modification, addition or replacement to the improvements on the premises undertaken by Lessee, which approval shall not be unreasonably withheld.
- E. The Lessee, and its successors and assigns, will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the Airport, or otherwise constitute an Airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust or glaring or misleading lights.
- F. In the event Lessee fails to comply with Section 9.8, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or cleaning which Lessee is required to make or perform.



- 9.9 Lessee agrees that any and all maintenance, repair or restoration activities on aircraft or otherwise shall be performed inside the hangar, screened from public view. Lessee further shall store all of its fixtures, equipment, and personal property within the hangar.
- 9.10 Refuse Disposal: Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles of all garbage, trash and other refuse at the Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. In the event Lessor discontinues providing garbage removal services as it is currently providing, Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- 9.11 Non-Discrimination: Lessee, in the conduct of its authorized Activities on or from the Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchases, or classes of purchasers.
- A. Lessee, as a part of the consideration hereof, do hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. That in the event of breach of any of the preceding nondiscrimination covenants, Lessee agrees that City has the right to take such action against Lessee as the government may direct to enforce this covenant, including termination of this lease.
- B. In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 9.12 Based Aircraft Report: Lessee in its written condominium declaration with the owners of the hangar units shall ensure that the owners of such units shall maintain and furnish by the 1<sup>st</sup> of August each year and at any time upon request for the Airport Manager, a report identifying all aircraft based at or on the Premises. The report shall identify the owner,



the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight and aircraft registration number.

- 9.13 Signage: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.
- 9.14 Special Events: Lessee shall not conduct or hold air shows or any other special events including any non-aeronautical event at the Airport without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.

#### **ARTICLE 10. OBLIGATIONS OF CITY**

- 10.1 City covenants and agrees that all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- 10.2 Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Premises, then that any such mortgage, deed of trust, or other instrument in the thereof will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgagee arising by virtue of this Lease.

#### **ARTICLE 11. DEFAULTS AND REMEDIES**

- 11.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.
- A. The filing by Lessee of a voluntary petition in bankruptcy.
  - B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
  - C. A court making or entering any decree or order.
    - 1. adjudging Lessee to be bankrupt or insolvent;
    - 2. approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
    - 3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;



4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Premises or its failure to maintain an on-going business at the Premises for a period of thirty (30) days or more, coupled with the failure to pay rent as provided in Article 5.
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.
- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."
- 11.2 In the event of any default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, no written or other notice of default shall be required. If this Agreement is terminated, any payments made to City shall be forfeited to City and Lessee shall have no rights to recover the payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.
- 11.3 Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.



- 11.4 In addition to the termination and forfeiture rights described in the preceding paragraphs, City shall have the following rights and remedies upon default by Lessee:
- A. The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that would have been made in the Agreement had not been breached by Lessee.
  - B. The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, including reasonable attorneys' fees and expenses.
  - C. The removal of all persons from the Premises and the removal and storage at Lessee's expense of all property on the Premises, in accordance with the law.
  - D. Any other right or remedy, legal or equitable, including specific performance, that City is entitled to under applicable law, whether stated in this Agreement or not.
- 11.5 No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue.
- 11.6 In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said premises and improvements, including any facilities, fixtures and equipment, to City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- 11.7 In the event the failure of Lessee upon termination of this Agreement to immediately remove from the Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Premises, restoring the Premises and Improvements to the condition by this Agreement, and protecting the Premises.
- 11.8 The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.



**ARTICLE 12.**  
**TERMINATION BY LESSEE**

- 12.1 Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:
- A. Permanent closure of the Airport.
  - B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered, however not during any appeals therefrom.
  - C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.
  - D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure to City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
  - E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminate operations at the Airport and which suspension or termination materially affects the operations of rights of Lessee hereunder.
- 12.2 Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.
- 12.3 As an alternative to the right of termination, Lessee shall be entitled to seek injunctive relief against the City relating to an event of default under Section 12.1-E above, together with costs and attorneys' fees by Lessee in such action if Lessee judicially obtains the relief sought; however, in no event shall rent abate during the pendency of any proceeding.



**ARTICLE 13.  
REMEDIES CUMULATIVE**

- 13.1 All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; however, Lessee's sole remedies upon City's default are contained in Article 12.

**ARTICLE 14.  
NO WAIVER**

- 14.1 No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

**ARTICLE 15.  
COMPLIANCE WITH LAWS**

- 15.1 At its own expense, Lessee shall comply with all federal, state and local regulations, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fine or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

**ARTICLE 16.  
COMPLIANCE WITH AIRPORT MINIMUM STANDARDS**

- 16.1 Lessee shall comply with the Airport Minimum Standards as all may be promulgated by City (and in effect from time to time). Any violation of this paragraph shall be construed as a material breach of this Agreement authorizing the termination thereof in accordance with 11.
- 16.2 In the event of a conflict between the Airport Minimum Standards and this Agreement, the strictest standard, obligation and/or requirement shall govern Lessee's responsibilities under this Agreement.

**ARTICLE 17.  
LICENSES, CERTIFICATES, AND PERMITS**

- 17.1 At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Premises or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or



on the Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

## **ARTICLE 18. INSURANCE**

- 18.1 Lessee agrees to procure and maintain insurance as provided by the *Minimum Standards for Commercial and Non-Commercial Operators at Lancaster Airport, January 2006 and as amended*, including attaining a commercial general liability policy for premises and operations liability that names the City of Lancaster, Texas, its City Council (individually and collectively), and its representatives, officials, officers, employees, and agents as additional insureds. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas or otherwise be approved in writing by City. Any insurance policy procured to comply with this provision shall be endorsed to state that coverage shall not be suspended, voided, cancelled, non-renewed, or reduced in coverage except after ten (10) days prior written notice by certified mail, return receipt requested, to the City of Lancaster. All liability policies shall contain or be endorsed to contain the following provisions:
- A. "City of Lancaster and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."
  - B. "Any failure to comply with reporting or other provisions of the policies, including breached of warranties, shall not affect coverage provided to City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- 18.2 Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.
- 18.3 The applicable insurance coverage shall be in full force upon execution of the Agreement and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.



- 18.4 Lessee shall, at its sole cost and expense, insure the Premises continuously against loss or damage. The Improvements shall be insured (80% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.
- 18.5 Insurance coverages and policy limits are subject to periodic review and modification at the discretion of City.

## **ARTICLE 19.**

### **DAMAGE TO PREMISES AND PROPERTY**

- 19.1 Damages to Premises. If any part of the Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sublessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Premises immediately prior to damage (the "Restoration").
- A. If at any time during the term of this Agreement, any part of the Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to Lessee or any sub-Lessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.
- B. If Lessee fails to restore Premises, Lessee shall pay to City, upon demand, the amount that City reasonably determines is necessary to restore the Premises. Upon said payment, City will restore the Premises.
- 19.2 Use of Insurance Proceeds for Rebuilding.
- A. If, by reason of any damage or destruction mentioned in Article 19.1, any sums are paid under any insurance policy mentioned in Article 18, such sums will be paid to any Leasehold Mortgagee, if one exists, or to the City if no Leasehold Mortgage exists, (such entity holding the insurance proceeds hereinafter referred to as "Depository") and will be used to defray the cost of repairing, restoring, or reconstructing the Improvements as required in Article 19 herein. If there is no Leasehold Mortgagee at the time of such damage or destruction, as such sums shall be paid to City to be held and applied as set forth below.
- B. Upon receipt by the Depository, of:



1. A certificate of Lessee dated not more than thirty (30) days prior to the date of such receipt (a) requesting the payment of a specified amount of such monies; (b) describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Lessee; (c) stating that such specified amount does not exceed the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (d) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;
2. A certificate of an independent engineer or any independent architect designated by Lessee and approved by City (which approval will not be unreasonably withheld) and by the Leasehold Mortgagee, if any, stating (a) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate and desirable to the Restoration in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; (b) that the amount specified in such certificate of Lessee is not in excess of the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (c) the additional amount, if any, required to complete the Restoration;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of such work and materials has been paid in full or will be paid in full out of such advance;
4. Either (a) a written opinion of Lessee's counsel, or (b) the certification of title company licensed to do business in the State of Texas, in either case that as of date not more than twenty (20) days prior to the date of payment described below there exists no filed or recorded lien, encumbrance or, charge prior to or on a parity with the estate, rights and interest of City, and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, a certificate from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, Evidencing that any fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City; and
5. Evidence satisfactory to the Leasehold Mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and by a corporate surety reasonably satisfactory to City, with each such bond naming City



and Leasehold Mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to City, and evidence satisfactory to the Leasehold Mortgagee and City that such bonds remain in full force and effect; the Depository will pay to Lessee the amount of such insurance monies specified in such certificate of Lessee, provided that the balance will be sufficient for the completion of the Restoration.

- C. The Depository will pay to Lessee the ten percent (10%) retainage reserved during the Restoration, upon the completion of Restoration as evidenced by a certificate of such independent engineer or independent architect, and upon the receipt by the Depository of:
1. A certificate of Lessee (a) requesting the payment of the ten percent (10%) retainage reserved by the Depository during the Restoration; (b) stating that the Restoration was completed at least thirty (30) days prior to the date of the certificate and was finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; and (c) stating that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance;
  2. A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities;
  3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engage in the Restoration);
  4. The certification of a title company licensed to do business in the State of Texas, in either case that, as of date not more than five (5) days prior to the date of payment described below, there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a fee mortgage, if any), and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, evidencing that fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted therein and except for any chattel mortgage or security agreement delivered to City.



- D. Any balance of insurance proceeds after the completion of Restoration, as evidenced by a certificate of such independent engineer or independent architect, will be paid to Lessee or to Leasehold Mortgagee(s), if required under the terms of the Leasehold Mortgage then in effect. Depository shall notify City and Leasehold Mortgagee of each amount paid to Lessee and the date of each such payment.
- E. Upon the expiration or sooner termination of this Lease, any insurance proceeds not theretofore applied to the cost of Restoration or not theretofore paid to Lessee or a Leasehold Mortgagee will be paid to City.

## **ARTICLE 20. INDEMNIFICATION**

- 20.1 LESSEE SHALL INDEMNIFY, PROTECT, DEFEND, SAVE AND COMPLETELY HOLD HARMLESS CITY AND ITS CITY COUNCIL (INDIVIDUALLY AND COLLECTIVELY), REPRESENTATIVES, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS ARTICLE AS "CITY") FROM ANY AND ALL LIENS, CLAIMS, CHARGES, ENCUMBRANCES, DEMANDS, DAMAGES, FINES, OBLIGATIONS, SUITS, JUDGMENTS, PENALTIES, CAUSES OF ACTION, LOSSES, LIABILITIES, ADMINISTRATIVE PROCEEDINGS, ARBITRATION, OR COSTS OF ANY NATURE WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, AT ANY TIME RECEIVED, INCURRED, OR ACCRUED BY CITY RELATING TO THIS AGREEMENT OR ARISING FROM DAMAGE OR INJURY OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM LESSEE'S POSSESSION, USE, OCCUPANCY, MANAGEMENT, MAINTENANCE, OR CONTROL OF THE PREMISES AND/OR AIRPORT LAND AND/OR IMPROVEMENTS AND/OR THE CONDUCT OF LESSEE'S ACTIVITIES AT THE AIRPORT OR ARISING OUT OF LESSEE'S ACTIONS OR INACTIONS, REGARDLESS OF ANY SOLE OR CONCURRENT NEGLIGENCE OF THE CITY.
- 20.2 City shall give Lessee prompt notice of any such demand, claim, lawsuit or proceeding against City that relates to this Agreement. If such demand, claim, lawsuit or proceeding is brought, City shall have the right, but not the duty, to: (1) investigate and settle the demand, claim, lawsuit or proceeding and (2) participate in the defense of the demand, claim, lawsuit or proceeding.
- 20.3 In this Article, "City" also includes the Lancaster Municipal Airport, Airport Board and all of its members. The indemnification provisions of this Agreement shall survive its expiration of termination.



**ARTICLE 21.**  
**SUBLEASE AND SUBCONTRACTS**

- 21.1 The City hereby expressly grants its consent for Lessee to convey ownership of a leasehold interest (as condominium units) of the Hangars upon the Premises. Individual hangar owners may lease their interests in the condominium hangar units, subject to the terms of this lease, the Lancaster Airport Rules and Regulations, and the Airport Minimum Standards, and provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Article 3. During the existence of this Agreement, all revenues from any sublease shall belong to Lessee.
- 21.2 Lessee shall not sublease the Premises (or any part of the Premises) or subcontract any operation or service it performs or is permitted to perform, without the prior express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- 21.3 Lessee shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before the expiration date of this Agreement.
- 21.4 A lease or sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in a written consent, a sublease is subject to all of the terms and conditions of the lease governing the land and/or improvements being sublet. In addition, the Lessee shall at all times assume total responsibility for the acts and omissions of a sublessee and/or subcontractor.

**ARTICLE 22.**  
**ASSIGNMENT**

- 22.1 No portion of this Agreement may be assigned without the prior express written consent of City. In the event this Agreement is assigned, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default.

**ARTICLE 23.**  
**ENCUMBRANCES**

- 23.1 Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the real property described in Exhibits A and B and Lessee shall not suffer the real property described in Exhibits A and B, or any improvements thereon, to be or become subject to any non-consensual lien (including mechanic's liens), charge or



encumbrance whatsoever. The limitation on encumbrances provided herein shall not prevent Lessee or any sublessee from encumbering their leasehold interest in the Premises.

#### **ARTICLE 24. MORTGAGE**

- 24.1 Lessee shall not further mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Premises without the prior express written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By virtue of its execution of this Agreement, City consents to the existence of Lessee's current mortgage and pledge that encumbers Lessee's leasehold interest in the Premises.

#### **ARTICLE 25. BOOKS AND RECORDS**

- 25.1 Lessee shall maintain complete financial records of its Activities on the Premises. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to City.
- 25.2 Any information, records and reports provided to or obtained by City pursuant to this Article or which City otherwise comes possession of pursuant to this Agreement, shall be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

#### **ARTICLE 26. HOLDOVER POSSESSION**

- 26.1 In the event that Lessee should hold over and remain in possession of the Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at an time by the Airport Manager or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

#### **ARTICLE 27. INDEPENDENT ENTITIES**

- 27.1 Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between City and Lessee or as constituting either party as the agent or representative or employee of the other party for any purpose or in any manner whatsoever.



**ARTICLE 28.  
BINDING EFFECT**

- 28.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

**ARTICLE 29.  
SUBORDINATION**

- 29.1 This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

**ARTICLE 30.  
GOVERNING LAW**

- 30.1 This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

**ARTICLE 31.  
PARAGRAPH HEADINGS**

- 31.1 All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience in reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

**ARTICLE 32.  
SEVERABILITY**

- 32.1 In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.



**ARTICLE 33.  
COUNTERPARTS**

- 33.1 This Agreement has been executed in several counterparts, each of which shall be deemed an original.

**ARTICLE 34.  
MODIFICATION**

- 34.1 Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.  
ENTIRE AGREEMENT**

- 35.1 This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

**ARTICLE 36.  
NOTICES**

- 36.1 Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:  
Airport Manager  
LANCASTER MUNICIPAL AIRPORT  
P.O. Box 940  
Lancaster, Texas 75146

Lessee:

George Sheban  
RISING STAR AVIATION HOLDINGS, L.L.C.  
5950 Berkshire Lane, Suite 310  
Dallas, Texas 75225

with a copy to:

Michael D. Hesse  
HESSE & HESSE, L.L.P.  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

- 36.2 All payments shall be made payable to City of Lancaster and sent to the attention of the Finance Department at P.O. Box 940, Lancaster, Texas 75146.
- 36.3 The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.



**ARTICLE 37.  
MISCELLANEOUS**

- 37.1 Recognition of Subleases. In the event of termination of this Lease because of any breach or default by Lessee, City shall recognize any existing subleases.
- 37.2 Merger of Title. No merger of Lessee's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) Lessee's interest in this Lease or the leasehold created by this Lease and (b) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (a) and (b) above join in a written instrument effecting such merger and record same.
- 37.3 Rights Regarding Condominium Association. Notwithstanding anything contained in this Agreement to the contrary, Lessee shall have the following rights relating to Rising Star Hangars of Lancaster Condominium Association No. 1 or any other condominium association formed and/or established in connection with this Agreement and related to the Property and/or the Improvements, each of which may be exercised in Lessee's sole and absolute discretion:
- (1) Lessee shall have no obligation to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act or to form or establish Rising Star Hangars of Lancaster Condominium Association No. 1 or any other condominium association to manage or maintain the Property.
  - (2) In the event Lessee does elect to form or establish Rising Star Hangars of Lancaster Condominium Association No. 1 or any other condominium association for the Property, Lessee shall retain the right, in its sole and absolute discretion, to remove all or any part of the Property from such condominium association and may offer and sell the leasehold interest in and to the Property without any attachment or encumbrance of a condominium association. Any leasehold interest sold that is not subject to a condominium association shall remain subject to the terms and conditions of this Agreement, including, but not limited to the provisions of Article 21 hereof.

**ARTICLE 38.  
EXHIBITS AND APPENDICES**

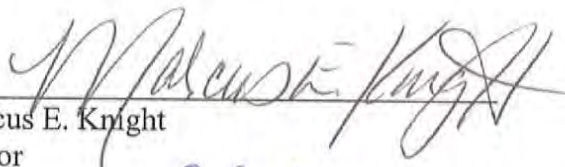
- 38.1 Exhibits and Appendices attached hereto are expressly made a part hereof.

- A Description of Leased Premises
- B Site Plan




IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this 9<sup>th</sup> day of March, 2010.

**CITY OF LANCASTER, TEXAS**

By:   
Marcus E. Knight  
Mayor  
Date Signed: 3-9-2010

**RIISING STAR AVIATION HOLDINGS,  
L.L.C., a Texas limited liability company**

By:   
Printed Name: George Steben  
Title: President  
Date Signed: 3.18.10

ATTEST:

  
Dolle K. Downe, City Secretary



LEGAL DESCRIPTION  
0.3664 ACRES

Being a tract of land situated in the J. Green Survey, Abstract No. 504, City of Lancaster, Dallas County, Texas and being a part of the Lancaster Airport Addition, an addition to the City of Lancaster, recorded in Volume 97173, Page 5853, Map Records, Dallas County, Texas and being more particularly described as follows:

Beginning at a point for corner, said point being S 10°57'20" E, 1317.41 ft., S 10°49'02" E, 1070.48 ft. to the beginning of a circular curve to the left having a central angle of 60°04'13", a radius of 440.00 ft., a tangent length of 254.39 ft., a chord bearing of S 40°51'08" E a chord length of 440.47 ft. and an arc length of 461.31 ft. and N 49°43'07" E, 171.22 ft. from the most westerly-northwest corner of said addition;

THENCE N 49°43'05" E, a distance of 280.00 ft. to a point for corner;


THENCE S 40°16'55" E, a distance of 57.00 ft. to a point for corner;

THENCE S 49°43'05" W, a distance of 280.00 ft. to a point for corner;

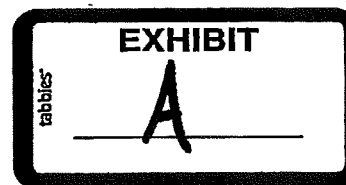
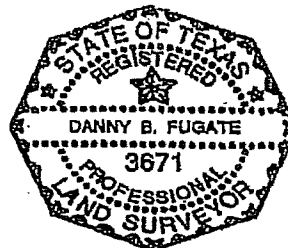
THENCE N 40°16'55" W, a distance of 57.00 ft. to the Point of Beginning and containing 0.3664 acres (15,960 Sq. Ft.) of land.

CERTIFICATION

To the person relying upon the accuracy of this survey or plat I, Danny B. Fugate, Registered Professional Land Surveyor, State of Texas, do certify to that this plat represents measurements performed upon the ground under my supervision. This is a true and correct survey.

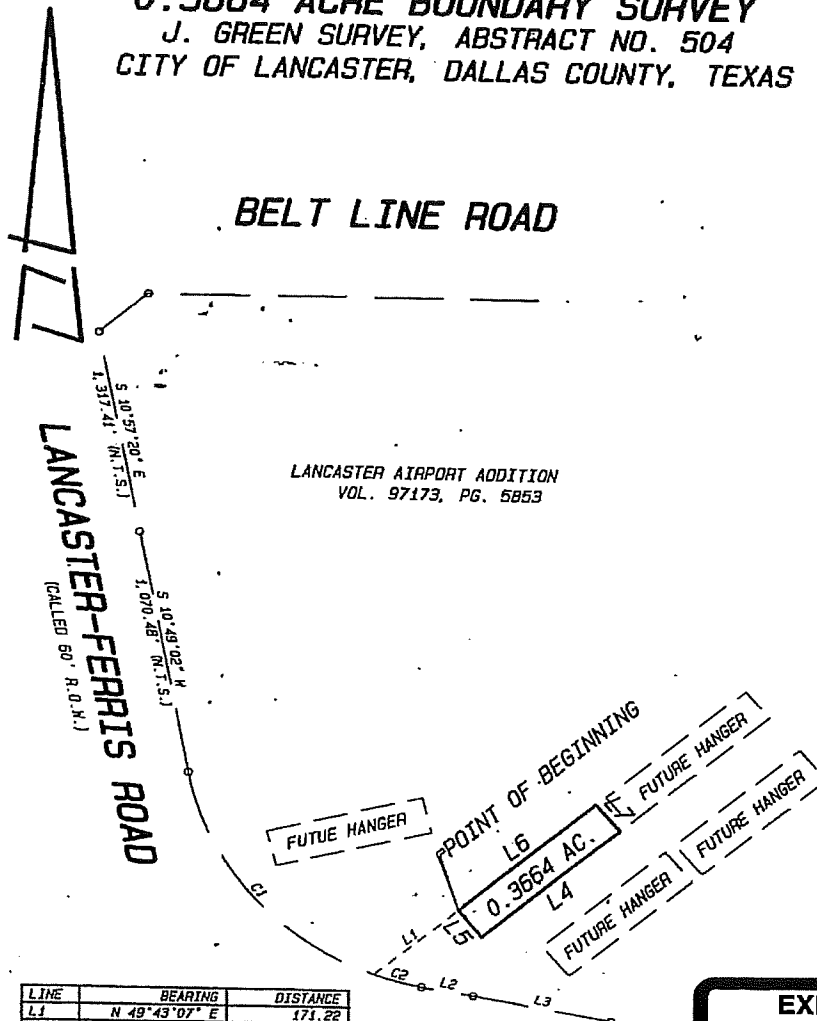
By:   
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3671  
STATE OF TEXAS

DATE: 8-20-2002





**0.3664 ACRE BOUNDARY SURVEY**  
**J. GREEN SURVEY, ABSTRACT NO. 504**  
**CITY OF LANCASTER, DALLAS COUNTY, TEXAS**



LINE	BEARING	DISTANCE
L1	N 49°43'07" E	171.22
L2	S 80°51'23" E	81.20
L3	S 79°51'05" E	216.91
L4	S 49°43'05" E	280.00
L5	N 40°16'55" E	57.00
L6	N 49°43'05" E	280.00
L7	S 40°18'59" E	57.00

CURVE	ARC	DELTA	RADIUS	CHORD LENGTH	CHORD BEARING	TAN LENGTH
C1	461.31	60°04'13"	440.00	440.47	S 40°51'08" E	254.39
C2	76.56	09°58'08"	440.00	76.46	S 75°52'19" E	38.38



FILE: F93152A  
 MM: F93152AY

**Fugate Surveying, Inc.**  
 235 EAST BELT LINE ROAD  
 DE SOTO, TEXAS 75115  
 223-0740 FAX 230-0825

Scale 1"=200' Date 8-20-2007  
 Job No. 73-152

GF No. \_\_\_\_\_



## LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement"), made and entered into this 9<sup>th</sup> day of March, 2010, by and between the *CITY OF LANCASTER*, a Texas Home-rule Municipal Corporation ("City" or "Lessor") and *RISING STAR AVIATION HOLDINGS, L.L.C.*, a Texas Limited Liability Corporation ("Lessee").

### WITNESSETH:

WHEREAS, City is the owner and operator of the Lancaster Municipal Airport ("Airport") which is located in the City of Lancaster, Dallas County, State of Texas; and

WHEREAS, Lessee desires to lease, develop, and use the Airport Property particularly described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to operate a maximum of twelve (12) commercial business units for use as private airport hangars, as generally provided in the plat attached hereto as Exhibit B; and

WHEREAS, Lessee desires to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act, codified in Chapter 82 of the Texas Property Code, and to establish a unit leasehold-owners association—Rising Star Hangars of Lancaster Condominium Association No. 2—to manage and maintain the Property; and

WHEREAS, in accordance with the provisions contained within this agreement, City desires to allow Lessee to use and operate private airport hangars on the Property, to provide for leasehold interests on the Property, and to establish an association to manage and maintain the Property.

NOW, THEREFORE, for and in consideration of the rental payments, covenants, promises, and agreements contained herein, and for other good and valuable consideration, City and Lessee agree as follows:

### ARTICLE 1. DEFINITIONS

*Airport* means the Lancaster Municipal Airport, located at 730 Ferris Road, Suite 102, Lancaster, Texas 75146.

*Airport ALP* means the Lancaster Municipal Airport's Airport Layout Plan.

*Hazardous Materials* is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

*Improvements* means approximately twelve (12) hangar Units, utilities, water line and any related alterations located, or to be located, on the Premises.



*Premises* means the real property described in Exhibits A and B, which is owned by the City and leased to Lessee.

*Public Facilities* means the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft.

*Site Plan* means, for purposes of this Agreement, the area depicted in the attached Exhibit B, including hangars and related improvements.

*Sponsor* means the City of Lancaster, Texas.

## **ARTICLE 2. PREMISES**

- 2.1 City hereby leases to Lessee, and Lessee hereby leases from City, in accordance with the terms and conditions of this Agreement, the Premises.
- 2.2 Lessee warrants and represents that Lessee has carefully and completely examined and inspected the entire Premises, is fully informed of the condition of the Premises, and is completely satisfied as to the suitability of the Premises for all of the activities contemplated by this Agreement. Lessee accepts possession of the premises as is, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by the ordinances of the City of Lancaster.

## **ARTICLE 3. USE OF PREMISES**

- 3.1 Lessee has established a condominium regime pursuant to the Texas Uniform Condominium Act whereby Lessee will operate condominium units ("Units") for use as private aircraft hangars, and sell leasehold interests in each unit to third-party purchasers. Such Units shall be sold by Lessee subject to the terms and conditions of this Lease and any conveyance instruments shall clearly acknowledge that third party purchasers are bound by this Agreement. In addition, Lessee is granted the use and occupancy of the Premises for all uses allowed for a commercial aeronautical activity, as provided by the Minimum Standards for Commercial and Noncommercial Operators ("Airport Minimum Standards"); however, any owner of a leasehold interest, sublessee or tenant of Lessee may use and occupy the Premises solely for the storage of its privately owned aircraft (whether one or more) and any and all activities associated with maintaining and operating such aircraft, including, but not limited to, flight personnel, offices and aircraft maintenance areas related thereto in accordance with the Airport Minimum Standards.
- 3.2 Lessee agrees not to engage in any other activity on the Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or



occupy the Premises in any manner contrary to the Airport ALP or Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.

3.3 Prohibited Products, Services, and/or Uses: The following conduct is expressly prohibited on the Premises:

- A. Promotion or sale of commercial or retail products and/or services;
- B. Possession or use of any products, performance of any services, and any other uses prohibited by law;
- C. Use of hangar or office space for any activity unrelated to aviation, other than as an incidental or temporary uses as shall be reasonably approved by the Airport Manager.

In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive right, other than the exclusive use of the Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Premises.

3.4 Use of Airport: Lessee may use, in common with others, the existing and future aeronautical and Public Facilities at the Airport, subject to and in full compliances with all applicable rules and regulations. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

3.5 Ingress and Egress: Lessee, its employees, guests, patrons, suppliers, vendors, sublessees, purchasers of leasehold interests, and invitees shall have the right of ingress and egress to and from the Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Premises.

3.6 Quiet Enjoyment: Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Premises and privileges granted for the term of this Agreement free from hindrance or interruption by City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Premises, provided same do not materially adversely affect Lessee's ability to access and use the Premises.



## ARTICLE 4. TERM

- 4.1 Initial Term: The initial term of this Lease shall be thirty (30) years commencing on March 1, 2010, and ending on February 29, 2040, unless sooner terminated in accordance with the provisions hereof. This Lease shall become effective on March 8, 2010.
- 4.2 Extension of Term:
- A. City hereby grants Lessee, its successors, and assigns, two consecutive options to extend this Lease on the Leased Premises, as existing at the time(s) when either is exercised, as follows:
    - (1) First Option Period: Five (5) years, beginning at the expiration date of the initial term.
    - (2) Second Option Period: Five (5) years, beginning at the expiration date of the First Option Period.
  - B. As a condition for the exercise of each option, Lessee shall give City written notice of Lessee's intent to exercise its option at least six (6) months prior to the expiration of the date of the term of the Lease, as then in effect.
  - C. All conditions and covenants contained herein shall remain in force during any extension of term pursuant to said option(s), except the provision for rental, which shall be renegotiated by the parties in advance of any extension, using as a basis thereof the standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport. During any option period, rental shall be charged for any leasehold improvements added or constructed by Lessee, or any sublessee or successor during the term of the Lease or any option period based on standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport.
  - D. Lessee's right to exercise such option is conditional on proper notice, required in Paragraph B of this Subsection 4.2, and is further conditional upon Lessee not being in default in the performance of its covenants undertaken by Lessee, at the beginning date of the extension of the term for which such notice is given.
  - E. Lessee shall not have the right to exercise such options if this Lease has been terminated for any reason or reasons, or Lessee is in default as to any provision or condition of the Lease prior to the exercise of an option granted under this section.
  - F. At the end of forty (40) years (being the initial term, the first option period and the second option period), the Lessee, its successors, and assigns shall be given the first right of refusal to again lease the improvements at the going fair market value. Length of lease and price shall be mutually agreed upon, and negotiated directly with the City.



- 4.3 Ownership of the Improvements shall revert to City at no cost to City upon expiration of the Initial Lease Term and any approved extension of the lease term ("Term") of this Agreement. However, at the end of the Term, City shall retain the right to require that Lessee demolish and/or remove any non-structural alterations to the Improvements, the construction of which had not been previously approved by City, or any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default, noticed by City to Lessee, existing at the end of the Term, and restore the Improvements as nearly as possible to their original condition and character as of the date of the issuance of any certificate of occupancy, ordinary wear and tear excluded. Lessee may transfer the Improvements upon receipt from City of appropriate consents as described hereinafter. **Lessee's right to transfer the use and enjoyment of the Improvements shall be expressly conditioned upon Lessee's and any transferee's obtaining appropriate consent to such transferee's use and enjoyment of the Premises through an approved sublease or assignment of this Lease pursuant to Articles 21 and 22.**

## ARTICLE 5. RENT

- 5.1 For the use and occupancy of the leased premises herein granted, Lessee agrees to pay City the sum of eleven cents (\$0.11) per square foot per year for the first three years of the term hereof. At the beginning of the fourth year of the term hereof, and every five years thereafter until the beginning of the twenty-fifth year, the rental payments shall be adjusted (from eleven cents (\$0.11) per square foot per year at the beginning of year four), upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index as of the end of the preceding year of the term hereof. If the Area Consumer Price Index shall have decreased or remained the same, the lease rate shall remain the same. At the beginning of the twenty-fifth year of the term, the rental payment shall be the greater of: (1) the lease rate at the end of the twenty-fourth year of the term adjusted upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index; or (2) eighteen cents (\$0.18) per square foot.
- 5.2 The rentals provided shall be payable in advance in equal monthly installments beginning March 1, 2010. The parties hereto agree that the premises leased hereby are fifteen thousand nine hundred sixty (15,960) square feet and that the initial rental sums due hereunder are one hundred forty-six and 30/100 Dollars (\$146.30) per month or one thousand seven hundred fifty-five and 60/100 Dollars (\$1,755.60) per year for the first three (3) years hereof. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind.
- 5.3 A late charge of 5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 20<sup>th</sup> day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of 5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. All payments shall be made to City of Lancaster and sent to the attention of the



Finance Department at P.O. Box 940, Lancaster, Texas 75146. The failure to make any payment when due may result in a termination of the Agreement as provided in 11.

## **ARTICLE 6. FEES**

- 6.1 Lessee will pay, and will provide in its written lease agreement with any Sublessee, that Sublessee shall pay all applicable fees as established by the City of Lancaster.

## **ARTICLE 7. RIGHTS AND PRIVILEGES OF LESSEE**

City does hereby grant to Lessee and Lessee does take from City the following rights and privileges:

- 7.1 Lessee and/or its sublessees may install in or upon the Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee and/or any of its sublessees located on the Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee and/or its sublessees. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee, any sublessee, or any customer of Lessee unless due to the willful misconduct to City.
- 7.2 Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Airport Minimum Standards in order to engage in the authorized Activities.
- 7.3 Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement within five (5) days of termination or expiration of this Agreement. City may purchase personal property of Lessee at the termination of the Lease which the City deems essential to operation of Airport at the-then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.



## ARTICLE 8. RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances, City reserves the following rights and privileges:

- 8.1 City Authority: While the Airport Manager has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- 8.2 Airport Development: City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of Premises. City shall provide advance notice of any closures to the extent possible.
- 8.3 Aerial Approaches: City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee or any sublessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- 8.4 War, National Emergency, Riot, or Natural Disaster: During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- 8.5 Access to the Premises: City and/or its representatives shall have the right to enter the Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.



- 8.6 Performance of Acts: All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by representative or delegate of City.
- 8.7 Exercising Rights: No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee or its sublessee nor shall such exercise by grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.

## **ARTICLE 9. OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided, Lessee shall have the following obligations:

- 9.1 Conduct: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- 9.2 Disturbance: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport.
- A. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.
- B. Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely effect the environment or do anything or permit anything to be done that would violate any federal, state, or local regulations. Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Premises and shall neither use, allow the use of, nor occupy Premises for any improper, immoral or unlawful purpose.
- 9.3 Hazardous Materials: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable EPA, TCEQ and local regulations. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Premises unless Lessee has complied with the following:
- A. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.



- B. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and order relating to health, safety and protection of persons, the public, and/or the environment.
- C. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Premises as authorized by this Agreement.
- D. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Premises are not being used nor have the Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.
  - 1. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, Lessees or sublessees or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
  - 2. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Manager of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.
- E. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
- F. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials from the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City within thirty (30) days of City's demand for payment. If City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Premises and/or the Airport, Lessee shall reimburse City for all costs and expenses



incurred in so doing. In its sole discretion, City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.

- G. Immediately upon receipt thereof, Lessee shall provide City with copies of any notices, claims, complaints, demands, lawsuits, hearing, investigations, or governmental requests for information relating to the environmental condition on or of the Premises and/or Hazardous Materials on, in, under or emanating from the Premises during Lessee's occupancy thereof.

- 9.4 Storage, Handling, and Dispensing of Fuels, Gasolines and Lubricants: Fueling requirements are governed by the Lancaster Code of Ordinances.

The storage of fuels, gasolines, and lubricants in bulk quantities shall be limited to City's fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's or Sublessee's installation, operation and maintenance of a fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee and Sublessee must abide by all applicable federal, state and local regulations pertaining to the storage, handling, and dispensing of aviation fuels, gasolines and lubricants.

- 9.5 Utilities: Lessee shall directly procure and promptly pay for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Premises during the term of this Agreement.

- 9.6 Taxes, Assessments, and Fees: Lessee shall pay and discharge all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Premises, the Improvements locate thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination.

- 9.7 Costs, Expresses, and Other Charges: Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.

- 9.8 Maintenance: Lessee agrees during the initial term of this agreement and any option periods to assume the entire responsibility, cost and expense for repair and maintenance



on the Leased Premises and all improvements, including any hangar buildings and slabs, and to maintain the Leased Premises and improvements in a good condition.

- A. Lessee shall keep the interior and exterior (including all structural and non-structural) portions of the Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Premises in good order and condition and will make all necessary repairs to the Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair.
- B. Lessee agrees to keep the premises in a clean and orderly condition and appearance.
  - 1. Lessee shall not cause or allow any outdoor storage of materials, goods supplies, or equipment.
  - 2. Lessee shall further be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.
- C. Lessee agrees to provide and maintain all obstruction lights and similar devices or safety equipment required by law, to keep in effect such insurance (replacement value) on the premises as may be required by City.
- D. Lessee further agrees to submit to City for its written approval the plans and specifications for any major repairs, construction, alteration, modification, addition or replacement to the improvements on the premises undertaken by Lessee, which approval shall not be unreasonably withheld.
- E. The Lessee, and its successors and assigns, will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the Airport, or otherwise constitute an Airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust or glaring or misleading lights.
- F. In the event Lessee fails to comply with Section 9.8, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or cleaning which Lessee is required to make or perform.



- 9.9 Lessee agrees that any and all maintenance, repair or restoration activities on aircraft or otherwise shall be performed inside the hangar, screened from public view. Lessee further shall store all of its fixtures, equipment, and personal property within the hangar.
- 9.10 Refuse Disposal: Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles of all garbage, trash and other refuse at the Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. In the event Lessor discontinues providing garbage removal services as it is currently providing, Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- 9.11 Non-Discrimination: Lessee, in the conduct of its authorized Activities on or from the Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchases, or classes of purchasers.
- A. Lessee, as a part of the consideration hereof, do hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. That in the event of breach of any of the preceding nondiscrimination covenants, Lessee agrees that City has the right to take such action against Lessee as the government may direct to enforce this covenant, including termination of this lease.
- B. In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 9.12 Based Aircraft Report: Lessee in its written condominium declaration with the owners of the hangar units shall ensure that the owners of such units shall maintain and furnish by the 1<sup>st</sup> of August each year and at any time upon request for the Airport Manager, a report identifying all aircraft based at or on the Premises. The report shall identify the owner,



the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight and aircraft registration number.

- 9.13 Signage: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.
- 9.14 Special Events: Lessee shall not conduct or hold air shows or any other special events including any non-aeronautical event at the Airport without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.

## **ARTICLE 10. OBLIGATIONS OF CITY**

- 10.1 City covenants and agrees that all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- 10.2 Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Premises, then that any such mortgage, deed of trust, or other instrument in the thereof will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgage arising by virtue of this Lease.

## **ARTICLE 11. DEFAULTS AND REMEDIES**

- 11.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.
- A. The filing by Lessee of a voluntary petition in bankruptcy.
  - B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
  - C. A court making or entering any decree or order.
    - 1. adjudging Lessee to be bankrupt or insolvent;
    - 2. approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
    - 3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;



4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Premises or its failure to maintain an ongoing business at the Premises for a period of thirty (30) days or more, coupled with the failure to pay rent as provided in Article 5.
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.
- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."
- 11.2 In the event of any default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, no written or other notice of default shall be required. If this Agreement is terminated, any payments made to City shall be forfeited to City and Lessee shall have no rights to recover the payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.
- 11.3 Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.



- 11.4 In addition to the termination and forfeiture rights described in the preceding paragraphs, City shall have the following rights and remedies upon default by Lessee:
- A. The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that would have been made in the Agreement had not been breached by Lessee.
  - B. The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, including reasonable attorneys' fees and expenses.
  - C. The removal of all persons from the Premises and the removal and storage at Lessee's expense of all property on the Premises, in accordance with the law.
  - D. Any other right or remedy, legal or equitable, including specific performance, that City is entitled to under applicable law, whether stated in this Agreement or not.
- 11.5 No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue.
- 11.6 In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said premises and improvements, including any facilities, fixtures and equipment, to City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- 11.7 In the event the failure of Lessee upon termination of this Agreement to immediately remove from the Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Premises, restoring the Premises and Improvements to the condition by this Agreement, and protecting the Premises.
- 11.8 The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.



**ARTICLE 12.**  
**TERMINATION BY LESSEE**

- 12.1 Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:
- A. Permanent closure of the Airport.
  - B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered, however not during any appeals therefrom.
  - C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.
  - D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure to City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
  - E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminate operations at the Airport and which suspension or termination materially affects the operations of rights of Lessee hereunder.
- 12.2 Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.
- 12.3 As an alternative to the right of termination, Lessee shall be entitled to seek injunctive relief against the City relating to an event of default under Section 12.1-E above, together with costs and attorneys' fees by Lessee in such action if Lessee judicially obtains the relief sought; however, in no event shall rent abate during the pendency of any proceeding.



**ARTICLE 13.  
REMEDIES CUMULATIVE**

- 13.1 All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; however, Lessee's sole remedies upon City's default are contained in Article 12.

**ARTICLE 14.  
NO WAIVER**

- 14.1 No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

**ARTICLE 15.  
COMPLIANCE WITH LAWS**

- 15.1 At its own expense, Lessee shall comply with all federal, state and local regulations, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fine or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

**ARTICLE 16.  
COMPLIANCE WITH AIRPORT MINIMUM STANDARDS**

- 16.1 Lessee shall comply with the Airport Minimum Standards as all may be promulgated by City (and in effect from time to time). Any violation of this paragraph shall be construed as a material breach of this Agreement authorizing the termination thereof in accordance with 11.
- 16.2 In the event of a conflict between the Airport Minimum Standards and this Agreement, the strictest standard, obligation and/or requirement shall govern Lessee's responsibilities under this Agreement.

**ARTICLE 17.  
LICENSES, CERTIFICATES, AND PERMITS**

- 17.1 At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Premises or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or



on the Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

## **ARTICLE 18. INSURANCE**

- 18.1 Lessee agrees to procure and maintain insurance as provided by the *Minimum Standards for Commercial and Non-Commercial Operators at Lancaster Airport, January 2006 and as amended*, including attaining a commercial general liability policy for premises and operations liability that names the City of Lancaster, Texas, its City Council (individually and collectively), and its representatives, officials, officers, employees, and agents as additional insureds. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas or otherwise be approved in writing by City. Any insurance policy procured to comply with this provision shall be endorsed to state that coverage shall not be suspended, voided, cancelled, non-renewed, or reduced in coverage except after ten (10) days prior written notice by certified mail, return receipt requested, to the City of Lancaster. All liability policies shall contain or be endorsed to contain the following provisions:
- A. "City of Lancaster and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."
  - B. "Any failure to comply with reporting or other provisions of the policies, including breached of warranties, shall not affect coverage provided to City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- 18.2 Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.
- 18.3 The applicable insurance coverage shall be in full force upon execution of the Agreement and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.



- 18.4 Lessee shall, at its sole cost and expense, insure the Premises continuously against loss or damage. The Improvements shall be insured (80% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.
- 18.5 Insurance coverages and policy limits are subject to periodic review and modification at the discretion of City.

## **ARTICLE 19.**

### **DAMAGE TO PREMISES AND PROPERTY**

- 19.1 Damages to Premises. If any part of the Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sublessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Premises immediately prior to damage (the "Restoration").
- A. If at any time during the term of this Agreement, any part of the Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to Lessee or any sub-Lessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.
  - B. If Lessee fails to restore Premises, Lessee shall pay to City, upon demand, the amount that City reasonably determines is necessary to restore the Premises. Upon said payment, City will restore the Premises.
- 19.2 Use of Insurance Proceeds for Rebuilding.
- A. If, by reason of any damage or destruction mentioned in Article 19.1, any sums are paid under any insurance policy mentioned in Article 18, such sums will be paid to any Leasehold Mortgagee, if one exists, or to the City if no Leasehold Mortgage exists, (such entity holding the insurance proceeds hereinafter referred to as "Depository") and will be used to defray the cost of repairing, restoring, or reconstructing the Improvements as required in Article 19 herein. If there is no Leasehold Mortgagee at the time of such damage or destruction, as such sums shall be paid to City to be held and applied as set forth below.
  - B. Upon receipt by the Depository, of:



1. A certificate of Lessee dated not more than thirty (30) days prior to the date of such receipt (a) requesting the payment of a specified amount of such monies; (b) describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Lessee; (c) stating that such specified amount does not exceed the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (d) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;
2. A certificate of an independent engineer or any independent architect designated by Lessee and approved by City (which approval will not be unreasonably withheld) and by the Leasehold Mortgagee, if any, stating (a) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate and desirable to the Restoration in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; (b) that the amount specified in such certificate of Lessee is not in excess of the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (c) the additional amount, if any, required to complete the Restoration;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of such work and materials has been paid in full or will be paid in full out of such advance;
4. Either (a) a written opinion of Lessee's counsel, or (b) the certification of title company licensed to do business in the State of Texas, in either case that as of date not more than twenty (20) days prior to the date of payment described below there exists no filed or recorded lien, encumbrance or, charge prior to or on a parity with the estate, rights and interest of City, and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, a certificate from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, Evidencing that any fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City; and
5. Evidence satisfactory to the Leasehold Mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and by a corporate surety reasonably satisfactory to City, with each such bond naming City



and Leasehold Mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to City, and evidence satisfactory to the Leasehold Mortgagee and City that such bonds remain in full force and effect; the Depository will pay to Lessee the amount of such insurance monies specified in such certificate of Lessee, provided that the balance will be sufficient for the completion of the Restoration.

C. The Depository will pay to Lessee the ten percent (10%) retainage reserved during the Restoration, upon the completion of Restoration as evidenced by a certificate of such independent engineer or independent architect, and upon the receipt by the Depository of:

1. A certificate of Lessee (a) requesting the payment of the ten percent (10%) retainage reserved by the Depository during the Restoration; (b) stating that the Restoration was completed at least thirty (30) days prior to the date of the certificate and was finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; and (c) stating that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance;
2. A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance (which evidence may include fully executed and acknowledged waives or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engage in the Restoration);
4. The certification of a title company licensed to do business in the State of Texas, in either case that, as of date not more than five (5) days prior to the date of payment described below, there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a fee mortgage, if any), and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, evidencing that fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted therein and except for any chattel mortgage or security agreement delivered to City.



- D. Any balance of insurance proceeds after the completion of Restoration, as evidenced by a certificate of such independent engineer or independent architect, will be paid to Lessee or to Leasehold Mortgagee(s), if required under the terms of the Leasehold Mortgage then in effect. Depository shall notify City and Leasehold Mortgagee of each amount paid to Lessee and the date of each such payment.
- E. Upon the expiration or sooner termination of this Lease, any insurance proceeds not theretofore applied to the cost of Restoration or not theretofore paid to Lessee or a Leasehold Mortgagee will be paid to City.

## **ARTICLE 20. INDEMNIFICATION**

- 20.1 LESSEE SHALL INDEMNIFY, PROTECT, DEFEND, SAVE AND COMPLETELY HOLD HARMLESS CITY AND ITS CITY COUNCIL (INDIVIDUALLY AND COLLECTIVELY), REPRESENTATIVES, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS ARTICLE AS "CITY") FROM ANY AND ALL LIENS, CLAIMS, CHARGES, ENCUMBRANCES, DEMANDS, DAMAGES, FINES, OBLIGATIONS, SUITS, JUDGMENTS, PENALTIES, CAUSES OF ACTION, LOSSES, LIABILITIES, ADMINISTRATIVE PROCEEDINGS, ARBITRATION, OR COSTS OF ANY NATURE WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, AT ANY TIME RECEIVED, INCURRED, OR ACCRUED BY CITY RELATING TO THIS AGREEMENT OR ARISING FROM DAMAGE OR INJURY OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM LESSEE'S POSSESSION, USE, OCCUPANCY, MANAGEMENT, MAINTENANCE, OR CONTROL OF THE PREMISES AND/OR AIRPORT LAND AND/OR IMPROVEMENTS AND/OR THE CONDUCT OF LESSEE'S ACTIVITIES AT THE AIRPORT OR ARISING OUT OF LESSEE'S ACTIONS OR INACTIONS, REGARDLESS OF ANY SOLE OR CONCURRENT NEGLIGENCE OF THE CITY.
- 20.2 City shall give Lessee prompt notice of any such demand, claim, lawsuit or proceeding against City that relates to this Agreement. If such demand, claim, lawsuit or proceeding is brought, City shall have the right, but not the duty, to: (1) investigate and settle the demand, claim, lawsuit or proceeding and (2) participate in the defense of the demand, claim, lawsuit or proceeding.
- 20.3 In this Article, "City" also includes the Lancaster Municipal Airport, Airport Board and all of its members. The indemnification provisions of this Agreement shall survive its expiration of termination.



**ARTICLE 21.**  
**SUBLEASE AND SUBCONTRACTS**

- 21.1 The City hereby expressly grants its consent for Lessee to convey ownership of a leasehold interest (as condominium units) of the Hangars upon the Premises. Individual hangar owners may lease their interests in the condominium hangar units, subject to the terms of this lease, the Lancaster Airport Rules and Regulations, and the Airport Minimum Standards, and provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Article 3. During the existence of this Agreement, all revenues from any sublease shall belong to Lessee.
- 21.2 Lessee shall not sublease the Premises (or any part of the Premises) or subcontract any operation or service it performs or is permitted to perform, without the prior express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- 21.3 Lessee shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before the expiration date of this Agreement.
- 21.4 A lease or sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in a written consent, a sublease is subject to all of the terms and conditions of the lease governing the land and/or improvements being sublet. In addition, the Lessee shall at all times assume total responsibility for the acts and omissions of a sublessee and/or subcontractor.

**ARTICLE 22.**  
**ASSIGNMENT**

- 22.1 No portion of this Agreement may be assigned without the prior express written consent of City. In the event this Agreement is assigned, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default.

**ARTICLE 23.**  
**ENCUMBRANCES**

- 23.1 Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the real property described in Exhibits A and B and Lessee shall not suffer the real property described in Exhibits A and B, or any improvements thereon, to be or become subject to any non-consensual lien (including mechanic's liens), charge or



encumbrance whatsoever. The limitation on encumbrances provided herein shall not prevent Lessee or any sublessee from encumbering their leasehold interest in the Premises.

#### **ARTICLE 24. MORTGAGE**

- 24.1 Lessee shall not further mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Premises without the prior express written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By virtue of its execution of this Agreement, City consents to the existence of Lessee's current mortgage and pledge that encumbers Lessee's leasehold interest in the Premises.

#### **ARTICLE 25. BOOKS AND RECORDS**

- 25.1 Lessee shall maintain complete financial records of its Activities on the Premises. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to City.
- 25.2 Any information, records and reports provided to or obtained by City pursuant to this Article or which City otherwise comes possession of pursuant to this Agreement, shall be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

#### **ARTICLE 26. HOLDOVER POSSESSION**

- 26.1 In the event that Lessee should hold over and remain in possession of the Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at an time by the Airport Manager or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

#### **ARTICLE 27. INDEPENDENT ENTITIES**

- 27.1 Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between City and Lessee or as constituting either party as the agent or representative or employee of the other party for any purpose or in any manner whatsoever.



**ARTICLE 28.**  
**BINDING EFFECT**

- 28.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

**ARTICLE 29.**  
**SUBORDINATION**

- 29.1 This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

**ARTICLE 30.**  
**GOVERNING LAW**

- 30.1 This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

**ARTICLE 31.**  
**PARAGRAPH HEADINGS**

- 31.1 All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience in reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

**ARTICLE 32.**  
**SEVERABILITY**

- 32.1 In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.



**ARTICLE 33.  
COUNTERPARTS**

- 33.1 This Agreement has been executed in several counterparts, each of which shall be deemed an original.

**ARTICLE 34.  
MODIFICATION**

- 34.1 Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.  
ENTIRE AGREEMENT**

- 35.1 This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

**ARTICLE 36.  
NOTICES**

- 36.1 Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:  
Airport Manager  
LANCASTER MUNICIPAL AIRPORT  
P.O. Box 940  
Lancaster, Texas 75146

Lessee:

George Sheban  
RISING STAR AVIATION HOLDINGS, L.L.C.  
5950 Berkshire Lane, Suite 310  
Dallas, Texas 75225

with a copy to:

Michael D. Hesse  
HESSE & HESSE, L.L.P.  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

- 36.2 All payments shall be made payable to City of Lancaster and sent to the attention of the Finance Department at P.O. Box 940, Lancaster, Texas 75146.
- 36.3 The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.



**ARTICLE 37.  
MISCELLANEOUS**

- 37.1 Recognition of Subleases. In the event of termination of this Lease because of any breach or default by Lessee, City shall recognize any existing subleases.
- 37.2 Merger of Title. No merger of Lessee's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) Lessee's interest in this Lease or the leasehold created by this Lease and (b) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (a) and (b) above join in a written instrument effecting such merger and record same.
- 37.3 Rights Regarding Condominium Association. Notwithstanding anything contained in this Agreement to the contrary, Lessee shall have the following rights relating to Rising Star Hangars of Lancaster Condominium Association No. 2 or any other condominium association formed and/or established in connection with this Agreement and related to the Property and/or the Improvements, each of which may be exercised in Lessee's sole and absolute discretion:
- (1) Lessee shall have no obligation to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act or to form or establish Rising Star Hangars of Lancaster Condominium Association No. 2 or any other condominium association to manage or maintain the Property.
  - (2) In the event Lessee does elect to form or establish Rising Star Hangars of Lancaster Condominium Association No. 2 or any other condominium association for the Property, Lessee shall retain the right, in its sole and absolute discretion, to remove all or any part of the Property from such condominium association and may offer and sell the leasehold interest in and to the Property without any attachment or encumbrance of a condominium association. Any leasehold interest sold that is not subject to a condominium association shall remain subject to the terms and conditions of this Agreement, including, but not limited to the provisions of Article 21 hereof.

**ARTICLE 38.  
EXHIBITS AND APPENDICES**

- 38.1 Exhibits and Appendices attached hereto are expressly made a part hereof.

- A Description of Leased Premises
- B Site Plan



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this 9<sup>th</sup> day of March, 2010.

**CITY OF LANCASTER, TEXAS**

By: Marcus E. Knight  
Marcus E. Knight  
Mayor  
Date Signed: 3-9-2010

**RIISING STAR AVIATION HOLDINGS,  
L.L.C., a Texas limited liability company**

By: George Sheban  
Printed Name: George Sheban  
Title: President  
Date Signed: 3.18.10

ATTEST:

Dolle K. Downe  
Dolle K. Downe  
City Secretary



LEGAL DESCRIPTION  
0.3664 ACRES

Being a tract of land situated in the J. Green Survey, Abstract No. 504, City of Lancaster, Dallas County, Texas and being a part of the Lancaster Airport Addition, an addition to the City of Lancaster, recorded in Volume 97173, Page 5853, Map Records, Dallas county, Texas and being more particularly described as follows:

Beginning at a point for corner, said point being S 10°57'20" E, 1317.41 ft., S 10°49'02" E, 1070.48 ft. to the beginning of a circular curve to the left having a central angle of 60°04'13", a radius of 440.00 ft., a tangent length of 254.39 ft., a chord bearing of S 40°51'09" E, a chord length of 440.47 ft. and an arc length of 461.31 ft. and N 49°43'05" E, 471.22 ft. from the most westerly-northwest corner of said addition;

THENCE N 49°43'05" E, a distance of 280.00 ft. to a point for corner;

THENCE S 40°16'55" E, a distance of 57.00 ft. to a point for corner;

THENCE S 49°43'05" W, a distance of 280.00 ft. to a point for corner;

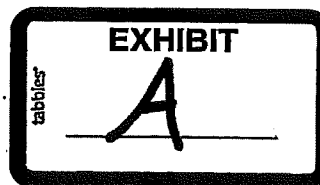
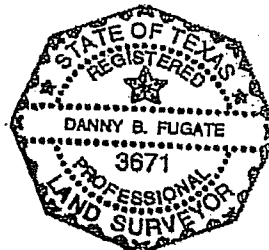
THENCE N 40°16'55" W, a distance of 57.00 ft. to the Point of Beginning and containing 0.3664 acres (15,960 Sq. Ft.) of land.

CERTIFICATION

To the person relying upon the accuracy of this survey or plat I, Danny B. Fugate, Registered Professional Land Surveyor, State of Texas, do certify to that this plat represents measurements performed upon the ground under my supervision. This is a true and correct survey.

By: [Signature]  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3671  
STATE OF TEXAS

DATE: 8-20-2007



MM: D93152AX  
F93152AX.TXT



**0.3664 ACRE BOUNDARY SURVEY**  
**J. GREEN SURVEY, ABSTRACT NO. 504**  
**CITY OF LANCASTER, DALLAS COUNTY, TEXAS**

**BELT LINE ROAD**

LANCASTER AIRPORT ADDITION  
 VOL. 97173, PG. 5853

**LANCASTER-FERRIS ROAD**  
 (CALLED 60' R.O.W.)

POINT OF BEGINNING  
 L5

0.3664 ACRES  
 L3

FUTURE HANGER

FUTURE HANGER

FUTURE HANGER

LINE	BEARING	DISTANCE
L1	S 80°51'23" E	81.20
L2	S 79°51'05" E	216.91
L3	S 49°43'05" N	57.00
L4	N 40°16'55" N	57.00
L5	N 49°43'05" E	280.00
L6	S 40°16'55" E	57.00

CURVE	ARC	DELTA	RADIUS	CHORD LENGTH	CHORD BEARINGS	TAN LENGTH
C1	451.31	60°04'13"	440.00	440.47	S 40°51'09" E	254.39
C2	75.56	09°58'06"	440.00	75.46	S 75°52'19" E	38.37



FILE F93152A  
 HK F93152AX

**Fugate Surveying, Inc.**

235 EAST BELT LINE ROAD  
 DE SOTO, TEXAS 75115  
 223-0740 FAX 230-0825

Scale: 1"=200' Date: 8-20-2004  
 Job No. 03452

GF No.



## LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement"), made and entered into this 9<sup>th</sup> day of March, 2010, by and between the *CITY OF LANCASTER*, a Texas Home-rule Municipal Corporation ("City" or "Lessor") and *RISING STAR AVIATION HOLDINGS, L.L.C.*, a Texas Limited Liability Corporation ("Lessee").

### WITNESSETH:

WHEREAS, City is the owner and operator of the Lancaster Municipal Airport ("Airport") which is located in the City of Lancaster, Dallas County, State of Texas; and

WHEREAS, Lessee desires to lease, develop, and use the Airport Property particularly described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to operate a maximum of four (4) commercial business units for use as private airport hangars, as generally provided in the plat attached hereto as Exhibit B; and

WHEREAS, Lessee desires to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act, codified in Chapter 82 of the Texas Property Code, and to establish a unit leasehold-owners association—Rising Star Hangars of Lancaster Condominium Association No. 3—to manage and maintain the Property; and

WHEREAS, in accordance with the provisions contained within this agreement, City desires to allow Lessee to use and operate private airport hangars on the Property, to provide for leasehold interests on the Property, and to establish an association to manage and maintain the Property.

NOW, THEREFORE, for and in consideration of the rental payments, covenants, promises, and agreements contained herein, and for other good and valuable consideration, City and Lessee agree as follows:

### ARTICLE 1. DEFINITIONS

*Airport* means the Lancaster Municipal Airport, located at 730 Ferris Road, Suite 102, Lancaster, Texas 75146.

*Airport ALP* means the Lancaster Municipal Airport's Airport Layout Plan.

*Hazardous Materials* is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

*Improvements* means approximately four (4) hangar Units, utilities, water line and any related alterations located, or to be located, on the Premises.



*Premises* means the real property described in Exhibits A and B, which is owned by the City and leased to Lessee.

*Public Facilities* means the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft.

*Site Plan* means, for purposes of this Agreement, the area depicted in the attached Exhibit B, including hangars and related improvements.

*Sponsor* means the City of Lancaster, Texas.

## **ARTICLE 2. PREMISES**

- 2.1 City hereby leases to Lessee, and Lessee hereby leases from City, in accordance with the terms and conditions of this Agreement, the Premises.
- 2.2 Lessee warrants and represents that Lessee has carefully and completely examined and inspected the entire Premises, is fully informed of the condition of the Premises, and is completely satisfied as to the suitability of the Premises for all of the activities contemplated by this Agreement. Lessee accepts possession of the premises as is, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by the ordinances of the City of Lancaster.

## **ARTICLE 3. USE OF PREMISES**

- 3.1 Lessee has established a condominium regime pursuant to the Texas Uniform Condominium Act whereby Lessee will operate condominium units ("Units") for use as private aircraft hangars, and sell leasehold interests in each unit to third-party purchasers. Such Units shall be sold by Lessee subject to the terms and conditions of this Lease and any conveyance instruments shall clearly acknowledge that third party purchasers are bound by this Agreement. In addition, Lessee is granted the use and occupancy of the Premises for all uses allowed for a commercial aeronautical activity, as provided by the Minimum Standards for Commercial and Noncommercial Operators ("Airport Minimum Standards"); however, any owner of a leasehold interest, sublessee or tenant of Lessee may use and occupy the Premises solely for the storage of its privately owned aircraft (whether one or more) and any and all activities associated with maintaining and operating such aircraft, including, but not limited to, flight personnel, offices and aircraft maintenance areas related thereto in accordance with the Airport Minimum Standards.
- 3.2 Lessee agrees not to engage in any other activity on the Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or



occupy the Premises in any manner contrary to the Airport ALP or Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.

3.3 Prohibited Products, Services, and/or Uses: The following conduct is expressly prohibited on the Premises:

- A. Promotion or sale of commercial or retail products and/or services;
- B. Possession or use of any products, performance of any services, and any other uses prohibited by law;
- C. Use of hangar or office space for any activity unrelated to aviation, other than as an incidental or temporary uses as shall be reasonably approved by the Airport Manager.

In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive right, other than the exclusive use of the Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Premises.

3.4 Use of Airport: Lessee may use, in common with others, the existing and future aeronautical and Public Facilities at the Airport, subject to and in full compliances with all applicable rules and regulations. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

3.5 Ingress and Egress: Lessee, its employees, guests, patrons, suppliers, vendors, sublessees, purchasers of leasehold interests, and invitees shall have the right of ingress and egress to and from the Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Premises.

3.6 Quite Enjoyment: Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Premises and privileges granted for the term of this Agreement free from hindrance or interruption by City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Premises, provided same do not materially adversely affect Lessee's ability to access and use the Premises.



## ARTICLE 4. TERM

- 4.1 Initial Term: The initial term of this Lease shall be thirty (30) years commencing on March 1, 2010, and ending on February 29, 2040, unless sooner terminated in accordance with the provisions hereof. This Lease shall become effective on March 8, 2010.
- 4.2 Extension of Term:
- A. City hereby grants Lessee, its successors, and assigns, two consecutive options to extend this Lease on the Leased Premises, as existing at the time(s) when either is exercised, as follows:
    - (1) First Option Period: Five (5) years, beginning at the expiration date of the initial term.
    - (2) Second Option Period: Five (5) years, beginning at the expiration date of the First Option Period.
  - B. As a condition for the exercise of each option, Lessee shall give City written notice of Lessee's intent to exercise its option at least six (6) months prior to the expiration of the date of the term of the Lease, as then in effect.
  - C. All conditions and covenants contained herein shall remain in force during any extension of term pursuant to said option(s), except the provision for rental, which shall be renegotiated by the parties in advance of any extension, using as a basis thereof the standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport. During any option period, rental shall be charged for any leasehold improvements added or constructed by Lessee, or any sublessee or successor during the term of the Lease or any option period based on standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport.
  - D. Lessee's right to exercise such option is conditional on proper notice, required in Paragraph B of this Subsection 4.2, and is further conditional upon Lessee not being in default in the performance of its covenants undertaken by Lessee, at the beginning date of the extension of the term for which such notice is given.
  - E. Lessee shall not have the right to exercise such options if this Lease has been terminated for any reason or reasons, or Lessee is in default as to any provision or condition of the Lease prior to the exercise of an option granted under this section.
  - F. At the end of forty (40) years (being the initial term, the first option period and the second option period), the Lessee, its successors, and assigns shall be given the first right of refusal to again lease the improvements at the going fair market value. Length of lease and price shall be mutually agreed upon, and negotiated directly with the City.



- 4.3 Ownership of the Improvements shall revert to City at no cost to City upon expiration of the Initial Lease Term and any approved extension of the lease term ("Term") of this Agreement. However, at the end of the Term, City shall retain the right to require that Lessee demolish and/or remove any non-structural alterations to the Improvements, the construction of which had not been previously approved by City, or any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default, noticed by City to Lessee, existing at the end of the Term, and restore the Improvements as nearly as possible to their original condition and character as of the date of the issuance of any certificate of occupancy, ordinary wear and tear excluded. Lessee may transfer the Improvements upon receipt from City of appropriate consents as described hereinafter. **Lessee's right to transfer the use and enjoyment of the Improvements shall be expressly conditioned upon Lessee's and any transferee's obtaining appropriate consent to such transferee's use and enjoyment of the Premises through an approved sublease or assignment of this Lease pursuant to Articles 21 and 22.**

## ARTICLE 5. RENT

- 5.1 For the use and occupancy of the leased premises herein granted, Lessee agrees to pay City the sum of eleven cents (\$0.11) per square foot per year for the first three years of the term hereof. At the beginning of the fourth year of the term hereof, and every five years thereafter until the beginning of the twenty-fifth year, the rental payments shall be adjusted (from eleven cents (\$0.11) per square foot per year at the beginning of year four), upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index as of the end of the preceding year of the term hereof. If the Area Consumer Price Index shall have decreased or remained the same, the lease rate shall remain the same. At the beginning of the twenty-fifth year of the term, the rental payment shall be the greater of: (1) the lease rate at the end of the twenty-fourth year of the term adjusted upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index; or (2) eighteen cents (\$0.18) per square foot.
- 5.2 The rentals provided shall be payable in advance in equal monthly installments beginning March 1, 2010. The parties hereto agree that the premises leased hereby are fifteen thousand eight hundred eighty-two (15,882) square feet and that the initial rental sums due hereunder are one hundred forty-five and 59/100 Dollars (\$145.59) per month or one thousand seven hundred forty-seven and 02/100 Dollars (\$1,747.02) per year for the first three (3) years hereof. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind.
- 5.3 A late charge of 5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 20<sup>th</sup> day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of 5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. All payments shall be made to City of Lancaster and sent to the attention of the



Finance Department at P.O. Box 940, Lancaster, Texas 75146. The failure to make any payment when due may result in a termination of the Agreement as provided in 11.

## **ARTICLE 6.**

### **FEES**

- 6.1 Lessee will pay, and will provide in its written lease agreement with any Sublessee, that Sublessee shall pay all applicable fees as established by the City of Lancaster.

## **ARTICLE 7.**

### **RIGHTS AND PRIVILEGES OF LESSEE**

City does hereby grant to Lessee and Lessee does take from City the following rights and privileges:

- 7.1 Lessee and/or its sublessees may install in or upon the Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee and/or any of its sublessees located on the Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee and/or its sublessees. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee, any sublessee, or any customer of Lessee unless due to the willful misconduct to City.
- 7.2 Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Airport Minimum Standards in order to engage in the authorized Activities.
- 7.3 Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement within five (5) days of termination or expiration of this Agreement. City may purchase personal property of Lessee at the termination of the Lease which the City deems essential to operation of Airport at the-then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.



## ARTICLE 8. RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances, City reserves the following rights and privileges:

- 8.1 City Authority: While the Airport Manager has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- 8.2 Airport Development: City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of Premises. City shall provide advance notice of any closures to the extent possible.
- 8.3 Aerial Approaches: City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee or any sublessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- 8.4 War, National Emergency, Riot, or Natural Disaster: During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- 8.5 Access to the Premises: City and/or its representatives shall have the right to enter the Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.



- 8.6 Performance of Acts: All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by representative or delegate of City.
- 8.7 Exercising Rights: No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee or its sublessee nor shall such exercise by grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.

## **ARTICLE 9. OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided, Lessee shall have the following obligations:

- 9.1 Conduct: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- 9.2 Disturbance: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport.
- A. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.
- B. Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely effect the environment or do anything or permit anything to be done that would violate any federal, state, or local regulations. Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Premises and shall neither use, allow the use of, nor occupy Premises for any improper, immoral or unlawful purpose.
- 9.3 Hazardous Materials: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable EPA, TCEQ and local regulations. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Premises unless Lessee has complied with the following:
- A. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.



- B. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and order relating to health, safety and protection of persons, the public, and/or the environment.
- C. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Premises as authorized by this Agreement.
- D. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Premises are not being used nor have the Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.
  - 1. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, Lessees or sublessees or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
  - 2. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Manager of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.
- E. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
- F. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials from the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City within thirty (30) days of City's demand for payment. If City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Premises and/or the Airport, Lessee shall reimburse City for all costs and expenses



incurred in so doing. In its sole discretion, City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.

- G. Immediately upon receipt thereof, Lessee shall provide City with copies of any notices, claims, complaints, demands, lawsuits, hearing, investigations, or governmental requests for information relating to the environmental condition on or of the Premises and/or Hazardous Materials on, in, under or emanating from the Premises during Lessee's occupancy thereof.

- 9.4 Storage, Handling, and Dispensing of Fuels, Gasolines and Lubricants: Fueling requirements are governed by the Lancaster Code of Ordinances.

The storage of fuels, gasolines, and lubricants in bulk quantities shall be limited to City's fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's or Sublessee's installation, operation and maintenance of a fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee and Sublessee must abide by all applicable federal, state and local regulations pertaining to the storage, handling, and dispensing of aviation fuels, gasolines and lubricants.

- 9.5 Utilities: Lessee shall directly procure and promptly pay for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Premises during the term of this Agreement.

- 9.6 Taxes, Assessments, and Fees: Lessee shall pay and discharge all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Premises, the Improvements locate thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination.

- 9.7 Costs, Expresses, and Other Charges: Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.

- 9.8 Maintenance: Lessee agrees during the initial term of this agreement and any option periods to assume the entire responsibility, cost and expense for repair and maintenance



on the Leased Premises and all improvements, including any hangar buildings and slabs, and to maintain the Leased Premises and improvements in a good condition.

- A. Lessee shall keep the interior and exterior (including all structural and non-structural) portions of the Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Premises in good order and condition and will make all necessary repairs to the Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair.
- B. Lessee agrees to keep the premises in a clean and orderly condition and appearance.
  - 1. Lessee shall not cause or allow any outdoor storage of materials, goods supplies, or equipment.
  - 2. Lessee shall further be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.
- C. Lessee agrees to provide and maintain all obstruction lights and similar devices or safety equipment required by law, to keep in effect such insurance (replacement value) on the premises as may be required by City.
- D. Lessee further agrees to submit to City for its written approval the plans and specifications for any major repairs, construction, alteration, modification, addition or replacement to the improvements on the premises undertaken by Lessee, which approval shall not be unreasonably withheld.
- E. The Lessee, and its successors and assigns, will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the Airport, or otherwise constitute an Airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust or glaring or misleading lights.
- F. In the event Lessee fails to comply with Section 9.8, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or cleaning which Lessee is required to make or perform.



- 9.9 Lessee agrees that any and all maintenance, repair or restoration activities on aircraft or otherwise shall be performed inside the hangar, screened from public view. Lessee further shall store all of its fixtures, equipment, and personal property within the hangar.
- 9.10 Refuse Disposal: Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles of all garbage, trash and other refuse at the Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. In the event Lessor discontinues providing garbage removal services as it is currently providing, Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- 9.11 Non-Discrimination: Lessee, in the conduct of its authorized Activities on or from the Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchases, or classes of purchasers.
- A. Lessee, as a part of the consideration hereof, do hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. That in the event of breach of any of the preceding nondiscrimination covenants, Lessee agrees that City has the right to take such action against Lessee as the government may direct to enforce this covenant, including termination of this lease.
- B. In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 9.12 Based Aircraft Report: Lessee in its written condominium declaration with the owners of the hangar units shall ensure that the owners of such units shall maintain and furnish by the 1<sup>st</sup> of August each year and at any time upon request for the Airport Manager, a report identifying all aircraft based at or on the Premises. The report shall identify the owner,



the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight and aircraft registration number.

- 9.13 Signage: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.
- 9.14 Special Events: Lessee shall not conduct or hold air shows or any other special events including any non-aeronautical event at the Airport without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.

## **ARTICLE 10. OBLIGATIONS OF CITY**

- 10.1 City covenants and agrees that all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- 10.2 Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Premises, then that any such mortgage, deed of trust, or other instrument in the thereof will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgagee arising by virtue of this Lease.

## **ARTICLE 11. DEFAULTS AND REMEDIES**

- 11.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.
- A. The filing by Lessee of a voluntary petition in bankruptcy.
  - B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
  - C. A court making or entering any decree or order.
    - 1. adjudging Lessee to be bankrupt or insolvent;
    - 2. approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
    - 3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;



4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Premises or its failure to maintain an on-going business at the Premises for a period of thirty (30) days or more, coupled with the failure to pay rent as provided in Article 5.
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.
- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."
- 11.2 In the event of any default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, no written or other notice of default shall be required. If this Agreement is terminated, any payments made to City shall be forfeited to City and Lessee shall have no rights to recover the payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.
- 11.3 Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.



- 11.4 In addition to the termination and forfeiture rights described in the preceding paragraphs, City shall have the following rights and remedies upon default by Lessee:
- A. The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that would have been made in the Agreement had not been breached by Lessee.
  - B. The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, including reasonable attorneys' fees and expenses.
  - C. The removal of all persons from the Premises and the removal and storage at Lessee's expense of all property on the Premises, in accordance with the law.
  - D. Any other right or remedy, legal or equitable, including specific performance, that City is entitled to under applicable law, whether stated in this Agreement or not.
- 11.5 No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue.
- 11.6 In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said premises and improvements, including any facilities, fixtures and equipment, to City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- 11.7 In the event the failure of Lessee upon termination of this Agreement to immediately remove from the Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Premises, restoring the Premises and Improvements to the condition by this Agreement, and protecting the Premises.
- 11.8 The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.



**ARTICLE 12.**  
**TERMINATION BY LESSEE**

- 12.1 Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:
- A. Permanent closure of the Airport.
  - B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered, however not during any appeals therefrom.
  - C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.
  - D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure to City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
  - E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminate operations at the Airport and which suspension or termination materially affects the operations of rights of Lessee hereunder.
- 12.2 Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.
- 12.3 As an alternative to the right of termination, Lessee shall be entitled to seek injunctive relief against the City relating to an event of default under Section 12.1-E above, together with costs and attorneys' fees by Lessee in such action if Lessee judicially obtains the relief sought; however, in no event shall rent abate during the pendency of any proceeding.



**ARTICLE 13.**  
**REMEDIES CUMULATIVE**

- 13.1 All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; however, Lessee's sole remedies upon City's default are contained in Article 12.

**ARTICLE 14.**  
**NO WAIVER**

- 14.1 No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

**ARTICLE 15.**  
**COMPLIANCE WITH LAWS**

- 15.1 At its own expense, Lessee shall comply with all federal, state and local regulations, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fine or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

**ARTICLE 16.**  
**COMPLIANCE WITH AIRPORT MINIMUM STANDARDS**

- 16.1 Lessee shall comply with the Airport Minimum Standards as all may be promulgated by City (and in effect from time to time). Any violation of this paragraph shall be construed as a material breach of this Agreement authorizing the termination thereof in accordance with 11.
- 16.2 In the event of a conflict between the Airport Minimum Standards and this Agreement, the strictest standard, obligation and/or requirement shall govern Lessee's responsibilities under this Agreement.

**ARTICLE 17.**  
**LICENSES, CERTIFICATES, AND PERMITS**

- 17.1 At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Premises or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or



on the Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

## **ARTICLE 18. INSURANCE**

- 18.1 Lessee agrees to procure and maintain insurance as provided by the *Minimum Standards for Commercial and Non-Commercial Operators at Lancaster Airport, January 2006 and as amended*, including attaining a commercial general liability policy for premises and operations liability that names the City of Lancaster, Texas, its City Council (individually and collectively), and its representatives, officials, officers, employees, and agents as additional insureds. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas or otherwise be approved in writing by City. Any insurance policy procured to comply with this provision shall be endorsed to state that coverage shall not be suspended, voided, cancelled, non-renewed, or reduced in coverage except after ten (10) days prior written notice by certified mail, return receipt requested, to the City of Lancaster. All liability policies shall contain or be endorsed to contain the following provisions:
- A. "City of Lancaster and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."
  - B. "Any failure to comply with reporting or other provisions of the policies, including breached of warranties, shall not affect coverage provided to City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- 18.2 Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.
- 18.3 The applicable insurance coverage shall be in full force upon execution of the Agreement and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.



- 18.4 Lessee shall, at its sole cost and expense, insure the Premises continuously against loss or damage. The Improvements shall be insured (80% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.
- 18.5 Insurance coverages and policy limits are subject to periodic review and modification at the discretion of City.

## **ARTICLE 19.**

### **DAMAGE TO PREMISES AND PROPERTY**

- 19.1 Damages to Premises. If any part of the Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sublessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Premises immediately prior to damage (the "Restoration").
- A. If at any time during the term of this Agreement, any part of the Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to Lessee or any sub-Lessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.
- B. If Lessee fails to restore Premises, Lessee shall pay to City, upon demand, the amount that City reasonably determines is necessary to restore the Premises. Upon said payment, City will restore the Premises.
- 19.2 Use of Insurance Proceeds for Rebuilding.
- A. If, by reason of any damage or destruction mentioned in Article 19.1, any sums are paid under any insurance policy mentioned in Article 18, such sums will be paid to any Leasehold Mortgagee, if one exists, or to the City if no Leasehold Mortgage exists, (such entity holding the insurance proceeds hereinafter referred to as "Depository") and will be used to defray the cost of repairing, restoring, or reconstructing the Improvements as required in Article 19 herein. If there is no Leasehold Mortgagee at the time of such damage or destruction, as such sums shall be paid to City to be held and applied as set forth below.
- B. Upon receipt by the Depository, of:



1. A certificate of Lessee dated not more than thirty (30) days prior to the date of such receipt (a) requesting the payment of a specified amount of such monies; (b) describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Lessee; (c) stating that such specified amount does not exceed the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (d) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;
2. A certificate of an independent engineer or any independent architect designated by Lessee and approved by City (which approval will not be unreasonably withheld) and by the Leasehold Mortgagee, if any, stating (a) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate and desirable to the Restoration in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; (b) that the amount specified in such certificate of Lessee is not in excess of the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (c) the additional amount, if any, required to complete the Restoration;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of such work and materials has been paid in full or will be paid in full out of such advance;
4. Either (a) a written opinion of Lessee's counsel, or (b) the certification of title company licensed to do business in the State of Texas, in either case that as of date not more than twenty (20) days prior to the date of payment described below there exists no filed or recorded lien, encumbrance or, charge prior to or on a parity with the estate, rights and interest of City, and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, a certificate from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, Evidencing that any fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City; and
5. Evidence satisfactory to the Leasehold Mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and by a corporate surety reasonably satisfactory to City, with each such bond naming City



and Leasehold Mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to City, and evidence satisfactory to the Leasehold Mortgagee and City that such bonds remain in full force and effect; the Depository will pay to Lessee the amount of such insurance monies specified in such certificate of Lessee, provided that the balance will be sufficient for the completion of the Restoration.

- C. The Depository will pay to Lessee the ten percent (10%) retainage reserved during the Restoration, upon the completion of Restoration as evidenced by a certificate of such independent engineer or independent architect, and upon the receipt by the Depository of:
1. A certificate of Lessee (a) requesting the payment of the ten percent (10%) retainage reserved by the Depository during the Restoration; (b) stating that the Restoration was completed at least thirty (30) days prior to the date of the certificate and was finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; and (c) stating that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance;
  2. A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities;
  3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engage in the Restoration);
  4. The certification of a title company licensed to do business in the State of Texas, in either case that, as of date not more than five (5) days prior to the date of payment described below, there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a fee mortgage, if any), and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, evidencing that fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted therein and except for any chattel mortgage or security agreement delivered to City.



- D. Any balance of insurance proceeds after the completion of Restoration, as evidenced by a certificate of such independent engineer or independent architect, will be paid to Lessee or to Leasehold Mortgagee(s), if required under the terms of the Leasehold Mortgage then in effect. Depository shall notify City and Leasehold Mortgagee of each amount paid to Lessee and the date of each such payment.
- E. Upon the expiration or sooner termination of this Lease, any insurance proceeds not theretofore applied to the cost of Restoration or not theretofore paid to Lessee or a Leasehold Mortgagee will be paid to City.

## **ARTICLE 20. INDEMNIFICATION**

- 20.1 LESSEE SHALL INDEMNIFY, PROTECT, DEFEND, SAVE AND COMPLETELY HOLD HARMLESS CITY AND ITS CITY COUNCIL (INDIVIDUALLY AND COLLECTIVELY), REPRESENTATIVES, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS ARTICLE AS "CITY") FROM ANY AND ALL LIENS, CLAIMS, CHARGES, ENCUMBRANCES, DEMANDS, DAMAGES, FINES, OBLIGATIONS, SUITS, JUDGMENTS, PENALTIES, CAUSES OF ACTION, LOSSES, LIABILITIES, ADMINISTRATIVE PROCEEDINGS, ARBITRATION, OR COSTS OF ANY NATURE WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, AT ANY TIME RECEIVED, INCURRED, OR ACCRUED BY CITY RELATING TO THIS AGREEMENT OR ARISING FROM DAMAGE OR INJURY OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM LESSEE'S POSSESSION, USE, OCCUPANCY, MANAGEMENT, MAINTENANCE, OR CONTROL OF THE PREMISES AND/OR AIRPORT LAND AND/OR IMPROVEMENTS AND/OR THE CONDUCT OF LESSEE'S ACTIVITIES AT THE AIRPORT OR ARISING OUT OF LESSEE'S ACTIONS OR INACTIONS, REGARDLESS OF ANY SOLE OR CONCURRENT NEGLIGENCE OF THE CITY.
- 20.2 City shall give Lessee prompt notice of any such demand, claim, lawsuit or proceeding against City that relates to this Agreement. If such demand, claim, lawsuit or proceeding is brought, City shall have the right, but not the duty, to: (1) investigate and settle the demand, claim, lawsuit or proceeding and (2) participate in the defense of the demand, claim, lawsuit or proceeding.
- 20.3 In this Article, "City" also includes the Lancaster Municipal Airport, Airport Board and all of its members. The indemnification provisions of this Agreement shall survive its expiration of termination.



**ARTICLE 21.**  
**SUBLEASE AND SUBCONTRACTS**

- 21.1 The City hereby expressly grants its consent for Lessee to convey ownership of a leasehold interest (as condominium units) of the Hangars upon the Premises. Individual hangar owners may lease their interests in the condominium hangar units, subject to the terms of this lease, the Lancaster Airport Rules and Regulations, and the Airport Minimum Standards, and provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Article 3. During the existence of this Agreement, all revenues from any sublease shall belong to Lessee.
- 21.2 Lessee shall not sublease the Premises (or any part of the Premises) or subcontract any operation or service it performs or is permitted to perform, without the prior express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- 21.3 Lessee shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before the expiration date of this Agreement.
- 21.4 A lease or sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in a written consent, a sublease is subject to all of the terms and conditions of the lease governing the land and/or improvements being sublet. In addition, the Lessee shall at all times assume total responsibility for the acts and omissions of a sublessee and/or subcontractor.

**ARTICLE 22.**  
**ASSIGNMENT**

- 22.1 No portion of this Agreement may be assigned without the prior express written consent of City. In the event this Agreement is assigned, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default.

**ARTICLE 23.**  
**ENCUMBRANCES**

- 23.1 Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the real property described in Exhibits A and B and Lessee shall not suffer the real property described in Exhibits A and B, or any improvements thereon, to be or become subject to any non-consensual lien (including mechanic's liens), charge or



encumbrance whatsoever. The limitation on encumbrances provided herein shall not prevent Lessee or any sublessee from encumbering their leasehold interest in the Premises.

#### **ARTICLE 24. MORTGAGE**

- 24.1 Lessee shall not further mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Premises without the prior express written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By virtue of its execution of this Agreement, City consents to the existence of Lessee's current mortgage and pledge that encumbers Lessee's leasehold interest in the Premises.

#### **ARTICLE 25. BOOKS AND RECORDS**

- 25.1 Lessee shall maintain complete financial records of its Activities on the Premises. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to City.
- 25.2 Any information, records and reports provided to or obtained by City pursuant to this Article or which City otherwise comes possession of pursuant to this Agreement, shall be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

#### **ARTICLE 26. HOLDOVER POSSESSION**

- 26.1 In the event that Lessee should hold over and remain in possession of the Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at an time by the Airport Manager or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

#### **ARTICLE 27. INDEPENDENT ENTITIES**

- 27.1 Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between City and Lessee or as constituting either party as the agent or representative or employee of the other party for any purpose or in any manner whatsoever.



**ARTICLE 28.  
BINDING EFFECT**

- 28.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

**ARTICLE 29.  
SUBORDINATION**

- 29.1 This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

**ARTICLE 30.  
GOVERNING LAW**

- 30.1 This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

**ARTICLE 31.  
PARAGRAPH HEADINGS**

- 31.1 All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience in reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

**ARTICLE 32.  
SEVERABILITY**

- 32.1 In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.



**ARTICLE 33.  
COUNTERPARTS**

- 33.1 This Agreement has been executed in several counterparts, each of which shall be deemed an original.

**ARTICLE 34.  
MODIFICATION**

- 34.1 Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.  
ENTIRE AGREEMENT**

- 35.1 This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

**ARTICLE 36.  
NOTICES**

- 36.1 Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:

Airport Manager  
LANCASTER MUNICIPAL AIRPORT  
P.O. Box 940  
Lancaster, Texas 75146

Lessee:

George Sheban  
RISING STAR AVIATION HOLDINGS, L.L.C.  
5950 Berkshire Lane, Suite 310  
Dallas, Texas 75225

with a copy to:

Michael D. Hesse  
HESSE & HESSE, L.L.P.  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

- 36.2 All payments shall be made payable to City of Lancaster and sent to the attention of the Finance Department at P.O. Box 940, Lancaster, Texas 75146.
- 36.3 The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.



**ARTICLE 37.  
MISCELLANEOUS**

- 37.1 Recognition of Subleases. In the event of termination of this Lease because of any breach or default by Lessee, City shall recognize any existing subleases.
- 37.2 Merger of Title. No merger of Lessee's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) Lessee's interest in this Lease or the leasehold created by this Lease and (b) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (a) and (b) above join in a written instrument effecting such merger and record same.
- 37.3 Rights Regarding Condominium Association. Notwithstanding anything contained in this Agreement to the contrary, Lessee shall have the following rights relating to Rising Star Hangars of Lancaster Condominium Association No. 3 or any other condominium association formed and/or established in connection with this Agreement and related to the Property and/or the Improvements, each of which may be exercised in Lessee's sole and absolute discretion:
- (1) Lessee shall have no obligation to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act or to form or establish Rising Star Hangars of Lancaster Condominium Association No. 3 or any other condominium association to manage or maintain the Property.
  - (2) In the event Lessee does elect to form or establish Rising Star Hangars of Lancaster Condominium Association No. 3 or any other condominium association for the Property, Lessee shall retain the right, in its sole and absolute discretion, to remove all or any part of the Property from such condominium association and may offer and sell the leasehold interest in and to the Property without any attachment or encumbrance of a condominium association. Any leasehold interest sold that is not subject to a condominium association shall remain subject to the terms and conditions of this Agreement, including, but not limited to the provisions of Article 21 hereof.

**ARTICLE 38.  
EXHIBITS AND APPENDICES**

- 38.1 Exhibits and Appendices attached hereto are expressly made a part hereof.

- A Description of Leased Premises
- B Site Plan



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this 9<sup>th</sup> day of March, 2010.

**CITY OF LANCASTER, TEXAS**

**RIISING STAR AVIATION HOLDINGS,  
L.L.C.**, a Texas limited liability company

By: Marcus E. Knight  
Marcus E. Knight  
Mayor  
Date Signed: 3-9-2010

By: George Sheban  
Printed Name: George Sheban  
Title: President  
Date Signed: 3.18.10

ATTEST:

Dolle K. Dawne  
Dolle K. Dawne, City Secretary



LEGAL DESCRIPTION  
0.3646 ACRES

Being a tract of land situated in the J. Green Survey, Abstract No. 504, City of Lancaster, Dallas County, Texas and being a part of the Lancaster Airport Addition, an addition to the City of Lancaster, recorded in Volume 97173, Page 5853, Map Records, Dallas County, Texas and being more particularly described as follows:

Beginning at a point for corner, said point being S 10°57'20" E, 1317.41 ft., S 10°49'02" E, 1070.48 ft. to the beginning of a circular curve to the left having a central angle of 70°02'21", a radius of 440.00 ft., a tangent length of 254.38 ft., a chord bearing of S 45°50'13" E, a chord length of 504.99 ft. and an arc length of 537.86 ft., S 80°51'23" E, 81.20 ft., S 79°51'05" E, 5.37 ft. and N 49°43'07" E, 134.15 ft. from the most westerly-northwest corner of said addition;

THENCE N 49°43'07" E, a distance of 248.17 ft. to a point for corner;


THENCE S 40°16'54" E, a distance of 64.00 ft. to a point for corner;

THENCE S 49°43'07" W, a distance of 248.17 ft. to a point for corner;

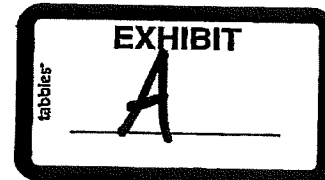
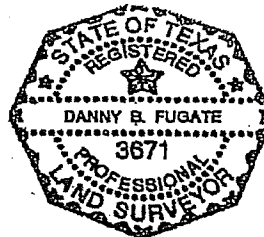
THENCE N 40°16'53" W, a distance of 64.00 ft. to the Point of Beginning and containing 0.3646 acres (15,882 Sq. Ft.) of land.

CERTIFICATION

To the person relying upon the accuracy of this survey or plat I, Danny B. Fugate, Registered Professional Land Surveyor, State of Texas, do certify to that this plat represents measurements performed upon the ground under my supervision. This is a true and correct survey.

By:   
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3671  
STATE OF TEXAS

DATE: 3-20-2012

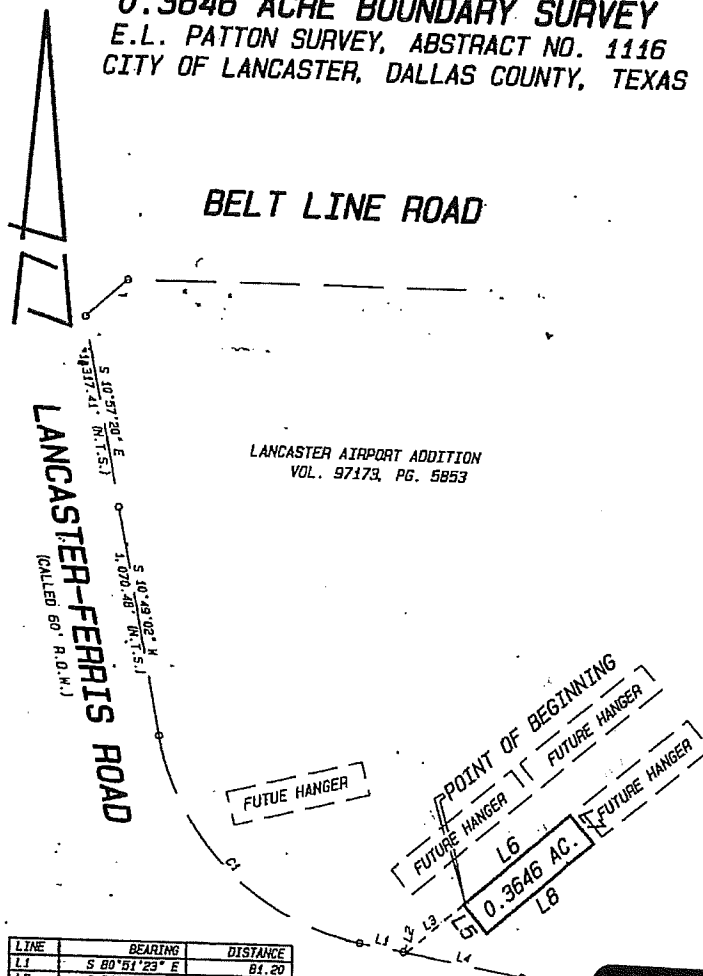


ME D93152AW  
F93152AW.TXT



Exhibit A

**0.3646 ACRE BOUNDARY SURVEY**  
**E.L. PATTON SURVEY, ABSTRACT NO. 1116**  
**CITY OF LANCASTER, DALLAS COUNTY, TEXAS**



LINE	BEARING	DISTANCE
L1	S 80°51'29" E	81.20
L2	S 79°51'05" E	5.37
L3	N 49°43'07" E	134.15
L4	S 79°51'05" E	216.91
L5	N 40°16'53" N	64.00
L6	N 49°43'07" E	248.17
L7	S 40°16'53" E	64.00
L8	S 49°43'07" N	248.17

CURVE	ARC	DELTA	RADIUS	CHORD LENGTH	CHORD BEARING	TAN LENGTH
C1	537.80	70°02'21"	449.00	504.99	S 45°50'13" E	308.32



FILE: F93152A  
 MK: F93152AH

**Fugate Surveying, Inc.**  
 235 EAST BELT LINE ROAD  
 DE SOTO, TEXAS 75115  
 223-0740 FAX 230-0825

Scale: 1"=200' Date: 8-28-2002  
 Job No. 99192

OF No. \_\_\_\_\_



## LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement"), made and entered into this 9th day of March, 2010, by and between the CITY OF LANCASTER, a Texas Home-rule Municipal Corporation ("City" or "Lessor") and RISING STAR AVIATION HOLDINGS, L.L.C., a Texas Limited Liability Corporation ("Lessee").

### WITNESSETH:

WHEREAS, City is the owner and operator of the Lancaster Municipal Airport ("Airport") which is located in the City of Lancaster, Dallas County, State of Texas; and

WHEREAS, Lessee desires to lease, develop, and use the Airport Property particularly described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to operate a maximum of four (4) commercial business units for use as private airport hangars, as generally provided in the plat attached hereto as Exhibit B; and

WHEREAS, Lessee desires to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act, codified in Chapter 82 of the Texas Property Code, and to establish a unit leasehold-owners association—Rising Star Hangars of Lancaster Condominium Association No. 4—to manage and maintain the Property; and

WHEREAS, in accordance with the provisions contained within this agreement, City desires to allow Lessee to use and operate private airport hangars on the Property, to provide for leasehold interests on the Property, and to establish an association to manage and maintain the Property.

NOW, THEREFORE, for and in consideration of the rental payments, covenants, promises, and agreements contained herein, and for other good and valuable consideration, City and Lessee agree as follows:

### ARTICLE 1. DEFINITIONS

*Airport* means the Lancaster Municipal Airport, located at 730 Ferris Road, Suite 102, Lancaster, Texas 75146.

*Airport ALP* means the Lancaster Municipal Airport's Airport Layout Plan.

*Hazardous Materials* is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

*Improvements* means approximately four (4) hangar Units, utilities, water line and any related alterations located, or to be located, on the Premises.



*Premises* means the real property described in Exhibits A and B, which is owned by the City and leased to Lessee.

*Public Facilities* means the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft.

*Site Plan* means, for purposes of this Agreement, the area depicted in the attached Exhibit B, including hangars and related improvements.

*Sponsor* means the City of Lancaster, Texas.

## **ARTICLE 2. PREMISES**

- 2.1 City hereby leases to Lessee, and Lessee hereby leases from City, in accordance with the terms and conditions of this Agreement, the Premises.
- 2.2 Lessee warrants and represents that Lessee has carefully and completely examined and inspected the entire Premises, is fully informed of the condition of the Premises, and is completely satisfied as to the suitability of the Premises for all of the activities contemplated by this Agreement. Lessee accepts possession of the premises as is, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by the ordinances of the City of Lancaster.

## **ARTICLE 3. USE OF PREMISES**

- 3.1 Lessee has established a condominium regime pursuant to the Texas Uniform Condominium Act whereby Lessee will operate condominium units ("Units") for use as private aircraft hangars, and sell leasehold interests in each unit to third-party purchasers. Such Units shall be sold by Lessee subject to the terms and conditions of this Lease and any conveyance instruments shall clearly acknowledge that third party purchasers are bound by this Agreement. In addition, Lessee is granted the use and occupancy of the Premises for all uses allowed for a commercial aeronautical activity, as provided by the Minimum Standards for Commercial and Noncommercial Operators ("Airport Minimum Standards"); however, any owner of a leasehold interest, sublessee or tenant of Lessee may use and occupy the Premises solely for the storage of its privately owned aircraft (whether one or more) and any and all activities associated with maintaining and operating such aircraft, including, but not limited to, flight personnel, offices and aircraft maintenance areas related thereto in accordance with the Airport Minimum Standards.
- 3.2 Lessee agrees not to engage in any other activity on the Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or



occupy the Premises in any manner contrary to the Airport ALP or Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.

3.3 Prohibited Products, Services, and/or Uses: The following conduct is expressly prohibited on the Premises:

- A. Promotion or sale of commercial or retail products and/or services;
- B. Possession or use of any products, performance of any services, and any other uses prohibited by law;
- C. Use of hangar or office space for any activity unrelated to aviation, other than as an incidental or temporary uses as shall be reasonably approved by the Airport Manager.

In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive right, other than the exclusive use of the Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Premises.

3.4 Use of Airport: Lessee may use, in common with others, the existing and future aeronautical and Public Facilities at the Airport, subject to and in full compliances with all applicable rules and regulations. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

3.5 Ingress and Egress: Lessee, its employees, guests, patrons, suppliers, vendors, sublessees, purchasers of leasehold interests, and invitees shall have the right of ingress and egress to and from the Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Premises.

3.6 Quiet Enjoyment: Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Premises and privileges granted for the term of this Agreement free from hindrance or interruption by City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Premises, provided same do not materially adversely affect Lessee's ability to access and use the Premises.



## ARTICLE 4. TERM

- 4.1 Initial Term: The initial term of this Lease shall be thirty (30) years commencing on March 1, 2010, and ending on February 29, 2040, unless sooner terminated in accordance with the provisions hereof. This Lease shall become effective on March 8, 2010.
- 4.2 Extension of Term:
- A. City hereby grants Lessee, its successors, and assigns, two consecutive options to extend this Lease on the Leased Premises, as existing at the time(s) when either is exercised, as follows:
    - (1) First Option Period: Five (5) years, beginning at the expiration date of the initial term.
    - (2) Second Option Period: Five (5) years, beginning at the expiration date of the First Option Period.
  - B. As a condition for the exercise of each option, Lessee shall give City written notice of Lessee's intent to exercise its option at least six (6) months prior to the expiration of the date of the term of the Lease, as then in effect.
  - C. All conditions and covenants contained herein shall remain in force during any extension of term pursuant to said option(s), except the provision for rental, which shall be renegotiated by the parties in advance of any extension, using as a basis thereof the standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport. During any option period, rental shall be charged for any leasehold improvements added or constructed by Lessee, or any sublessee or successor during the term of the Lease or any option period based on standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport.
  - D. Lessee's right to exercise such option is conditional on proper notice, required in Paragraph B of this Subsection 4.2, and is further conditional upon Lessee not being in default in the performance of its covenants undertaken by Lessee, at the beginning date of the extension of the term for which such notice is given.
  - E. Lessee shall not have the right to exercise such options if this Lease has been terminated for any reason or reasons, or Lessee is in default as to any provision or condition of the Lease prior to the exercise of an option granted under this section.
  - F. At the end of forty (40) years (being the initial term, the first option period and the second option period), the Lessee, its successors, and assigns shall be given the first right of refusal to again lease the improvements at the going fair market value. Length of lease and price shall be mutually agreed upon, and negotiated directly with the City.



- 4.3 Ownership of the Improvements shall revert to City at no cost to City upon expiration of the Initial Lease Term and any approved extension of the lease term ("Term") of this Agreement. However, at the end of the Term, City shall retain the right to require that Lessee demolish and/or remove any non-structural alterations to the Improvements, the construction of which had not been previously approved by City, or any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default, noticed by City to Lessee, existing at the end of the Term, and restore the Improvements as nearly as possible to their original condition and character as of the date of the issuance of any certificate of occupancy, ordinary wear and tear excluded. Lessee may transfer the Improvements upon receipt from City of appropriate consents as described hereinafter. **Lessee's right to transfer the use and enjoyment of the Improvements shall be expressly conditioned upon Lessee's and any transferee's obtaining appropriate consent to such transferee's use and enjoyment of the Premises through an approved sublease or assignment of this Lease pursuant to Articles 21 and 22.**

## ARTICLE 5. RENT

- 5.1 For the use and occupancy of the leased premises herein granted, Lessee agrees to pay City the sum of eleven cents (\$0.11) per square foot per year for the first three years of the term hereof. At the beginning of the fourth year of the term hereof, and every five years thereafter until the beginning of the twenty-fifth year, the rental payments shall be adjusted (from eleven cents (\$0.11) per square foot per year at the beginning of year four), upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index as of the end of the preceding year of the term hereof. If the Area Consumer Price Index shall have decreased or remained the same, the lease rate shall remain the same. At the beginning of the twenty-fifth year of the term, the rental payment shall be the greater of: (1) the lease rate at the end of the twenty-fourth year of the term adjusted upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index; or (2) eighteen cents (\$0.18) per square foot.
- 5.2 The rentals provided shall be payable in advance in equal monthly installments beginning March 1, 2010. The parties hereto agree that the premises leased hereby are fifteen thousand eight hundred eighty-two (15,882) square feet and that the initial rental sums due hereunder are one hundred forty-five and 59/100 Dollars (\$145.59) per month or one thousand seven hundred forty-seven and 02/100 Dollars (\$1,747.02) per year for the first three (3) years hereof. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind.
- 5.3 A late charge of 5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 20<sup>th</sup> day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of 5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. All payments shall be made to City of Lancaster and sent to the attention of the



Finance Department at P.O. Box 940, Lancaster, Texas 75146. The failure to make any payment when due may result in a termination of the Agreement as provided in 11.

## **ARTICLE 6. FEES**

- 6.1 Lessee will pay, and will provide in its written lease agreement with any Sublessee, that Sublessee shall pay all applicable fees as established by the City of Lancaster.

## **ARTICLE 7. RIGHTS AND PRIVILEGES OF LESSEE**

City does hereby grant to Lessee and Lessee does take from City the following rights and privileges:

- 7.1 Lessee and/or its sublessees may install in or upon the Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee and/or any of its sublessees located on the Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee and/or its sublessees. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee, any sublessee, or any customer of Lessee unless due to the willful misconduct to City.
- 7.2 Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Airport Minimum Standards in order to engage in the authorized Activities.
- 7.3 Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement within five (5) days of termination or expiration of this Agreement. City may purchase personal property of Lessee at the termination of the Lease which the City deems essential to operation of Airport at the-then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.



## ARTICLE 8. RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances, City reserves the following rights and privileges:

- 8.1 City Authority: While the Airport Manager has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- 8.2 Airport Development: City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of Premises. City shall provide advance notice of any closures to the extent possible.
- 8.3 Aerial Approaches: City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee or any sublessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- 8.4 War, National Emergency, Riot, or Natural Disaster: During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- 8.5 Access to the Premises: City and/or its representatives shall have the right to enter the Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.



- 8.6 Performance of Acts: All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by representative or delegate of City.
- 8.7 Exercising Rights: No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee or its sublessee nor shall such exercise by grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.

## **ARTICLE 9. OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided, Lessee shall have the following obligations:

- 9.1 Conduct: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- 9.2 Disturbance: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport.
- A. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.
- B. Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely effect the environment or do anything or permit anything to be done that would violate any federal, state, or local regulations. Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Premises and shall neither use, allow the use of, nor occupy Premises for any improper, immoral or unlawful purpose.
- 9.3 Hazardous Materials: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable EPA, TCEQ and local regulations. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Premises unless Lessee has complied with the following:
- A. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.



- B. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and order relating to health, safety and protection of persons, the public, and/or the environment.
- C. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Premises as authorized by this Agreement.
- D. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Premises are not being used nor have the Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.
  - 1. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, Lessees or sublessees or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
  - 2. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Manager of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.
- E. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
- F. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials from the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City within thirty (30) days of City's demand for payment. If City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Premises and/or the Airport, Lessee shall reimburse City for all costs and expenses



incurred in so doing. In its sole discretion, City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.

- G. Immediately upon receipt thereof, Lessee shall provide City with copies of any notices, claims, complaints, demands, lawsuits, hearing, investigations, or governmental requests for information relating to the environmental condition on or of the Premises and/or Hazardous Materials on, in, under or emanating from the Premises during Lessee's occupancy thereof.

- 9.4 Storage, Handling, and Dispensing of Fuels, Gasolines and Lubricants: Fueling requirements are governed by the Lancaster Code of Ordinances.

The storage of fuels, gasolines, and lubricants in bulk quantities shall be limited to City's fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's or Sublessee's installation, operation and maintenance of a fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee and Sublessee must abide by all applicable federal, state and local regulations pertaining to the storage, handling, and dispensing of aviation fuels, gasolines and lubricants.

- 9.5 Utilities: Lessee shall directly procure and promptly pay for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Premises during the term of this Agreement.

- 9.6 Taxes, Assessments, and Fees: Lessee shall pay and discharge all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Premises, the Improvements locate thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination.

- 9.7 Costs, Expresses, and Other Charges: Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.

- 9.8 Maintenance: Lessee agrees during the initial term of this agreement and any option periods to assume the entire responsibility, cost and expense for repair and maintenance



on the Leased Premises and all improvements, including any hangar buildings and slabs, and to maintain the Leased Premises and improvements in a good condition.

- A. Lessee shall keep the interior and exterior (including all structural and non-structural) portions of the Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Premises in good order and condition and will make all necessary repairs to the Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair.
- B. Lessee agrees to keep the premises in a clean and orderly condition and appearance.
  - 1. Lessee shall not cause or allow any outdoor storage of materials, goods supplies, or equipment.
  - 2. Lessee shall further be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Premises in neat, safe, sanitary, orderly and slightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.
- C. Lessee agrees to provide and maintain all obstruction lights and similar devices or safety equipment required by law, to keep in effect such insurance (replacement value) on the premises as may be required by City.
- D. Lessee further agrees to submit to City for its written approval the plans and specifications for any major repairs, construction, alteration, modification, addition or replacement to the improvements on the premises undertaken by Lessee, which approval shall not be unreasonably withheld.
- E. The Lessee, and its successors and assigns, will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the Airport, or otherwise constitute an Airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust or glaring or misleading lights.
- F. In the event Lessee fails to comply with Section 9.8, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or cleaning which Lessee is required to make or perform.



- 9.9 Lessee agrees that any and all maintenance, repair or restoration activities on aircraft or otherwise shall be performed inside the hangar, screened from public view. Lessee further shall store all of its fixtures, equipment, and personal property within the hangar.
- 9.10 Refuse Disposal: Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles of all garbage, trash and other refuse at the Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. In the event Lessor discontinues providing garbage removal services as it is currently providing, Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- 9.11 Non-Discrimination: Lessee, in the conduct of its authorized Activities on or from the Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchases, or classes of purchasers.
- A. Lessee, as a part of the consideration hereof, do hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. That in the event of breach of any of the preceding nondiscrimination covenants, Lessee agrees that City has the right to take such action against Lessee as the government may direct to enforce this covenant, including termination of this lease.
- B. In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 9.12 Based Aircraft Report: Lessee in its written condominium declaration with the owners of the hangar units shall ensure that the owners of such units shall maintain and furnish by the 1<sup>st</sup> of August each year and at any time upon request for the Airport Manager, a report identifying all aircraft based at or on the Premises. The report shall identify the owner,



the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight and aircraft registration number.

- 9.13 Signage: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.
- 9.14 Special Events: Lessee shall not conduct or hold air shows or any other special events including any non-aeronautical event at the Airport without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.

## **ARTICLE 10. OBLIGATIONS OF CITY**

- 10.1 City covenants and agrees that all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- 10.2 Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Premises, then that any such mortgage, deed of trust, or other instrument in the thereof will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgagee arising by virtue of this Lease.

## **ARTICLE 11. DEFAULTS AND REMEDIES**

- 11.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.
- A. The filing by Lessee of a voluntary petition in bankruptcy.
  - B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
  - C. A court making or entering any decree or order.
    - 1. adjudging Lessee to be bankrupt or insolvent;
    - 2. approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
    - 3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;



4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Premises or its failure to maintain an on-going business at the Premises for a period of thirty (30) days or more, coupled with the failure to pay rent as provided in Article 5.
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.
- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."
- 11.2 In the event of any default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, no written or other notice of default shall be required. If this Agreement is terminated, any payments made to City shall be forfeited to City and Lessee shall have no rights to recover the payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.
- 11.3 Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.



- 11.4 In addition to the termination and forfeiture rights described in the preceding paragraphs, City shall have the following rights and remedies upon default by Lessee:
- A. The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that would have been made in the Agreement had not been breached by Lessee.
  - B. The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, including reasonable attorneys' fees and expenses.
  - C. The removal of all persons from the Premises and the removal and storage at Lessee's expense of all property on the Premises, in accordance with the law.
  - D. Any other right or remedy, legal or equitable, including specific performance, that City is entitled to under applicable law, whether stated in this Agreement or not.
- 11.5 No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue.
- 11.6 In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said premises and improvements, including any facilities, fixtures and equipment, to City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- 11.7 In the event the failure of Lessee upon termination of this Agreement to immediately remove from the Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Premises, restoring the Premises and Improvements to the condition by this Agreement, and protecting the Premises.
- 11.8 The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.



**ARTICLE 12.**  
**TERMINATION BY LESSEE**

- 12.1 Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:
- A. Permanent closure of the Airport.
  - B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered, however not during any appeals therefrom.
  - C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.
  - D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure to City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
  - E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminate operations at the Airport and which suspension or termination materially affects the operations of rights of Lessee hereunder.
- 12.2 Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.
- 12.3 As an alternative to the right of termination, Lessee shall be entitled to seek injunctive relief against the City relating to an event of default under Section 12.1-E above, together with costs and attorneys' fees by Lessee in such action if Lessee judicially obtains the relief sought; however, in no event shall rent abate during the pendency of any proceeding.



**ARTICLE 13.  
REMEDIES CUMULATIVE**

- 13.1 All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; however, Lessee's sole remedies upon City's default are contained in Article 12.

**ARTICLE 14.  
NO WAIVER**

- 14.1 No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

**ARTICLE 15.  
COMPLIANCE WITH LAWS**

- 15.1 At its own expense, Lessee shall comply with all federal, state and local regulations, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fine or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

**ARTICLE 16.  
COMPLIANCE WITH AIRPORT MINIMUM STANDARDS**

- 16.1 Lessee shall comply with the Airport Minimum Standards as all may be promulgated by City (and in effect from time to time). Any violation of this paragraph shall be construed as a material breach of this Agreement authorizing the termination thereof in accordance with 11.
- 16.2 In the event of a conflict between the Airport Minimum Standards and this Agreement, the strictest standard, obligation and/or requirement shall govern Lessee's responsibilities under this Agreement.

**ARTICLE 17.  
LICENSES, CERTIFICATES, AND PERMITS**

- 17.1 At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Premises or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or



on the Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

## **ARTICLE 18. INSURANCE**

- 18.1 Lessee agrees to procure and maintain insurance as provided by the *Minimum Standards for Commercial and Non-Commercial Operators at Lancaster Airport, January 2006 and as amended*, including attaining a commercial general liability policy for premises and operations liability that names the City of Lancaster, Texas, its City Council (individually and collectively), and its representatives, officials, officers, employees, and agents as additional insureds. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas or otherwise be approved in writing by City. Any insurance policy procured to comply with this provision shall be endorsed to state that coverage shall not be suspended, voided, cancelled, non-renewed, or reduced in coverage except after ten (10) days prior written notice by certified mail, return receipt requested, to the City of Lancaster. All liability policies shall contain or be endorsed to contain the following provisions:
- A. "City of Lancaster and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."
  - B. "Any failure to comply with reporting or other provisions of the policies, including breached of warranties, shall not affect coverage provided to City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- 18.2 Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.
- 18.3 The applicable insurance coverage shall be in full force upon execution of the Agreement and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.



- 18.4 Lessee shall, at its sole cost and expense, insure the Premises continuously against loss or damage. The Improvements shall be insured (80% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.
- 18.5 Insurance coverages and policy limits are subject to periodic review and modification at the discretion of City.

## **ARTICLE 19.**

### **DAMAGE TO PREMISES AND PROPERTY**

- 19.1 Damages to Premises. If any part of the Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sublessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially prior to the condition and character of the Premises immediately prior to damage (the "Restoration").
- A. If at any time during the term of this Agreement, any part of the Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to Lessee or any sub-Lessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.
- B. If Lessee fails to restore Premises, Lessee shall pay to City, upon demand, the amount that City reasonably determines is necessary to restore the Premises. Upon said payment, City will restore the Premises.
- 19.2 Use of Insurance Proceeds for Rebuilding.
- A. If, by reason of any damage or destruction mentioned in Article 19.1, any sums are paid under any insurance policy mentioned in Article 18, such sums will be paid to any Leasehold Mortgagee, if one exists, or to the City if no Leasehold Mortgage exists, (such entity holding the insurance proceeds hereinafter referred to as "Depository") and will be used to defray the cost of repairing, restoring, or reconstructing the Improvements as required in Article 19 herein. If there is no Leasehold Mortgagee at the time of such damage or destruction, as such sums shall be paid to City to be held and applied as set forth below.
- B. Upon receipt by the Depository, of:



1. A certificate of Lessee dated not more than thirty (30) days prior to the date of such receipt (a) requesting the payment of a specified amount of such monies; (b) describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Lessee; (c) stating that such specified amount does not exceed the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (d) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;
2. A certificate of an independent engineer or any independent architect designated by Lessee and approved by City (which approval will not be unreasonably withheld) and by the Leasehold Mortgagee, if any, stating (a) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate and desirable to the Restoration in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; (b) that the amount specified in such certificate of Lessee is not in excess of the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (c) the additional amount, if any, required to complete the Restoration;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of such work and materials has been paid in full or will be paid in full out of such advance;
4. Either (a) a written opinion of Lessee's counsel, or (b) the certification of title company licensed to do business in the State of Texas, in either case that as of date not more than twenty (20) days prior to the date of payment described below there exists no filed or recorded lien, encumbrance or, charge prior to or on a parity with the estate, rights and interest of City, and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, a certificate from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, Evidencing that any fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City; and
5. Evidence satisfactory to the Leasehold Mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and by a corporate surety reasonably satisfactory to City, with each such bond naming City



and Leasehold Mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to City, and evidence satisfactory to the Leasehold Mortgagee and City that such bonds remain in full force and effect; the Depository will pay to Lessee the amount of such insurance monies specified in such certificate of Lessee, provided that the balance will be sufficient for the completion of the Restoration.

C. The Depository will pay to Lessee the ten percent (10%) retainage reserved during the Restoration, upon the completion of Restoration as evidenced by a certificate of such independent engineer or independent architect, and upon the receipt by the Depository of:

1. A certificate of Lessee (a) requesting the payment of the ten percent (10%) retainage reserved by the Depository during the Restoration; (b) stating that the Restoration was completed at least thirty (30) days prior to the date of the certificate and was finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; and (c) stating that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance;
2. A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engage in the Restoration);
4. The certification of a title company licensed to do business in the State of Texas, in either case that, as of date not more than five (5) days prior to the date of payment described below, there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a fee mortgage, if any), and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, evidencing that fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted therein and except for any chattel mortgage or security agreement delivered to City.



- D. Any balance of insurance proceeds after the completion of Restoration, as evidenced by a certificate of such independent engineer or independent architect, will be paid to Lessee or to Leasehold Mortgagee(s), if required under the terms of the Leasehold Mortgage then in effect. Depository shall notify City and Leasehold Mortgagee of each amount paid to Lessee and the date of each such payment.
- E. Upon the expiration or sooner termination of this Lease, any insurance proceeds not theretofore applied to the cost of Restoration or not theretofore paid to Lessee or a Leasehold Mortgagee will be paid to City.

## **ARTICLE 20. INDEMNIFICATION**

- 20.1 LESSEE SHALL INDEMNIFY, PROTECT, DEFEND, SAVE AND COMPLETELY HOLD HARMLESS CITY AND ITS CITY COUNCIL (INDIVIDUALLY AND COLLECTIVELY), REPRESENTATIVES, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS ARTICLE AS "CITY") FROM ANY AND ALL LIENS, CLAIMS, CHARGES, ENCUMBRANCES, DEMANDS, DAMAGES, FINES, OBLIGATIONS, SUITS, JUDGMENTS, PENALTIES, CAUSES OF ACTION, LOSSES, LIABILITIES, ADMINISTRATIVE PROCEEDINGS, ARBITRATION, OR COSTS OF ANY NATURE WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, AT ANY TIME RECEIVED, INCURRED, OR ACCRUED BY CITY RELATING TO THIS AGREEMENT OR ARISING FROM DAMAGE OR INJURY OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM LESSEE'S POSSESSION, USE, OCCUPANCY, MANAGEMENT, MAINTENANCE, OR CONTROL OF THE PREMISES AND/OR AIRPORT LAND AND/OR IMPROVEMENTS AND/OR THE CONDUCT OF LESSEE'S ACTIVITIES AT THE AIRPORT OR ARISING OUT OF LESSEE'S ACTIONS OR INACTIONS, REGARDLESS OF ANY SOLE OR CONCURRENT NEGLIGENCE OF THE CITY.
- 20.2 City shall give Lessee prompt notice of any such demand, claim, lawsuit or proceeding against City that relates to this Agreement. If such demand, claim, lawsuit or proceeding is brought, City shall have the right, but not the duty, to: (1) investigate and settle the demand, claim, lawsuit or proceeding and (2) participate in the defense of the demand, claim, lawsuit or proceeding.
- 20.3 In this Article, "City" also includes the Lancaster Municipal Airport, Airport Board and all of its members. The indemnification provisions of this Agreement shall survive its expiration of termination.



**ARTICLE 21.**  
**SUBLEASE AND SUBCONTRACTS**

- 21.1 The City hereby expressly grants its consent for Lessee to convey ownership of a leasehold interest (as condominium units) of the Hangars upon the Premises. Individual hangar owners may lease their interests in the condominium hangar units, subject to the terms of this lease, the Lancaster Airport Rules and Regulations, and the Airport Minimum Standards, and provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Article 3. During the existence of this Agreement, all revenues from any sublease shall belong to Lessee.
- 21.2 Lessee shall not sublease the Premises (or any part of the Premises) or subcontract any operation or service it performs or is permitted to perform, without the prior express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- 21.3 Lessee shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before the expiration date of this Agreement.
- 21.4 A lease or sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in a written consent, a sublease is subject to all of the terms and conditions of the lease governing the land and/or improvements being sublet. In addition, the Lessee shall at all times assume total responsibility for the acts and omissions of a sublessee and/or subcontractor.

**ARTICLE 22.**  
**ASSIGNMENT**

- 22.1 No portion of this Agreement may be assigned without the prior express written consent of City. In the event this Agreement is assigned, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default.

**ARTICLE 23.**  
**ENCUMBRANCES**

- 23.1 Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the real property described in Exhibits A and B and Lessee shall not suffer the real property described in Exhibits A and B, or any improvements thereon, to be or become subject to any non-consensual lien (including mechanic's liens), charge or



encumbrance whatsoever. The limitation on encumbrances provided herein shall not prevent Lessee or any sublessee from encumbering their leasehold interest in the Premises.

#### **ARTICLE 24. MORTGAGE**

- 24.1 Lessee shall not further mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Premises without the prior express written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By virtue of its execution of this Agreement, City consents to the existence of Lessee's current mortgage and pledge that encumbers Lessee's leasehold interest in the Premises.

#### **ARTICLE 25. BOOKS AND RECORDS**

- 25.1 Lessee shall maintain complete financial records of its Activities on the Premises. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to City.
- 25.2 Any information, records and reports provided to or obtained by City pursuant to this Article or which City otherwise comes possession of pursuant to this Agreement, shall be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

#### **ARTICLE 26. HOLDOVER POSSESSION**

- 26.1 In the event that Lessee should hold over and remain in possession of the Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at an time by the Airport Manager or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

#### **ARTICLE 27. INDEPENDENT ENTITIES**

- 27.1 Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between City and Lessee or as constituting either party as the agent or representative or employee of the other party for any purpose or in any manner whatsoever.



**ARTICLE 28.  
BINDING EFFECT**

- 28.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

**ARTICLE 29.  
SUBORDINATION**

- 29.1 This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

**ARTICLE 30.  
GOVERNING LAW**

- 30.1 This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

**ARTICLE 31.  
PARAGRAPH HEADINGS**

- 31.1 All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience in reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

**ARTICLE 32.  
SEVERABILITY**

- 32.1 In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.



**ARTICLE 33.  
COUNTERPARTS**

- 33.1 This Agreement has been executed in several counterparts, each of which shall be deemed an original.

**ARTICLE 34.  
MODIFICATION**

- 34.1 Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.  
ENTIRE AGREEMENT**

- 35.1 This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

**ARTICLE 36.  
NOTICES**

- 36.1 Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:  
Airport Manager  
LANCASTER MUNICIPAL AIRPORT  
P.O. Box 940  
Lancaster, Texas 75146

Lessee:

George Sheban  
RISING STAR AVIATION HOLDINGS, L.L.C.  
5950 Berkshire Lane, Suite 310  
Dallas, Texas 75225

with a copy to:

Michael D. Hesse  
HESSE & HESSE, L.L.P.  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

- 36.2 All payments shall be made payable to City of Lancaster and sent to the attention of the Finance Department at P.O. Box 940, Lancaster, Texas 75146.
- 36.3 The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.



**ARTICLE 37.  
MISCELLANEOUS**

- 37.1 Recognition of Subleases. In the event of termination of this Lease because of any breach or default by Lessee, City shall recognize any existing subleases.
- 37.2 Merger of Title. No merger of Lessee's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) Lessee's interest in this Lease or the leasehold created by this Lease and (b) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (a) and (b) above join in a written instrument effecting such merger and record same.
- 37.3 Rights Regarding Condominium Association. Notwithstanding anything contained in this Agreement to the contrary, Lessee shall have the following rights relating to Rising Star Hangars of Lancaster Condominium Association No. 4 or any other condominium association formed and/or established in connection with this Agreement and related to the Property and/or the Improvements, each of which may be exercised in Lessee's sole and absolute discretion:
- (1) Lessee shall have no obligation to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act or to form or establish Rising Star Hangars of Lancaster Condominium Association No. 4 or any other condominium association to manage or maintain the Property.
  - (2) In the event Lessee does elect to form or establish Rising Star Hangars of Lancaster Condominium Association No. 4 or any other condominium association for the Property, Lessee shall retain the right, in its sole and absolute discretion, to remove all or any part of the Property from such condominium association and may offer and sell the leasehold interest in and to the Property without any attachment or encumbrance of a condominium association. Any leasehold interest sold that is not subject to a condominium association shall remain subject to the terms and conditions of this Agreement, including, but not limited to the provisions of Article 21 hereof.

**ARTICLE 38.  
EXHIBITS AND APPENDICES**

- 38.1 Exhibits and Appendices attached hereto are expressly made a part hereof.

- A Description of Leased Premises
- B Site Plan



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this 9<sup>th</sup> day of March, 2010.

**CITY OF LANCASTER, TEXAS**

By: Marcus E. Knight

Marcus E. Knight

Mayor

Date Signed: 3-9-2010

**RIISING STAR AVIATION HOLDINGS,  
L.L.C., a Texas limited liability company**

By: George Sheban

Printed Name: George Sheban

Title: President

Date Signed: 3.18.10

ATTEST:

Dolle K. Downe

Dolle K. Downe, City Secretary



LEGAL DESCRIPTION  
0.3646 ACRES

Being a tract of land situated in the J. Green Survey, Abstract No. 504, City of Lancaster, Dallas County, Texas and being a part of the Lancaster Airport Addition, an addition to the City of Lancaster, recorded in Volume 97173, Page 5853, Map Records, Dallas county, Texas and being more particularly described as follows:

Beginning at a point for corner, said point being S 10°57'20" E, 1317.41 ft., S 10°49'02" E, 1070.48 ft. to the beginning of a circular curve to the left having a central angle of 70°02'21", a radius of 440.00 ft., a tangent length of 254.38 ft., a chord bearing of S 45°50'13" E, a chord length of 504.99 ft. and an arc length of 537.86 ft., S 80°51'23" E, 81.20 ft., S 79°51'05" E, 5.37 ft. and N 49°43'07" E, 402.31 ft. from the most westerly-northwest corner of said addition;

THENCE N 49°43'07" E, a distance of 248.17 ft. to a point for corner;

THENCE S 40°16'53" E, a distance of 64.00 ft. to a point for corner;

THENCE S 49°43'07" W, a distance of 248.17 ft. to a point for corner;

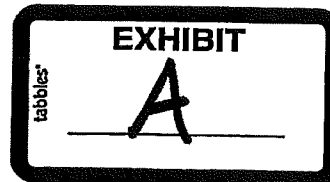
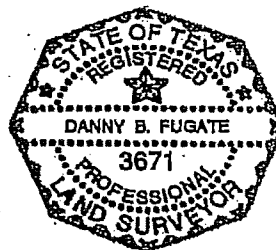
THENCE N 40°16'53" W, a distance of 64.00 ft. to the Point of Beginning and containing 0.3646 acres (15,882 Sq. Ft.) of land.

CERTIFICATION

To the person relying upon the accuracy of this survey or plat I, Danny B. Fugate, Registered Professional Land Surveyor, State of Texas, do certify to that this plat represents measurements performed upon the ground under my supervision. This is a true and correct survey.

By: [Signature]  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3671  
STATE OF TEXAS

DATE: 8-20-2002





**0.3646 ACRE BOUNDARY SURVEY**  
**E.L. PATTON SURVEY, ABSTRACT NO. 1116**  
**CITY OF LANCASTER, DALLAS COUNTY, TEXAS**

**BELT LINE ROAD**

LANCASTER AIRPORT ADDITION  
 VOL. 97173, PG. 5853

**LANCASTER-FERRIS ROAD**  
 (CALLED 60' R.O.H.)

LINE	BEARINGS	DISTANCE
L1	S 80° 51' 23" E	81.20
L2	S 79° 51' 05" E	5.97
L3	S 79° 51' 05" E	216.91
L4	N 40° 16' 53" W	84.00
L5	N 49° 43' 07" E	248.17
L6	S 40° 16' 53" E	84.00
L7	S 49° 43' 07" W	248.17

CURVE	ARC	DELTA	RADIUS	CHORD LENGTH	CHORD BEARINGS	TAN LENGTH
C1	537.86	70° 02' 21"	440.00	504.99	S 45° 50' 13" E	308.32

POINT OF BEGINNING  
 FUTURE HANGER  
 FUTURE HANGER  
 FUTURE HANGER  
 FUTURE HANGER  
 0.3646 AC.  
 L5  
 L7

EXHIBIT  
**B**

FILE: F93152A  
 H/C: F93152AV

**Fugate Surveying, Inc.**  
 235 EAST BELT LINE ROAD  
 DE SOTO, TEXAS 75115  
 223-0740 FAX 230-0825

Scale: 1" = 100' Date: 8-20-2002  
 Job No. 93-152

GF No.



## LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement"), made and entered into this 9<sup>th</sup> day of March, 2010, by and between the *CITY OF LANCASTER*, a Texas Home-rule Municipal Corporation ("City" or "Lessor") and *RISING STAR AVIATION HOLDINGS, L.L.C.*, a Texas Limited Liability Corporation ("Lessee").

### WITNESSETH:

WHEREAS, City is the owner and operator of the Lancaster Municipal Airport ("Airport") which is located in the City of Lancaster, Dallas County, State of Texas; and

WHEREAS, Lessee desires to lease, develop, and use the Airport Property particularly described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"), to operate a maximum of three (3) commercial business units for use as private airport hangars; and

WHEREAS, Lessee desires to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act, codified in Chapter 82 of the Texas Property Code, and to establish a unit leasehold-owners association—Rising Star Hangars of Lancaster Condominium Association No. 6—to manage and maintain the Property; and

WHEREAS, in accordance with the provisions contained within this agreement, City desires to allow Lessee to use and operate private airport hangars on the Property, to provide for leasehold interests on the Property, and to establish an association to manage and maintain the Property.

NOW, THEREFORE, for and in consideration of the rental payments, covenants, promises, and agreements contained herein, and for other good and valuable consideration, City and Lessee agree as follows:

### ARTICLE 1. DEFINITIONS

*Airport* means the Lancaster Municipal Airport, located at 730 Ferris Road, Suite 102, Lancaster, Texas 75146.

*Airport ALP* means the Lancaster Municipal Airport's Airport Layout Plan.

*Hazardous Materials* is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.

*Improvements* means approximately three (3) hangar Units, utilities, water line and any related alterations located, or to be located, on the Premises.



*Premises* means the real property described in Exhibit A, which is owned by the City and leased to Lessee.

*Public Facilities* means the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing and taking-off of aircraft.

*Sponsor* means the City of Lancaster, Texas.

## **ARTICLE 2. PREMISES**

- 2.1 City hereby leases to Lessee, and Lessee hereby leases from City, in accordance with the terms and conditions of this Agreement, the Premises.
- 2.2 Lessee warrants and represents that Lessee has carefully and completely examined and inspected the entire Premises, is fully informed of the condition of the Premises, and is completely satisfied as to the suitability of the Premises for all of the activities contemplated by this Agreement. Lessee accepts possession of the premises as is, and subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration and by the ordinances of the City of Lancaster.

## **ARTICLE 3. USE OF PREMISES**

- 3.1 Lessee has established a condominium regime pursuant to the Texas Uniform Condominium Act whereby Lessee will operate condominium units ("Units") for use as private aircraft hangars, and sell leasehold interests in each unit to third-party purchasers. Such Units shall be sold by Lessee subject to the terms and conditions of this Lease and any conveyance instruments shall clearly acknowledge that third party purchasers are bound by this Agreement. In addition, Lessee is granted the use and occupancy of the Premises for all uses allowed for a commercial aeronautical activity, as provided by the Minimum Standards for Commercial and Noncommercial Operators ("Airport Minimum Standards"); however, any owner of a leasehold interest, sublessee or tenant of Lessee may use and occupy the Premises solely for the storage of its privately owned aircraft (whether one or more) and any and all activities associated with maintaining and operating such aircraft, including, but not limited to, flight personnel, offices and aircraft maintenance areas related thereto in accordance with the Airport Minimum Standards.
- 3.2 Lessee agrees not to engage in any other activity on the Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or occupy the Premises in any manner contrary to the Airport ALP or Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.



3.3 Prohibited Products, Services, and/or Uses: The following conduct is expressly prohibited on the Premises:

- A. Promotion or sale of commercial or retail products and/or services;
- B. Possession or use of any products, performance of any services, and any other uses prohibited by law;
- C. Use of hangar or office space for any activity unrelated to aviation, other than as an incidental or temporary uses as shall be reasonably approved by the Airport Manager.

In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive right, other than the exclusive use of the Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Premises.

3.4 Use of Airport: Lessee may use, in common with others, the existing and future aeronautical and Public Facilities at the Airport, subject to and in full compliances with all applicable rules and regulations. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

3.5 Ingress and Egress: Lessee, its employees, guests, patrons, suppliers, vendors, sublessees, purchasers of leasehold interests, and invitees shall have the right of ingress and egress to and from the Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Premises.

3.6 Quiet Enjoyment: Upon payment of rents and fees and the performance of the covenants, agreements, and conditions to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Premises and privileges granted for the term of this Agreement free from hindrance or interruption by City. Lessee agrees that temporary inconveniences such as noise, disturbances, traffic detours and the like, caused by or associated with the construction of Airport improvements or Airport events, shall not constitute a breach of quiet enjoyment of the Premises, provided same do not materially adversely affect Lessee's ability to access and use the Premises.



**ARTICLE 4.**  
**TERM**

- 4.1 Initial Term: The initial term of this Lease shall be thirty (30) years commencing on March 1, 2010, and ending on February 29, 2040, unless sooner terminated in accordance with the provisions hereof. This Lease shall become effective on March 8, 2010.
- 4.2 Extension of Term:
- A. City hereby grants Lessee, its successors, and assigns, two consecutive options to extend this Lease on the Leased Premises, as existing at the time(s) when either is exercised, as follows:
    - (1) First Option Period: Five (5) years, beginning at the expiration date of the initial term.
    - (2) Second Option Period: Five (5) years, beginning at the expiration date of the First Option Period.
  - B. As a condition for the exercise of each option, Lessee shall give City written notice of Lessee's intent to exercise its option at least six (6) months prior to the expiration of the date of the term of the Lease, as then in effect.
  - C. All conditions and covenants contained herein shall remain in force during any extension of term pursuant to said option(s), except the provision for rental, which shall be renegotiated by the parties in advance of any extension, using as a basis thereof the standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport. During any option period, rental shall be charged for any leasehold improvements added or constructed by Lessee, or any sublessee or successor during the term of the Lease or any option period based on standard airport rental rates for similar premises then prevailing at Lancaster Municipal Airport.
  - D. Lessee's right to exercise such option is conditional on proper notice, required in Paragraph B of this Subsection 4.2, and is further conditional upon Lessee not being in default in the performance of its covenants undertaken by Lessee, at the beginning date of the extension of the term for which such notice is given.
  - E. Lessee shall not have the right to exercise such options if this Lease has been terminated for any reason or reasons, or Lessee is in default as to any provision or condition of the Lease prior to the exercise of an option granted under this section.
  - F. At the end of forty (40) years (being the initial term, the first option period and the second option period), the Lessee, its successors, and assigns shall be given the first right of refusal to again lease the improvements at the going fair market value. Length of lease and price shall be mutually agreed upon, and negotiated directly with the City.



- 4.3 Ownership of the Improvements shall revert to City at no cost to City upon expiration of the Initial Lease Term and any approved extension of the lease term ("Term") of this Agreement. However, at the end of the Term, City shall retain the right to require that Lessee demolish and/or remove any non-structural alterations to the Improvements, the construction of which had not been previously approved by City, or any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default, noticed by City to Lessee, existing at the end of the Term, and restore the Improvements as nearly as possible to their original condition and character as of the date of the issuance of any certificate of occupancy, ordinary wear and tear excluded. Lessee may transfer the Improvements upon receipt from City of appropriate consents as described hereinafter. **Lessee's right to transfer the use and enjoyment of the Improvements shall be expressly conditioned upon Lessee's and any transferee's obtaining appropriate consent to such transferee's use and enjoyment of the Premises through an approved sublease or assignment of this Lease pursuant to Articles 21 and 22.**

## ARTICLE 5. RENT

- 5.1 For the use and occupancy of the leased premises herein granted, Lessee agrees to pay City the sum of thirteen cents (\$0.13) per square foot per year for the first three years of the term hereof. At the beginning of the fourth year of the term hereof, and every five years thereafter until the beginning of the twenty-fifth year, the rental payments shall be adjusted (from thirteen cents (\$0.13) per square foot per year at the beginning of year four), upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index as of the end of the preceding year of the term hereof. If the Area Consumer Price Index shall have decreased or remained the same, the lease rate shall remain the same. At the beginning of the twenty-fifth year of the term, the rental payment shall be the greater of: (1) the lease rate at the end of the twenty-fourth year of the term adjusted upwards in accordance with the increase in the Dallas-Fort Worth Standard Metropolitan Statistical Area Consumer Price Index; or (2) eighteen cents (\$0.18) per square foot.
- 5.2 The rentals provided shall be payable in advance in equal monthly installments beginning March 1, 2010. The parties hereto agree that the premises leased hereby are fourteen thousand seven hundred (14,700) square feet and that the initial rental sums due hereunder are one hundred fifty-nine and 25/100 Dollars (\$159.25) per month or one thousand nine hundred eleven and 00/100 Dollars (\$1,911.00) per year for the first three (3) years hereof. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind.
- 5.3 A late charge of 5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 20<sup>th</sup> day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of 5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. All payments shall be made to City of Lancaster and sent to the attention of the



Finance Department at P.O. Box 940, Lancaster, Texas 75146. The failure to make any payment when due may result in a termination of the Agreement as provided in 11.

## **ARTICLE 6. FEES**

- 6.1 Lessee will pay, and will provide in its written lease agreement with any Sublessee, that Sublessee shall pay all applicable fees as established by the City of Lancaster.

## **ARTICLE 7. RIGHTS AND PRIVILEGES OF LESSEE**

City does hereby grant to Lessee and Lessee does take from City the following rights and privileges:

- 7.1 Lessee and/or its sublessees may install in or upon the Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the Activities authorized in this Agreement. Any personal property belonging to Lessee and/or any of its sublessees located on the Premises and/or in the Improvements located thereon shall be there at the sole risk of Lessee and/or its sublessees. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee, any sublessee, or any customer of Lessee unless due to the willful misconduct to City.
- 7.2 Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the term of this Agreement to remove from the Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property) and that those items removed are not required by Airport Minimum Standards in order to engage in the authorized Activities.
- 7.3 Lessee shall remove all equipment, fixtures, and systems as specified in this Agreement within five (5) days of termination or expiration of this Agreement. City may purchase personal property of Lessee at the termination of the Lease which the City deems essential to operation of Airport at the-then fair market value. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove or have removed at the expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within fifteen (15) days after receipt of an invoice from City.



**ARTICLE 8.**  
**RIGHTS AND PRIVILEGES OF CITY**

In addition to all other rights and privileges reserved by City including those outlined under Federal and/or State Sponsor Assurances, City reserves the following rights and privileges:

- 8.1 City Authority: While the Airport Manager has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- 8.2 Airport Development: City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of Premises. City shall provide advance notice of any closures to the extent possible.
- 8.3 Aerial Approaches: City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee or any sublessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- 8.4 War, National Emergency, Riot, or Natural Disaster: During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- 8.5 Access to the Premises: City and/or its representatives shall have the right to enter the Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall provide three (3) hours advance written notice (which shall include email transmission) prior to entering any non-public area except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.



- 8.6 Performance of Acts: All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by representative or delegate of City.
- 8.7 Exercising Rights: No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee or its sublessee nor shall such exercise be grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially interferes with the rights granted Lessee in this Agreement.

## **ARTICLE 9. OBLIGATIONS OF LESSEE**

Except as otherwise specifically provided, Lessee shall have the following obligations:

- 9.1 Conduct: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- 9.2 Disturbance: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport.
- A. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.
- B. Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would adversely effect the environment or do anything or permit anything to be done that would violate any federal, state, or local regulations. Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Premises and shall neither use, allow the use of, nor occupy Premises for any improper, immoral or unlawful purpose.
- 9.3 Hazardous Materials: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with all applicable EPA, TCEQ and local regulations. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Premises unless Lessee has complied with the following:
- A. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.



- B. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and order relating to health, safety and protection of persons, the public, and/or the environment.
- C. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Premises as authorized by this Agreement.
- D. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Premises are not being used nor have the Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.
  - 1. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, Lessees or sublessees or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
  - 2. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Manager of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.
- E. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate, and/or rectify any such conditions at or upon the Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
- F. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials from the Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any improvements is not commenced by Lessee within thirty (30) days after written notice from City of the discovery of such Hazardous Materials and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City within thirty (30) days of City's demand for payment. If City is required to remediate and/or abate any such conditions caused by Lessee on or upon the Premises and/or the Airport, Lessee shall reimburse City for all costs and expenses



incurred in so doing. In its sole discretion, City may, but shall not be required to, grant Lessee more than fifteen (15) days after written notice to remove Hazardous Materials, all at Lessee's expense.

- G. Immediately upon receipt thereof, Lessee shall provide City with copies of any notices, claims, complaints, demands, lawsuits, hearing, investigations, or governmental requests for information relating to the environmental condition on or of the Premises and/or Hazardous Materials on, in, under or emanating from the Premises during Lessee's occupancy thereof.

9.4 Storage, Handling, and Dispensing of Fuels, Gasolines and Lubricants: Fueling requirements are governed by the Lancaster Code of Ordinances.

The storage of fuels, gasolines, and lubricants in bulk quantities shall be limited to City's fuel storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's or Sublessee's installation, operation and maintenance of a fuel storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee and Sublessee must abide by all applicable federal, state and local regulations pertaining to the storage, handling, and dispensing of aviation fuels, gasolines and lubricants.

9.5 Utilities: Lessee shall directly procure and promptly pay for all utilities and utility services including electricity, sewer, water, natural gas and telephone charges relating to the Premises during the term of this Agreement.

9.6 Taxes, Assessments, and Fees: Lessee shall pay and discharge all taxes, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Premises, the Improvements locate thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, Lessee shall deposit with City that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by City, in trust, until the conclusion of any tax contest and payment of any final determination.

9.7 Costs, Expresses, and Other Charges: Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.

9.8 Maintenance: Lessee agrees during the initial term of this agreement and any option periods to assume the entire responsibility, cost and expense for repair and maintenance



on the Leased Premises and all improvements, including any hangar buildings and slabs, and to maintain the Leased Premises and improvements in a good condition.

- A. Lessee shall keep the interior and exterior (including all structural and non-structural) portions of the Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Premises in good order and condition and will make all necessary repairs to the Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair.
- B. Lessee agrees to keep the premises in a clean and orderly condition and appearance.
  - 1. Lessee shall not cause or allow any outdoor storage of materials, goods supplies, or equipment.
  - 2. Lessee shall further be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.
- C. Lessee agrees to provide and maintain all obstruction lights and similar devices or safety equipment required by law, to keep in effect such insurance (replacement value) on the premises as may be required by City.
- D. Lessee further agrees to submit to City for its written approval the plans and specifications for any major repairs, construction, alteration, modification, addition or replacement to the improvements on the premises undertaken by Lessee, which approval shall not be unreasonably withheld.
- E. The Lessee, and its successors and assigns, will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the Airport, or otherwise constitute an Airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust or glaring or misleading lights.
- F. In the event Lessee fails to comply with Section 9.8, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and continuously pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or cleaning which Lessee is required to make or perform.



- 9.9 Lessee agrees that any and all maintenance, repair or restoration activities on aircraft or otherwise shall be performed inside the hangar, screened from public view. Lessee further shall store all of its fixtures, equipment, and personal property within the hangar.
- 9.10 Refuse Disposal: Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles of all garbage, trash and other refuse at the Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. In the event Lessor discontinues providing garbage removal services as it is currently providing, Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- 9.11 Non-Discrimination: Lessee, in the conduct of its authorized Activities on or from the Premises and/or on the Airport, shall furnish service on a fair, equal and just basis to all users thereof and shall charge fair and reasonable prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchases, or classes of purchasers.
- A. Lessee, as a part of the consideration hereof, do hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, gender or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended. That in the event of breach of any of the preceding nondiscrimination covenants, Lessee agrees that City has the right to take such action against Lessee as the government may direct to enforce this covenant, including termination of this lease.
- B. In accordance with these requirements, Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, sex, race, creed, color or national origin and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
- 9.12 Based Aircraft Report: Lessee in its written condominium declaration with the owners of the hangar units shall ensure that the owners of such units shall maintain and furnish by the 1<sup>st</sup> of August each year and at any time upon request for the Airport Manager, a report identifying all aircraft based at or on the Premises. The report shall identify the owner,



the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight and aircraft registration number.

- 9.13 Signage: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.
- 9.14 Special Events: Lessee shall not conduct or hold air shows or any other special events including any non-aeronautical event at the Airport without the prior express written consent of the Airport Manager, such consent not to be unreasonably withheld.

#### **ARTICLE 10. OBLIGATIONS OF CITY**

- 10.1 City covenants and agrees that all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- 10.2 Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Premises, then that any such mortgage, deed of trust, or other instrument in the thereof will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgagee arising by virtue of this Lease.

#### **ARTICLE 11. DEFAULTS AND REMEDIES**

- 11.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.
- A. The filing by Lessee of a voluntary petition in bankruptcy.
  - B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
  - C. A court making or entering any decree or order.
    - 1. adjudging Lessee to be bankrupt or insolvent;
    - 2. approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
    - 3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;



4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Premises or its failure to maintain an on-going business at the Premises for a period of thirty (30) days or more, coupled with the failure to pay rent as provided in Article 5.
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.
- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."
- 11.2 In the event of any default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, no written or other notice of default shall be required. If this Agreement is terminated, any payments made to City shall be forfeited to City and Lessee shall have no rights to recover the payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.
- 11.3 Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.



- 11.4 In addition to the termination and forfeiture rights described in the preceding paragraphs, City shall have the following rights and remedies upon default by Lessee:
- A. The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that would have been made in the Agreement had not been breached by Lessee.
  - B. The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, including reasonable attorneys' fees and expenses.
  - C. The removal of all persons from the Premises and the removal and storage at Lessee's expense of all property on the Premises, in accordance with the law.
  - D. Any other right or remedy, legal or equitable, including specific performance, that City is entitled to under applicable law, whether stated in this Agreement or not.
- 11.5 No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue.
- 11.6 In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said premises and improvements, including any facilities, fixtures and equipment, to City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- 11.7 In the event the failure of Lessee upon termination of this Agreement to immediately remove from the Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Premises, restoring the Premises and Improvements to the condition by this Agreement, and protecting the Premises.
- 11.8 The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.



**ARTICLE 12.**  
**TERMINATION BY LESSEE**

- 12.1 Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:
- A. Permanent closure of the Airport.
  - B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered, however not during any appeals therefrom.
  - C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least ninety (90) days.
  - D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure to City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
  - E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminate operations at the Airport and which suspension or termination materially affects the operations of rights of Lessee hereunder.
- 12.2 Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.
- 12.3 As an alternative to the right of termination, Lessee shall be entitled to seek injunctive relief against the City relating to an event of default under Section 12.1-E above, together with costs and attorneys' fees by Lessee in such action if Lessee judicially obtains the relief sought; however, in no event shall rent abate during the pendency of any proceeding.



**ARTICLE 13.**  
**REMEDIES CUMULATIVE**

- 13.1 All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; however, Lessee's sole remedies upon City's default are contained in Article 12.

**ARTICLE 14.**  
**NO WAIVER**

- 14.1 No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation.

**ARTICLE 15.**  
**COMPLIANCE WITH LAWS**

- 15.1 At its own expense, Lessee shall comply with all federal, state and local regulations, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fine or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

**ARTICLE 16.**  
**COMPLIANCE WITH AIRPORT MINIMUM STANDARDS**

- 16.1 Lessee shall comply with the Airport Minimum Standards as all may be promulgated by City (and in effect from time to time). Any violation of this paragraph shall be construed as a material breach of this Agreement authorizing the termination thereof in accordance with 11.
- 16.2 In the event of a conflict between the Airport Minimum Standards and this Agreement, the strictest standard, obligation and/or requirement shall govern Lessee's responsibilities under this Agreement.

**ARTICLE 17.**  
**LICENSES, CERTIFICATES, AND PERMITS**

- 17.1 At its own expense, Lessee shall obtain any and all licenses, certificates and permits that may be necessary to construct Improvements on the Premises or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything at the Airport or



on the Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

## **ARTICLE 18. INSURANCE**

- 18.1 Lessee agrees to procure and maintain insurance as provided by the *Minimum Standards for Commercial and Non-Commercial Operators at Lancaster Airport, January 2006 and as amended*, including attaining a commercial general liability policy for premises and operations liability that names the City of Lancaster, Texas, its City Council (individually and collectively), and its representatives, officials, officers, employees, and agents as additional insureds. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas or otherwise be approved in writing by City. Any insurance policy procured to comply with this provision shall be endorsed to state that coverage shall not be suspended, voided, cancelled, non-renewed, or reduced in coverage except after ten (10) days prior written notice by certified mail, return receipt requested, to the City of Lancaster. All liability policies shall contain or be endorsed to contain the following provisions:
- A. "City of Lancaster and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."
  - B. "Any failure to comply with reporting or other provisions of the policies, including breached of warranties, shall not affect coverage provided to City of Lancaster or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- 18.2 Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.
- 18.3 The applicable insurance coverage shall be in full force upon execution of the Agreement and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.



- 18.4 Lessee shall, at its sole cost and expense, insure the Premises continuously against loss or damage. The Improvements shall be insured (80% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.
- 18.5 Insurance coverages and policy limits are subject to periodic review and modification at the discretion of City.

**ARTICLE 19.**  
**DAMAGE TO PREMISES AND PROPERTY**

- 19.1 Damages to Premises. If any part of the Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sublessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Premises immediately prior to damage (the "Restoration").
- A. If at any time during the term of this Agreement, any part of the Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to rebuild or repair the damaged or destroyed portion of the Premises. City shall have no obligation to Lessee or any sub-Lessee or subcontractor for any damage or destruction to their property caused by fire, earthquake, tornado, windstorm or other casualty or natural disaster.
- B. If Lessee fails to restore Premises, Lessee shall pay to City, upon demand, the amount that City reasonably determines is necessary to restore the Premises. Upon said payment, City will restore the Premises.
- 19.2 Use of Insurance Proceeds for Rebuilding.
- A. If, by reason of any damage or destruction mentioned in Article 19.1, any sums are paid under any insurance policy mentioned in Article 18, such sums will be paid to any Leasehold Mortgagee, if one exists, or to the City if no Leasehold Mortgage exists, (such entity holding the insurance proceeds hereinafter referred to as "Depository") and will be used to defray the cost of repairing, restoring, or reconstructing the Improvements as required in Article 19 herein. If there is no Leasehold Mortgagee at the time of such damage or destruction, as such sums shall be paid to City to be held and applied as set forth below.
- B. Upon receipt by the Depository, of:



1. A certificate of Lessee dated not more than thirty (30) days prior to the date of such receipt (a) requesting the payment of a specified amount of such monies; (b) describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Lessee; (c) stating that such specified amount does not exceed the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (d) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;
2. A certificate of an independent engineer or any independent architect designated by Lessee and approved by City (which approval will not be unreasonably withheld) and by the Leasehold Mortgagee, if any, stating (a) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate and desirable to the Restoration in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; (b) that the amount specified in such certificate of Lessee is not in excess of the sum of ninety percent (90%) of the cost of such work and one hundred percent (100%) of the cost of such materials; and (c) the additional amount, if any, required to complete the Restoration;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of such work and materials has been paid in full or will be paid in full out of such advance;
4. Either (a) a written opinion of Lessee's counsel, or (b) the certification of title company licensed to do business in the State of Texas, in either case that as of date not more than twenty (20) days prior to the date of payment described below there exists no filed or recorded lien, encumbrance or, charge prior to or on a parity with the estate, rights and interest of City, and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, a certificate from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, Evidencing that any fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City; and
5. Evidence satisfactory to the Leasehold Mortgagee, that, prior to commencing the Restoration, Lessee, at Lessee's expense, has furnished to City performance and payment bonds issued by each of the original contractors retained by Lessee for the Restoration under construction contracts having a contract price in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and by a corporate surety reasonably satisfactory to City, with each such bond naming City



and Leasehold Mortgagee as a dual obligee and otherwise being in form and content reasonably satisfactory to City, and evidence satisfactory to the Leasehold Mortgagee and City that such bonds remain in full force and effect; the Depository will pay to Lessee the amount of such insurance monies specified in such certificate of Lessee, provided that the balance will be sufficient for the completion of the Restoration.

C. The Depository will pay to Lessee the ten percent (10%) retainage reserved during the Restoration, upon the completion of Restoration as evidenced by a certificate of such independent engineer or independent architect, and upon the receipt by the Depository of:

1. A certificate of Lessee (a) requesting the payment of the ten percent (10%) retainage reserved by the Depository during the Restoration; (b) stating that the Restoration was completed at least thirty (30) days prior to the date of the certificate and was finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules, regulations, specifications and standards of all Governmental Authorities; and (c) stating that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance;
2. A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefore and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities;
3. Evidence reasonably satisfactory to the Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full out of such advance (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engage in the Restoration);
4. The certification of a title company licensed to do business in the State of Texas, in either case that, as of date not more than five (5) days prior to the date of payment described below, there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a fee mortgage, if any), and that neither the Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Dallas County, Texas, evidencing that fixtures in the Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted therein and except for any chattel mortgage or security agreement delivered to City.



- D. Any balance of insurance proceeds after the completion of Restoration, as evidenced by a certificate of such independent engineer or independent architect, will be paid to Lessee or to Leasehold Mortgagee(s), if required under the terms of the Leasehold Mortgage then in effect. Depository shall notify City and Leasehold Mortgagee of each amount paid to Lessee and the date of each such payment.
- E. Upon the expiration or sooner termination of this Lease, any insurance proceeds not theretofore applied to the cost of Restoration or not theretofore paid to Lessee or a Leasehold Mortgagee will be paid to City.

## **ARTICLE 20. INDEMNIFICATION**

- 20.1 LESSEE SHALL INDEMNIFY, PROTECT, DEFEND, SAVE AND COMPLETELY HOLD HARMLESS CITY AND ITS CITY COUNCIL (INDIVIDUALLY AND COLLECTIVELY), REPRESENTATIVES, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS AND VOLUNTEERS (HEREINAFTER REFERRED TO COLLECTIVELY IN THIS ARTICLE AS "CITY") FROM ANY AND ALL LIENS, CLAIMS, CHARGES, ENCUMBRANCES, DEMANDS, DAMAGES, FINES, OBLIGATIONS, SUITS, JUDGMENTS, PENALTIES, CAUSES OF ACTION, LOSSES, LIABILITIES, ADMINISTRATIVE PROCEEDINGS, ARBITRATION, OR COSTS OF ANY NATURE WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, AT ANY TIME RECEIVED, INCURRED, OR ACCRUED BY CITY RELATING TO THIS AGREEMENT OR ARISING FROM DAMAGE OR INJURY OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM LESSEE'S POSSESSION, USE, OCCUPANCY, MANAGEMENT, MAINTENANCE, OR CONTROL OF THE PREMISES AND/OR AIRPORT LAND AND/OR IMPROVEMENTS AND/OR THE CONDUCT OF LESSEE'S ACTIVITIES AT THE AIRPORT OR ARISING OUT OF LESSEE'S ACTIONS OR INACTIONS, REGARDLESS OF ANY SOLE OR CONCURRENT NEGLIGENCE OF THE CITY.
- 20.2 City shall give Lessee prompt notice of any such demand, claim, lawsuit or proceeding against City that relates to this Agreement. If such demand, claim, lawsuit or proceeding is brought, City shall have the right, but not the duty, to: (1) investigate and settle the demand, claim, lawsuit or proceeding and (2) participate in the defense of the demand, claim, lawsuit or proceeding.
- 20.3 In this Article, "City" also includes the Lancaster Municipal Airport, Airport Board and all of its members. The indemnification provisions of this Agreement shall survive its expiration or termination.



**ARTICLE 21.**  
**SUBLEASE AND SUBCONTRACTS**

- 21.1 The City hereby expressly grants its consent for Lessee to convey ownership of a leasehold interest (as condominium units) of the Hangars upon the Premises. Individual hangar owners may lease their interests in the condominium hangar units, subject to the terms of this lease, the Lancaster Airport Rules and Regulations, and the Airport Minimum Standards, and provided any such sublease shall be for the purpose of carrying out one or more of the activities set forth in Article 3. During the existence of this Agreement, all revenues from any sublease shall belong to Lessee.
- 21.2 Lessee shall not sublease the Premises (or any part of the Premises) or subcontract any operation or service it performs or is permitted to perform, without the prior express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- 21.3 Lessee shall not enter into any sublease unless the term of such sublease, including any renewal or option provisions, expires and terminates on or before the expiration date of this Agreement.
- 21.4 A lease or sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in a written consent, a sublease is subject to all of the terms and conditions of the lease governing the land and/or improvements being sublet. In addition, the Lessee shall at all times assume total responsibility for the acts and omissions of a sublessee and/or subcontractor.

**ARTICLE 22.**  
**ASSIGNMENT**

- 22.1 No portion of this Agreement may be assigned without the prior express written consent of City. In the event this Agreement is assigned, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of rents, fees, and/or other charges not paid by the assignee when due. The assignee shall not assign the Agreement without the prior express written consent of City and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default.

**ARTICLE 23.**  
**ENCUMBRANCES**

- 23.1 Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the real property described in Exhibit A and Lessee shall not suffer the real property described in Exhibit A, or any improvements thereon, to be or become subject to any non-consensual lien (including mechanic's liens), charge or encumbrance



whatsoever. The limitation on encumbrances provided herein shall not prevent Lessee or any sublessee from encumbering their leasehold interest in the Premises.

#### **ARTICLE 24. MORTGAGE**

- 24.1 Lessee shall not further mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Premises without the prior express written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By virtue of its execution of this Agreement, City consents to the existence of Lessee's current mortgage and pledge that encumbers Lessee's leasehold interest in the Premises.

#### **ARTICLE 25. BOOKS AND RECORDS**

- 25.1 Lessee shall maintain complete financial records of its Activities on the Premises. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect amounts due to City.
- 25.2 Any information, records and reports provided to or obtained by City pursuant to this Article or which City otherwise comes possession of pursuant to this Agreement, shall be subject to the provisions of the Texas Public Information Act, including provisions regarding limitations to access based upon trade secret information and state and federal restrictions.

#### **ARTICLE 26. HOLDOVER POSSESSION**

- 26.1 In the event that Lessee should hold over and remain in possession of the Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at an time by the Airport Manager or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

#### **ARTICLE 27. INDEPENDENT ENTITIES**

- 27.1 Nothing in this Agreement is intended to nor shall be construed as in any way creating or establishing the relationship of partners between City and Lessee or as constituting either party as the agent or representative or employee of the other party for any purpose or in any manner whatsoever.



**ARTICLE 28.  
BINDING EFFECT**

- 28.1 This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

**ARTICLE 29.  
SUBORDINATION**

- 29.1 This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

**ARTICLE 30.  
GOVERNING LAW**

- 30.1 This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of Texas. Venue shall be in Dallas County, Texas.

**ARTICLE 31.  
PARAGRAPH HEADINGS**

- 31.1 All section, paragraph, and subparagraph headings contained in this Agreement are for the convenience in reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

**ARTICLE 32.  
SEVERABILITY**

- 32.1 In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.



**ARTICLE 33.  
COUNTERPARTS**

- 33.1 This Agreement has been executed in several counterparts, each of which shall be deemed an original.

**ARTICLE 34.  
MODIFICATION**

- 34.1 Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.  
ENTIRE AGREEMENT**

- 35.1 This Agreement contains and embodies the entire Agreement between the parties and supersedes and replaces any and all prior agreements, understandings and promises on the same subject, whether written or oral.

**ARTICLE 36.  
NOTICES**

- 36.1 Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:

Airport Manager  
LANCASTER MUNICIPAL AIRPORT  
P.O. Box 940  
Lancaster, Texas 75146

Lessee:

George Sheban  
RISING STAR AVIATION HOLDINGS, L.L.C.  
5950 Berkshire Lane, Suite 310  
Dallas, Texas 75225

with a copy to:

Michael D. Hesse  
HESSE & HESSE, L.L.P.  
1518 Legacy Drive, Suite 250  
Frisco, Texas 75034

- 36.2 All payments shall be made payable to City of Lancaster and sent to the attention of the Finance Department at P.O. Box 940, Lancaster, Texas 75146.
- 36.3 The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.



**ARTICLE 37.  
MISCELLANEOUS**

- 37.1 Recognition of Subleases. In the event of termination of this Lease because of any breach or default by Lessee, City shall recognize any existing subleases.
- 37.2 Merger of Title. No merger of Lessee's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) Lessee's interest in this Lease or the leasehold created by this Lease and (b) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (a) and (b) above join in a written instrument effecting such merger and record same.
- 37.3 Rights Regarding Condominium Association. Notwithstanding anything contained in this Agreement to the contrary, Lessee shall have the following rights relating to Rising Star Hangars of Lancaster Condominium Association No. 6 or any other condominium association formed and/or established in connection with this Agreement and related to the Property and/or the Improvements, each of which may be exercised in Lessee's sole and absolute discretion:
- (1) Lessee shall have no obligation to offer and sell a leasehold interest in each individual unit and common areas of the Property pursuant to the Texas Uniform Condominium Act or to form or establish Rising Star Hangars of Lancaster Condominium Association No. 6 or any other condominium association to manage or maintain the Property.
  - (2) In the event Lessee does elect to form or establish Rising Star Hangars of Lancaster Condominium Association No. 6 or any other condominium association for the Property, Lessee shall retain the right, in its sole and absolute discretion, to remove all or any part of the Property from such condominium association and may offer and sell the leasehold interest in and to the Property without any attachment or encumbrance of a condominium association. Any leasehold interest sold that is not subject to a condominium association shall remain subject to the terms and conditions of this Agreement, including, but not limited to the provisions of Article 21 hereof.

**ARTICLE 38.  
EXHIBITS AND APPENDICES**

- 38.1 Exhibits and Appendices attached hereto are expressly made a part hereof.
- A Description of Leased Premises



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, this 9th day of March, 2010.

**CITY OF LANCASTER, TEXAS**

By: Marcus E. Knight  
Marcus E. Knight  
Mayor  
Date Signed: 3-9-2010

**RISING STAR AVIATION HOLDINGS,  
L.L.C., a Texas limited liability company**

By: George Sheban  
Printed Name: George Sheban  
Title: President  
Date Signed: 3.18.10

ATTEST:

Dolle K. Downe  
Dolle K. Downe, City Secretary



## EXHIBIT "A"

### Tract 2:

Being a tract of land situated in the E. L. Patton Survey, Abstract No. 1116, City of Lancaster, Dallas County, Texas and being a part of Lot 1, Block A of Lancaster Airport Addition, an addition to the City of Lancaster and being more particularly described as follows:

Beginning at a point for corner, said point being S 10 degrees 57'20" E, 1317.41 ft., THENCE S 10 degrees 49'02" E, 1070.48 ft. to the beginning of a circular curve to the left; THENCE along said circular curve to the left having a central angle of 70 degrees 02'21", a radius of 440.00 ft., a tangent length of 308.32 ft., a chord bearing of S 45 degrees 50'13" E, a chord length of 504.99 ft., and an arc length of 537.86 ft.; THENCE S 80 degrees 51'23" E, 81.20 ft., THENCE S 79 degrees 51'05" E, 216.91 ft. to the beginning of a circular curve to the right; THENCE along said circular curve to the right having a central angle of 18 degrees 02' 43", a radius of 666.70 ft., a tangent length of 105.87 ft., a chord bearing of S 70 degrees 49'43" E, a chord length of 209.11 and an arc length of 209.98 ft and N 49 degrees 43'07" E, 277.68 ft. from the most westerly-northwest corner of said Lot 1:

THENCE N 49 degrees 43'07" E, a distance of 210.00 ft to a point for corner;

THENCE S 40 degrees 16'53" E, a distance of 70.00 ft. to a point for corner;

THENCE S 49 degrees 43'07" W, a distance of 210.00 ft to a point for corner;

THENCE N 40 degrees 16'53" W, a distance of 70.00 ft to the Point at Beginning and containing 0.337 acres (14,700 Sq. Ft.) of land.



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 5.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Healthy, Safe & Vibrant Community

**Submitted by:** Alton Dixon, Purchasing Manager

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#### **Agenda Caption:**

Consider a resolution approving the terms and conditions of a professional services agreement with Public Safety Corporation (PSC) for alarm registration, tracking and billing.

#### **Background:**

The Lancaster Police Department prides itself on continuously exploring methods by which to make the department more efficient, while continuing to provide quality customer service to citizens. The City of Lancaster is in need of assistance with alarm registration, tracking, and billing as well as the enforcement of false alarms. This responsibility was assigned to the Records Division.

#### **Operational Considerations:**

The purpose of this request is to provide a third party management of alarm services. The professional services agreement with Public Safety Corporation will provide the level of service and support necessary to improve alarm registration, tracking and billing of alarm permits and false alarms processing.

#### **Legal Considerations:**

The RFP was processed in accordance with all local and state purchasing statutes. Two proposals were received.

#### **Public Information Considerations:**

The bids were advertised on March 20, 2016 and March 22, 2016 in the official publication of record, Focus Daily News and on the city electronic procurement system. The bids were opened on April 19, 2016. This item is being considered at a meeting of the City Council posted in accordance with the Texas Open Meetings Act.

#### **Options/Alternatives:**

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

#### **Recommendation:**

Staff recommends approval of the resolution as presented.



**Financial Considerations:**

The annual cost is based on revenues received, PSC will receive 23% of all revenues collected. The initial year of the contract revenues will be reduced by \$750.00 per month for implementation of an interface with the City's computer aided dispatch (CAD) system.

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**Attachments**

Resolution

Exhibit A

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN PUBLIC SAFETY CORPORATION AND THE CITY OF LANCASTER FOR PROVIDING THE FALSE ALARM TRACKING AND BILLING FOR THE ENFORCEMENT OF THE CITY OF LANCASTER ALARM SYSTEMS ORDINANCE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.**

**WHEREAS**, PSC Services has the expertise to provide false alarm tracking and billing functions services to the City of Lancaster, and

**WHEREAS**, the City Council of Lancaster desires to utilize the expertise PSC Services can offer for the above referenced services; and

**WHEREAS**, The City Council has determined that it would be in the best interest of the City to enter into the Agreement with PSC Services, which is attached hereto and incorporated herein by reference as Exhibit "A," and to authorize the City Manager to execute the same.

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

**SECTION 1.** The City Council hereby approves and accepts the terms and conditions of the professional services agreement with PSC Services, which is attached hereto and incorporated herein by reference as Exhibit A, for the purposes of providing false alarm tracking and billing functions for the enforcement of Lancaster's Alarm Systems Ordinance.

**SECTION 2.** The City Manager of the City of Lancaster, Texas is hereby authorized to execute said professional services agreement.

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

---

Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

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Robert E. Hager, City Attorney



## **CONTRACT FOR FALSE ALARM BILLING AND TRACKING SERVICES**

**THIS CONTRACT FOR FALSE ALARM TRACKING AND BILLING SERVICES** ("Contract") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **City of Lancaster, Texas**, a municipal corporation of the State of Texas, 211 N. Henry Street, Lancaster, Texas 75146 and **Public Safety Corporation**, ("CONTRACTOR"), a corporation of the State of Florida with its principal administrative offices located at 103 Paul Mellon Court, Waldorf, Maryland, 20602.

### **WITNESSETH:**

**Whereas**, the Lancaster City Council enacted ordinances related to alarm systems and false alarms titled Ordinance 2007-02-05 adopted 2/26/2007, as of this date ("Alarm Ordinance"), as amended; and

**Whereas**, the goal of City of Lancaster is to encourage more responsible use of alarm systems and to reduce the number of false alarms to which public safety officers must respond by accurately tracking false alarm instances and assessing fees and penalties as required by the Alarm Ordinance; and

**Whereas**, in its implementation of the Alarm Ordinance, City of Lawrence is authorized to engage a third-party CONTRACTOR to assist the CITY in the enforcement of the Alarm Ordinance so that persons and organizations that use alarm systems can be held accountable for false alarms through a system of fees and penalties; and

**Whereas**, the CONTRACTOR created and markets the proprietary and patented (U.S. Patent No. 6,856,246) software system called CryWolf® ("Software"), an integrated suite of software applications operating in a Windows-based environment, designed to assist false alarm reduction managers and planners in government agencies and industry in accessing information relevant to false alarms, and which has been developed at CONTRACTOR's private expense for the commercial marketplace and is not in the public domain; and

**Whereas**, City of Lancaster desires to engage the CONTRACTOR to provide the full service false alarm solution ("Services") described in Attachment A; and

**Whereas**, the CONTRACTOR desires to accept such engagement.

**Now, Therefore**, the parties agree as follows:

#### **1. Term.**

The term of this Contract shall be July 11, 2016, and shall expire on July 10, 2017. If written notice from City of Lancaster to PSC terminating further services after the expiration of the Agreement is not received by PSC at least sixty (90) days prior to the expiration of this Agreement, this Agreement shall automatically be renewed for a period of 1 year with 2 (two) one year renewals on the same terms and conditions as set forth in this Agreement

#### **2. Contract Documents and Order of Precedence.**



The contract documents consist of the following Attachments which are incorporated into the Contract by this reference:

A. **Attachment A**, describes the Scope of Services to be provided by the CONTRACTOR and the CITY's operational responsibilities, and Attachment B, Payment Terms.

B. The Order of Precedence shall be as follows: (1) this Contract; (2) Attachment A; and (3) Attachment B.

### **3. Alarm Management Scope of Services.**

A. The CONTRACTOR shall provide the Alarm Management Services described in **Attachment A - Alarm Management Services**.

B. The Alarm Management Services shall assist City of Lancaster in enforcing its Alarm Ordinance to include tracking of responsible persons (including individuals, businesses and government agencies) who use alarm systems, registering of alarm systems, billing and notification of permit and false alarm fees in accordance with the Alarm Ordinance and at the direction and under the supervision of City of Lancaster's Alarm Administrator, maintenance of a database of persons who use alarm systems, tracking of false alarm occurrences, collection of fees, the collection and enforcement of penalties for violations, generating performance and outcome reports and assuring the availability to City of Lancaster of timely false alarm information, all as more specifically described in **Attachment A - Alarm Management Services**.

### **4. Software license.**

City of Lancaster shall be licensed and authorized to use the Software and any additional specific customization and development provided as part of the Alarm Management Services described in **Attachment A**. The license shall cover all Software, including, without limitation, software interfaces and software modifications. The scope of the license is non-transferable and non-exclusive and is authorized by CONTRACTOR for use by City of Lancaster to access its false alarm information.

### **5. Duration of the Software License.**

City of Lancaster shall have the right to use the Software in accordance with **Attachment A** for so long as the CONTRACTOR provides Alarm Management Services to City of Lancaster and/or licenses the Software in accordance with the Termination provisions in this Contract. This license shall apply for the duration of the Contract and any extensions provided for herein or agreed to in writing by the parties. In the event the business relationship with CONTRACTOR is terminated or ended for any reason, City of Lancaster's license rights to use the Software shall likewise terminate except as provided for in this Contract, including **Attachment B**.

### **6. Modification of the Software.**

A. Modifications or adaptations of the Software shall be limited to creating or providing interfaces between the Software and City of Lancaster's computer systems required to import or export data in order to implement the Software.



B. City of Lancaster shall retain a nonexclusive License to use the modified and/or "customized" interfaces with the Software, provided, however, the use of the original Software with such adaptations in any projects other than the management of the Alarm Ordinance shall be subject to additional compensation to CONTRACTOR in an amount and subject to terms to be determined by the parties in writing prior to any such additional use.

## **7. Protecting Confidential and Proprietary Information.**

The proprietary information of both parties, CONTRACTOR and City of Lancaster is and shall remain the valuable intellectual property of each respective party. Except as required by law, neither party shall disclose any such information to any third party for any reason without the express written consent of the other party and shall only use proprietary information for internal purposes to facilitate and assist CONTRACTOR and CITY staff in the administration of the Alarm Ordinance. In addition, the parties shall provide reasonable safeguards to protect their respective software, hardware systems and data from unauthorized intrusion by third parties. Notwithstanding, the parties recognize that the CITY is a government body subject to compliance with Texas Public Information Act and applicable local ordinances.

Names, addresses, type of alarm, identification information of any alarm monitoring company, or identification information of any person cited under the Alarm Ordinance shall not be released, exhibited or sold to any third party by CONTRACTOR, except as required by law.

All data received hereunder shall be made a part of City of Lancaster's permanent records and files and preserved therein for a period in accordance with the requirements of Texas law. City of Lancaster will inform CONTRACTOR of the required retention time in writing at the beginning of the Contract term and, in the event these requirements change, as soon as those changes are approved by the appropriate Texas State or CITY agency.

All alarm related data maintained by the CONTRACTOR shall remain the property of the CITY. If the contract is terminated for any reason, the CONTRACTOR shall provide such data to City of Lancaster on a timely basis in a mutually acceptable, electronic file format.

## **8. Reproduction and Copyright.**

A. The Software is protected under the Copyright and Patent laws of the United States, and as extended by treaty, with Canada. City of Lancaster may not copy, or allow anyone else to copy or otherwise reproduce, any part of the Software without the prior written consent of CONTRACTOR, except to store and/or install a copy of the Software on a storage device, such as a network server, used only to run the Software on other computers over an internal network and except for two copies for back-up or archive purposes.

B. City of Lancaster may copy any CONTRACTOR provided Software as necessary to its hard disks or other such storage medium to efficiently operate the Software on City of Lancaster's single-user system, multiple-user system, or network. The Software shall be copied as a whole, and the use of the copies shall be governed by this Contract. All other copying is prohibited.

## **9. Limitations on the Use of the Software.**



City of Lancaster may not reverse engineer, decompile, or disassemble the Software. The Software is licensed as a single product. Its component parts may not be separated.

#### **10. Notices of Intellectual Property Rights.**

City of Lancaster shall assure that CONTRACTOR's notices of intellectual property (e.g., patent, trademark, and copyright notices) provided by CONTRACTOR, if any, shall remain visible on the Software when displayed electronically, or when output created by it is printed for distribution to persons or organizations outside the normal scope of the Alarm Ordinance.

#### **11. Payment.**

City of Lancaster shall pay the CONTRACTOR for the Services described, in accordance with **Attachment B** ("Payment Terms").

#### **12. Collection of Fines.**

The CITY shall support the collection of false alarm fees, fines and penalties in accordance with the Alarm Ordinances and at the direction of the Alarm Administrator. If the CITY directs CONTRACTOR to engage a third-party collection organization for delinquent amounts, the CITY shall cause the necessary legislative and administrative procedures to be enacted and/or adopted in order to delegate to the CONTRACTOR the authority to collect the delinquent fees on behalf of the CITY.

#### **13. Confidentiality of City of Lancaster False Alarm Data.**

Any false alarm collection data provided to the CONTRACTOR during the performance of the Alarm Management Services shall be used only in a manner consistent with this Contract, and no false alarm collection data shall be disclosed without the prior written consent of City of Lancaster. If such disclosure is compelled or required in any judicial or administrative proceeding, the CONTRACTOR shall, before disclosing such information, first notify City of Lancaster and give City of Lancaster an opportunity to object to the disclosure.

In the event City of Lancaster objects to such disclosure, it shall notify the CONTRACTOR that it will indemnify it, to the extent provided by law, for any costs and expense incurred, including, without limitation, the cost of attorney fees expended in the defense of any action or proceeding, or relating to the refusal to disclose such information.

#### **14. City of Lancaster Responsibilities.**

A. City of Lancaster shall cooperate with and assist the CONTRACTOR by providing management decisions affecting startup or provision of the Alarm Management Services within ten (10) business days of receipt of CONTRACTOR's request for a decision, as well as providing personnel, information, approvals, and acceptances in accordance with a mutually-agreed Implementation Plan to be developed by CONTRACTOR and City of Lancaster at the start of the Services. This Implementation Plan will define the detailed tasks and schedule necessary to achieve the following program target milestones:



- 1 ) Commence Services implementation activities on the Effective Date;
- 2 ) Begin collecting and processing alarm location information within sixty (60) days of the Effective Date; and
- 3 ) Begin processing false alarm activations within ninety (90) days of the Effective Date.

The Implementation Plan shall be agreed to in writing by both parties and upon execution by both parties shall be incorporated into this Contract by reference. If factors beyond the CONTRACTOR's control prevent processing of false alarms within the implementation timeline, extension of the implementation must be mutually agreed to and documented via change order.

B. City of Lancaster shall provide the CONTRACTOR with CAD alarm incident Records, appeal records, and necessary historical, non-financial alarm registration and alarm incident information in accordance with the terms of a mutually-agreed implementation plan and in a mutually-agreed electronic format, as necessary and proper, to allow the CONTRACTOR to effectively provide the Services and enforce the Alarm Ordinance.

#### **15. City of Lancaster Alarm Administrator.**

To facilitate effective communication between City of Lancaster and the CONTRACTOR, and in accordance with the Alarm Ordinance, City of Lancaster shall designate an Alarm Administrator. The Alarm Administrator shall have the power and authority to make decisions relating to the Services. A secondary Alarm Administrator will also be designated to act on behalf of the Alarm Administrator when the primary Alarm Administrator is unavailable. The primary and secondary Alarm Administrators shall be designated by City of Lancaster. The Alarm Administrator has the authority to waive, void, or modify violation notices and the resulting fine amounts. Any such waiver, modification, or voiding will be communicated to the CONTRACTOR in a written format.

#### **16. Resolution of Disputes.**

A. *Mediation.* In the event of a dispute between the parties concerning any matter arising under this Contract, the parties shall proceed to good-faith mediation of the dispute. The mediation venue shall be Lancaster, Texas. The cost of mediation shall be shared equally.

#### **17. Termination.**

A. *For Convenience.* Either party may terminate this Contract for any reason and at any time by giving at least ninety (90) days written notice to the other party of such termination and specifying the effective date thereof. If the Contract is terminated by the CITY, the CONTRACTOR shall be paid for any services already performed by sharing in the collections of all amounts billed by the CONTRACTOR through the date of termination. If the Contract is terminated by the CONTRACTOR, the CONTRACTOR shall provide an option for the CITY to transition operation of the alarm program to CITY facilities and staff using the CONTRACTOR's proprietary Software as described in Paragraph 18A.

B. *For Cause.* Either party may terminate this Contract for cause if the other party does not perform its duties or exercise its responsibilities in accordance with this Contract including the maintenance of the system of fees and fines in effect at the beginning of the Contract period. Upon an event of cause by either party (Non-performing party), the other (Claimant) party shall provide thirty (30) days prior written notice to the non-performing party



that the Contract terms have not been carried out in accordance with this Contract. If the event of cause is not corrected by the Non-performing party to the reasonable satisfaction of the Claimant, the Claimant may terminate this Contract after a thirty (30) day written cure notice to the Non-performing party.

C. Termination Within Initial Two (2) Year Period. If this Contract is terminated by the CITY or its implementation is terminated or postponed by the CITY during the initial two (2) year period, for any reason other than breach by the CONTRACTOR, the CONTRACTOR shall be entitled to receive a prorated share of its initial startup costs as specified in **Attachment B**, in addition to any Service fees owed the CONTRACTOR as described in Paragraph 18 – Rights upon Termination.

## **18. Rights upon Termination.**

A. If the CONTRACTOR is entitled to terminate this Contract or the CITY chooses not to continue the Contract for its convenience, the CONTRACTOR shall offer City of Lancaster an option, which must be exercised within thirty (30) calendar days after the Notice of Termination, to continue a conditional, uninterrupted, non-exclusive and non-transferable license to use the proprietary Software as necessary to support and administer City of Lancaster's Alarm Ordinance conditional on the payment of one-time transitional service and ongoing annual license, maintenance and support fees at the CONTRACTOR's then prevailing rates.

B. If City of Lancaster terminates this Contract or if the CONTRACTOR terminates for cause, City of Lancaster, in addition to payment of false alarm collections owed to the CONTRACTOR based on the CONTRACTOR's billings through the date of termination, shall undertake good faith efforts to collect any Alarm Management Services fees and civil penalties for Ordinance violations billed, but not yet collected, as of the date of termination, in order to pay the CONTRACTOR, all amounts due the CONTRACTOR as a result of efforts engaged in by the CONTRACTOR on City of Lancaster's behalf.

C. In the event that either party terminates this agreement, the CONTRACTOR agrees that all data collected under this agreement is part of City of Lancaster's permanent record and that all data, including historical records under the required retention time will be provided to City of Lancaster in an agreed upon data format within 30 days of the termination date.

## **19. Indemnification.**

A. The CONTRACTOR shall indemnify, hold harmless, and defend City of Lancaster, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting, directly or indirectly, from the CONTRACTOR's (or CONTRACTOR's subcontractors, if any) performance or breach of the Contract provided that such claim, damage, loss, or expense is not caused by the negligent act or omission or willful misconduct of City of Lancaster or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.



B. In the event that a claim is made against the CONTRACTOR, which arises out of the negligence or willful misconduct of City of Lancaster or any of City of Lancaster's employees, City of Lancaster shall indemnify the CONTRACTOR to the extent City of Lancaster is liable and authorized to do so under the law.

C. Any party seeking indemnification shall promptly notify the other party of its discovery of any matter-giving rise to a claim of indemnity. For each individual claim, the indemnifying party shall have no obligation to the other or to any third party with respect to any expenses incurred by or on behalf of the other or its assumption of control of the defense of the claim, or with respect to any compromise or settlement made, without the prior written consent of both parties.

## **20. Patent infringement.**

The CONTRACTOR shall indemnify City of Lancaster its elected and appointed officials, officers, employees, agents, and successors in interest from and against all damages and expenses resulting from any infringement action brought against the CONTRACTOR, or against City of Lancaster to the extent that any such action is predicated on the use of CONTRACTOR's software, during the term of this Contract. This Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance and shall survive termination of this contract

## **21. Limitation of Liability.**

In no event shall either Party be liable to the other for consequential, special, or incidental damages arising out of or relating to performance and nonperformance. This limitation shall apply regardless of the form of action, whether in contract or in tort, including negligence or misrepresentation.

## **22. Insurance.**

The CONTRACTOR shall provide and maintain in full force and effect at no additional cost to City of Lancaster for the duration of the Contract commercial general liability insurance or comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury and damage to property including contractual liability, premises/operations, products/completed operations, independent CONTRACTORS, broad form property damage, and personal injury coverage and a minimum aggregate amount of \$1,000,000 or commercial/comprehensive general liability insurance plus additional excess umbrella liability insurance to meet these limits.

The CONTRACTOR agrees that it shall add City of Lancaster, its elected and appointed officials, officers, employees, agents, and successors in interest to the CONTRACTOR's liability insurance policies as additional insureds. The CONTRACTOR shall require its insurance carrier or agent to certify that this requirement has been satisfied on all Insurance Certificates issued under this Contract.

Before any work is initiated and before any invoices are paid for work performed under this Contract, the CONTRACTOR shall provide written proof of compliance with the above insurance requirements by delivering to:



City of Lancaster  
211 N. Henry Street  
Lancaster, TX 75146  
Attention: Opal Mauldin-Robertson, City Manager

a copy of a certificate or certificates of insurance completed by its insurance carrier or agent certifying that minimum insurance coverages as required above are in effect and that the coverage will not be canceled or changed until thirty (30) days after written notice is given to the CITY. The CONTRACTOR shall maintain, update, and renew the Certificate(s) for the term of this Contract.

### **23. Assignment.**

This Contract shall not be assigned to any third party without prior written consent, which may be withheld in the sole and absolute discretion of either party. A change in ownership of the CONTRACTOR or a purchase of the majority of assets or stock of the CONTRACTOR by another company shall not be considered an assignment of this Contract.

### **24. Attorney's Fees.**

Should the parties or either of them employ an attorney to enforce by litigation in a court of competent jurisdiction, any of the contract provisions because of a disputed matter arising under this Contract, to assert damages for the breach of the Contract, or in order to obtain injunctive relief, then the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and any expenses expended or incurred.

### **25. Notices.**

Wherever under this Contract one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand or when mailed, by United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

In the case of the CONTRACTOR:

Public Safety Corporation  
103 Paul Mellon Court  
Waldorf, Maryland 20602  
Attention: Contract Administration

In the case of City of Lancaster:

City of Lancaster  
211 N. Henry Street  
Lancaster, TX 75146  
Attention: Opal Mauldin-Robertson, City Manager



## **26. Governing Law.**

The substantive laws of the State of Texas shall govern this Contract without regard to the law of conflicts. Venue shall be in the appropriate court of State of Texas. Such actions shall neither be commenced in nor removed to federal court.

## **27. Severability.**

If any provision of this Contract is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired.

## **28. No Waiver.**

The failure by any party to exercise any right stated in this Contract shall not be deemed a waiver of the right.

## **29. Complete Agreement.**

This Contract when signed by both parties sets forth the entire understanding of the parties as to its subject matter, conditions and obligations and may not be modified except by further written agreement.

## **30. Independent Contractors.**

In performing the work under this Contract, the CONTRACTOR acts as an independent CONTRACTOR and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as errors and omissions insurance. The CONTRACTOR, as an independent CONTRACTOR, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the CONTRACTOR are not and shall not become employees, agents or servants of <CITY NAME> because of the performance of any work by or under the performance of this Contract.

## **31. Cooperative Purchases.**

This Contract may be used by other government agencies. The CONTRACTOR has agreed to offer similar services to other agencies under the same terms and conditions as stated herein except that the revenue share percentage (Compensation) may be negotiated between the CONTRACTOR and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The CITY will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.



**WHEREAS**, the individuals representing the parties are both authorized and have executed this Contract effective as of on the date first written above.

**Lancaster, Texas**

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

**Public Safety Corporation**

By: \_\_\_\_\_  
[Authorized Signing Officer]

\_\_\_\_\_  
[Name and Title – please print]

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

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_ as the \_\_\_\_\_ of Public Safety Corporation and who is personally known to me or produced \_\_\_\_\_ as identification and who did/did not take an oath.

NOTARY SEAL:

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



## **ATTACHMENT A**

### **Scope of Services**

#### **Purpose**

The purpose of this Scope of Services is to describe the duties and responsibilities of Public Safety Corporation ("PSC" or "CONTRACTOR"), and the City of Lancaster, Texas "Lancaster" or "CITY").

#### **CONTRACTOR Responsibilities**

##### **PSC Responsibilities**

1. At the beginning of the project, electronic conversion/import to PSC computer server(s) of any CITY alarm program records required to support the proposed CONTRACTOR services. These records may contain historical CITY alarm business, alarm system location, responsible party and other alarm data previously developed by or for City of Lancaster. CONTRACTOR shall obtain this data directly from Lancaster and relies on the CITY for the accuracy and completeness of any such historical data;
2. Update alarm business, alarm system location and responsible party information and renew permits and alarm registrations in accordance with the CITY Alarm Ordinance ("Ordinance"). Updated information may be processed by mail, electronically and / or online;
3. Register, renew and bill the registration of alarm systems in accordance with the Ordinance. Registrations and renewals may be processed by mail, telephone, electronically and / or online. Notices related to registration may be sent by email or mail based on the alarm user contact information maintained;
4. Import daily into the CONTRACTOR's CryWolf® alarm billing system, alarm incident data (in formats prescribed by PSC) extracted by the CITY from the CITY's SunGard CAD/911 System;
5. Create and host a dedicated, secure (SSL encrypted) Lancaster's Alarm Program website for CITY citizens and businesses to obtain false alarm reduction educational information, review alarm ordinance and appeal requirements, access and update alarm account information, and pay alarm fees online if preferred. This website may be linked by the CITY to the CITY website if desired;
6. Initialize, maintain, secure and back-up Program databases including alarm business, alarm system location and incident data; alarm-related financial transactions and accounts receivable information. PSC will comply with the provisions of the Alarm Ordinance, and update Program business rules to comply with Alarm Ordinance changes as supported by the PSC software;
7. Process false alarm incident data, including the matching of false alarm incidents with the alarm system location database maintained by PSC;
8. Bill and correspond with alarm businesses and alarm users in accordance with the Alarm Ordinance provisions. This will include but may not be limited to invoices and delinquent payment notices. A warning notice will be sent to each alarm user on the occasion of the alarm user's first false alarm immediately preceding the first chargeable alarm incident. Warning



notices may be sent by mail, email or other electronic method based on the alarm user's accepted contact method(s);

9. Provide CITY alarm users access to online information on false alarm reduction and Ordinance requirements to include an Online Alarm School.

10. Answer telephone inquiries from CITY alarm users that are placed to a false alarm program toll-free customer service number established for the CITY;

11. Process fee / penalty payments mailed to and deposited in a nearby CITY-approved bank lockbox and account, and received from other payment channels, e.g. online, as agreed on by PSC and the CITY, and apply these payments to alarm accounts;

12. Support alarm hearings and appeals by notifying the CITY of any such appeals, providing a CITY Alarm Program representative with documentation supporting noticing / billing decisions; and updating the system with the disposition of any hearing results;

13. Provide and maintain computer equipment, software, mailing equipment and furniture at PSC's Program processing facilities;

14. Provide the CITY secure (SSL encrypted), online, on-demand access to alarm management information and reports including, but not limited to, alarm account transaction history, alarm system information, and financial transactions/balances with format and content specified by the CryWolf® Alarm Management System and the designated Bank, and agreed on between the CITY and PSC; and,

15. Perform special collection functions as directed and authorized by the CITY such as retaining a third party collection agency or providing delinquent account information to other CITY agencies. To the extent permitted by local law, third-party collection fees will be added to the delinquent amounts.

PSC is responsible for all costs of carrying out these responsibilities including, but not limited to, the costs of staff, facilities, equipment, consumable supplies. Only third-party bank and credit card fees, mailing supply costs (paper and envelopes), first class postage, third party collection costs (if any), e.g. collection agency fee, and citizen overpayments, if any, will be shared by the parties through payment from gross collections before revenue sharing.

### **City of Lancaster Responsibilities**

1. Appointing a CITY Alarm Administrator ("Administrator") and backup administrator who will be the primary points of contact between PSC and the CITY. The Administrator(s) is responsible for overseeing PSC's operation of the False Alarm Management Services Program ("Program") and accessing Program information, as needed, via PSC provided online access;

2. Requesting or supporting PSC's requests of Alarm Companies, as needed, to provide alarm system information;

3. Making any and all decisions about alarm call response, determining whether calls are false alarms, providing any on-scene communication of alarm related information to alarm users, and for entering any alarm related information within the CITY's SunGard CAD/911 system;



4. Extracting false alarm call incident data from the SunGard CAD/911 System and transferring this data electronically to PSC (via PSC's FTP site). The data extraction format will be provided by PSC and PSC will provide the CITY additional software for automating the daily transfer of alarm incident files to PSC;
5. Scheduling, conducting and making appeal decisions for any false alarm hearings;
6. Conducting any general public education programs on false alarms; and,
7. Transferring any and all financial information from the Program generated alarm reports to other City of Lancaster financial systems, as needed.

The CITY is responsible for all costs of carrying out the CITY's responsibilities, including, but not limited to the costs of staff, facilities, computer equipment and consumable supplies.

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## **ATTACHMENT B PAYMENT TERMS**

### **1. Revenue Sharing Percentage**

For the provision of all Services and technology outlined in this Contract, CONTRACTOR shall obtain payment exclusively from the revenues CONTRACTOR helps generate. There shall be no upfront systems development, licensing, conversion, equipment, travel, support or other costs. CONTRACTOR shall purchase, configure, install, and customize all systems and processes CONTRACTOR requires to provide the Services described herein. The CONSULTANT's Revenue Share is 23%.

The only amounts that shall be paid from the total collected revenue and subtracted from the total collected revenue before the revenue sharing percentages are applied are:

1. Any overpayments by alarm users to be refunded or held for application against future charges, as directed by the CITY;
2. Bank fees charged by the CITY-approved lockbox bank;
3. Correspondence mailing costs (envelopes and paper) including postage (at first class postage rates);
4. Special mailing costs, if any, as directed by the CITY, in excess of U.S. Post Office first class rates; and,
5. Third-party credit card processing charges, if any.

Any certified mail requirements will be billed separately on a monthly basis and is not subject to the revenue share division.

First Year CAD Interface Adjustment: During the initial twelve (12) months of the contract, the CONTRACTOR's revenue share shall be increased by \$750.00 per month and the City's share reduced by \$750.00 per month to reimburse the CONTRACTOR for the cost of the acquiring from the City's CAD vendor, SunGard Public Sector, and implementing an automated, bi-directional interface (SunGard's CryWolf CAD Standard Interface) between the City's SunGard CAD System and the CONTRACTOR's CryWolf Administrative system. If, especially during program startup, any month's revenue is insufficient to fund the entire \$750.00 adjustment fee, that shortfall will be postponed until sufficient revenue is obtained to cover the shortfall.

The revenue share percentages are based on several assumptions over which the CONTRACTOR has little or no control:

- The Ordinance fee and fine schedules remain at levels equal to or greater than at the Contract effective date;
- The CITY adopts a fair, but firm approach to granting appeals. Appeals and CITY waived charges are expected to reduce collections by no more than 5% annually; and
- The CITY actively supports enforcement of the Alarm Ordinance, including support of reasonable measures to collect all amounts due for violations of the Alarm Ordinance.

### **Revenue Share Payment Process**

CITY and CONTRACTOR agree as follows:



- 1 . All false alarm related fee collections from any payment method, including but not limited to bank lockbox and online credit card, shall be deposited, as soon as practical, in a False Alarm Bank Account ("False Alarm Account") to be established at a mutually agreeable Commercial Bank;
- 2 . CITY and CONTRACTOR agree to maintain a positive balance of available funds ("Minimum Balance") at all times in the False Alarm Account;
- 3 . At the beginning of each month, CONTRACTOR will reconcile the alarm related deposits for the most recent completed month and report the same to CITY. Upon CITY's approval, CITY and CONTRACTOR shall authorize and cause the issuance of electronic (ACH) transfers to CITY and to CONTRACTOR as follows:
  - a . With regard to the transfer to CONTRACTOR, the amount will be calculated for CONTRACTOR based on the Revenue Share described above. That amount, not to exceed 23% of the revenue collected during the preceding month, shall be transferred to a bank and account authorized by CONTRACTOR; and,
  - b . The remaining balance of the revenue collected during the preceding month of no less than 77%, shall be transferred to a bank and CITY account specified by CITY .
- 4 . At the termination of this Contract, any remaining balance shall be transferred to CONTRACTOR and to CITY on the same prorata basis, e.g. 23% and 77% respectively.
- 5 . CITY is a Texas public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore.

#### Delinquent Account Terms

The parties shall define a mutually agreeable process and methods for collecting amounts due from delinquent accounts. If organizations other than the CITY and CONTRACTOR are retained to collect overdue amounts, the parties agree that the collection costs shall to the extent permitted by State of Texas law be added to the delinquent amounts owed by alarm system users or be borne by the parties on a pro-rata basis by deducting the third party collection fees from the gross third party collections before the revenue shares are calculated.



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 6.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Healthy, Safe & Vibrant Community

**Submitted by:** Sam Urbanski, Interim Police Chief

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#### **Agenda Caption:**

Consider a resolution approving the terms and conditions of the 2016 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funds Sharing and Fiscal Agency Agreement between the City of Lancaster and the County of Dallas, Texas to provide funds to prevent and control crime and to improve the criminal justice system.

#### **Background:**

This item is for consideration to approve the 2016 JAG Program Funds Sharing and Fiscal Agency Agreement. This agreement will allow the Lancaster Police Department to be eligible to receive a grant in the amount of \$10,920.00 through the Dallas County Justice Assistance Grant ("JAG").

#### **Operational Considerations:**

Approval of this agreement will provide grant funding from Dallas County JAG for the purchase of police related equipment, in an amount not to exceed \$7,108.92.

#### **Legal Considerations:**

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

#### **Public Information Considerations:**

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

#### **Options/Alternatives:**

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

#### **Recommendation:**

Staff recommends approval of the resolution as presented.

#### **Financial Considerations:**

This agreement creates additional funding opportunities to purchase additional equipment for utilization within the Lancaster Police Department.



\$10,920.00 Allocation  
- 3,276.00 Dallas County Administrative Fee  
- 535.08 City of Dallas Fiscal Agent Fee  
\$ 7,108.92 Available for use

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**Attachments**

Resolution

Exhibit A

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## **RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING THE TERMS AND CONDITIONS OF THE 2016 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FUNDS SHARING AND FISCAL AGENCY AGREEMENT FOR THE SHARING OF FUNDS BETWEEN THE CITY OF LANCASTER AND THE COUNTY OF DALLAS, TEXAS; TO PROVIDE FUNDS THROUGH DALLAS COUNTY JUSTICE ASSISTANCE GRANT (“JAG”); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Part E of Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Edward Byrne Memorial Justice Assistance Grant Program (the “JAG Program”) authorize the Department of Justice’s Bureau of Justice Assistance (the “BJA”) to make funds (the “JAG Funds”) available to units of local government in order to support a broad range of activities to prevent and control crime and to improve the criminal justice system; and

**WHEREAS**, the County and the Cities are eligible for 2016 JAG Program Funds and have been certified by the Department of Justice Bureau of Justice Assistance (BJA) as a disparate jurisdiction; and

**WHEREAS**, for the purposes of simplifying the application process, the JAG Program permits the chief executive officer of one of the eligible units of local government in the disparate jurisdiction to submit a joint application for JAG Funds on behalf of the other eligible units of local governments within that jurisdiction and to act as the fiscal agent for those local governments in administering the JAG Funds; and

**WHEREAS**, certified disparate jurisdictions must reach an agreement regarding the sharing of JAG Funds prior to submission of the JAG Program application; and

**WHEREAS**, the County and the Cities agree and acknowledge that as a certified disparate jurisdiction, they must reach an agreement regarding the sharing of JAG Funds prior to submitting a JAG application with the BJA; and

**WHEREAS**, the County and the Cities hereby agree to name a fiscal agent to administer and distribute the JAG Funds and to designate a share of each jurisdiction’s JAG Funds for administrative costs to be paid to the fiscal agent named below, prior to submission of the joint application for JAG Funds to the BJA; and

**WHEREAS**, the County and the Cities wish to name Dallas as the fiscal agent to administer and distribute the JAG Funds pursuant to the JAG Program; and

**WHEREAS**, a unit of local government may transfer up to ten percent (10%) of its allocation of JAG Funds for costs associated with administering the JAG Funds to the fiscal agent; and

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of the parties, that the undertaking will benefit the public, and that the share of the JAG Funds to each jurisdiction fairly compensates the parties for their respective functions under this Agreement.

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

**SECTION 1.** The Agreement by and between the City of Lancaster and Dallas County, Texas, attached hereto as Exhibit A, having been reviewed by the City Council of the City of Lancaster, Texas and found to be acceptable and in the best interest of the City and its citizens. Be and, the same is hereby, in all things approved.

**SECTION 2.** The City Manager of the City of Lancaster, Texas is hereby authorized to execute said Agreement.

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

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



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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

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Robert E. Hager, City Attorney



**GMS Application # 2016-H3105-TX-DJ  
2016 EDWARD BYRNE MEMORIAL  
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM  
FUNDS SHARING AND FISCAL AGENCY AGREEMENT**

**THIS AGREEMENT** (the "Agreement"), is made and entered into by and between the following parties:

The County of Dallas, Texas (the "County") located at County Administration Building, 2nd Floor, 411 Elm Street, Dallas, Texas 75202, political body recognized as a legal subdivision of the State of Texas pursuant to Article XI, Section 1 of the Texas Constitution; and

The City of Balch Springs, Texas ("Balch Springs"), located at City Hall, 13503 Alexander Road, Balch Springs, Texas 75181, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Carrollton, Texas ("Carrollton"), located at City Hall, 1945 East Jackson Road, Carrollton, Texas 75006, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Dallas, Texas ("Dallas"), located at City Hall, Room 7DN, 1500 Marilla Street, Dallas, Texas 75201, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of DeSoto, Texas ("DeSoto"), located at City Hall, 211 East Pleasant Run Road, Suite A, DeSoto, Texas 75115, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution;

The City of Duncanville, Texas ("Duncanville"), located at City Hall, 203 E. Wheatland Road, Duncanville, TX 75116, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Garland, Texas ("Garland"), located at City Hall, 200 North Fifth Street, 4th Floor, Garland, Texas 75040, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Grand Prairie, Texas ("Grand Prairie"), located at City Hall, 317 College Street, Grand Prairie, Texas 75050, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Irving, Texas ("Irving"), located at City Hall, 825 West Irving Boulevard, Irving, Texas 75060, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and



The City of Lancaster, Texas (“Lancaster”), located at City Hall, 211 North Henry Street, Lancaster, Texas 75146, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Mesquite, Texas (“Mesquite”), located at City Hall, 757 North Galloway Avenue, Mesquite, Texas 75149, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution; and

The City of Richardson, Texas (“Richardson”), located at City Hall, 411 West Arapaho, Richardson, Texas 75080, a home rule municipality pursuant to Section 5, Article 11 of the Texas Constitution.

The aforementioned Cities shall be referred to collectively in this Agreement as the “Cities.”

#### **WITNESSETH:**

**WHEREAS**, Part E of Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Edward Byrne Memorial Justice Assistance Grant Program (the “JAG Program”) authorize the Department of Justice’s Bureau of Justice Assistance (the “BJA”) to make funds (the “JAG Funds”) available to units of local government in order to support a broad range of activities to prevent and control crime and to improve the criminal justice system; and

**WHEREAS**, the County and the Cities are eligible for 2016 JAG Program Funds and have been certified by the BJA as a disparate jurisdiction; and

**WHEREAS**, for the purposes of simplifying the application process, the JAG Program permits the chief executive officer of one of the eligible units of local government in the disparate jurisdiction to submit a joint application for JAG Funds on behalf of the other eligible units of local governments within that jurisdiction and to act as the fiscal agent for those local governments in administering the JAG Funds; and

**WHEREAS**, certified disparate jurisdictions must reach an agreement regarding the sharing of JAG Funds prior to submission of the JAG Program application; and

**WHEREAS**, the County and the Cities agree and acknowledge that as a certified disparate jurisdiction, they must reach an agreement regarding the sharing of JAG Funds prior to submitting a JAG application with the BJA; and

**WHEREAS**, the County and the Cities hereby agree to name a fiscal agent to administer and distribute the JAG Funds and to designate a share of each jurisdiction’s JAG Funds for administrative costs to be paid to the fiscal agent named below, prior to submission of the joint application for JAG Funds to the BJA; and

**WHEREAS**, the County and the Cities wish to name Dallas as the fiscal agent to administer and distribute the JAG Funds pursuant to the JAG Program; and



**WHEREAS**, a unit of local government may transfer up to ten percent (10%) of its allocation of JAG Funds for costs associated with administering the JAG Funds to the fiscal agent; and

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of the parties, that the undertaking will benefit the public, and that the share of the JAG Funds to each jurisdiction fairly compensates the parties for their respective functions under this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

## **SECTION 1. PURPOSE**

This Agreement shall set forth the following: (A) the nature of the relationship between the County and the Cities and Dallas as fiscal agent for the County and the Cities; (B) the parties' reporting, legal, and audit obligations; (C) the amount of JAG Funds initially allocated by the BJA to the County and the Cities (the "Initial Allocations"); (D) the amount of the Initial Allocations of the JAG Funds to be transferred from the Cities to the County; (E) the allocation of JAG Funds for each jurisdiction *after* the transfer of a portion of the Initial Allocations of JAG Funds from the Cities to the County (the "Adjusted Allocations"); (F) the amount of the grant administration fees to be paid to Dallas as the fiscal agent for both the County and the Cities; (G) the allocation of JAG Funds for the County and the Cities *after* the grant administration fee has been deducted from the Adjusted Allocations (the "Final Allocations"); and (H) other rights and responsibilities of Dallas, the County, and the Cities with regard to Dallas' application for, administration of, and distribution of the JAG Funds on behalf of the County and the Cities.

## **SECTION 2. FISCAL AGENT**

A. Dallas as Fiscal Agent. The County and the Cities do hereby agree that Dallas shall act as the fiscal agent for purposes of applying for, administering, and distributing the JAG Funds on behalf of both the County and the Cities. In consideration for Dallas acting as the fiscal agent for purposes of the JAG Program, the County and the Cities, save Dallas, each agree to pay Dallas seven percent (7%) of their Adjusted Allocations for costs associated with administering the JAG Funds. Dallas shall allocate greater than seven percent (7%) of its Adjusted Allocation toward administration; provided, however, the total contribution of Adjusted Allocations toward grant administration, including Dallas' contribution, shall not exceed ten percent (10%) of the total allocation to the parties' disparate jurisdiction. Dallas further agrees to prioritize the expenditure of the grant administration fees to include the following activities: distributing the JAG Funds, monitoring the award, submitting reports to the BJA (including performance measures and program assessment data), and providing ongoing assistance to the County and the Cities as sub-recipients of the JAG Funds.



B. No Additional Funds. The County and the Cities agree that Dallas has no obligation to provide funds to the County and the Cities from any source other than the JAG Program and in any amount other than the Final Allocation of JAG Funds for each party as set forth in this Agreement regardless of whether the JAG Funds are sufficient to fully accomplish the priorities set forth in Section 2.A above. In the event a portion of the JAG grant administration fee remains upon completion of the project set forth in this Agreement, as determined by Dallas, Dallas may expend such funds on other eligible projects under the JAG Program at Dallas's sole discretion.

### **SECTION 3. REPORTING, LEGAL, AND AUDIT REQUIREMENTS**

A. Reports.

(1) Quarterly Reports. The County and the Cities agree to provide Dallas with quarterly financial and programming reports no later than eighteen (18) days after the last day of the calendar quarter that demonstrate the appropriate use and management of the JAG Funds in conformance with the JAG Program and the BJA guidelines.

(2) Semi-Annual Reports. The County and the Cities agree to provide Dallas with semi-annual progress reports in conformance with the JAG Program and the BJA guidelines.

B. Legal Requirements. The County and the Cities agree to act in accordance with the Edward Byrne Memorial Justice Assistance Grant (JAG) Program Fiscal year (FY) 2016 Local Assistance Application, all Office of Justice Programs financial guidelines and the Mandatory Award Terms and Conditions, and all of the requirements of the JAG Program guidance, including but not limited to: Administrative Funds, Disparate Certification, Prohibited and Controlled Uses, Compliance with Applicable Federal Laws, Body-Worn Camera (BWA) purchases, Body Armor, DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database, Interoperable Communications, Non-Supplanting of State and Local Funds; Civil Rights Compliance; Anti-Lobbying Act; Financial and Government Audit Requirements, includes Single Audit Act Requirements; National Environmental Policy Act (NEPA); DOJ Information Technology Standards; Compliance with Office of Justice Programs Financial Guide; and Government Performance and Results Act (GPRA); Federal Funding Accountability and Transparency Act (FFATA) of 2006; and the Uniform Administrative Requirements, Cost Principles, and Audits Requirements of Federal Awards, particularly, those set out at 2 CFR 200.303 and 2 CFR 200.205.

No recipient or subrecipient under this award, including Cities and County, or any other entity that receives a contract or subcontract with funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.



Cities and County shall comply with the award terms and conditions, and other legal requirements, including but not limited to Office of Management and Budget (OMB), Department of Justice (DOJ), or other federal regulations which will be included in the award and are incorporated by reference into the award and into this Agreement.

D. Audit Requirements. The County and the Cities shall maintain records to demonstrate proper expenditure of JAG Program Funds and Dallas, as fiscal agent, has the right to review and audit any and all of such financial and programming records. The County and the Cities shall retain all such records for a minimum of three (3) years following completion of this Agreement. The County and the Cities must require that any of its contractors, subcontractors, vendors, or partner agencies allow Dallas to review and audit their financial records pertaining to any contracts they may have with the County or the Cities utilizing JAG Funds.

#### **SECTION 4. INITIAL ALLOCATIONS**

For 2016, the BJA has determined the Initial Allocations of JAG Funds for the parties to this Agreement as follows:

THE COUNTY	\$0.00
BALCH SPRINGS	\$16,247.00
CARROLLTON	\$14,213.00
DALLAS	\$673,617.00
DESOTO	\$12,259.00
DUNCANVILLE	\$10,439.00
GARLAND	\$45,448.00
GRAND PRAIRIE	\$39,935.00
IRVING	\$41,460.00
LANCASTER	\$10,920.00
MESQUITE	\$34,153.00
<u>RICHARDSON</u>	<u>\$12,794.00</u>
<b>TOTAL</b>	<b>\$911,485.00</b>



## **SECTION 5. AMOUNT OF INITIAL ALLOCATIONS TO BE TRANSFERRED FROM THE CITIES TO THE COUNTY**

The Cities shall transfer a portion of their Initial Allocations of JAG Funds to the County pursuant to this Agreement as follows:

THE COUNTY	\$0.00
BALCH SPRINGS	\$4,874.10
CARROLLTON	\$4,263.90
DALLAS	\$202,085.10
DESOTO	\$3,677.70
DUNCANVILLE	\$3,131.70
GARLAND	\$13,634.40
GRAND PRAIRIE	\$11,980.50
IRVING	\$12,438.00
LANCASTER	\$3,276.00
MESQUITE	\$10,245.90
<u>RICHARDSON</u>	<u>\$3,838.20</u>
<b>TOTAL</b>	<b>\$273,445.50</b>

## **SECTION 6. ADJUSTED ALLOCATIONS**

After the transfer of a portion of the Cities' Initial Allocations of JAG Funds to the County, the County and the Cities' Adjusted Allocations of JAG Funds are as follows:

THE COUNTY	\$273,445.50
BALCH SPRINGS	\$11,372.90
CARROLLTON	\$9,949.10



DALLAS	\$471,531.90
DESOTO	\$8,581.30
DUNCANVILLE	\$7,307.30
GARLAND	\$31,813.60
GRAND PRAIRIE	\$27,954.50
IRVING	\$29,022.00
LANCASTER	\$7,644.00
MESQUITE	\$23,907.10
<u>RICHARDSON</u>	<u>\$8,955.80</u>
<b>TOTAL</b>	<b>\$911,485.00</b>

## **SECTION 7. FISCAL AGENT GRANT ADMINISTRATION FEES**

The County and the Cities other than Dallas agree to transfer grant administration fees equal to seven percent (7%) of each party's Adjusted Allocation of JAG Funds to Dallas, as fiscal agent for the County and the Cities and Dallas shall allocate greater than seven percent (7%) of its Adjusted Allocation toward administration as shown below. The total contribution of Adjusted Allocations toward grant administration, including Dallas' contribution, does not exceed ten percent (10%) of the total allocation to the parties' disparate jurisdiction

THE COUNTY	\$19,141.19
BALCH SPRINGS	\$796.10
CARROLLTON	\$696.44
DALLAS	\$60,351.77
DESOTO	\$600.69
DUNCANVILLE	\$511.51
GARLAND	\$2,226.95
GRAND PRAIRIE	\$1,956.82
IRVING	\$2,031.54



LANCASTER	\$535.08
MESQUITE	\$1,673.50
<u>RICHARDSON</u>	<u>\$626.91</u>
<b>TOTAL</b>	<b>\$91,148.50</b>

## **SECTION 8. FINAL ALLOCATIONS**

The Final Allocations of JAG Funds are the Initial Allocations (1) less the transfer of a portion of the Cities' Initial Allocations of JAG Funds to the County, which are the Adjusted Allocations and (2) less the transfer of the grant administration fees of the Adjusted Allocations to Dallas. Each jurisdiction shall include in its JAG Program application the following Final Allocations of JAG Funds:

THE COUNTY	\$254,304.31
BALCH SPRINGS	\$10,576.80
CARROLLTON	\$9,252.66
DALLAS	\$502,328.63
DESOTO	\$7,980.61
DUNCANVILLE	\$6,795.79
GARLAND	\$29,586.65
GRAND PRAIRIE	\$25,997.68
IRVING	\$26,990.46
LANCASTER	\$7,108.92
MESQUITE	\$22,233.60
<u>RICHARDSON</u>	<u>\$8,328.89</u>
<b>TOTAL</b>	<b>\$911,485.00</b>

## **SECTION 9. APPLICATION OF COUNTY FUNDS**



The County agrees to prioritize the expenditure of its Final Allocation of Two Hundred Fifty-Four Thousand Three Hundred and Four Dollars and Thirty-One Cents (\$254,304.31) to continue the development and implementation of improvements to the criminal justice system. The Cities agree that the County has no obligation to provide any additional funds under this Agreement, even if the 2016 JAG Funds are insufficient to fully develop or implement the County's chosen improvements to the criminal justice system. In the event any JAG Funds remain upon completion of the development and implementation of improvements to the criminal justice, the County may expend such funds on other eligible projects under the grant at the County's discretion, subject to the approval of the BJA, as required under the JAG Program.

## **SECTION 10. TERM**

The term of this Agreement shall begin on the date the last signature of either the County or the Cities authorizing approving this Agreement is obtained and shall terminate upon final expenditure of the funds in accordance with the JAG Program.

## **SECTION 11. AGENCY**

The County and the Cities agree and acknowledge that each entity is not an agent of any other entity and that each entity is responsible for its acts, forbearance, negligence, and deeds and each entity is responsible for those acts, forbearance, negligence, and deeds of its agents or employees in conjunction with performance under this Agreement.

## **SECTION 12. INDEMNIFICATION**

The County agrees to be responsible for any liability or damages the County may suffer as a result of claims, demands, costs, or judgments, including all reasonable attorneys' fees, against the County arising out of any performance under this Agreement, or arising from any accident, injury, or damage, whatsoever, to any persons, or to the property of any persons or corporations occurring during the performance of this Agreement and caused by the sole negligence of the County, its agents, officers and employees.

Each City made a party to this Agreement agrees to be responsible for any liability or damages it may suffer as a result of claims, demands, costs, or judgments, including any reasonable attorneys' fees, against that respective City, arising out of any performance under this Agreement, or arising out of the performance of any services to be provided under this Agreement, or arising from any accident, injury, or damage, whatsoever, to any persons, or to the property of any persons or corporations occurring during the performance of the Agreement and caused by the sole negligence of that respective City, their agents, officers, and employees.

The Cities and County agree that any liability or damages as stated above occurring during the performance of this Agreement caused by the joint or comparative negligence of their employees or officers shall be determined in accordance with comparative responsibility laws of the State of Texas.



### **SECTION 13. FORMAL APPROVAL**

This Agreement is expressly subject to and contingent upon formal approval by the governing bodies of the County and the Cities.

### **SECTION 14. NO THIRD-PARTY BENEFICIARY ENFORCEMENT**

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and any right of action relating to such enforcement shall be strictly reserved to the Cities and the County and nothing contained in this Agreement shall be construed to create any rights for any third parties.

### **SECTION 15. NON-ASSIGNMENT**

The parties shall not sell, assign, transfer, or convey this Agreement, in whole or in part, without the prior written consent of the parties.

### **SECTION 16. NOTICE OF CONTRACT CLAIM**

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement. County and Cities shall fully comply with the requirements of this ordinance as a condition precedent to any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

### **SECTION 17. RESPONSIBILITY**

Dallas, the County, and the Cities shall each be responsible for the sole negligent acts of their officers, agents, employees, or separate contractors. In the event of joint and concurrent negligence of the parties to this agreement, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any sovereign immunity or governmental immunity available to the parties under Texas law and without waiving any defenses of the parties under Texas law.

### **SECTION 18. NOTICE**

Any notice, payment, statement, communication, report, or demand required or permitted to be given under this Agreement by any party to another may be effected by personal delivery in writing or deposited in the U.S. mail by certified letter, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.



To the County: Director of Criminal Justice, Ron Stretcher  
Dallas County – Administration Building  
411 Elm Street, 2<sup>nd</sup> Floor  
Dallas, Texas 75202

To Balch Springs: Acting Chief of Police, Jonathan Haber  
Balch Springs Police Department  
12500 Elam Road  
Balch Springs, Texas 75180

To Carrollton: Chief of Police, Rex Redden  
Carrollton Police Department  
2025 East Jackson Road  
Carrollton, Texas 75006

To Dallas: Chief of Police, David Brown  
Dallas Police Department  
1400 South Lamar Street  
Dallas, Texas 75215

To DeSoto: Chief of Police, Joseph Costa  
DeSoto Police Department  
714 East Belt Line Road  
DeSoto, Texas 75115

To Duncanville: Chief of Police, Robert D. Brown, Jr.  
Duncanville Police Department  
203 E. Wheatland Rd.  
Duncanville, Texas 75116

To Garland: Chief of Police, Mitch Bates  
Garland Police Department  
1891 Forest Lane  
Garland, Texas 75042

To Grand Prairie: Chief of Police, Steve Dye  
Grand Prairie Police Department  
1525 Arkansas Lane  
Grand Prairie, Texas 75052

To Irving: Chief of Police, Larry Boyd  
Irving Police Department  
P. O. Box 152288  
Irving, Texas 75015

To Lancaster: Interim Chief of Police, Samuel Urbanski



Lancaster Police Department  
1650 North Dallas Avenue  
Lancaster, Texas 75134

To Mesquite:

Chief of Police, Charles Cato  
Mesquite Police Department  
PO Box 850137  
Mesquite, Texas 75185-0137

To Richardson:

Chief of Police, Jimmy L. Spivey  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083

## **SECTION 19. GOVERNING LAW AND VENUE**

The obligations of the parties to this Agreement shall be performed in Dallas County, Texas, and venue for any legal action under this Agreement shall lie exclusively in Dallas County, Texas. In construing this Agreement, the laws and court decisions of the State of Texas shall control.

## **SECTION 20. LEGAL CONSTRUCTION**

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

## **SECTION 21. COUNTERPARTS**

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

## **SECTION 22. CAPTIONS**

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

## **SECTION 23. AMENDMENTS; ENTIRE AGREEMENT**



This Agreement (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. This Agreement may be modified or amended only by written agreement of the parties, to be attached to and made a part of this Agreement.

#### **SECTION 24. SOVEREIGN AND GOVERNMENTAL IMMUNITY**

**This Agreement is expressly made subject to County's sovereign immunity, Title 5 of the Texas Civil Remedies Code, each of the Cities' governmental immunity, and all applicable State and federal law.**

**IN WITNESS WHEREOF**, by their signatures hereon, each of the undersigned represents and warrants that they are the duly authorized agents of each entity and have full right and authority to enter into this Agreement. This Agreement is to be effective upon the signature of both County and the Cities.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]



The County of Dallas, State of Texas, has executed this Agreement pursuant to Commissioners Court Order Number \_\_\_\_\_ and passed on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE COUNTY OF DALLAS:**

\_\_\_\_\_  
Clay Lewis Jenkins, County Judge

APPROVED AS TO FORM\*:

SUSAN HAWK  
DISTRICT ATTORNEY

\_\_\_\_\_  
Randall Miller  
Assistant District Attorney

\*BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).



The City of Balch Springs, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF BALCH SPRINGS:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Suzy Cluse, City Manager

\_\_\_\_\_  
Jonathan Haber, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Monte Akers, City Attorney



The City of Carrollton, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF CARROLLTON:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Leonard Martin, City Manager

\_\_\_\_\_  
Rex Redden, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Meredith A. Ladd, City Attorney



The City of Dallas, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE CITY OF DALLAS:**

**RECOMMENDED BY:**

\_\_\_\_\_  
A.C. Gonzalez, City Manager

\_\_\_\_\_  
David Brown, Chief of Police

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Interim City Attorney or Assistant City Attorney



The City of DeSoto, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE CITY OF DESOTO:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Tarron J. Richardson, Ph .D, City Manager

\_\_\_\_\_  
Joseph Costa, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Joseph J. Gorfida, Jr, City Attorney



The City of Duncanville, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF DUNCANVILLE:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Kevin Hugman, City Manager

\_\_\_\_\_  
Robert D. Brown, Jr., Chief of Police

**APPROVED AS TO FORM BY:**

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



The City of Garland, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF GARLAND:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Bryan Bradford, City Manager

\_\_\_\_\_  
Mitch Bates, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Brad Neighbor, City Attorney



The City of Grand Prairie, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF GRAND PRAIRIE:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Tom Hart, City Manager

\_\_\_\_\_  
Steve Dye, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Don Postell, City Attorney



The City of Irving, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE CITY OF IRVING:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Beth Van Duyne, Mayor

\_\_\_\_\_  
Larry Boyd, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Kuruvilla Oommen, City Attorney



The City of Lancaster, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF LANCASTER:**

**RECOMMENDED BY:**

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

\_\_\_\_\_  
Samuel Urbanski, Interim Chief of Police

**APPROVED AS TO FORM:**

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



The City of Mesquite, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF MESQUITE:**

**RECOMMENDED BY:**

\_\_\_\_\_  
Cliff Kehely, City Manager

\_\_\_\_\_  
Charles Cato, Chief of Police

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
B.J. Smith, City Attorney



The City of Richardson, State of Texas, has executed the Agreement pursuant to duly authorized City Council Resolution \_\_\_\_\_, Minutes \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED BY THE  
CITY OF RICHARDSON:**

\_\_\_\_\_  
Dan Johnson, City Manager

**RECOMMENDED BY:**

\_\_\_\_\_  
Jimmy L. Spivey, Chief of Police

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney

DRAFT



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 7.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Financially Sound, City Government  
Healthy, Safe & Vibrant Community  
Professional and Committed City Workforce

**Submitted by:** Jermaine Sapp, Director of Equipment and Facility Services

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#### **Agenda Caption:**

Consider a resolution authorizing the purchase of a 2017 7500 International 12 yard dump truck from International through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed one hundred forty-three thousand four hundred twenty dollars (\$143,420).

#### **Background:**

At the May 17, 2016 work session Council received a presentation regarding the FY 2016 equipment replacement plan. The plan included the purchase of a dump truck to be utilized by the Water and Waste Water Division.

#### **Operational Considerations:**

Approval of this purchase will improve operations of the Water and Waste Water Division, and further comply with the Texas Clean Fleet Act.

An Interlocal Agreement allows staff to utilize other agencies' formal bid contracts. Each entity's formal bid process meets the requirements set forth in the statutes, including advertising, M/WBE participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirement. All legal requirements are verified by the Purchasing Agent prior to recommendation or use of a contract. Utilization of an interlocal agreement saves time associated with issuing bids or in obtaining quotes. Savings is achieved through aggregate volumes either through joint bidding opportunities or by addressing the cooperative language within the specifications to the vendors. The City of Lancaster maintains an agreement with the City of Dallas.

#### **Legal Considerations:**

Texas law authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process. The use of cooperative agreements is in accordance with Section 791.001 of the Texas Government Code and 271.101 of the Texas Local Government Code.

#### **Public Information Considerations:**

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

#### **Options/Alternatives:**

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



**Recommendation:**

Staff recommends approval of the resolution as presented.

**Financial Considerations:**

This purchase is funded through the Equipment Replacement Fund and expenditures will not exceed \$143,420.00.

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**Attachments**

Resolution

Quote/Specifications

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE PURCHASE OF A 2017 7500 INTERNATIONAL TWELVE (12) YARD DUMP TRUCK FROM INTERNATIONAL THROUGH AN INTERLOCAL AGREEMENT WITH THE CITY OF DALLAS, TEXAS IN AN AMOUNT NOT TO EXCEED ONE HUNDRED FORTY-THREE THOUSAND FOUR HUNDRED TWENTY DOLLARS (\$143,420.00)**

**WHEREAS**, the City of Lancaster, Texas, desires to authorize the purchase of one (1) 2017 7500 twelve(12)yard dump truck through an Interlocal Agreement with the City of Dallas;

**WHEREAS**, the City of Lancaster maintains an executed Interlocal Agreement with the City of Dallas, Texas. Local Government Code authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process.

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

**SECTION 1.** The City Council hereby authorizes, approves, and accepts, the purchase of one (1) 2017 7500 International twelve yard dump truck from International in an amount not to exceed one hundred forty-three thousand four hundred twenty dollars (\$143,420.00), as set forth in Exhibit "A", and;

**SECTION 2.** That the City Manager or her designee of the City of Lancaster, Texas is hereby authorized to issue appropriate purchase orders in conformity herewith.

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

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

**SECTION 5.** This Resolution shall become effective immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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



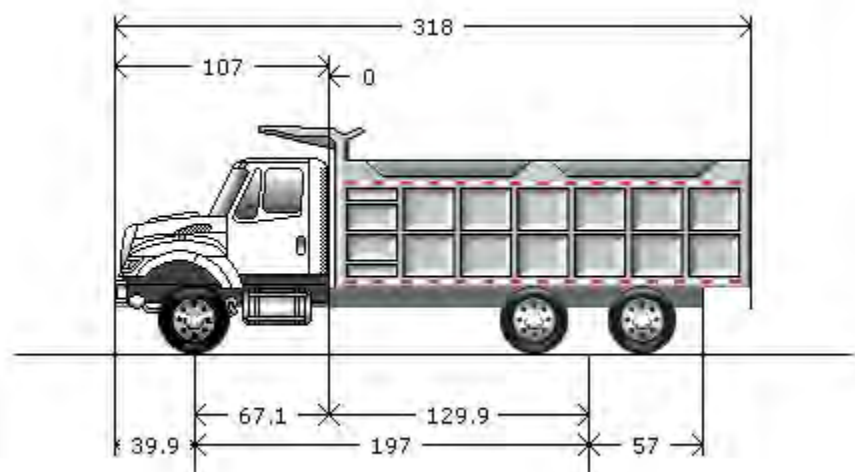
**INTERNATIONAL®****May 16, 2016****Prepared For:**

City of Lancaster  
 Jermaine Sapp  
 211 N Henry St.  
 Lancaster, TX 75146-2569  
 (972)275 - 1461

**Presented By:**

Southwest International Trucks, Inc.  
 Joel B Laxson  
 3722 Irving Blvd.  
 Dallas TX 75247 -  
 (214)689-1400

Thank you for the opportunity to provide you with the following quotation on a new International truck. I am sure the following detailed specification will meet your operational requirements, and I look forward to serving your business needs.



**Model Profile**  
**2017 7500 SBA 6X4 (SF637)**

<b>APPLICATION:</b>	Construction Dump
<b>MISSION:</b>	Requested GVWR: 54000. Calc. GVWR: 56000 Calc. Start / Grade Ability: 19.03% / 2.49% @ 55 MPH
<b>DIMENSION:</b>	Wheelbase: 197.00, CA: 129.90, Axle to Frame: 57.00
<b>ENGINE, DIESEL:</b>	{Navistar N10} EPA 2010, SCR, 370 HP @ 2000 RPM, 1250 lb-ft Torque @ 1200 RPM, 2200 RPM Governed Speed, 370 Peak HP (Max)
<b>TRANSMISSION, AUTOMATIC:</b>	{Allison 3000_RDS_P} 5th Generation Controls; Close Ratio, 6-Speed, With Double Overdrive; On/Off Hwy; Includes Oil Level Sensor, With PTO Provision, Less Retarder, With 80,000-lb GVW & GCW Max.
<b>CLUTCH:</b>	Omit Item (Clutch & Control)
<b>AXLE, FRONT NON-DRIVING:</b>	{Meritor MFS-16-143A} Wide Track, I-Beam Type, 16,000-lb Capacity
<b>AXLE, REAR, TANDEM:</b>	{Meritor MT-40-14X-5DER-P} Single Reduction, 0.500"(12.7mm) Wall Housing Thickness, 40,000-lb Capacity, R Wheel Ends, With Lube Pump, Driver Controlled Locking Differential in Rear-Rear Axle Gear Ratio: 4.88
<b>CAB:</b>	Conventional
<b>TIRE, FRONT:</b>	(2) 315/80R22.5 HSU2 WT (CONTINENTAL) 481 rev/mile, load range L, 20 ply
<b>TIRE, REAR:</b>	(8) 11R22.5 HDR2 (CONTINENTAL) 491 rev/mile, load range H, 16 ply
<b>SUSPENSION, REAR, TANDEM:</b>	{Chalmers 854-40L-HS} Walking Beam Type, With Rubber Spring, 54" Axle Spacing; 40,000-lb Capacity, With High Stability (HS) Restrictor Cans, (8) Torque Rods Less Shocks
<b>FRAME REINFORCEMENT:</b>	Outer "C" Channel, Heat Treated Alloy Steel (120,000 PSI Yield); 10.813" x 3.892" x 0.312"; (274.6mm x 98.9mm x 8.0mm); 480.0" (12192mm) Maximum OAL
<b>PAINT:</b>	Cab schematic 100GN Location 1: 9344, White (Prem) Chassis schematic N/A



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
SF63700	Base Chassis, Model 7500 SBA 6X4 with 197.00 Wheelbase, 129.90 CA, and 57.00 Axle to Frame.	7616/6299	13915
1586	TOW LOOP, FRONT	85/0	85
1CBU	FRAME RAILS Heat Treated Alloy Steel (120,000 PSI Yield); 10.125" x 3.580" x 0.312" (257.2mm x 90.9mm x 8.0mm); 480.0" (12192) Maximum OAL	93/59	152
1GBP	FRAME REINFORCEMENT Outer "C" Channel, Heat Treated Alloy Steel (120,000 PSI Yield); 10.813" x 3.892" x 0.312"; (274.6mm x 98.9mm x 8.0mm); 480.0" (12192mm) Maximum OAL	415/498	913
1LEH	LICENSE PLATE HOLDER Single Plate, Swing Type, Mounted Below Front Bumper	3/0	3
1LNR	BUMPER, FRONT Steel, Swept Back; Painted 0001 Canyon Black	0/0	0
1WGX	WHEELBASE RANGE 169" (430cm) Through and Including 219" (555cm)	0/0	0
2ARU	AXLE, FRONT NON-DRIVING (Meritor MFS-16-143A) Wide Track, I-Beam Type, 16,000-lb Capacity	95/0	95
	<u>Notes</u> : The following features should be considered when calculating Front GAWR: Front Axles; Front Suspension; Brake System; Brakes, Front Air Cam; Wheels; Tires.		
3708	SHOCK ABSORBERS, FRONT	47/0	47
3ACP	SUSPENSION, FRONT, SPRING Multileaf, Shackle Type; 16,000-lb Capacity; Less Shock Absorbers	139/0	139
	<u>Includes</u> : SPRING PINS Rubber Bushings, Maintenance-Free		
	<u>Notes</u> : The following features should be considered when calculating Front GAWR: Front Axles; Front Suspension; Brake System; Brakes, Front Air Cam; Wheels; Tires.		
4091	BRAKE SYSTEM, AIR Dual System for Straight Truck Applications	0/0	0
	<u>Includes</u> : BRAKE LINES Color and Size Coded Nylon : DRAIN VALVE Twist-Type : GAUGE, AIR PRESSURE (2) Air 1 and Air 2 Gauges; Located in Instrument Cluster : PARKING BRAKE CONTROL Yellow Knob, Located on Instrument Panel : PARKING BRAKE VALVE For Truck : QUICK RELEASE VALVE Bendix On Rear Axle for Spring Brake Release: 1 for 4x2, 2 for 6x4 : SLACK ADJUSTERS, FRONT Automatic : SLACK ADJUSTERS, REAR Automatic : SPRING BRAKE MODULATOR VALVE R-7 for 4x2, SR-7 with relay valve for 6x4		
	<u>Notes</u> : Rear Axle is Limited to 46,000-lb GAWR with Code 04091 BRAKE SYSTEM, AIR and Standard Rear Air Cam Brakes Regardless of Axle /Suspension Ordered.		
4193	BRAKES, FRONT, AIR CAM 16.5" x 6", Includes 24 Sqn Long Stroke Brake Chambers	-62/0	-62
	<u>Notes</u> : The following features should be considered when calculating Front GAWR: Front Axles; Front Suspension; Brake System; Brakes, Front Air Cam; Wheels; Tires.		



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
4619	TRAILER CONNECTIONS Four-Wheel, With Hand Control Valve and Tractor Protection Valve, for Straight Truck	2/0	2
4AZJ	AIR BRAKE ABS {Bendix AntiLock Brake System} Full Vehicle Wheel Control System (4-Channel) With Automatic Traction Control	0/0	0
4EBT	AIR DRYER {Bendix AD-IP} With Heater	22/3	25
	<u>Includes</u> : AIR DRYER LOCATION Inside Left Rail, Back of Cab		
4EXU	BRAKE CHAMBERS, REAR AXLE {Bendix EverSure} 30/30 Spring Brake	0/0	0
4EXV	BRAKE CHAMBERS, FRONT AXLE {Bendix} 24 SqIn	0/0	0
4NDB	BRAKES, REAR, AIR CAM S-Cam; 16.5" x 7.0"; Includes 30/30 Sq.In. Long Stroke Brake Chamber and Spring Actuated Parking Brake	0/0	0
	<u>Notes</u> : The following features should be considered when calculating Rear GAWR: Rear Axles; Rear Suspension; Brake System; Brakes, Rear Air Cam; Brake Shoes, Rear; Special Rating, GAWR; Wheels; Tires.		
4SBD	AIR COMPRESSOR {Bendix Tu-Flo 750} 16.5 CFM Capacity	0/0	0
4WWZ	DRAIN VALVE (3) Manual; With Pull Chains for Air Tanks	3/0	3
5708	STEERING COLUMN Tilting	10/0	10
5CAL	STEERING WHEEL 2-Spoke, 18" Dia., Black	0/0	0
5PSL	STEERING GEAR {Sheppard M110} Power	58/7	65
6DDE	DRIVESHAFT SYSTEM {Dana Spicer} SPL170XL with SPL170XL Inneraxle Shaft in lieu of 1810 Drive shaft with 1710 Inneraxle Shaft	-4/-18	-22
7BEP	EXHAUST SYSTEM Switchback Horizontal Aftertreatment Device, Frame Mounted Right Side Under Cab; Includes Single Vertical Tail Pipe, Frame Mounted Right Side Back of Cab	119/-16	103
7WBA	TAIL PIPE (1) Turnback Type, Bright, for Single Exhaust	0/0	0
8000	ELECTRICAL SYSTEM 12-Volt, Standard Equipment	0/0	0
	<u>Includes</u> : DATA LINK CONNECTOR For Vehicle Programming and Diagnostics In Cab : FUSES, ELECTRICAL SAE Blade-Type : HAZARD SWITCH Push On/Push Off, Located on Top of Steering Column Cover : HEADLIGHT DIMMER SWITCH Integral with Turn Signal Lever : HEADLIGHTS (2) Sealed Beam, Round, with Chrome Plated Bezels : JUMP START STUD Located on Positive Terminal of Outermost Battery : PARKING LIGHT Integral with Front Turn Signal and Rear Tail Light : RUNNING LIGHT (2) Daytime, Included With Headlights : STARTER SWITCH Electric, Key Operated : STOP, TURN, TAIL & B/U LIGHTS Dual, Rear, Combination with Reflector : TURN SIGNAL SWITCH Self-Cancelling for Trucks, Manual Cancelling for Tractors, with Lane Change Feature : WINDSHIELD WIPER SWITCH 2-Speed with Wash and Intermittent Feature (5 Pre-Set Delays), Integral with Turn Signal Lever : WINDSHIELD WIPERS Single Motor, Electric, Cowl Mounted : WIRING, CHASSIS Color Coded and Continuously Numbered		
8518	CIGAR LIGHTER Includes Ash Cup	1/0	1



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
8541	HORN, ELECTRIC (2) Disc Style	1/0	1
8718	POWER SOURCE Cigar Type Receptacle without Plug and Cord	1/0	1
8GGG	ALTERNATOR {Delco Remy 36SI} Brushless, 12 Volt 165 Amp. Capacity, Pad Mount, with Remote Voltage Sensor	7/0	7
8HAU	BODY BUILDER WIRING INSIDE CAB; Includes Sealed Connectors for Tail/Amber, Turn/Marker/Backup/Accessory, Power/Ground, and Stop/Turn	1/0	1
8MPV	BATTERY SYSTEM {Exide} (3) 12-Volt 2775CCA Total	33/15	48
8RMA	RADIO AM/FM/WB/Clock/Bluetooth/USB Input/3MM Auxiliary Input, MP3, Apple Device Play & Control, Bluetooth for Phone & Music, with Multiple Speakers	1/0	1
8TME	TRAILER CONNECTION SOCKET 7-Way; Mounted at Rear of Frame, Wired for Turn Signals Independent of Stop, Compatible With Trailers That Have Amber or Side Turn Lamps	0/7	7
8TPR	STOP, TURN, TAIL & B/U LIGHTS {Weldon LED Multi-Function Lamp} Mounted Outside Rails	-3/14	11
8VUL	BATTERY BOX Steel With Plastic Cover, 18" Wide, 2, 3, or 4 Battery Capacity, Mounted Left Side Back of Cab	-27/11	-16
8WBW	JUMP START STUD Remote Mounted	2/0	2
	<u>Includes</u> : JUMP START STUD Mounted to Battery Box		
8WDG	BACK-UP ALARM {Preco 1059} Electronic; Solid State, Dual Function, 112 dBA	0/1	1
8WGL	WINDSHIELD WIPER SPD CONTROL Force Wipers to Slowest Intermittent Speed When Park Brake Set and Wipers Left on for a Predetermined Time	0/0	0
8WML	HEADLIGHTS Long Life Halogen; for Two Light System	0/0	0
8WPH	CLEARANCE/MARKER LIGHTS (5) {Truck Lite} Amber LED Lights, Flush Mounted on Cab or Sunshade	0/0	0
8WPP	ENGINE SHUTDOWN Automatic; With 30 Second Delay, With International Engines	1/0	1
8WPZ	TEST EXTERIOR LIGHTS Pre-Trip Inspection will Cycle all Exterior Lamps Except Back-up Lights	0/0	0
8WRB	HEADLIGHTS ON W/WIPERS Headlights Will Automatically Turn on if Windshield Wipers are turned on	0/0	0
8WTL	STARTING MOTOR {Delco Remy 39MT} 12 Volt; Gear Reduced, With Thermal Over-Crank Protection	0/0	0
8WVP	HORN, AIR (2) Single Tone, Rectangular; Chrome. Roof Mounted	9/-1	8
8WWJ	INDICATOR, LOW COOLANT LEVEL With Audible Alarm	0/0	0
8WXD	ALARM, PARKING BRAKE Electric Horn Sounds in Repetitive Manner When Vehicle Park Brake is "NOT" Set, With Ignition "OFF" and any Door Opened	0/0	0
8XAH	CIRCUIT BREAKERS Manual-Reset (Main Panel) SAE Type III With Trip Indicators, Replaces All Fuses Except For 5-Amp Fuses	0/0	0
8XGT	TURN SIGNALS, FRONT LED, Includes LED Side Marker Lights, Mounted on Fender	0/0	0



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
9585	FENDER EXTENSIONS Rubber	6/0	6
9HAN	INSULATION, UNDER HOOD for Sound Abatement	10/0	10
9HBM	GRILLE Stationary, Chrome	0/0	0
9HBN	INSULATION, SPLASH PANELS for Sound Abatement	2/0	2
9WAC	BUG SCREEN Front End; Mounted Behind Grille	5/0	5
9WBC	FRONT END Tilting, Fiberglass, With Three Piece Construction; for 2007 & 2010 Emissions	0/0	0
10060	PAINT SCHEMATIC, PT-1 Single Color, Design 100 <u>Includes</u> : PAINT SCHEMATIC ID LETTERS "GN"	0/0	0
10761	PAINT TYPE Base Coat/Clear Coat, 1-2 Tone	0/0	0
10769	PAINT CLASS Premium Color	0/0	0
10WCY	SAFETY TRIANGLES	6/0	6
10WJH	PROMOTIONAL PACKAGE Government and Municipal Silver Package; Two Year Limited Subscription of On-Command Service Information (Formerly Fleet ISIS), and On-Command Parts Information (Formerly Fleet Parts Catalog), Requires Specific Feature Combinations	0/0	0
10WWP	MUD FLAPS, FRONT WHEELS (2) Rubber, Behind Front Wheels, Mounted on Fender Extension, for Tire Size 425/445	3/0	3
11001	CLUTCH Omit Item (Clutch & Control)	-92/-15	-107
12703	ANTI-FREEZE Red, Extended Life Coolant; To -40 Degrees F/ -40 Degrees C, Freeze Protection	0/0	0
12959	BLOCK HEATER, ENGINE {Phillips} 120V/1250W <u>Includes</u> : BLOCK HEATER SOCKET Receptacle Type; Mounted below Drivers Door	2/0	2
12NWY	ENGINE, DIESEL {Navistar N10} EPA 2010, SCR, 370 HP @ 2000 RPM, 1250 lb-ft Torque @ 1200 RPM, 2200 RPM Governed Speed, 370 Peak HP (Max)	550/4	554
12THZ	FAN DRIVE {Horton Drivemaster Polar Extreme} Direct Drive Type, Two Speed, With Residual Torque Device for Disengaged Fan Speed <u>Includes</u> : FAN Nylon	0/0	0
12UPA	FEDERAL EMISSIONS {Navistar N9 & N10} EPA, OBD and GHG Certified for Calendar Year 2016	0/0	0
12UWY	RADIATOR Cross Flow, Series System; 1228 SqIn Aluminum Radiator Core and 1167 SqIn Charge Air Cooler <u>Includes</u> : DEAERATION SYSTEM with Surge Tank : HOSE CLAMPS, RADIATOR HOSES Gates Shrink Band Type; Thermoplastic Coolant Hose Clamps : RADIATOR HOSES Premium, Rubber	20/-2	18
12VBG	AIR CLEANER Dual Element, With Integral Pre Cleaner	12/0	12



Code	Description	F/R Wt (lbs)	Tot Wt (lbs)
	<u>Includes</u> : GAUGE, AIR CLEANER RESTRICTION Air Cleaner Mounted		
12VXT	THROTTLE, HAND CONTROL Engine Speed Control; Electronic, Stationary, Variable Speed; Mounted on Steering Wheel	0/0	0
12VZA	ENGINE CONTROL, REMOTE MOUNTED Provision for; Includes Wiring for Body Builder Installation of PTO Controls; With Ignition Switch Control for MaxxForce and Navistar post 2007 Emissions Electronic Engines	0/0	0
12WZB	EMISSION COMPLIANCE Low NOx Idle Engine, Complies with California Clean Air Regulations; Includes "Certified Clean Idle" Decal on Hood	0/0	0
13AVR	TRANSMISSION, AUTOMATIC {Allison 3000_RDS_P} 5th Generation Controls; Close Ratio, 6-Speed, With Double Overdrive; On/Off Hwy; Includes Oil Level Sensor, With PTO Provision, Less Retarder, With 80,000-lb GVW & GCW Max.	-10/-46	-56
13WAW	OIL COOLER, AUTO TRANSMISSION {Modine} Water to Oil Type	25/0	25
13WBL	TRANSMISSION SHIFT CONTROL {Allison} Push-Button Type; for Allison 3000 & 4000 Series Transmission	0/0	0
13WLP	TRANSMISSION OIL Synthetic; 29 thru 42 Pints	0/0	0
13WUC	ALLISON SPARE INPUT/OUTPUT for Rugged Duty Series (RDS); General Purpose Trucks, Construction	0/0	0
13WYU	SHIFT CONTROL PARAMETERS Allison 3000 or 4000 Series Transmissions, 5th Generation Controls, Performance Programming	0/0	0
14GVK	AXLE, REAR, TANDEM {Meritor MT-40-14X-5DER-P} Single Reduction, 0.500"(12.7mm) Wall Housing Thickness, 40,000-lb Capacity, R Wheel Ends, With Lube Pump, Driver Controlled Locking Differential in Rear-Rear Axle . Gear Ratio: 4.88	0/22	22
14UZR	SUSPENSION, REAR, TANDEM {Chalmers 854-40L-HS} Walking Beam Type, With Rubber Spring, 54" Axle Spacing; 40,000-lb Capacity, With High Stability (HS) Restrictor Cans, (8) Torque Rods Less Shocks	0/345	345
	<u>Includes</u> : CROSSMEMBER, SUSPENSION Stamped Steel Double Dogbone		
	<u>Notes</u> : The following features should be considered when calculating Rear GAWR: Rear Axles; Rear Suspension; Brake System; Brakes, Rear Air Cam; Brake Shoes, Rear; Special Rating, GAWR; Wheels; Tires.		
14WBU	SHOCK ABSORBERS, REAR (4) for Chalmers Suspension Only, Mounted from Frame to Beam	0/24	24
14WMJ	AXLE, REAR, LUBE {EmGard FE-75W-90} Synthetic Oil; 50 thru 64.99 Pints	0/0	0
15DYP	DEF TANK 9.5 U.S. Gal. 36.0L Capacity, Frame Mounted Outside Left Rail, Under Cab	18/3	21
15LKG	FUEL/WATER SEPARATOR with Thermostatic Fuel Temperature Controlled Electric Heater, and Filter Restriction/Change Indicator, Includes Standard Equipment Water-in-Fuel Sensor	5/0	5
15SJZ	FUEL TANK Top Draw; Non-Polished Aluminum, 26" Diam., 80 U.S. Gal., 302 L Capacity Mounted Left Side, Under Cab	38/14	52
16030	CAB Conventional	0/0	0



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
	Includes : ARM REST (2) Molded Plastic; One Each Door : COAT HOOK, CAB Located on Rear Wall, Centered Above Rear Window : CUP HOLDERS Two Cup Holders, Located in Lower Center of Instrument Panel : DOME LIGHT, CAB Rectangular, Door Activated and Push On-Off at Light Lens, Timed Theater Dimming, Integral to Console, Center Mounted : GLASS, ALL WINDOWS Tinted : GRAB HANDLE, CAB INTERIOR (1) "A" Pillar Mounted, Passenger Side : GRAB HANDLE, CAB INTERIOR (2) Front of "B" Pillar Mounted, One Each Side : INTERIOR SHEET METAL Upper Door (Above Window Ledge) Painted Exterior Color : STEP (4) Two Steps Per Door		
16564	HEATER SHUT-OFF VALVES (1) Ball Check Valve Type, Supply Line	5/0	5
16HBA	GAUGE CLUSTER English With English Electronic Speedometer	0/0	0
	Includes : GAUGE CLUSTER (6) Engine Oil Pressure (Electronic), Water Temperature (Electronic), Fuel (Electronic), Tachometer (Electronic), Voltmeter, Washer Fluid Level : ODOMETER DISPLAY, Miles, Trip Miles, Engine Hours, Trip Hours, Fault Code Readout : WARNING SYSTEM Low Fuel, Low Oil Pressure, High Engine Coolant Temp, and Low Battery Voltage (Visual and Audible)		
16HKT	IP CLUSTER DISPLAY On Board Diagnostics Display of Fault Codes in Gauge Cluster	0/0	0
16HLJ	GAUGE, DEF FLUID LEVEL	0/0	0
16JNT	SEAT, DRIVER {National 2000} Air Suspension, High Back With Integral Headrest, Vinyl, Isolator, 1 Chamber Lumbar, With 2 Position Front Cushion Adjust, -3 to +14 Degree Angle Back Adjust	0/0	0
	Includes : SEAT BELT 3-Point, Lap and Shoulder Belt Type		
16LUM	SEAT, PASSENGER {National} Non Suspension, High Back With Integral Headrest, Vinyl, With Fixed Back, With Under Seat Storage	29/12	41
16SEE	GRAB HANDLE Chrome; Towel Bar Type With Anti-Slip Rubber Inserts; for Cab Entry Mounted Left Side Only at "B" Pillar	3/0	3
16SND	MIRRORS (2) {Lang Mekra} Rectangular, Power Both Sides, Thermostatically Controlled Heated Heads, Black Heads, Brackets and Arms, Breakaway Type, 7.55" x 14.1" Integral Convex Both Sides, 102" Inside Spacing	0/-3	-3
16VCC	SEAT BELT All Orange; 1 to 3	0/0	0
16WCT	AIR CONDITIONER {Blend-Air} With Integral Heater & Defroster	48/6	54
	Includes : HEATER HOSES Premium : HOSE CLAMPS, HEATER HOSE Mubea Constant Tension Clamps : REFRIGERANT Hydrofluorocarbon HFC-134A		
16WHJ	HOSE CLAMPS, HEATER HOSE {Breeze} Belleville Washer Type	0/0	0
16WJS	INSTRUMENT PANEL Center Section, Flat Panel	0/0	0
16WKY	HVAC FRESH AIR FILTER	0/0	0



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
16WLS	FRESH AIR FILTER Attached to Air Intake Cover on Cowl Tray in Front of Windshield Under Hood	1/0	1
16WRZ	CAB INTERIOR TRIM Premium  <u>Includes</u> : "A" PILLAR COVER Molded Plastic : CAB INTERIOR TRIM PANELS Cloth Covered Molded Plastic, Full Height; All Exposed Interior Sheet Metal is Covered Except for the Following: with a Two-Man Passenger Seat or with a Full Bench Seat the Back Panel is Completely Void of Covering : CAB SOUND INSULATION Includes Dash and Engine Cover Insulators : CAB, INTERIOR TRIM, CLOSEOUT Lower Dash Closeout Panel; Molded Plastic; Under Instrument Panel Driver Side : CONSOLE, OVERHEAD Molded Plastic; With Dual Storage Pockets with Retainer Nets, CB Radio Pocket, Speakers, and Reading Lights : COURTESY LIGHT (2) Mounted In Front Map Pocket Left and Right Side : DOOR TRIM PANELS with Cloth Insert on Bolster Driver and Passenger Doors : FLOOR COVERING Rubber, Black : GAUGE, TEMPERATURE, AMBIENT Includes Wiring and Sensor With Display Unit Mounted in Cluster : HEADLINER Soft Padded Cloth : INSTRUMENT PANEL TRIM Molded Plastic with Black Center Section : STORAGE POCKET, DOOR (2) Molded Plastic (Carpet Texture), Full-Length; Driver and Passenger Doors : SUN VISOR (3) Padded Vinyl: 2 Moveable (Front-to-Side) Primary Visors, Driver Side with Vanity Mirror and Toll Ticket Strap, plus 1 Auxiliary Visor (Front Only), Driver Side	0/0	0
16WSK	CAB REAR SUSPENSION Air Bag Type	0/0	0
16XWD	SUNSHADE, EXTERIOR Aerodynamic, Painted Roof Color; Includes Integral Clearance/Marker Lights	14/3	17
27DMY	WHEELS, FRONT DISC; 22.5x9.00 Rims, Non-Polished Aluminum, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with Steel Hubs	-24/0	-24
	<u>Notes</u> : Aluminum Wheels not Painted or Coated : Compatible Tire Sizes: 12R22.5, 295/75R22.5, 295/80R22.5, 315/80R22.5		
28DRN	WHEELS, REAR {Accuride} DUAL DISC; 22.5x8.25 Rims, Painted Steel, 5-Hand Hole, 10-Stud, 285.75mm BC, Hub-Piloted, Flanged Nut, with .472" Thick Increased Capacity Disc and Steel Hubs  <u>Includes</u> : PAINT IDENTITY, REAR WHEELS White  <u>Notes</u> : Compatible Tire Sizes: 11R22.5, 12R22.5, 255/70R22.5, 255/80R22.5, 265/75R22.5, 275/70R22.5, 275/80R22.5, 295/75R22.5, 295/80R22.5 : The following features should be considered when calculating Rear GAWR: Rear Axles; Rear Suspension; Brake System; Brakes, Rear Air Cam; Brake Shoes, Rear; Special Rating, GAWR; Wheels; Tires.	0/65	65
29597	WHEEL SEALS, REAR {Stemco Voyager} Oil Lubricated Wheel Bearings	0/0	0
29598	WHEEL SEALS, FRONT {Stemco Voyager} Oil Lubricated Wheel Bearings ILO Standard Oil Seals	0/0	0



<u>Code</u>	<u>Description</u>	<u>F/R Wt</u> (lbs)	<u>Tot Wt</u> (lbs)
29PAS	PAINT IDENTITY, REAR WHEELS Disc Rear Wheels; With Vendor Applied White Powder Coat Paint	0/0	0
29WLK	WHEEL BEARING, FRONT, LUBE {EmGard FE-75W-90} Synthetic Oil	0/0	0
7382135423	(8) TIRE, REAR 11R22.5 HDR2 (CONTINENTAL) 491 rev/mile, load range H, 16 ply	0/120	120
7792545416	(2) TIRE, FRONT 315/80R22.5 HSU2 WT (CONTINENTAL) 481 rev/mile, load range L, 20 ply	64/0	64
<b>Services Section:</b>			
40118	WARRANTY Standard for Paystar 5000, and Workstar 7500/7600, Effective with Vehicles Built January 2, 2015 or Later, CTS-2003Z	0/0	0
40KMA	SERVICES, TOWING {Navistar} Service Call to 24-Month/Unlimited Mileage to the Nearest Navistar Dealer for Navistar Warrantable Failure as Contract Defined; Includes Engine Failure if Supplier Declines Tow Coverage & ESC Supplied thru Navistar; \$550 (USA) Maximum Benefit per Incident	0/0	0
40LVC	SRV CONTRACT, EXT VEH COVERAGE {Navistar} To 24-Month/100,000 Miles (160,000 km), Covers 100% Parts and Labor, Excludes Extended Warranty for Engine and Transmission, for Rear Axle Rating of 52,000 lbs or less	0/0	0
<b>Total Component Weight:</b>		<b>9408/7431</b>	<b>16839</b>
1	10/12 Yard Dump	0/0	0
<b>Total Body Allied:</b>		<b>0/0</b>	<b>0</b>

The weight calculations included in this proposal are an estimate of future vehicle weight. The actual weight as manufactured may be different from the estimated weight. Navistar, Inc. shall not be liable for any consequences resulting from any differences between the estimated weight of a vehicle and the actual weight.



(US DOLLAR)		Price
Description		
Net Sales Price:		\$143,420.00
Memo Item(s):		
Total Federal Excise Tax	\$14,875.37	
Body/Allied Equipment:	\$19,125.00	
Freight	\$2,200.00	
Note: Memo item(s) shown here are included in the above Net Sales Price.		

Please feel free to contact me regarding these specifications should your interests or needs change. I am confident you will be pleased with the quality and service of an International vehicle.

Approved by Seller:

Accepted by Purchaser:

\_\_\_\_\_  
Official Title and Date

\_\_\_\_\_  
Firm or Business Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature and Date

Southwest International Trucks, Inc.  
3722 Irving Blvd.  
Dallas TX 75247 -  
(214)689-1400

This proposal is not binding upon the seller without  
Seller's Authorized Signature

\_\_\_\_\_  
Official Title and Date

The TOPS FET calculation is an estimate for reference purposes only. The seller or retailer is responsible for calculating and reporting/paying appropriate FET to the IRS.



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 8.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Financially Sound, City Government  
Healthy, Safe & Vibrant Community  
Professional and Committed City Workforce

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

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#### **Agenda Caption:**

Consider a resolution authorizing the purchase of a Case CX130 excavator and Husqvarna FS520 concrete saw from ASCO Equipment through an interlocal agreement with Houston-Galveston Area Council (HGAC) in an amount not to exceed one hundred thirty-nine thousand and thirty-two dollars (\$139,032).

#### **Background:**

At the May 17, 2016 work session Council received a presentation regarding the FY 2016 equipment replacement plan. The plan included the purchase of a Case CX130 excavator and Husqvarna concrete saw to be utilized by the Water and Waste Water Division.

#### **Operational Considerations:**

Approval of this purchase will improve operations of the Water and Waste Water Division, and further comply with the Texas Clean Fleet Act.

An interlocal agreement allows staff to utilize other agencies' formal bid contracts. Each entity's formal bid process meets the requirements set forth in the statutes, including advertising, M/WBE participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirement. All legal requirements are verified by the Purchasing Agent prior to recommendation or use of a contract. Utilization of an interlocal agreement saves time associated with issuing bids or in obtaining quotes. Savings is achieved through aggregate volumes either through joint bidding opportunities or by addressing the cooperative language within the specifications to the vendors. The City of Lancaster maintains an interlocal agreement with HGAC.

#### **Legal Considerations:**

Texas law authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process. The use of cooperative agreements is in accordance with Section 791.001 of the Texas Government Code and 271.101 of the Texas Local Government Code.

#### **Public Information Considerations:**

This item is being considered at a meeting of the City Council noticed in accordance with the Texas Open meetings act.



**Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Financial Considerations:**

This purchase is funded through the Equipment Replacement Fund and expenditures will not exceed one hundred thirty-nine thousand and thirty-two dollars (\$139,032.00).

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**Attachments**

Equipment Resolution  
Excavator Quote  
Concrete Saw Quote

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**RESOLUTION NO.**

**CONSIDER A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS AUTHORIZING THE PURCHASE OF A CASE CX130 EXCAVATOR AND HUSQVARNA FS520 CONCRETE SAW FROM ASCO EQUIPMENT THROUGH AN INTERLOCAL AGREEMENT WITH HOUSTON-GALVESTON AREA COUNCIL (HGAC) IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THIRTY-NINE THOUSAND AND THIRTY-TWO DOLLARS (\$139,032).**

**WHEREAS**, the City of Lancaster, Texas desires to authorize the purchase of a Case CX130 excavator and Husqvarna FS520 concrete saw from ASCO Equipment through an interlocal agreement with Houston-Galveston Area Council (HGAC)

**WHEREAS**, the City of Lancaster maintains an executed interlocal agreement with HGAC. Local Government Code authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process.

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

**SECTION 1.** The City Council hereby authorizes, approves and accepts the purchase of a Case CX130 excavator and Husqvarna FS520 concrete saw from ASCO Equipment in an amount not to exceed one hundred thirty-nine thousand and thirty-two dollars (\$139,032).

**SECTION 2.** That the City Manager or her designee of the City of Lancaster, Texas is hereby authorized to issue appropriate purchase orders in conformity herewith.

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

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

**SECTION 5.** This Resolution shall become effective immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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Sorangel O. Arenas, City Secretary

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Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

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Robert E. Hager, City Attorney





**CONTRACT PRICING WORKSHEET**  
For Standard Equipment Purchases

Contract  
No.:

EM06-15

Date  
Prepared:

5/6/2016

**This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.**

Buying Agency:	City of Lancaster	Contractor:	Associated Supply Company
Contact Person:	Jermaine Sapp	Prepared By:	Sharon Reeves
Phone:	972-275-1461	Phone:	817-313-8129
Fax:		Fax:	817-283-7836
Email:	<a href="mailto:jsapp@lanaster-tx.com">jsapp@lanaster-tx.com</a>	Email:	<a href="mailto:sreeves@ascoeq.com">sreeves@ascoeq.com</a>

Product Code:	07A	Description:	Case CX130D
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**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** \$142,852.71

**B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable**

(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
9'10" Arm	\$596.50	CASE SiteWatch Telematics	Included
23.6" (600 mm) Steel Shoes	Included	3yr Advanced Tele Subscription	Included
Single Acting Auxiliary Hydraulics	\$4,581.46	12 Month/1800 Hour Warranty	Included
Control Pattern Selector Valve	Included		
Sun Visor	\$83.75		
Standard Working Lights	Included		
Free Swing	Included		
36" Extra Heavy Duty Bucket	\$2,967.43		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	\$8,229.14

**C. Unpublished Options - Itemize below - Attach additional sheet if necessary**

(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	
		Subtotal C:	\$0.00

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).

For this transaction the percentage is:

0%

**D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)**

Quantity Ordered:	1	X Subtotal of A + B + C:	\$151,081.85	=	Subtotal D:	\$151,081.85
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**E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

Description	Cost	Description	Cost
One time special discount	-\$20,000.00	Factory Freight	\$1,800.00
		Delivery to City	\$350.00
		Subtotal E:	-\$17,850.00

**Delivery Date:** 60-90 Days

**F. Total Purchase Price (D+E):**

\$133,231.85

**PRICE QUOTE GOOD FOR 90 DAYS**



# Associated Supply Company Sales Quote



Call Toll Free: 800-687-0008

Abilene Amarillo Beaumont Belton Brenham Bryan Clovis, NM Dallas/Euless Houston North Houston South  
Lubbock Manor Midland Odessa Perryton San Angelo San Antonio Sherman Terrell Tyler Wichita Falls

Account Name City Of Lancaster, TX

Prepared By Sharon Reeves

Created Date 7/7/2016

Cell (817) 313-8129

Email sreeves@ascoeq.com

Line Item Description	Equipment Tag	Quantity	Sales Price
FS 520	NIS00015	1.00	\$5,800.00

Husqvarna FS 520 Concrete Saw

Gas Honda up to 24 hp engines with electric start

Left and right cutting capability

Integrated tool box

Integrated fuel tank (2.2 gal) for extended use

Complete console with engine start/stop switch and throttle,  
transmission control lever, tachometer/timer

18" Diamond Vari-Cut Blade

Optional water tank (6.6 gal) for additional cost of \$175.00

Subtotal \$5,800.00

Grand Total \$5,800.00

This is not a finance offer. Financing is subject to customer credit approval and must be documented on official appropriate forms. Physical damage insurance is required on all financed equipment and IS NOT quoted here. **This quote DOES NOT include any applicable taxes, delivery fees, or other applicable fees unless otherwise noted above.** Net due on delivery or approved finance. A cancellation charge of 20% of total purchase price will be assessed and is hereby agreed to by the customer on all cancelled orders. All used equipment is sold AS IS WHERE IS. All used equipment quoted is subject to prior sale and is not guaranteed. Price, terms and delivery date are subject to approval by the management of the company. Quotation expires in 10 days unless otherwise noted.

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

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

Signature: \_\_\_\_\_

Approved, Associated Supply Co., Inc.

Printed/Title/Date: \_\_\_\_\_

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



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 9.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Financially Sound, City Government  
Healthy, Safe & Vibrant Community  
Professional and Committed City Workforce

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

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#### **Agenda Caption:**

Consider a resolution authorizing the purchase of two (2) Chevrolet Silverado 1500 regular cab trucks and three (3) Chevrolet Silverado 1500 crew cab trucks from Freedom Chevrolet through an Interlocal Agreement with the City of Dallas, Texas in an amount not to exceed one hundred thirty-five thousand three hundred eighty dollars (\$135,380).

#### **Background:**

At the May 17, 2016 work session Council received a presentation regarding the FY 2016 equipment replacement plan. The plan included the purchase of two (2) Chevrolet Silverado 1500 regular cab trucks for utilization in the Inspections and Code Compliance Division and two (2) Chevrolet Silverado 1500 crew cab trucks for utilization in the Streets Division and one (1) Chevrolet Silverado 1500 crew cab truck for utilization in the Parks Department .

#### **Operational Considerations:**

Approval of this purchase will improve efficiencies and operations in these divisions. This purchase will further our compliance with the Texas Clean Fleet Act.

An interlocal agreement allows staff to utilize other agencies' formal bid contracts. Each entity's formal bid process meets the requirements set forth in the statutes, including advertising, M/WBE participation, reference checks, verification of insurance and bonding, if required by specifications, and any other requirements. All legal requirements are verified by the Purchasing Agent prior to recommendation or use of a contract. Utilization of interlocal agreements save time associated with issuing bids or in obtaining quotes. Savings are achieved through aggregate volumes either through joint bidding opportunities or by addressing the cooperative language within the specifications to the vendors. The City of Lancaster maintains an agreement with the City of Dallas.

#### **Legal Considerations:**

Texas law authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process. The use of cooperative agreements is in accordance with Section 791.001 of the Texas Government Code and 271.101 of the Texas Local Government Code.

#### **Public Information Considerations:**

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



**Options/Alternatives:**

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

**Recommendation:**

Staff recommends approval of the resolution as presented.

**Financial Considerations:**

This purchase is funded through the Equipment Replacement Fund and expenditures will not exceed one hundred thirty-five thousand three hundred eighty dollars (\$135,380).

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**Attachments**

Resolution

Regular Cab Quote

Crew Cab Quote

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**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS AUTHORIZING THE PURCHASE OF TWO (2) CHEVROLET SILVERADO 1500 REGULAR CAB TRUCKS AND THREE (3) CHEVROLET SILVERADO 1500 CREW CAB TRUCKS FROM FREEDOM CHEVROLET THROUGH AN INTERLOCAL AGREEMENT WITH THE CITY OF DALLAS, TEXAS IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THIRTY-FIVE THOUSAND THREE HUNDRED EIGHTY DOLLARS (\$135,380).**

**WHEREAS**, the City of Lancaster, Texas desires to authorize the purchase of two (2) Chevrolet Silverado 1500 regular cab trucks and three (3) Chevrolet Silverado 1500 crew cab trucks through an interlocal agreement with the City of Dallas, Texas; and

**WHEREAS**, the City of Lancaster maintains an executed Interlocal Agreement with the City of Dallas, Texas. Local Government code authorizes cooperative agreements to help save time in developing specifications and duplication during the bid process.

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

**SECTION 1.** The City Council hereby authorizes, approves and accepts the purchase of two (2) Chevrolet Silverado 1500 regular cab trucks and three (3) Chevrolet Silverado 1500 crew cab trucks through an interlocal agreement with the City of Dallas, Texas from Freedom Chevrolet in an amount not to exceed one hundred thirty-five thousand three hundred eighty dollars (\$135,380), as set forth in Exhibit "A"; and

**SECTION 2.** The City Manager or her designee of the City of Lancaster, Texas is hereby authorized to issue appropriate purchase orders in conformity herewith.

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

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

**SECTION 5.** This Resolution shall become effective immediately from and after its passage, and it is duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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



**Prepared By:**

Tim Middlebrooks

Freedom Auto Group

23,695 Delivered To Lancaster

Email:

tmiddlebrooks@freedomfleetsales.com

## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work **STANDARD EQUIPMENT**

---

### STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck

---

#### ENTERTAINMENT

- Audio system, 4.2" diagonal color display, AM/FM stereo with USB port and auxiliary jack with USB ports and auxiliary jack (Not available with (AZ3) 40/20/40 split-bench seat.)
- SiriusXM Satellite Radio, delete
- Audio system feature, 4-speaker system on Regular Cab models

#### EXTERIOR

- Wheels, 17" x 8" (43.2 cm x 20.3 cm) painted steel
- Tires, P255/70R17 all-season, blackwall
- Wheel, full-size spare, 17" x 7" (43.2 cm x 17.8 cm) aluminum (Included and only available with model K15543 and (L83) 5.3L EcoTec3 V8 engine or (LV3) 4.3L EcoTec3 V6 engine or model \*15703 and (LV3) 4.3L EcoTec3 V6 engine.)
- Tire, spare P255/70R17 all-season, blackwall (Included and only available with (RBZ) P255/70R17 all-season, blackwall tires.)
- Tire carrier lock, keyed cylinder lock that utilizes same key as ignition and door
- Bumpers, front, Black
- Bumpers, rear, Black
- Lamps, cargo area, cab mounted with switch on center switch bank
- CornerStep, rear bumper
- Grille surround, chrome
- Headlamps, high intensity discharge (HID) projector-beam with LED signature DRL
- Mirrors, outside manual, Black
- Glass, solar absorbing, tinted
- Door handles, Black
- Tailgate and bed rail protection cap, top
- Tailgate, locking utilizes same key as ignition and door (Not available with (AQQ) Remote Keyless Entry.) (Not available with (AQQ) Remote Keyless Entry. Not available with (ZW9) pickup box delete.)

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

GM AutoBook, Data Version: 437.0, Data updated 5/3/2016

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Customer File:



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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work ***STANDARD EQUIPMENT***

---

### **STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

#### *INTERIOR*

- Seats, front 40/20/40 split-bench, 3-passenger, driver and front passenger manual recline with outboard head restraints and center fold-down armrest with storage. Vinyl has fixed lumbar and cloth has manual adjustable driver lumbar.
- Floor covering, Graphite-colored rubberized-vinyl, no floor mats included
- Steering column, Tilt-Wheel, manual with theft-deterrent locking feature
- Instrumentation, 6-gauge cluster featuring speedometer, fuel level, engine temperature, tachometer, voltage and oil pressure
- Driver Information Center, 3.5-inch diagonal monochromatic display provides warning messages and basic vehicle information
- Door locks, power
- Cruise control, electronic with set and resume speed, steering wheel-mounted
- Air conditioning, single-zone
- Assist handle, front passenger on A-pillar

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work ***STANDARD EQUIPMENT***

---

### **STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

#### *MECHANICAL*

- Engine, 4.3L FlexFuel EcoTec3 V6 with Active Fuel Management, Direct Injection and Variable Valve Timing includes aluminum block construction with (FHS) E85 FlexFuel capability, capable of running on unleaded or up to 85% ethanol (285 hp [212 kW] @ 5300 rpm, 305 lb-ft of torque [413 Nm] @ 3900 rpm) (Includes (FHS) E85 FlexFuel capability. Not available on C\*15743 models.)
- Transmission, 6-speed automatic, electronically controlled with overdrive and tow/haul mode. Includes Cruise Grade Braking and Powertrain Grade Braking
- Rear axle, 3.23 ratio (Standard and only available on (LV3) 4.3L EcoTec3 V6 engine with 2WD models.)
- Pickup box
- GVWR, 6500 lbs. (2948 kg) (Requires Regular Cab models.)
- Rear wheel drive
- Cooling, external engine oil cooler
- Battery, heavy-duty 730 cold-cranking amps/70 Amp-hr, maintenance-free with rundown protection and retained accessory power
- Alternator, 150 amps
- Frame, fully-boxed, hydroformed front section
- Suspension Package, Handling/Trailering
- Steering, Electric Power Steering (EPS) assist, rack-and-pinion
- Brakes, 4-wheel disc with DURALIFE rotors, 4-wheel antilock
- Exhaust, aluminized stainless-steel muffler and tailpipe

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work ***STANDARD EQUIPMENT***

---

### **STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

#### *SAFETY*

- StabiliTrak, stability control system with Proactive Roll Avoidance and traction control includes electronic trailer sway control and hill start assist
- Daytime Running Lamps with automatic exterior lamp control
- Air bags, dual-stage frontal and side-impact, driver and front passenger and head-curtain and seat-mounted side-impact, front and rear outboard seating positions with Passenger Sensing System (Always use safety belts and child restraints. Children are safer when properly secured in a rear seat in the appropriate child restraint. See the Owner's Manual for more information.)
- OnStar, delete also deletes driver information center compass
- Tire Pressure Monitoring System (does not apply to spare tire)

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work

### ***SELECTED MODEL & OPTIONS***

---

#### **SELECTED MODEL - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

<b><u>Code</u></b>	<b><u>Description</u></b>
CC15703	2016 Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work Truck

---

#### **SELECTED VEHICLE COLORS - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

<b><u>Code</u></b>	<b><u>Description</u></b>
-	Interior: No color has been selected.
-	Exterior 1: No color has been selected.
-	Exterior 2: No color has been selected.

---

#### **SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

##### **CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
EMISSIONS	
FE9	EMISSIONS, FEDERAL REQUIREMENTS
ENGINE	
L83	ENGINE, 5.3L ECOTEC3 V8 WITH ACTIVE FUEL MANAGEMENT, DIRECT INJECTION AND VARIABLE VALVE TIMING includes aluminum block construction (355 hp [265 kW] @ 5600 rpm, 383 lb-ft of torque [518 Nm] @ 4100 rpm; more than 300 lb-ft of torque from 2000 to 5600 rpm)
TRANSMISSION	
MYC	TRANSMISSION, 6-SPEED AUTOMATIC, ELECTRONICALLY CONTROLLED with overdrive and tow/haul mode. Includes Cruise Grade Braking and Powertrain Grade Braking (STD)
GVWR	
C5S	GVWR, 6600 LBS. (2994 KG) (Requires Regular Cab models.)
AXLE	

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work

### ***SELECTED MODEL & OPTIONS***

---

#### **SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

##### **CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
AXLE	
GU4	REAR AXLE, 3.08 RATIO (Requires (L83) 5.3L EcoTec3 V8 engine. Not available with (RD2) 20" chrome wheels or (RD4) 20" polished-aluminum wheels.)
PREFERRED EQUIPMENT GROUP	
1WT	WORK TRUCK PREFERRED EQUIPMENT GROUP includes standard equipment
WHEELS	
RD6	WHEELS, 17" X 8" (43.2 CM X 20.3 CM) PAINTED STEEL (STD)
TIRES	
RBZ	TIRES, P255/70R17 ALL-SEASON, BLACKWALL (STD)
PAINT SCHEME	
ZY1	PAINT, SOLID
PAINT	
G1C	SLATE GREY METALLIC (Not available on 1CX or 2LT models. Not available with SEO (9G3) Suspension Package, off-road, for base decor vehicles.)
SEAT TYPE	
AE7	SEATS, FRONT 40/20/40 SPLIT-BENCH, 3-PASSENGER, DRIVER AND FRONT PASSENGER MANUAL RECLINE with outboard head restraints and center fold-down armrest with storage. Vinyl has fixed lumbar and cloth has manual adjustable driver lumbar. (STD)
SEAT TRIM	
H2Q	DARK ASH WITH JET BLACK INTERIOR ACCENTS, VINYL SEAT TRIM
RADIO	
IO3	AUDIO SYSTEM, 4.2" DIAGONAL COLOR DISPLAY, AM/FM STEREO with USB ports and auxiliary jack (Not available with (AZ3) 40/20/40 split-bench seat.) (STD)
ADDITIONAL EQUIPMENT	

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work

### ***SELECTED MODEL & OPTIONS***

---

#### **SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck**

---

##### **CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
--------------------	---------------------------

##### **ADDITIONAL EQUIPMENT**

PCR	WT FLEET CONVENIENCE PACKAGE All cabs include (DL8) outside heated power-adjustable mirrors, (A91) remote locking tailgate and (AQQ) Remote Keyless Entry. Regular Cab also includes (A31) power windows ((DL8) outside heated power-adjustable mirrors can be upgraded to (DPN) power camper mirrors. If (ZW9) pickup box delete is ordered (A91) remote locking tailgate will not be included.)
Z82	TRAILERING PACKAGE includes trailer hitch, 7-pin and 4-pin connectors
KNP	COOLING, AUXILIARY EXTERNAL TRANSMISSION OIL COOLER (Included and only available with (L83) 5.3L EcoTec3 V8 engine.)
—	BATTERY, HEAVY-DUTY 720 COLD-CRANKING AMPS/80 AMP-HR, MAINTENANCE-FREE with rundown protection and retained accessory power (Included and only available with V8 engines.)
RUF	WHEEL, FULL-SIZE SPARE, 17" (43.2 CM) STEEL
DL8	MIRRORS, OUTSIDE HEATED POWER-ADJUSTABLE (includes driver's side spotter mirror) (Black. Included and only available with (PCR) WT Fleet Convenience Package.)
A91	REMOTE LOCKING TAILGATE (Included and only available with (AQQ) Remote Keyless Entry. Not available with (ZW9) pickup box delete.)
A31	WINDOWS, POWER FRONT AND REAR with driver express up and down and express down on all other windows (On Regular Cab, Included and only available with (PCR) WT Fleet Convenience Package.)
AQQ	REMOTE KEYLESS ENTRY, WITH 2 TRANSMITTERS (Included and only available with (PCR) WT Fleet Convenience Package. Includes (A91) remote locking tailgate.)

##### **DEALER INSTALLED / PROCESSING OPTIONS**

<u>.HR</u>	Headache Rack
<u>.TB</u>	Tool Box

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m

2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Reg Cab 119.0" Work

***SELECTED MODEL & OPTIONS***

---

SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15703 2WD Reg Cab 119.0" Work Truck

---

**CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
--------------------	---------------------------

**OPTIONS TOTAL**

An underlined code indicates that the options have been applied by the dealer. All sales prices established solely by dealer.

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May 10, 2016 9:16:15 AM

Page 8



## Exhibit "A"

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor ***STANDARD EQUIPMENT***

---

### **STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

#### *ENTERTAINMENT*

- Audio system, 4.2" diagonal color display, AM/FM stereo with USB port and auxiliary jack with USB ports and auxiliary jack (Not available with (AZ3) 40/20/40 split-bench seat.)
- SiriusXM Satellite Radio, delete
- 6-speaker audio system (Standard on Crew Cab and Double Cab models.)

#### *EXTERIOR*

- Wheels, 17" x 8" (43.2 cm x 20.3 cm) painted steel
- Tires, P255/70R17 all-season, blackwall
- Wheel, full-size spare, 17" (43.2 cm) steel
- Tire, spare P255/70R17 all-season, blackwall (Included and only available with (RBZ) P255/70R17 all-season, blackwall tires.)
- Tire carrier lock, keyed cylinder lock that utilizes same key as ignition and door
- Bumpers, front, Black
- Bumpers, rear, Black
- Lamps, cargo area, cab mounted with switch on center switch bank
- CornerStep, rear bumper
- Grille surround, chrome
- Headlamps, high intensity discharge (HID) projector-beam with LED signature DRL
- Mirrors, outside manual, Black
- Glass, solar absorbing, tinted
- Door handles, Black
- Tailgate and bed rail protection cap, top
- Tailgate, locking utilizes same key as ignition and door (Not available with (AQQ) Remote Keyless Entry.) (Not available with (AQQ) Remote Keyless Entry. Not available with (ZW9) pickup box delete.)

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor **STANDARD EQUIPMENT**

---

### STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck

---

#### *INTERIOR*

- Seats, front 40/20/40 split-bench, 3-passenger, driver and front passenger manual recline with outboard head restraints and center fold-down armrest with storage. Vinyl has fixed lumbar and cloth has manual adjustable driver lumbar.
- Seat, rear 60/40 folding bench (folds up), 3-passenger (includes child seat top tether anchor) (Requires Crew Cab model.)
- Floor covering, Graphite-colored rubberized-vinyl, no floor mats included
- Steering column, Tilt-Wheel, manual with theft-deterrent locking feature
- Instrumentation, 6-gauge cluster featuring speedometer, fuel level, engine temperature, tachometer, voltage and oil pressure
- Driver Information Center, 3.5-inch diagonal monochromatic display provides warning messages and basic vehicle information
- Windows, power front and rear with driver express up and down and express down on all other windows (Standard on Crew Cab and Double Cab.)
- Door locks, power
- Cruise control, electronic with set and resume speed, steering wheel-mounted
- Air conditioning, single-zone
- Assist handle, front passenger on A-pillar

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor ***STANDARD EQUIPMENT***

---

### **STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

#### *MECHANICAL*

- Engine, 4.3L FlexFuel EcoTec3 V6 with Active Fuel Management, Direct Injection and Variable Valve Timing includes aluminum block construction with (FHS) E85 FlexFuel capability, capable of running on unleaded or up to 85% ethanol (285 hp [212 kW] @ 5300 rpm, 305 lb-ft of torque [413 Nm] @ 3900 rpm) (Includes (FHS) E85 FlexFuel capability. Not available on C\*15743 models.)
- Transmission, 6-speed automatic, electronically controlled with overdrive and tow/haul mode. Includes Cruise Grade Braking and Powertrain Grade Braking
- Rear axle, 3.23 ratio (Standard and only available on (LV3) 4.3L EcoTec3 V6 engine with 2WD models.)
- Pickup box
- GVWR, 6900 lbs. (3130 kg) (Crew Cab and Double Cab requires 2WD models and (LV3) 4.3L EcoTec3 V6 engine.)
- Rear wheel drive
- Cooling, external engine oil cooler
- Battery, heavy-duty 730 cold-cranking amps/70 Amp-hr, maintenance-free with rundown protection and retained accessory power
- Alternator, 150 amps
- Frame, fully-boxed, hydroformed front section
- Suspension Package, Handling/Trailering
- Steering, Electric Power Steering (EPS) assist, rack-and-pinion
- Brakes, 4-wheel disc with DURALIFE rotors, 4-wheel antilock
- Exhaust, aluminized stainless-steel muffler and tailpipe

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor ***STANDARD EQUIPMENT***

---

### **STANDARD EQUIPMENT - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

#### *SAFETY*

- StabiliTrak, stability control system with Proactive Roll Avoidance and traction control includes electronic trailer sway control and hill start assist
- Daytime Running Lamps with automatic exterior lamp control
- Air bags, dual-stage frontal and side-impact, driver and front passenger and head-curtain and seat-mounted side-impact, front and rear outboard seating positions with Passenger Sensing System (Always use safety belts and child restraints. Children are safer when properly secured in a rear seat in the appropriate child restraint. See the Owner's Manual for more information.)
- OnStar, delete also deletes driver information center compass
- Tire Pressure Monitoring System (does not apply to spare tire)

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor

### ***SELECTED MODEL & OPTIONS***

---

#### **SELECTED MODEL - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

<b><u>Code</u></b>	<b><u>Description</u></b>
CC15543	2016 Chevrolet Silverado 1500 2WD Crew Cab 143.5" Work Truck

---

#### **SELECTED VEHICLE COLORS - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

<b><u>Code</u></b>	<b><u>Description</u></b>
-	Interior: No color has been selected.
-	Exterior 1: No color has been selected.
-	Exterior 2: No color has been selected.

---

#### **SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

##### **CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
EMISSIONS	
FE9	EMISSIONS, FEDERAL REQUIREMENTS
ENGINE	
L83	ENGINE, 5.3L ECOTEC3 V8 WITH ACTIVE FUEL MANAGEMENT, DIRECT INJECTION AND VARIABLE VALVE TIMING includes aluminum block construction (355 hp [265 kW] @ 5600 rpm, 383 lb-ft of torque [518 Nm] @ 4100 rpm; more than 300 lb-ft of torque from 2000 to 5600 rpm)
TRANSMISSION	
MYC	TRANSMISSION, 6-SPEED AUTOMATIC, ELECTRONICALLY CONTROLLED with overdrive and tow/haul mode. Includes Cruise Grade Braking and Powertrain Grade Braking (STD)
GVWR	
C5W	GVWR, 7000 LBS. (3175 KG) (Crew Cab and Double Cab Requires 2WD models and (L83) 5.3L EcoTec3 V8 engine or (L86) 6.2L EcoTec3 V8 engine. Not available with (NHT) Max Trailering Package.)

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor

### ***SELECTED MODEL & OPTIONS***

---

#### **SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

##### **CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
AXLE	
GU4	REAR AXLE, 3.08 RATIO (Requires (L83) 5.3L EcoTec3 V8 engine. Not available with (RD2) 20" chrome wheels or (RD4) 20" polished-aluminum wheels.)
PREFERRED EQUIPMENT GROUP	
1WT	WORK TRUCK PREFERRED EQUIPMENT GROUP includes standard equipment
TIRES	
RBZ	TIRES, P255/70R17 ALL-SEASON, BLACKWALL (STD)
PAINT SCHEME	
ZY1	PAINT, SOLID
PAINT	
GAZ	SUMMIT WHITE
SEAT TYPE	
AE7	SEATS, FRONT 40/20/40 SPLIT-BENCH, 3-PASSENGER, DRIVER AND FRONT PASSENGER MANUAL RECLINE with outboard head restraints and center fold-down armrest with storage. Vinyl has fixed lumbar and cloth has manual adjustable driver lumbar. (STD)
SEAT TRIM	
H2Q	DARK ASH WITH JET BLACK INTERIOR ACCENTS, VINYL SEAT TRIM
RADIO	
IO3	AUDIO SYSTEM, 4.2" DIAGONAL COLOR DISPLAY, AM/FM STEREO with USB ports and auxiliary jack (Not available with (AZ3) 40/20/40 split-bench seat.) (STD)
ADDITIONAL EQUIPMENT	
PCR	WT FLEET CONVENIENCE PACKAGE All cabs include (DL8) outside heated power-adjustable mirrors, (A91) remote locking tailgate and (AQQ) Remote Keyless Entry. ((DL8) outside heated power-adjustable mirrors can be upgraded to (DPN) power camper mirrors. If (ZW9) pickup box delete is ordered (A91) remote locking tailgate will not be included.)

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

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## 2016 Fleet/Non-Retail Chevrolet Silverado 1500 2WD Crew Cab 143.5" Wor

### ***SELECTED MODEL & OPTIONS***

---

#### **SELECTED OPTIONS - 2016 Fleet/Non-Retail CC15543 2WD Crew Cab 143.5" Work Truck**

---

##### **CATEGORY**

<b><u>Code</u></b>	<b><u>Description</u></b>
--------------------	---------------------------

##### **ADDITIONAL EQUIPMENT**

Z82	TRAILERING PACKAGE includes trailer hitch, 7-pin and 4-pin connectors
KNP	COOLING, AUXILIARY EXTERNAL TRANSMISSION OIL COOLER (Included and only available with (L83) 5.3L EcoTec3 V8 engine.)
—	BATTERY, HEAVY-DUTY 720 COLD-CRANKING AMPS/80 AMP-HR, MAINTENANCE-FREE with rundown protection and retained accessory power (Included and only available with V8 engines.)
DL8	MIRRORS, OUTSIDE HEATED POWER-ADJUSTABLE (includes driver's side spotter mirror) (Black. Included and only available with (PCR) WT Fleet Convenience Package.)
A91	REMOTE LOCKING TAILGATE (Included and only available with (AQQ) Remote Keyless Entry. Not available with (ZW9) pickup box delete.)
AQQ	REMOTE KEYLESS ENTRY, WITH 2 TRANSMITTERS (Included and only available with (PCR) WT Fleet Convenience Package. Includes (A91) remote locking tailgate.)

##### **DEALER INSTALLED / PROCESSING OPTIONS**

<u>HR</u>	Headache Rack
<u>TB</u>	Toolbox

##### **OPTIONS TOTAL**

An underlined code indicates that the options have been applied by the dealer. All sales prices established solely by dealer.

Report content is based on current data version referenced. Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

GM AutoBook, Data Version: 437.0, Data updated 5/3/2016  
© Copyright 1986-2012 Chrome Data Solutions, LP. All rights reserved.

Customer File:



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

Item 10.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Healthy, Safe & Vibrant Community  
Sound Infrastructure  
Quality Development

**Submitted by:** Rona Stringfellow, Assistant City Manager

---

### **Agenda Caption:**

Consider a Resolution approving the terms and conditions of a License Agreement by and between the City of Lancaster and Quik-Trip Corporation for the installation and maintenance of a monument entry feature and landscaping improvements within the Pleasant Run Road right-of-way for the Quik-Trip development.

### **Background:**

Quik-Trip Corporation is developing the property at the Northeast corner of Pleasant Run Road and Interstate Highway 35E. To further enhance this gateway entrance to the City they will construct a monument entry feature and onsite landscaping within the City right-of-way. The onsite landscaping within the rights-of-way will be maintained by Quik-Trip. The monuments and associated improvements will be installed by the developers at their cost and maintained by the City. This license agreement grants permission, to the developer to have a monument sign and landscaping in public rights-of-way. City staff has reviewed the construction plans and have no concerns with this proposal.

### **Operational Considerations:**

The purpose of the request is to seek approval of a license agreement in fulfillment of the streetscape masterplan, providing a 15' monument sign in the median.

The proposed improvements (monument), will be installed by Quik-Trip and maintained by the City.

### **Legal Considerations:**

The license agreement and resolution have been reviewed and approved as to form by the City Attorney. This agreement is required before any signage can be located in the City rights-of-way.

### **Public Information Considerations:**

This resolution is being considered at a regular meeting of the City Council, in accordance with the Texas Open Meetings Act.

### **Options/Alternatives:**

1. Approve the resolution as presented.
2. Deny the resolution.



**Recommendation:**

Staff recommends approval of the resolution, as presented.

**Attachments**

Resolution

License Agreement

Exhibit A-1

---



**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, APPROVING THE TERMS AND CONDITIONS OF A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER AND QUIK-TRIP CORPORATION, FOR THE INSTALLATION OF A MONUMENT ENTRY FEATURE AND LANDSCAPING IMPROVEMENTS WITHIN THE PLEASANT RUN ROAD RIGHTS-OF-WAY FOR THE QUIK-TRIP DEVELOPMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LICENSE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, City of Lancaster ("City") and Quik-Trip Corporation ("QT"), an Oklahoma Corporation, desire to enter into a rights-of-way license agreement for the installation of a monument entry feature and landscaping improvements; and

**WHEREAS**, the City and QT have negotiated such license agreement; and

**WHEREAS**, after discussion and consideration, the City Council has determined that it would be in the best interest of the City and its citizens to enter into such agreements;

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

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

**SECTION 2.** That the City Manager is hereby authorized to execute the License Agreement by and between the City of Lancaster and Quik-Trip Corporation.

**SECTION 3.** That this Resolution shall take effect immediately from and after its adoption and it is so resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

---

Sorangel O. Arenas, City Secretary

---

Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

---

Robert E. Hager, City Attorney



STATE OF TEXAS	§	
	§	LICENSE AGREEMENT
COUNTY OF DALLAS	§	

This License Agreement ("AGREEMENT") is made by and between the City of Lancaster, Texas (hereinafter referred to as "CITY") and Quik-Trip Corporation, an Oklahoma Corporation (hereinafter referred to as "LICENSEE") acting by and through their authorized representatives.

**WITNESSETH:**

**WHEREAS,** CITY owns the right-of-way described in Exhibit "A-1" attached hereto and incorporated herein for all purposes; and

**WHEREAS,** LICENSEE has requested the CITY allow the use and occupancy of the right-of-way for the purpose of LICENSEE installing and maintaining landscaping and signage improvements (hereinafter referred to as "IMPROVEMENTS");

**NOW, THEREFORE,** in consideration of the covenants contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purpose:** CITY hereby grants LICENSEE a license, pursuant to the terms of this AGREEMENT, for the purpose of installing landscaping and signage IMPROVEMENTS within that certain CITY right-of-way being more particularly described in Exhibit "A-1."
2. **Terms:** The term of this AGREEMENT shall be perpetual, subject, however, to termination by the CITY as provided herein.
3. **Non-exclusive:** This AGREEMENT is nonexclusive and is subject to any existing utility, drainage or communications facility located in, on, under or upon the right-of-way or property owned by CITY, any utility or communication company, public or private, to all vested rights presently owned any utility or communication company, public or private for the use of the CITY right-of-way for facilities presently located within the boundaries of the right-of-way and to any existing lease, license, or other interest in the right-of-way granted by CITY to any individual, corporation or other entity, public or private.
4. **Environmental Protection:** LICENSEE shall not use or permit the use of the property for any purpose that may be in violation of any laws pertaining to the health of the environment, including, without limitation, the comprehensive environmental



response, compensation and liability act of 1980 ("CERCLA"), the resource conservation and recovery act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. LICENSEE warrants that the permitted use of the property will not result in the disposal or other release of any hazardous substance or solid waste on or to the property and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the property. The terms "hazardous substance" and "release" shall have the meaning specified in CERCLA and the term "solid waste" and "disposal (or dispose)" shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, to the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader than that specified in the CERCLA or RCRA, such broader meaning shall apply. LICENSEE shall indemnify and hold CITY harmless against all costs, environmental clean up to the property and surrounding CITY property to the extent resulting from LICENSEE's use of the property under this AGREEMENT.

5. **Mechanic's liens not permitted:** LICENSEE shall fully pay all labor materials used in, on or about the property and will not permit or suffer any mechanic's or materialman's liens of any nature be affixed against the property by reason of any work done or materials furnished to the property at LICENSEE's instance or request.
6. **Future City use:** This AGREEMENT is made expressly subject and subordinate to the right of CITY to use the property for any public purpose whatsoever. In the event that CITY shall, at any time subsequent to the date of this AGREEMENT, at its sole discretion, determine that the relocation or removal of the IMPROVEMENTS shall be necessary or convenient for CITY's use of the property, LICENSEE shall at its sole cost and expense make or cause to be made such modifications or relocate said IMPROVEMENTS so as not to interfere with the CITY's use of the property. A minimum of ninety (90) days written notice for the exercise of the above action shall be given by CITY and LICENSEE shall promptly commence to make the required changes and complete them as quickly as possible or reimburse CITY for the cost of making such required changes.
7. **Maintenance:** The CITY, or its assignee, agrees to maintain the IMPROVEMENTS for the duration of this AGREEMENT.
8. **Duration of License:** This AGREEMENT shall terminate and be of no further force and effect in the event LICENSEE shall discontinue or abandon the use of the IMPROVEMENTS or in the event LICENSEE shall remove the IMPROVEMENTS from the property or upon termination by CITY whichever event first occurs.
9. **Compliance with laws:** LICENSEE agrees to abide by and be governed by all laws, ordinances and regulation of any and all government entities having jurisdiction over the LICENSEE.



10. **Indemnification:** LICENSEE shall defend, protect and keep CITY forever harmless and indemnified against and from any penalty, or any damage, or charge, imposed for any violation of any law, ordinance, rule or regulation arising out of the use of the property by the LICENSEE, whether occasioned by the neglect of LICENSEE, its employees, officers, agents, contractors or assigns or those holding under LICENSEE. LICENSEE shall at all times defend, protect and indemnify and it is the intention of the parties hereto that LICENSEE hold CITY harmless against and from any and all loss, cost, damage, or expense, including attorney's fees, arising out of or from any accident or other occurrence on or about the property causing personal injury, death or property damage to the extent resulting from use of property by LICENSEE, its agents, employees, customers and invitees, except when caused by the negligence or willful misconduct of CITY, its officers, employees or agents, and only then to the extent of the proportion of any fault determined against CITY for its willful misconduct. LICENSEE shall at all times defend, protect, indemnify and hold CITY harmless against and from any and all loss, cost, damage, or expense, including attorney's fees arising out of or from any and all claims or causes of action resulting from any failure of LICENSEE, its officers, employees, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof.
11. **Action upon termination:** At such time as this AGREEMENT may be terminated or canceled for any reason whatsoever, LICENSEE, upon request by CITY, shall either (i) remove all IMPROVEMENTS and appurtenances owned by it, situated in, under or attached to the CITY and shall restore such property to substantially the condition of the property prior to LICENSEE's encroachment at LICENSEE's sole expense; or (ii) abandon all IMPROVEMENTS and appurtenances in place with such IMPROVEMENTS becoming the property of the City.
12. **Assignment:** LICENSEE shall not assign or transfer its rights under this AGREEMENT to any other person or entity without the prior consent of CITY, which consent will not be unreasonably withheld, provided, however that LICENSEE has the right, without further action by or consent from the CITY to assign this AGREEMENT and the duties, obligations, responsibilities and liabilities imposed herein to a to-be-formed entity, to be developed by LICENSEE or for purposes of conducting a "sale-leaseback" transaction with an investor upon providing prior written notice to the CITY of such assignment, and further provided that upon such assignment, LICENSEE is released from all duties, obligations, responsibilities and liabilities arising under or pursuant to the terms and provisions of this AGREEMENT.
13. **Termination:** This AGREEMENT may be terminated in any of the following ways:
- a. Written agreement of both parties;
  - b. By CITY giving LICENSEE ninety (90) days prior written notice;
  - c. By CITY upon failure of LICENSEE to cure any breach of agreement within thirty (30) days of written notification by CITY of such breach.



14. **Notice:** When notice is PERMITTED or required by this Agreement, it shall be in writing and shall be deemed delivered when delivered in person or when delivered or attempted to be delivered to the parties at the address set forth below. Either party may designate from time to time another and different address for receipt of notice by giving notice of such change or address.

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

To LICENSEE: Quik-Trip Corporation  
Attn: Director of Real Estate  
1120 North Industrial Boulevard  
Euless, Texas 76039

15. **Attorney's fees:** Any signatory to this AGREEMENT, who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Agreement shall be entitled to recover court cost and reasonable attorney's fees from the non-prevailing party.
16. **Governing law:** This AGREEMENT is governed by the laws of the State of Texas; and venue for any action shall be in Dallas County, Texas.
17. **Binding effect:** This AGREEMENT shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.
18. **Entire Agreement:** This AGREEMENT embodies the entire agreement between the parties and supersedes all prior agreements, understandings, if any, relating to the property and the matters addressed herein and may be amended, or supplemented only by written instrument executed by the party against whom enforcement is sought.
19. **Recitals:** The recitals to this Agreement are incorporated herein by reference.
20. **Headings:** The heading of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereto.
21. **Legal construction:** The provisions of this AGREEMENT are hereby declared covenants running with the property and are fully binding on all successors, heirs, and assigns of LICENSEE who acquires any right, title, or interest in or to the property or any part thereof. Any person who acquires any right, title, or interest in or to the property, or any part hereof, thereby agrees and covenants to abide by and fully



perform the provisions of this AGREEMENT with respect to the right, title or interest in such property.

**EXECUTED** this 11<sup>th</sup> day of July, 2016.

**CITY OF LANCASTER**

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

ATTEST:

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

**Quik-Trip Corporation,**  
An Oklahoma Corporation

BY: \_\_\_\_\_

NAME: Joseph S. Faust

TITLE: Director of Real Estate



**LICENSEE'S ACKNOWLEDGMENT**

**STATE OF TEXAS   §**

**§**

**COUNTY OF TARRANT   §**

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2016, by Joseph S. Faust, Director of Real Estate of Quik-Trip Corporation, Oklahoma Corporation, on behalf of corporation.

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

My Commission expires: \_\_\_\_\_



**CITY'S ACKNOWLEDGMENT**

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF DALLAS       §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2016, by Opal Mauldin-Robertson, City Manager of the City of Lancaster, Texas, a Texas municipality, on behalf of said municipality.

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

My Commission expires:

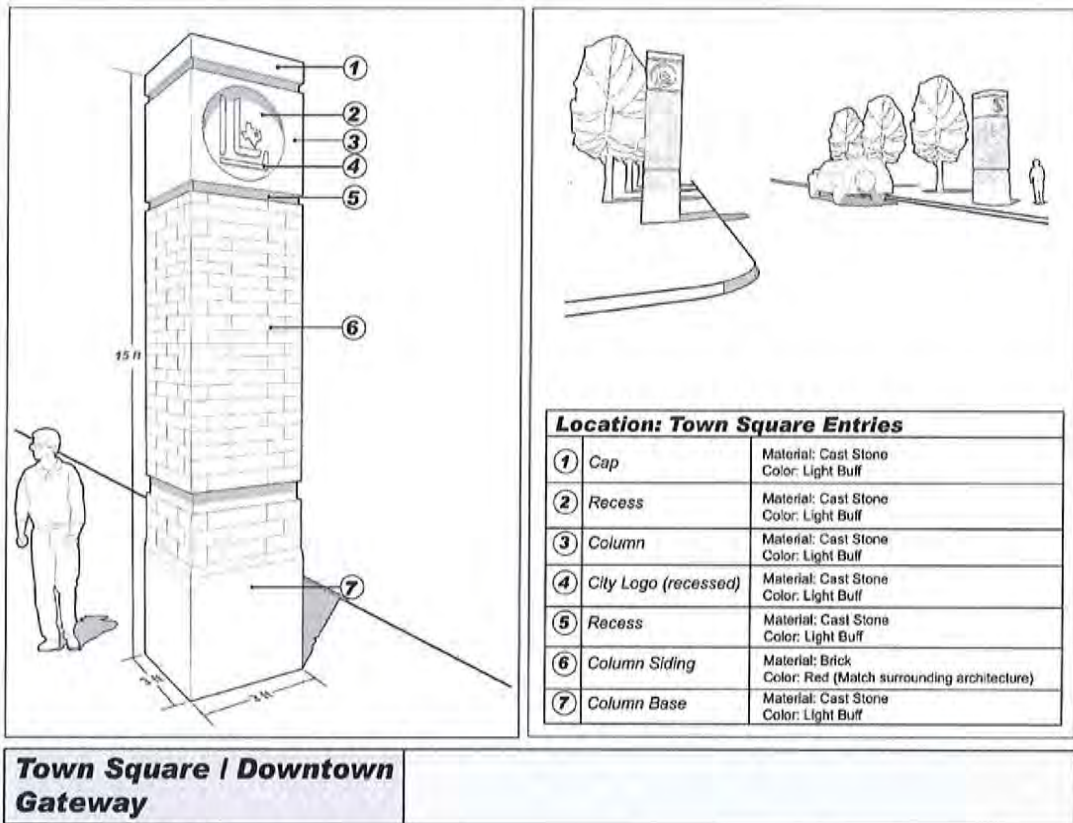
\_\_\_\_\_





Store 1976 Lancaster, TX  
08-1976-PE08 Date: 02.16.16 By:JK

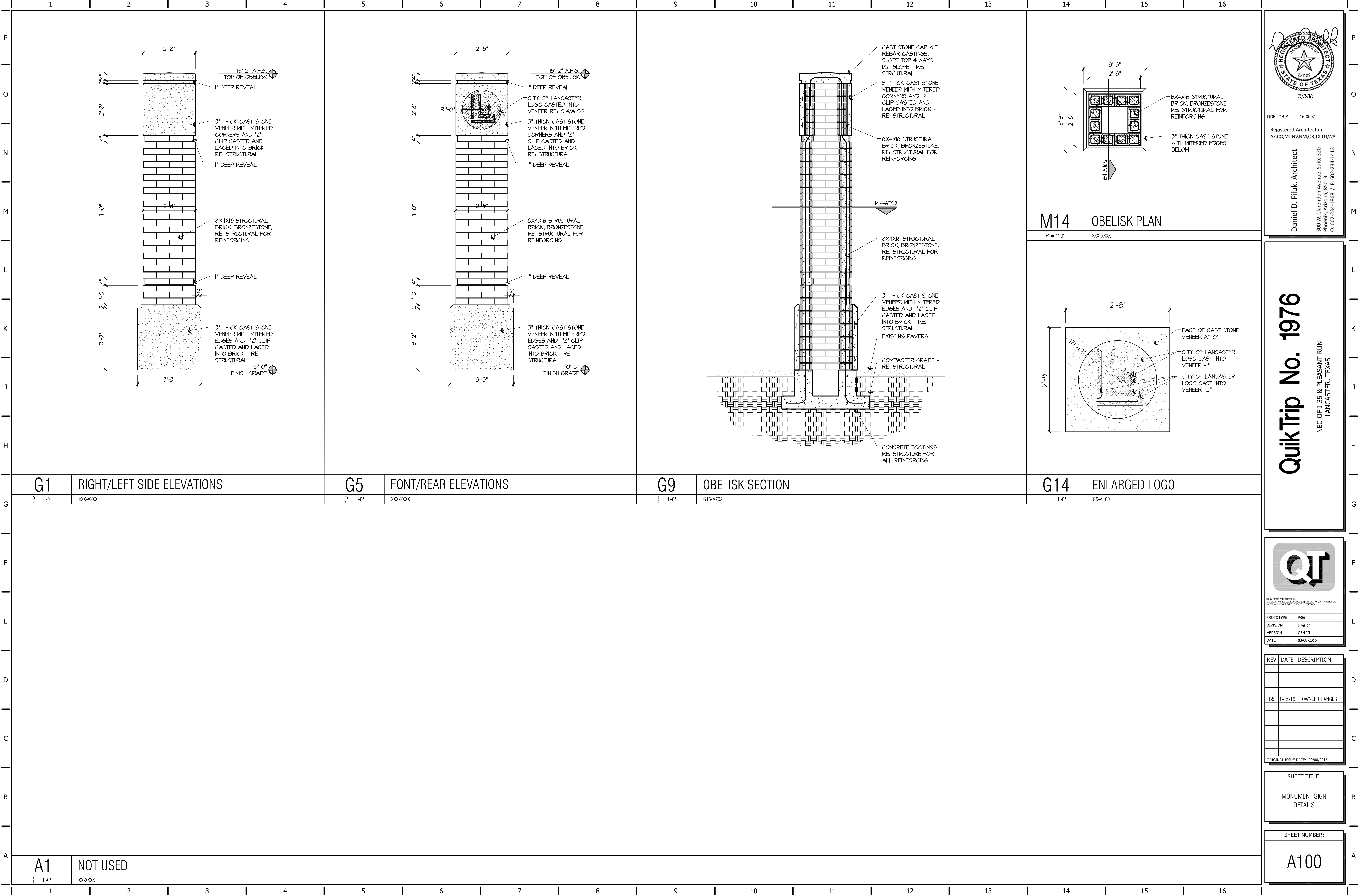






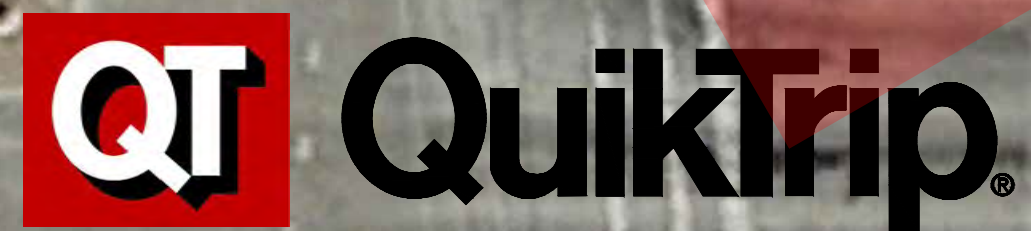








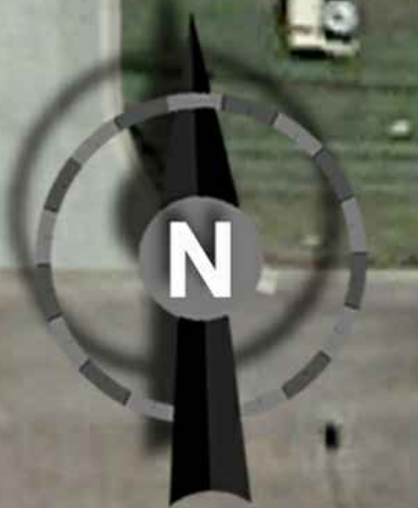
N Interstate 35 E Service Rd



Store 1976 Lancaster, TX  
08-1976-SP01 Date: 01.08.16 By:JK

E Pleasant Run Rd

Gateway Monument





## LANCASTER CITY COUNCIL

### City Council Regular Meeting

### Item 11.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Quality Development

**Submitted by:** Rona Stringfellow, Assistant City Manager

---

#### **Agenda Caption:**

Discuss and consider a resolution granting a request for Special Exceptions pursuant to Sections 14.504 (a) 3 and 14.505 (a) (3) (2), height and articulations; to provide a Special Exception for increased height and reduced horizontal and vertical articulation on the future Industrial site located on the southeast corner of Longhorn Drive and West Drive.

#### **Background:**

The request is for approximately 42.467 acres currently zoned light industrial on the southeast corner of Longhorn Drive and West Drive. There is currently no development planned for this location. The property owner is requesting this exception for the purpose of their marketing.

Section 14.500 – District Development Regulations and Standards of the Lancaster Development Code (LDC) states in Section 14.504 (a) 3 A (Maximum Building Height) that the height limit for all structures shall be as established in the Districts governing the property on which the structures are located. The District Development Standards table indicates that the maximum height of a building within the Light Industrial (LI) zoning district is thirty five feet (35').

Article 14.505 (a) (3) (2) states under Vertical Articulation that no horizontal wall shall extend for a distance greater than 4 times the height of the wall without changing height by a minimum of 25% of the wall's height. The applicant is stating that the vertical articulation requirement will cause a change in the height by a minimum of 25% of the wall height thereby resulting in unnecessarily tall parapets that in their opinion would add little visual interest to the building as well as reduce the available clear height available inside the building. The applicant is requesting that at such time that development occurs, this requirement is waived so long as the industrial building meets the standards and intent of the ordinance thereby providing visual interest through a variety of materials and color.

Due to the growing trend in industrial distribution buildings for taller buildings, to create more efficiency in using the cubic space available within the building footprint. There have been significant enhancements in material handling equipment, and fire sprinkler designs, such that taller buildings are becoming the standard in all competitive industrial distribution areas. These requests do not generally require articulations across loading dock walls, to allow an exterior height of forty-nine feet (49').

Article 14.209 (d) of Chapter 14.200 – Authority and Administrative Procedures of the LDC states that the City Council, pursuant to the powers conferred upon it by State law, the ordinances of the City, and this Article may grant Exceptions herein provided to the provisions of this ordinance upon finding that:

- (1) Such Exception will not substantially or permanently injure the appropriate use of adjacent property in the same district; and
- (2) Such Exception will not adversely affect the health, safety or general welfare of the public; and



- (3) Such Exception will not be contrary to the public interest; and
- (4) Such Exception will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the Exception sought is located, except as provided elsewhere in this ordinance; and
- (5) Such Exception will be in harmony with the spirit and purpose of this ordinance; and
- (6) Such Exception will not alter the essential character of the district in which is located the property for which the Exception is sought; and
- (7) Such Exception will not substantially weaken the general purposes of the zoning regulations established for the district in which the property is located; and
- (8) Such Exception is within the spirit and intent of the City's Comprehensive plan and other policies.

**Operational Considerations:**

The purpose of the request is to seek an exception to the maximum building height in the Light Industrial (LI) zoning district and an exception to building articulation to allow for vertical and horizontal articulation to be fulfilled through the use of paint color and materials.

The City Council must determine if the height and articulation exceptions meet the intent of the ordinance.

**Legal Considerations:**

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

**Public Information Considerations:**

This resolution is being considered at a regular meeting of the City Council, noticed in accordance with the Texas Open Meetings Act.

**Options/Alternatives:**

- 1. Approve the resolution as presented.
- 2. Deny the request.

**Recommendation:**

Staff recommends approval of resolution as presented.

**Attachments**

Resolution

---



**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, GRANTING A REQUEST FOR SPECIAL EXCEPTIONS PURSUANT TO SECTIONS 14.504 (A) 3 AND 14.505 (A) (3) (2), OF THE LANCASTER DEVELOPMENT CODE; TO PROVIDE A SPECIAL EXCEPTION TO A REDUCTION IN THE HORIZONTAL AND VERTICAL ARTICULATION REQUIREMENTS AND INCREASED HEIGHT ON THE FUTURE INDUSTRIAL SITE LOCATED ON THE SOUTHEAST CORNER OF LONGHORN DRIVE AND WEST DRIVE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Lancaster Development Code provides a thirty-five foot (35') maximum height for buildings, and a minimum change in vertical height of 25% for vertical articulation located within the Light Industrial (LI) zoning district; and

**WHEREAS**, the applicant has made a request for special exceptions to be granted to said height requirement, and vertical articulation to allow for the increased height of forty-nine feet (49'), and a reduction in the horizontal and vertical articulation; and

**WHEREAS**, after review and consideration, the City Council finds that the request for special exceptions as provided herein are warranted pursuant to §14.209 (d) of said code and meets the requirements of the Ordinance.

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

**SECTION 1.** That the request for the special exceptions to the requirements of the Lancaster Development Code to allow forty-nine feet (49') and reduction of the horizontal and vertical articulation, to be fulfilled through the use of differing paint color and materials be, and the same is, hereby granted.

**SECTION 2.** This Resolution shall become effective immediately from and after its passage, as the law and charter in such cases provides.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of July, 2016

**ATTEST:**

**APPROVED:**

---

Sorangel O. Arenas, City Secretary

---

Marcus E. Knight, Mayor

**APPROVED AS TO FORM:**

---

Robert E. Hager, City Attorney



## LANCASTER CITY COUNCIL

### City Council Regular Meeting

Item 12.

**Meeting Date:** 07/11/2016

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

**Goal(s):** Sound Infrastructure

**Submitted by:** Alton Dixon, Purchasing Agent

---

#### **Agenda Caption:**

Discuss and consider a resolution authorizing the award of Bid #2016-5 for reconstruction for Lancaster-Hutchins Road and Rogers Avenue, to Pavecon Public Works in an amount not to exceed one million nine hundred sixty-five thousand nine hundred seventy-five dollars and sixty-three cents (\$1,965,975.63).

#### **Background:**

On June 8, 2015, City Council approved the issuance of certificates of obligation to provide funding for the Lancaster-Hutchins Road and Rogers Avenue project. The project includes but is not limited to, the removal of existing pavement, disposal of materials that are designated for removal, installation of new pavement and associated drainage, and the re-installation of existing signs that are relocated due to new construction. In addition to this project but included in a separate bid is the water infrastructure replacement adjacent to these roadways.

#### **Operational Considerations:**

This project is consistent with our pavement management program and will improve our roadway infrastructure and overall quality of the community.

#### **Legal Considerations:**

This bid was processed in accordance with all local and state purchasing statutes.

#### **Public Information Considerations:**

Bids were advertised in the Focus Daily News on March 6 and 8, 2016. The bid opened on March 24, 2016.

#### **Options/Alternatives:**

1. Council may award the bid as presented.
2. Council may reject the bid.

#### **Recommendation:**

Staff recommends the Award of Bid# 2016-5 to Pavecon Public Works in an amount not to exceed one million nine hundred sixty-five thousand nine hundred seventy-five dollars and sixty-three cents (\$1,965,975.63).

#### **Financial Considerations:**

These projects are funded through 2015 certificate of obligation bonds and available roadway impact fees.



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**Attachments**

Resolution

Contract

Map of Construction Limits

Design Plans

Recommendation Letter

---



**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING THE AWARD OF BID 2016-5 TO PAVECON PUBLIC WORKS FOR CONSTRUCTION OF LANCASTER HUTCHINS RD IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED ONE MILLION NINE HUNDRED SIXTY-FIVE THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS AND SIXTY-THREE CENTS (\$1,965,975.63); AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT PURSUANT TO APPROVAL; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the construction is funded through 2015 certificate of obligation bonds and roadway impact fees; and,

**WHEREAS**, the City Council of the City of Lancaster desires to contract for construction services.

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

**SECTION 1.** The City Council hereby authorizes the award of bid 2016-5 to Pavecon Public Works, for the construction of Lancaster Hutchins Rd Improvements in an amount not to exceed one million nine hundred sixty-five thousand nine hundred and seventy-five dollars and sixty-three cents (\$1,965,975.63) pursuant to the contract attached hereto and incorporated herein by reference as Exhibit "A".

**SECTION 2.** The City Manager of the City of Lancaster, Texas, is hereby authorized to execute the contract.

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

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

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

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas on this the 11th day of July, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

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



**CONTRACT DOCUMENTS AND SPECIFICATIONS  
FOR  
PAVEMENT RECONSTRUCTION  
FOR**

**LANCASTER-HUTCHINS RD  
(500' SOUTH OF BELT LINE RD TO PLEASANT RUN RD)  
AND  
ROGERS AVENUE  
(PLEASANT RUN RD TO BALKIN DR)**



**CITY OF LANCASTER  
DALLAS COUNTY, TEXAS**



*Andrew R. Luce*  
*3-3-2016*

**FEB. 2016**

**PREPARED BY:**



TNP Project # LAN 15135



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# **SECTION I**

## **CONTRACTUAL DOCUMENTS, BID NOTICE & PROPOSAL**



**EXHIBIT A**  
**Standard Form of Agreement**



# STANDARD FORM OF CONSTRUCTION AGREEMENT

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF DALLAS     §

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the CITY OF LANCASTER, a municipal corporation, of the County of Dallas and State of Texas, hereinafter called "OWNER" and Pavecon Public Works of the City of Grand Prairie County of Tarrant and State of Texas hereinafter called "CONTRACTOR."

OWNER and CONTRACTOR in consideration of the mutual covenants contained in this Agreement, agree as follows:

## ARTICLE 1. WORK.

CONTRACTOR covenants and agrees to perform the Work in every detail, in a good and first-class workmanlike manner as specified and indicated in the Contract Documents, which are attached hereto and incorporated herein by reference as exhibits (Exhibit A-N) as recited in article 10 of this agreement, of which are incorporated in this Agreement in their entirety as if they were herein set out at length written word for word. The CONTRACTOR shall furnish all labor, materials, tools and equipment required to perform and complete the Work in strict accordance with these Contract Documents as defined herein. The Work is described as follows:

**PAVEMENT RECONSTRUCTION  
FOR  
Lancaster-Hutchins Rd  
(500' South of Belt Line Rd to Pleasant Run Rd)  
And  
Rogers Avenue  
(Pleasant Run Rd to Balkin Dr)**

## ARTICLE 2. CONTRACT PRICE.

OWNER agrees to pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, the price or prices shown in the bidder's proposal, which total the following amount:

One Million Nine Hundred Sixty Five Thousand Nine Hundred Seventy Five  
and 63/100 Dollars (\$ 1,965,975.63)



### **ARTICLE 3. CONTRACT TIME / LIQUIDATED DAMAGES.**

Unless otherwise stated in this agreement, **time shall be considered of the essence.**

- a. When **time is of** the essence, the CONTRACTOR shall be liable for failure to deliver or delay in delivery occasioned by and including without limitation strikes, lock-outs, inability of obtaining material or shopping space, breakdowns, delays of carriers or suppliers, and preexisting governmental acts and regulations of the Federal and State governments or any subdivision thereof, unless such governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of the CONTRACTOR prior to submission of his/her bid and City Council's acceptance thereof.
- b. When **time is not of** the essence, this agreement shall be inoperative during such period of time that aforesaid delivery or acceptance may be rendered impossible by reason of fire, strike, Acts of God, or government regulation. Provided, however, to the extent that the CONTRACTOR has any commercially reasonable alternative method of performing this contract by purchase on the market or otherwise, he/she shall not be freed of his/her obligation hereunder by this clause, even though the goods intended for this contract were destroyed or their delivery delayed because of any event described above.

As time is of the essence on this contract, CONTRACTOR agrees to commence work under this contract within ten (10) calendar days from the date specified in the "Notice to Proceed" and to totally complete the Work within **90 ( ninety)** consecutive calendar days after the date specified in the "Notice to Proceed", subject to such extensions of time as are indicated in the Special Provisions. The CONTRACTOR further agrees to pay as liquidated damages, the sum of **\$500.00** for each calendar day that any work remains uncompleted after the time specified above or after any extensions of time as are provided in the Special Provisions. It is understood between the parties hereto that the sum of **\$500.00** per day shall be treated as liquidated damages and not as a penalty, and the OWNER may withhold from the CONTRACTOR's compensation such sums as liquidated damages.

### **ARTICLE 4. PARTIAL PAYMENT.**

OWNER shall make payments to the CONTRACTOR in the following manner. On or about the first of each month, the OWNER, or the OWNER's Authorized Representative, will make accurate estimates of the value, based on contract prices, of the work done and materials incorporated in the work and of materials suitably stored at the site during the preceding calendar month. The CONTRACTOR shall furnish to the OWNER, or the OWNER's Representative, such detailed information as the OWNER may request to aid OWNER as a guide in the preparation of the monthly estimate.

Within the following thirty (30) days, OWNER shall make partial payments to the CONTRACTOR for work performed during the preceding calendar month as estimated by the OWNER or OWNER's Representative. Ten percent (10%) of each estimate shall be retained by the OWNER until final completion and acceptance of all work covered by the Contract

Upon completion and acceptance of all work in compliance with the Contract, the OWNER shall, within thirty (30) days, pay the CONTRACTOR the balance due under the terms and



conditions of the Contract, subject to any lien, claims or impositions, imposed by subcontractors and/or materialmen.

#### **ARTICLE 5. DISCRIMINATION.**

The CONTRACTOR agrees, in connection with the performance of work under this contract as follows:

- a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin or ancestry. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- b. The CONTRACTOR agrees to include this non-discrimination clause in any subcontracts connected with the performance of this agreement.
- c. In the event of the CONTRACTOR's non-compliance with the above non-discrimination clause, the contract may be canceled or terminated by the OWNER. The CONTRACTOR may be declared by the OWNER to be ineligible for future contracts with the OWNER, until satisfactory proof of intent to comply shall be made by the CONTRACTOR.
- d. Contractor agrees to comply with any applicable employment / labor laws, worker compensations, insurance, unemployment benefits under state or federal law, rules and regulations. During the term of this Agreement the Contractor agrees not to knowingly employ any undocumented workers. The City is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Contractor or by a person with whom the Contractor contracts.

#### **ARTICLE 6. ENTIRE CONTRACT.**

This Contract and Agreement contains the entire understanding and agreement of the parties upon the subject matter hereof. There is no agreement, oral or otherwise, which is not set forth in writing as part of this Agreement or the Contract Documents.

#### **ARTICLE 7. MODIFICATION.**

This contract cannot be modified except by a writing signed by both parties.

#### **ARTICLE 8. VARIABLES IN COST.**

The parties hereto assume and understand that the variables in the CONTRACTOR's cost of performance may fluctuate; consequently, the parties hereto agree that any fluctuations in the CONTRACTOR's costs will in no way alter the CONTRACTOR's obligations under this



contract nor excuse nonperformance or delay on his/her part.

## **ARTICLE 9. VENUE.**

This contract shall be governed by the laws of the State of Texas and enforcement shall be by appropriate court procedures in Dallas county Texas.

## **ARTICLE 10. CONTRACT DOCUMENTS.**

Documents Listed. The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR for the performance of and payment for the Work, consist of the following:

- (A) This Agreement
- (B) Addendum(s)
- (C1-2) "Notice to Bidders" advertisement, Instruction to Bidders
- (D) Bidder's Proposal
- (E1-3) Performance, Payment and Maintenance Bonds
- (F1-3) Certification of Insurance, Contractor's Release to City, and Contractor's Affidavit of Final Payment.
- (G) Special Provisions.
- (H) Technical Specifications
- (I) North Central Texas Council of Government "Public Works Construction Standards" Section 100 - General Provisions-included by reference only.
- (J) Special Material and/or Equipment Specifications-included by reference only.
- (K) Special Material and/or Equipment Drawings-included by reference only.
- (L) North Central Texas Council of Government "Public Works Construction Standards" Standard Specifications and Standard Drawings-included by reference only.
- (M) Project Construction Plans (Drawings)-bound separately.
- (N) Geotechnical report.

IN TESTIMONY WHEREOF, the CITY OF LANCASTER has caused this instrument to be signed in its corporate name, and on its behalf by the City Manager, duly authorized to



execute this instrument by the City Council and

**Pavecon Public Works**

*(CONTRACTOR)*

a corporation, a partnership, an individual ("**X**" **out the inappropriate wording**) acting by and through its duly authorized officials, thereby binding themselves for the faithful and full performance of the terms and provisions of this Agreement.

\_\_\_\_\_  
City of Lancaster  
**OWNER**

\_\_\_\_\_  
Pavecon Public Works  
**CONTRACTOR**

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

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

Title: \_\_\_\_\_  
City Manager

Title: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT B**  
**Addendum No.1**



## **ADDENDUM NO.1**

**PROJECT:** Paving Reconstruction for Lancaster-Hutchins Rd (500' South of Belt Line Rd to Pleasant Run Rd) and Rogers Avenue (Pleasant Run Rd to Balkin Dr)

**OWNER:** City of Lancaster

**CONSULTING ENGINEERS:** Teague Nall and Perkins, Inc.

**DATE OF ADDENDUM:** March 21, 2016

**DATE OF BID OPENING:** March 24, 2016

**INSTRUCTIONS TO BIDDERS:** All bidders shall acknowledge receipt of this Addendum No. 1 by initialing the appropriate space in the Proposal on Page BP-15R.

### **SCOPE OF ADDENDUM:**

This addendum provides clarification to the project.

### **PLAN & SPECIFICATION MODIFICATIONS:**

- **Proposal**

Replace the Bid Proposal in its entirety with the attached revised Proposal, Pages BP-1R to BP-15R. Revisions to the proposal are as listed below.

- **Proposal, Bid Item I-15**

Added bid Item I-15, "Erosion Control". Quantity shall be 1 LS and shall be per NCTCOG Item 201.

- **Proposal, Bid Item II-15**

Added bid Item II-15, "Erosion Control". Quantity shall be 1 LS and shall be per NCTCOG Item 201.

- **Proposal, Bid Item III-14**

Added bid Item III-14, "Erosion Control". Quantity shall be 1 LS and shall be per NCTCOG Item 201.

- **Proposal, Bid Item IV-13**

Added bid Item IV-13, "Erosion Control". Quantity shall be 1 LS and shall be per NCTCOG Item 201.

- **Special Provisions**

Replace Special Provision pages SP-31 to SP-33 with pages SP-31R to SP-34R. Revisions to Special Provisions are as listed below.



- **Special Provisions SP-48**

Added special provision for Erosion Control.

- **Plans**

Sheets 12A, 12B, 12C, and 12D have been added to provide erosion control requirements.

**Clarifications:**

- Rain days and subsequent days required for the work site to adequately drain to resume work will not be counted against the 90 calendar day contract length. The Contractor must keep accurate record of weather and work conditions. All rain days must be approved by the City.
- Contractor will be required to complete a ROW permit with the City prior to beginning any work. The fee for the ROW permit shall be waived. Contractor and all Sub-Contractors will be required to pay a \$100.00 registration fee if not already registered with the City prior to beginning any work. The ROW permit can be obtained and registration fee paid at 700 E. Main St, Lancaster, TX.
- The Contractor will be allowed to select any material testing lab that is approved by the City.
- The successful bidder will be required to submit a completed and notarized Form 1295 to the City prior to the project being awarded. Refer to the Texas Ethics Commission website for additional information.
- Microcracking per TxDOT item 275 will be required on the cement-treated base prior to installing asphalt pavement.
- The use of recycled materials (salvaged, milled, pulverized, broken, or crushed asphalt pavement) will not be allowed in the new asphalt pavement to be installed.
- The proposed work shall be sequenced such that one lane of traffic will be closed at a time. The pulverization, preparation of subgrade, and installation of asphalt pavement shall be completed on one lane before changing traffic patterns and beginning construction on the other lane. Refer to NCTCOG Specifications 107.19 and 801 and Special Provisions Nos. 24 and 48 for traffic control requirements.

Andrew Luce, P.E.  
Teague Nall and Perkins, Inc.

- END OF ADDENDUM -



**EXHIBIT C-1**  
**NOTICE TO BIDDERS**



## NOTICE TO BIDDERS

**SEALED PROPOSALS** addressed to the Mayor and Council of the City of Lancaster, Texas will be received at the Purchasing Department Office, 211 N. Henry Street, Lancaster, Texas 75146 until

**2:00 PM (LOCAL TIME) ON MARCH 24<sup>TH</sup>, 2016**

For the purpose of furnishing all plant, labor, materials and equipment and the performance of all work required in the construction of

### **PAVEMENT RECONSTRUCTION FOR**

**Lancaster-Hutchins Rd** (500' South of Belt Line Rd to Pleasant Run Rd)  
**& Rogers Avenue** (Pleasant Run Rd to Balkin Dr)

At which time and place the proposals will be publicly opened and read aloud and retained by the City Engineer for tabulation, checking and evaluation.

**BIDS** shall be submitted in sealed envelopes upon the blank form of proposal furnished in the Contract Documents. Sealed envelopes shall be marked **BID FOR PAVEMENT RECONSTRUCTION FOR Lancaster-Hutchins Rd (500' South of Belt Line Rd to Pleasant Run Rd) And Rogers Avenue (Pleasant Run Rd to Balkin Dr) - DO NOT OPEN UNTIL 2:00 P.M. ON MARCH 24<sup>TH</sup>, 2016**

**Plans, Contract Documents and Specifications** will be available for review or download on or after **8:00 A.M on Monday, March 7<sup>th</sup>, 2016**. Contract documents may be viewed and downloaded free of charge at [www.civcastusa.com](http://www.civcastusa.com)

**PLANS AND SPECIFICATIONS** and contract documents may be examined without charge at the City Engineer's Office 211 N. Henry Street, Lancaster, Texas 75146, or at the engineering firm of Teague Nall and Perkins, Inc., (1100 Macon Street, Fort Worth, Texas, 76102). Copies of said documents may be obtained from the engineering firm of Teague Nall and Perkins, Inc., upon a non-refundable payment of \$ 50.00 per set.

This project consists of pulverization and overlay pavement reconstruction for Rogers Avenue & Lancaster-Hutchins Rd. Rogers Ave is a two lane roadway approximately 22' wide beginning at West Pleasant Run Road and ending at Balkin Road (approximately 4,400 linear feet). Lancaster Hutchins Road is a two lane roadway approximately 28' wide beginning at approximately 500 feet south of Belt Line Road and ending at Pleasant Run Road, (approximately 8,050 linear feet). The project includes full width milling and overlay of 250 square yard of pavement at a bridge located at Lancaster Hutchins Road just north of State Ave.

All Bidders are strongly encouraged to attend a Pre-Bid meeting to be held at City of Lancaster, 211 N. Henry Street, Lancaster, Texas 75146, on Friday, March 18<sup>th</sup>, 2016 at 10:00am.

In case of ambiguity or lack of clearness in stating proposal prices, the City of LANCASTER reserves the right to adopt the most advantageous interpretation of the bids, or reject any or all bids. No bid may be withdrawn within sixty (60) days from the date on which the bids are opened.

**THE CITY OF LANCASTER, TEXAS**

By: Dipak Patel  
Project Manager

**ADVERTISEMENT DATES:**

**Friday, March 6<sup>th</sup>, 2016**

**Sunday, March 8<sup>th</sup>, 2016**



**EXHIBIT C-2**  
**INSTRUCTIONS TO BIDDERS**



# **INSTRUCTIONS TO BIDDERS**

## **IB-1 BID SECURITY**

A certified check or cashier's check or acceptable bidder's bond made payable to the City of Lancaster, Texas, in an amount of five percent (5%) of the bid submitted must accompany each bid as a guarantee that if awarded the contract, the bidder will promptly enter into a contract and execute such bonds as are required.

## **IB-2 QUALIFICATION OF BIDDERS**

No pre-qualification of bidders is required. However, in considering bids for award, the Owner may require bidders to furnish a written experience record and the most recent audited financial statement of the firm. The Owner reserves the right to use these items of data to influence a decision as to the award of the contract. Bidders need not submit a statement of experience and financial condition unless requested to do so by the Owner.

## **IB-3 BONDS**

A performance bond and a payment bond, each in the amount of not less than one hundred percent (100%) of the contract price, conditioned upon the faithful performance of the contract and upon payment of all persons supplying labor or furnishing materials, will be required on this project. Additionally, a two (2) year maintenance bond, in the amount of not less than one hundred percent (100%) of the final contract price, will be required on this project.

## **IB-4 POWER OF ATTORNEY**

Attorneys-in-Fact who sign bid bonds or contract bonds must file with each bond a certified and current copy of their power of attorney.

## **IB-5 STANDARD SPECIFICATIONS**

All related work required by this project shall be in accordance with the North Central Texas Council Of Government's "Public Works Construction Standards", with all amendments thereto, except as modified in the Contract Documents. A copy of these standards is included in the Contract Documents by reference and is made a part thereof. Omission of any section from this project's Contract Documents does not mean that such section is not applicable to this project.



## **IB-6 UNIT PRICE CONTRACT**

The contract for this project is a "Unit Price" Contract. As such, the Owner reserves the right to add and/or delete quantities to specific pay items. The Owner may further delete an entire unit price pay item if the Owner desires. The Owner reserves the right to increase or decrease the amount of work to be done by any amount not to be exceeded by twenty-five percent (25%) of the original contract amount. In the event the increase pertains to items not originally bid, the Contractor shall submit a bid in writing to the Owner for approval.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the Owner but not shown on the plans or required by the specifications, in accordance with the provisions of the general conditions; similarly, lump sum prices may be decreased to cover deletion of work so ordered.

The Owner reserves the right to reject the Contractor's bid on such extra work and secure such work to be done other than by said Contractor.

It is understood that the quantities of work to be done at unit prices is approximate only and are intended principally to serve as a guide in evaluating bids. Any change order shall be approved by the City Manager and/or the City Council for change orders less than a \$ 15,000 increase and by only the City Council for change orders greater than a \$ 15,000 increase prior to the work being started on said change order.

## **IB-7 MEASUREMENT AND PAYMENT**

The basis of payment for the pay items noted in the proceeding pages shall be full compensation for furnishing all labor, materials, equipment and incidentals required to complete the work as specified and as shown in the project drawings. Any item of work not specifically listed for payment but required by the project documents shall be considered an incidental item of the project and no specific payment will be made.

## **IB-8 LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT**

The successful bidder, upon his/her failure or refusal to execute and deliver the contract and bonds required within ten (10) days after he/she has received notice of the acceptance of his/her bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his/her bond.

## **IB-9 CONDITIONS OF WORK / OBLIGATION OF BIDDER**

Each bidder must inform himself/herself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will



not relieve a successful bidder of his/her obligation(s) to furnish all material, labor, equipment and incidentals necessary to carry out the provisions of this contract. Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor or City of Lancaster public employees.

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or documents shall in no way relieve the bidder from any obligation in respect to his/her bid.

## **IB-10 ADDENDA AND INTERPRETATIONS**

Bidders wanting further information, interpretation or clarification of the Contract Documents must make their request in writing to the Engineer at least **seven (7) business days** prior to bid opening. Answers to all such requests will be made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding.

Should a bidder find discrepancies in, or omission from the Contract Documents, or should he/she be in doubt as to their meaning, he/she should at once notify the Engineer in order that a written addendum may be sent to all bidders. Any addenda issued will be mailed or be delivered to each prospective bidder. The bid proposal as submitted by the bidder must be so constructed as to include any addenda issued by the Engineer prior to 24 hours of the opening bids, with the appropriate recognition of addenda so noted in the bid proposal.

No interpretation of the meaning of plans, specifications or other pre-bid documents will be made to any bidder orally. Every request for such interpretation shall be in writing, addressed to Teague Nall and Perkins, Inc, 1100 Macon Street, Fort Worth, Texas 76102 and to be given consideration, must be received at least **seven (7) business days** prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications and plans which, if issued, will be mailed to all prospective bidders (at the respective addresses furnished on the Plan Holders Sheet), not later than three (3) days prior to the date fixed for opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve the bidder from any obligation under his/her bid submitted. All addenda shall become part of the Contract Documents.



**IB-11 TRAFFIC CONTROL:**

The Contractor will be required to plan and execute the construction work in such manner that the residences and business establishments in the area of the improvements will be accessible with a minimum of interruption. The Contractor shall maintain all traffic lanes and/or detours to the satisfaction of the Engineer and the City of Lancaster.

**IB-12 BARRICADES AND WARNING SIGNS:**

Barricades and warning signs shall be placed in accordance with the requirements of the City of Lancaster and any other requirements necessary for the safety and protection of the public.

**IB-13 PROTECTION OF UTILITIES:**

The Contractor shall determine the exact location of all existing utilities and conduct his work so as to prevent interruption of service or damage to them. The Contractor shall protect existing structures and utilities and shall be responsible for their replacement if damaged by him. No Payment will be made for repair or replacement of existing utilities damaged by contractor. Utility locations as shown on the Plans are approximate and in all cases shall be field verified by Contractor prior to project construction. The Engineer has attempted to indicate all the existing underground utilities; however, whether or not this has been accomplished is not guaranteed; therefore, the Contractor shall locate all existing utilities, whether shown on the Plans or not; this location by the Contractor shall be accomplished prior to actual construction.

**IB-14 WATER FOR CONSTRUCTION:**

All water required for construction shall be furnished by the Contractor at his expense.

**IB-15 SUPERVISION AND INSPECTION:**

The work will be inspected in accordance with specific requirements herein and any additional requirements imposed by the City of Lancaster. Inspection shall be performed by the City Representative or ENGINEER. Final inspection shall jointly be performed by the Engineer and the Owner. No changes to the Plans or Specifications shall be authorized without specific approval of the Engineer.

**IB-16 SURVEYS AND LAYOUT OF WORK:**

The Contractor shall be responsible for laying out the exact location of all improvements in accordance with the Plans and Specifications and General Conditions of Agreement. The Contractor is encouraged to contact the Engineer regarding the surveyor, if any, used for field design surveys for the project.



**IB-17 WASTE MATERIAL:**

All excess excavation and other waste material shall be wasted in locations approved by the Engineer. All material shall be spread in uniform layers over the area being filled and shall be disposed of in such a manner as to present a neat appearance and to not obstruct proper drainage or to cause injury to improvements or to abutting property.

**IB-18 PERMIT FEES:**

The Contractor shall be responsible for the payment of any and all required City, County, or State fees as may be required from contractors.

**IB-19 CLEANUP FOR FINAL ACCEPTANCE:**

The Contractor shall make a final cleanup of all parts of the work before final acceptance by the City or its representative. This cleanup shall include removal of all objectionable rocks, pieces of asphalt or concrete, and other construction materials, and in general preparing the site of the work in an orderly manner and appearance.

**IB-20 FINAL ACCEPTANCE AND FINAL PAYMENT:**

The Engineer, upon his and the City's satisfactory final inspection of the project and upon receipt of satisfactory written evidence from the Contractor that all subcontractors and persons furnishing labor or materials have been paid in full and all persons claiming damages to property or persons because of the carrying on of this work have been settled with, or their claims dismissed, or the issues joined, shall certify the estimate for final payment after previous payments and any liquidated damages have been deducted and shall notify the Contractor and his surety of the acceptance of the project.

Upon delivery of the final payment, the Contractor shall sign a written acceptance of the final estimate as payment in full for the work done. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

**IB-21 CONTRACTOR'S DUTY:**

The Contractor is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the Owner being interested only in the result obtained and conformity of such completed improvements to the Plans, Specifications and Contract.

Likewise, the Contractor shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the



improvements being erected and the property of himself or any other person, as a result of his operations hereunder. Engineering construction drawings and specifications as well as any additional information concerning the work to be performed passing from or through the Engineer shall not be interpreted as requiring or allowing Contractor to deviate from the Plans and Specifications, the intent of such drawings, specifications and any other such instruction being to define with particularity the agreement of the parties as to the work the Contractor is to perform. Contractor shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non use, of all items and methods incident to performance of the contract, and for loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in progress, or any visit or observation during construction, or any clarification of Plans and Specifications, by the Engineer, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the Contractor to be for the purpose of observing the extent and nature of work to be completed or being performed, as measured against the purpose of enabling the Contractor to more fully understand the Plans and Specifications so that the completed construction work will conform thereto, and shall in no way relieve the Contractor from full and complete responsibility for the proper performance of his work on the project, including but without limitation the propriety of means and methods of the Contractor in performing said contract, and the adequacy of any designs, plans, or other facilities for accomplishing such performance. Deviation by the Contractor from Plans and Specifications that may have been in evidence during any such visitation or observation by the Engineer, or any of his representatives, whether called to the Contractor's attention or not shall in no way relieve the Contractor from his responsibility to complete all work in accordance with said Plans and Specifications.

**IB-22 MATERIALS TESTING:** All testing of materials required to comply with the NCTCOG specifications for this project shall be ordered by the City's field representative, and shall be paid for by the City. Any retests required due to failing test results shall be paid for by the Contractor.

**IB-23 ACCESS TO SITE:** The Contractor shall make every effort to complete construction and allow immediate access to adjacent property at all driveway entrances located along the roadway.

**IB-24 USE BY OWNER PRIOR TO FINAL ACCEPTANCE:** The Owner reserves the right, as its interests may direct, to connect into and use prior to final completion and



acceptance, such portions of the work as are installed in place and ready for service, provided that in so doing the Owner does not cause the Contractor hindrance or delay in prosecuting his operations. It shall be fully understood, however, that use of partially completed work by the Owner does not constitute acceptance of that part or any other part thereof.

**IB-25 LAWS AND REGULATIONS:**

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

**IB-26 SUBMITTALS:**

Prior to any construction commencing on this project the Contractor shall submit to the City Engineer and have his approval for all submittals as required in the Special Provisions.



**EXHIBIT D**  
**Bid Proposal**



**BID PROPOSAL**  
FOR  
**PAVEMENT RECONSTRUCTION**

**FOR**  
**Lancaster-Hutchins Rd**  
(500' South of Belt Line Rd to Pleasant Run Rd)

**And**  
**Rogers Avenue**  
(Pleasant Run Rd to Balkin Dr)

**CITY OF LANCASTER, TEXAS**  
**(THIS PROPOSAL MUST NOT BE REMOVED FROM THE CONTRACT DOCUMENTS**  
**AND MUST BE COMPLETED AND SUBMITTED IN ITS ENTIRETY)**

Date: \_\_\_\_\_

TO: City of Lancaster  
211 N.Henry Street  
Lancaster, Texas 76146

FOR: PAVEMENT RECONSTRUCTION FOR  
Lancaster-Hutchins Rd  
(500' South of Belt Line Rd to Pleasant Run Rd)  
And Rogers Avenue (Pleasant Run Rd to Balkin Dr)

Pursuant to the foregoing "Notice to Bidders", the undersigned bidder, having thoroughly examined the Contract Documents, the site of the project and understanding the amount of work to be done and the prevailing conditions, hereby proposes to fully complete all of the work and requirements as provided in the plans and Contract Documents and binds himself/herself upon acceptance of this proposal to execute a contract and furnish such bonds as required and proposes to complete the work within the time stated and for the following prices:

References:

1. The Standard Specifications for Public Works Construction, North Central Texas adopted by the North Central Texas Council of Governments (NCTCOG), Fourth Edition (2002), SP Special Provision Set of the Contract Documents.
2. Texas Department of transportation (TxDOT), 2004 Standard Specifications for Construction of Highways, Streets and Bridges.
3. Texas Department of transportation (TxDOT), Material Specifications,DMS-8220, November 2014.



UNIT I - ROGERS AVENUE RD PAVEMENT RECONSTRUCTION (BASE BID)						
Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
I-1	NCTCOG 203.3 & SP-48	1	LS	General Site Preparation @ _____ <u>Thirty Thousand Two</u> <u>Hundred Sixty Five</u> Dollars _____ <u>No</u> Cents Per Unit	\$30,265.00	\$30,265.00
I-2	NCTCOG 301 & SP-48	12,560	SY	Pavement / Subgrade Pulverization (12" Depth) @ _____ <u>Two</u> Dollars _____ <u>Three</u> Cents Per Unit	\$2.03	\$25,496.80
I-3	NCTCOG 301.3 & SP-48	12,560	SY	6" Cement Stabilized Subgrade @ _____ <u>Six</u> Dollars _____ <u>Four</u> Cents Per Unit	\$6.04	\$75,862.40
I-4	NCTCOG 301.3 & SP-48	138.2	TON	Cement for Stabilization (22#/SY) @ _____ <u>One Hundred Forty One</u> Dollars _____ <u>No</u> Cents Per Unit	\$141.00	\$19,486.20
I-5	NCTCOG 302 & SP-48	11,584	SY	4" Type B HMAC Base Course @ _____ <u>Eighteen</u> Dollars _____ <u>Seven</u> Cents Per Unit	\$18.07	\$209,322.88



**UNIT I - ROGERS AVENUE RD PAVEMENT RECONSTRUCTION (BASE BID)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
I-6	NCTCOG 302& SP-48	11,584	SY	2" Type D HMAC Surface Course @ _____ Nine Dollars Thirty Cents Per Unit	\$9.30	\$107,731.20
I-7	NCTCOG 302 & SP-48	310	SY	2" Type D HMAC Surface Course at Driveway Transition @ _____ Twenty Four Dollars Seventy Four Cents Per Unit	\$24.74	\$7,669.40
I-8	See Technical Specs	11,584	SY	HMAC Pavement Geotextile @ _____ Three Dollars Eighty Seven Cents Per Unit	\$3.87	\$44,830.08
I-9	TxDOT Item 666 DMS-8220 & SP-48	1,103	LF	4" Yellow Center Line Pavement Marking @ _____ One Dollars Sixteen Cents Per Unit	\$1.16	\$1,279.48
I-10	TxDOT Item 666 DMS-8220 & SP-48	8,820	LF	4" White Edge Line Pavement Marking @ _____ One Dollars Sixteen Cents Per Unit	\$1.16	\$10,231.20



**UNIT I - ROGERS AVENUE RD PAVEMENT RECONSTRUCTION (BASE BID)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
I-11	NCTCOG 202.2 202.6	1,960	SY	6" Topsoil and Seeding @ _____ Seventeen Dollars Ten Cents Per Unit	\$17.10	\$33,516.00
I-12	NCTCOG 502.1 & SP-48	2	EA	Adjust Existing Sanitary Sewer Manhole to Grade @ _____ Two Thousand Four Hundred Ten Dollars No Cents Per Unit	\$2,410.00	\$4,820.00
I-13	NCTCOG 502.6 & SP-48	1	EA	Adjust Existing Water Valve Box to Grade @ _____ Four Hundred Ninety Five Dollars No Cents Per Unit	\$495.00	\$495.00
I-14	NCTCOG 107.19 801 & SP-24 SP-48	1	LS	Traffic Control @ _____ Seven Thousand Two Hundred Fifteen Dollars No Cents Per Unit	\$7,215.00	\$7,215.00
I-15	NCTCOG 201	1	LS	Erosion Control @ _____ Four Thousand Four Hundred Fifty Five Dollars No Cents Per Unit	\$4,455.00	\$4,455.00

**UNIT I SUBTOTAL**
**\$ 582,675.64**  
 (Total Amount Bid, Numerical Value)



**UNIT II-LANCASTER-HUTCHINS RD PAVEMENT RECONSTRUCTION (BASE BID)  
(APPROX. 550 FT SOUTH OF BELT LINE RD TO MAIN ST)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
II-1	NCTCOG 203.3 & SP-48	1	LS	General Site Preparation @ _____ Thirty Six Thousand Nine Hundred Eighty Five Dollars _____ No Cents Per Unit	     \$36,985.00	     \$36,985.00
II-2	NCTCOG 301 & SP-48	14,880	SY	Pavement / Subgrade Pulverization (12" Depth) @ _____ Two Dollars _____ Three Cents Per Unit	    \$2.03	    \$30,206.40
II-3	NCTCOG 301.3 & SP-48	14,880	SY	6" Cement Stabilized Subgrade @ _____ Six Dollars _____ Four Cents Per Unit	    \$6.04	    \$89,875.20
II-4	NCTCOG 301.3 & SP-48	163.7	TON	Cement for Stabilization (22#/SY) @ _____ One Hundred Forty One Dollars _____ No Cents Per Unit	    \$141.00	    \$23,081.70
II-5	NCTCOG 302 & SP-48	14,025	SY	4" Type B HMAC Base Course @ _____ Eighteen Dollars _____ Seven Cents Per Unit	    \$18.07	    \$253,431.75



**UNIT II-LANCASTER-HUTCHINS RD PAVEMENT RECONSTRUCTION (BASE BID)  
(APPROX. 550 FT SOUTH OF BELT LINE RD TO MAIN ST)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
II-6	NCTCOG 302& SP-48	14,025	SY	2" Type D HMAC Surface Course @ _____ Nine Dollars _____ Thirty Cents Per Unit	<u>\$9.30</u>	<u>\$130,432.50</u>
II-7	NCTCOG 302 & SP-48	15	SY	2" Type D HMAC Surface Course at Driveway Transition@ _____ Twenty Four Dollars _____ Seventy Four Cents Per Unit	<u>\$24.74</u>	<u>\$371.10</u>
II-8	See Technical Specs	14,025	SY	HMAC Pavement Geotextile @ _____ Three Dollars _____ Eighty Seven Cents Per Unit	<u>\$3.87</u>	<u>\$54,276.75</u>
II-9	TxDOT Item 666 DMS-8220 & SP-48	988	LF	4" Yellow Center Line Pavement Marking @ _____ One Dollars _____ Sixteen Cents Per Unit	<u>\$1.16</u>	<u>\$1,146.08</u>
II-10	TxDOT Item 666 DMS-8220 & SP-48	7,900	LF	4" White Edge Line Pavement Marking @ _____ One Dollars _____ Sixteen Cents Per Unit	<u>\$1.16</u>	<u>\$9,164.00</u>



**UNIT II-LANCASTER-HUTCHINS RD PAVEMENT RECONSTRUCTION (BASE BID)  
(APPROX. 550 FT SOUTH OF BELT LINE RD TO MAIN ST)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
II-11	NCTCOG 202.2 202.6	1,756	SY	6" Topsoil and Seeding @ _____ Seventeen Dollars Ten Cents Per Unit	\$17.10	\$30,027.60
II-12	NCTCOG 107.19 801 & SP-24 SP-48	1	LS	Traffic Control @ _____ Eight Thousand Eight Hundred Twenty Dollars No Cents Per Unit	\$8,820.00	\$8,820.00
II-13	302 & SP-48	250	SY	2" Full width Milling at Bridge (STA.17+51 to STA. 18+43) @ _____ Thirty Eight Dollars Forty Cents Per Unit	\$38.40	\$9,600.00
II-14	302 & SP-48	250	SY	Full width 2" HMAC, Type D overlay at Bridge (STA.17+51 to STA. 18+43) @ _____ Twenty Three Dollars Thirty Cents Per Unit	\$23.30	\$5,825.00
II-15	NCTCOG 201	1	LS	Erosion Control @ _____ Three Thousand Dollars No Cents Per Unit	\$3,000.00	\$3,000.00

**UNIT II SUBTOTAL**

**\$ 686,243.08**  
(Total Amount Bid, Numerical Value)



**UNIT III- LANCASTER-HUTCHINS PAVEMENT RECONSTRUCTION (BID ALTERNATE 1)  
(MAIN ST. TO PIERSON)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
III-1	NCTCOG 203.3 & SP-48	1	LS	General Site Preparation @ _____ Nine Thousand Two Hundred Seventy One Dollars _____ No Cents Per Unit	\$9,271.00	\$9,271.00
III-2	NCTCOG 301 & SP-48	5,650	SY	Pavement / Subgrade Pulverization (12" Depth)@ _____ Two Dollars _____ Three Cents Per Unit	\$2.03	\$11,469.50
III-3	NCTCOG 301.3 & SP-48	5,650	SY	6" Cement Stabilized Subgrade @ _____ Six Dollars _____ Four Cents Per Unit	\$6.04	\$34,126.00
III-4	NCTCOG 301.3 & SP-48	62.2	TON	Cement for Stabilization (22#/SY) @ _____ One Hundred Forty One Dollars _____ No Cents Per Unit	\$141.00	\$8,770.20
III-5	NCTCOG 302 & SP-48	5,317	SY	4" Type B HMAC Base Course @ _____ Eighteen Dollars _____ Seven Cents Per Unit	\$18.07	\$96,078.19



**UNIT III- LANCASTER-HUTCHINS PAVEMENT RECONSTRUCTION (BID ALTERNATE 1)  
(MAIN ST. TO PIERSON)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
III-6	NCTCOG 302& SP-48	5,317	SY	2" Type D HMAC Surface Course @ _____ Nine Dollars Thirty Cents Per Unit	\$9.30	\$49,448.10
III-7	NCTCOG 302 & SP-48	12	SY	2" Type D HMAC Surface Course at Driveway Transition @ _____ Twenty Four Dollars Seventy Four Cents Per Unit	\$24.74	\$296.88
III-8	See Technical Specs	5,317	SY	HMAC Pavement Geotextile @ _____ Three Dollars Eighty Seven Cents Per Unit	\$3.87	\$20,576.79
III-9	TxDOT Item 666 DMS-8220 & SP-48	375	LF	4" Yellow Center Line Pavement Marking @ _____ One Dollars Sixteen Cents Per Unit	\$1.16	\$435.00
III-10	TxDOT Item 666 DMS-8220 & SP-48	3,000	LF	4" White Edge Line Pavement Marking @ _____ One Dollars Sixteen Cents Per Unit	\$1.16	\$3,480.00



**UNIT III- LANCASTER-HUTCHINS PAVEMENT RECONSTRUCTION (BID ALTERNATE 1)  
(MAIN ST. TO PIERSON)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
III-11	NCTCOG 202.2 202.6	667	SY	6" Topsoil and Seeding @ _____ Seventeen Dollars Ten Cents Per Unit	\$17.10	\$11,405.70
III-12	NCTCOG 502.6 & SP-48	2	EA	Adjust Existing Water Valve Box to Grade @ _____ Four Hundred Ninety Five Dollars No Cents Per Unit	\$495.00	\$990.00
III-13	NCTCOG 107.19 801 & SP-24 SP-48	1	LS	Traffic Control @ _____ Sixteen Hundred Dollars No Cents Per Unit	\$1,600.00	\$1,600.00
III-14	NCTCOG 201	1	LS	Erosion Control @ _____ Two Thousand One Hundred Fifty Dollars No Cents Per Unit	\$2,150.00	\$2,150.00

**UNIT III SUBTOTAL:**

**\$ 250,097.36**  
(Total Amount Bid, Numerical Value)



**UNIT IV - LANCASTER-HUTCHINS PAVEMENT RECONSTRUCTION (BID ALTERNATE 2) (PIERSON TO PLEASANT RUN)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
IV-1	NCTCOG 203.3 SP-48	1	LS	General Site Preparation @ Sixteen Thousand Five Hundred Sixty Nine Dollars Thirty Cents Per Unit	\$16,569.30	\$16,569.30
IV-2	NCTCOG 301 SP-48	10,125	SY	Pavement / Subgrade Pulverization (12" Depth) @ Two Dollars Three Cents Per Unit	\$2.03	\$20,553.75
IV-3	NCTCOG 301.3 & SP-48	10,125	SY	6" Cement Stabilized Subgrade @ Six Dollars Four Cents Per Unit	\$6.04	\$61,155.00
IV-4	NCTCOG 301.3 & SP-48	111.4	TON	Cement for Stabilization (22#/SY) @ One Hundred Forty One Dollars No Cents Per Unit	\$141.00	\$15,707.40
IV-5	NCTCOG 302 & SP-48	9,545	SY	4" Type B HMAC Base Course @ Eighteen Dollars Seven Cents Per Unit	\$18.07	\$172,478.15



**UNIT IV - LANCASTER-HUTCHINS PAVEMENT RECONSTRUCTION (BID ALTERNATE 2) (PIERSON TO PLEASANT RUN)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
IV-6	NCTCOG 302& SP-48	9,545	SY	2" Type D HMAC Surface Course @ _____ Nine Dollars Thirty Cents Per Unit	\$9.30	\$88,768.50
IV-7	NCTCOG 302 & SP-48	155	SY	2" Type D HMAC Surface Course at Driveway Transition @ _____ Twenty Four Dollars Seventy Four Cents Per Unit	\$24.74	\$3,834.70
IV-8	See Technical Specs	9,545	SY	HMAC Pavement Geotextile @ _____ Three Dollars Eighty Seven Cents Per Unit	\$3.87	\$36,939.15
IV-9	TxDOT Item 666 DMS-8220 & SP-48	650	LF	4" Yellow Center Line Pavement Marking @ _____ One Dollars Sixteen Cents Per Unit	\$1.16	\$754.00
IV-10	TxDOT Item 666 DMS-8220 & SP-48	5,200	LF	4" White Edge Line Pavement Marking @ _____ One Dollars Sixteen Cents Per Unit	\$1.16	\$6,032.00



**UNIT IV - LANCASTER-HUTCHINS PAVEMENT RECONSTRUCTION (BID ALTERNATE 2) (PIERSON TO PLEASANT RUN)**

Item No.	Spec. Reference	Estimated Quantity	Unit	Name of Pay Item with Unit Price in Words	Unit Bid Price	Amount Bid
IV-11	NCTCOG 202.2 202.6	1,156	SY	6" Topsoil and Seeding @ _____ Seventeen Dollars _____ Ten Cents Per Unit	\$17.10	\$19,767.60
IV-12	NCTCOG 107.19 801 & SP-24 SP-48	1	LS	Traffic Control @ _____ Two Thousand Six Hundred Fifty Dollars _____ No Cents Per Unit	\$2,650.00	\$2,650.00
IV-13	NCTCOG 201	1	LS	Erosion Control @ _____ One Thousand Seven Hundred Fifty Dollars _____ No Cents Per Unit	\$1,750.00	\$1,750.00

**UNIT IV SUBTOTAL:**

**\$ 446,959.55**  
(Total Amount Bid, Numerical Value)

**BID SUMMARY:**

**UNIT I SUBTOTAL:**

**\$ 582,675.64**  
(Total Amount Bid, Numerical Value)

**UNIT II SUBTOTAL:**

**\$ 686,243.08**  
(Total Amount Bid, Numerical Value)

**BASE BID SUBTOTAL:**

**\$ 1,268,918.72**

**BID ALTERNATIVES:**

**UNIT III SUBTOTAL:**

**\$ 250,097.36**  
(Total Amount Bid, Numerical Value)

**UNIT IV SUBTOTAL:**

**\$ 446,959.55**  
(Total Amount Bid, Numerical Value)



It is the intent of the owner to award the base bid. All alternatives will not necessarily be awarded but will be evaluated based on the bid amount and the amount of funding estimated by the owner as available to finance the contract. Owner reserves the right to award any combination of base bid and alternates that they choose. Bidders shall submit bids on all sections (base bid and all alternates) or run the risk of their bid being rejected. In case of ambiguity or lack of clearness in stating proposal prices, the owner reserves the right to adopt the most advantageous construction thereof, or to reject any or all bids.

### **SUMMARY OF BIDS**

**The undersigned bidder acknowledges receipt of the following Addenda:** (If none is received, then write NONE or N/A across the blanks.)

Addendum No. 1: \_\_\_\_\_ Date Received \_\_\_\_\_

Addendum No. 2: \_\_\_\_\_ Date Received \_\_\_\_\_

Addendum No. 3: \_\_\_\_\_ Date Received \_\_\_\_\_

The undersigned bidder agrees to execute and file with the Owner a contract and bonds on the forms provided within ten (10) days after written notification of award of the contract to him and to begin the work to be performed under the contract within ten (10) days after written authorization to begin the work (Work Order) and to complete the work, in full, within **ninety 90 for either Base Bid or Base Bid (Alt. 1) or Base Bid (Alt. 1) and (Alt.2)** Consecutive Calendar Days after the date specified in the "Notice to Proceed/Work Order".

The undersigned has examined the location of the proposed work, the plan drawings, specifications, and all other parts of these documents and is familiar with the local conditions at the place where the work is to be performed.

Enclosed with this proposal is a certified check or cashier's check or bid bond payable to the City of Lancaster in the amount of five percent (5%) of the total bid, which is to become the property of the City of Lancaster, or the attached Bidder's Bond is to be forfeited in the event the contract and bond are not executed within the time set forth, as liquidated damages for delay and additional work caused thereby.



Respectfully Submitted,

Signed: \_\_\_\_\_

Company: \_\_\_\_\_ Pavecon Public Works

Address: \_\_\_\_\_ 3022 Roy Orr Blvd.

\_\_\_\_\_ Grand Prairie, Texas 75050

Telephone: \_\_\_\_\_ 972-263-3223

FAX: \_\_\_\_\_ 972-263-6551

SEAL  
(If Bidder is  
Corporation)

Submitted by \_\_\_\_\_  
(an individual, a partnership, a corporation)

Doing Business As \_\_\_\_\_



**EXHIBIT E-1**  
**Performance Bond**



## PERFORMANCE BOND

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

KNOW ALL MEN BY THESE PRESENTS: That Pavecon Public Works (hereinafter referred to as "Principal") of the City of Grand Prairie, County of Tarrant and State of Texas, and \_\_\_\_\_ (hereinafter referred to as "Surety"), authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the **CITY OF LANCASTER** (hereinafter referred to as "Owner"), in the penal sum of One Million Nine Hundred Sixty Five Thousand Nine Hundred Seventy Five and 63/100 Dollars (\$ 1,965,975.63 ) not less than 100% of the approximate total amount of the contract as evidenced in the bid proposal for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, for the

**PAVEMENT RECONSTRUCTION  
FOR  
Lancaster-Hutchins Rd  
(500' South of Belt Line Rd to Pleasant Run Rd)  
And  
Rogers Avenue  
(Pleasant Run Rd to Balkin Dr)**

Which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said Principal fully and faithfully executes the work and performance of the



## PERFORMANCE BOND (Continued)

contract in accordance with the plans (drawings), specifications, and contract documents, including any extensions thereof, and according to the true intent and meaning of said contract and the plans and specifications hereto annexed, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute(s) to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the bond shall automatically be increased by the amount of any change order or supplemental agreement with increases the contract price with or without notice to the Surety and that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Pavecon Public Works  
(Principal)

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

3022 Roy Orr Blvd.

\_\_\_\_\_

Grand Prairie, Texas 75050

\_\_\_\_\_



**PERFORMANCE BOND** (Continued)

The name and address of the Resident Agent of Surety is:

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**EXHIBIT E-2**  
**Payment Bond**



# PAYMENT BOND

**STATE OF TEXAS** \$  
\$  
**COUNTY OF DALLAS** \$

KNOW ALL MEN BY THESE PRESENTS: That Pavecon Public Works of the City of Grand Prairie, County of Tarrant and State of Texas, (hereinafter referred to as "Principal"), and \_\_\_\_\_ hereinafter referred to as "Surety"), authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto **THE CITY OF LANCASTER** (hereinafter referred to as "Owner"), in the penal sum One Million Nine Hundred Sixty Five Thousand Nine Hundred Seventy Five and 63/100 Dollars (\$ 1,965,975.63 ) [not less than 100% of the approximate total amount of the contract as evidenced in the bid proposal] for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, for the

# PAVEMENT RECONSTRUCTION FOR

**Lancaster-Hutchins Rd**  
(500' South of Belt Line Rd to Pleasant Run Rd)  
**And**  
**Rogers Avenue**  
(Pleasant Run Rd to Balkin Dr)

Which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that the bond guarantees the full and proper protection of all claimants supplying labor and



## **PAYMENT BOND (Continued)**

material in the prosecution of the work provided for in said contract and for the use of each claimant, and that conversely should the Principal faithfully perform said contract and in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said contract agreed to by the Principal, and according to the true intent and meaning of said contract and the claims and specifications hereto annexed, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute(s) to the same extent as if they were fully copied at length herein.

Surety, for value received, stipulates and agrees that the bond shall automatically be increased by the amount of any change order or supplemental agreement with increases the contract price with or without notice to the Surety and that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



**PAYMENT BOND** (Continued)

\_\_\_\_\_  
Pavecon Public Works  
(Principal)

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
3022 Roy Orr Blvd.

\_\_\_\_\_

\_\_\_\_\_  
Grand Prairie, Texas 75050

\_\_\_\_\_

The name and address of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT E-3**  
**Maintenance Bond**



## MAINTENANCE BOND

STATE OF TEXAS

§

§

COUNTY OF Dallas

§

KNOW ALL MEN BY THESE PRESENTS: That Pavecon Public Works (hereinafter referred to as "Principal"), and \_\_\_\_\_ (hereinafter referred to as "Surety"), are held and firmly bound unto the CITY OF LANCASTER, a municipal corporation, as Obligee, (hereinafter referred to as "Owner"), in the amount, One Million Nine Hundred Sixty Five Thousand Nine Hundred Seventy Five and 63/100 Dollars (\$1,965,975.63), equal to **one hundred (100%) percent** of the Contract amount, for the payment of which Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

Contractor has by written agreement entered into a contract with Owner for the

### PAVEMENT RECONSTRUCTION FOR

#### LANCASTER-HUTCHINS RD

(500' SOUTH OF BELT LINE RD TO PLEASANT RUN RD)

#### AND

#### ROGERS AVENUE

(PLEASANT RUN RD TO BALKIN DR)

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ which contract is by reference made a part of this bond and is hereinafter referred to as the "Contract".

Under the Contract, it is provided that the Contractor shall maintain and keep in good repair the work constructed or equipment furnished by it as contemplated by the plan drawings, specifications, and other Contract documents, and perform for a period of two ( **2** ) years from the date of acceptance as shown in the Letter of Acceptance issued by the City Engineer or his/her authorized agent, or the date of Final Payment by the Owner if a separate Letter of Acceptance is not issued, all necessary repairs, reconstruction or replacement of any part of the work, and to furnish the labor and materials to make good and to repair any defective condition growing out of or on account of the breakage or failure of any substance or the improper function of any part of the construction work. The Contractor shall reimburse the Owner for the costs of all engineering and special services required to be



## **MAINTENANCE BOND** (Continued)

furnished by the Owner which are directly attributable to the repair, reconstruction or replacement of the work.

The maintenance under this bond contemplates the complete restoration of the work to a functional use if that should be necessary. It is the intended purpose of this bond to require the correction of all defective conditions

resulting from materials furnished or work and labor performed by the Contractor under the Contract; and in case the Contractor or Surety shall fail or refuse to commence and actively pursue such corrections within ten (10) days after written notification has been furnished to them by the Owner, it is agreed that the Owner may do the work and supply such materials and the Contractor and Surety shall be liable for the payment of all costs thereby incurred, jointly and severally.

THEREFORE, if the Contractor shall keep and perform its agreement to maintain the work and keep the same in good repair for the maintenance period as provided above, then this bond shall be null and void and have no further effect; but if default shall be made by the Contractor in the performance of its obligation to maintain and repair the work, then this bond shall have full force and effect and the Owner shall be entitled to recover one hundred percent (100%) cost of materials and labor from the Contractor and Surety, as provided in this bond. It is further understood and agreed that the obligation under this bond shall be a continuing one against the Contractor and Surety, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted. It is further understood that the obligation to maintain the work shall continue throughout the maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during that time.

The Owner shall be entitled to its reasonable attorneys' fees and costs in any legal proceeding to enforce the Owner's rights under this bond.



## MAINTENANCE BOND (Continued)

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Pavecon Public Works  
(Principal)  
By \_\_\_\_\_

\_\_\_\_\_  
(Surety)  
By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
3022 Roy Orr Blvd.

\_\_\_\_\_

\_\_\_\_\_  
Grand Prairie, Texas 75050

\_\_\_\_\_

The name and address of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of Maintenance Bond must not be prior to date of Contract.  
Power of Attorney must be attached.  
Amount and Term of Maintenance Bond shall be as stated in the  
"Special Conditions".



**EXHIBIT F-1**  
**Certificate of Insurance**  
**(Sample Form)**



(SAMPLE FORM)

## CERTIFICATE OF INSURANCE

TO: \_\_\_\_\_ Date \_\_\_\_\_  
OWNER \_\_\_\_\_  
Project No. \_\_\_\_\_  
Address \_\_\_\_\_  
Type of Project \_\_\_\_\_  
\_\_\_\_\_

THIS IS TO CERTIFY THAT \_\_\_\_\_ Pavecon Public Works  
(NAME AND ADDRESS OF INSURED)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

### TYPE OF INSURANCE

Policy No.	Effective	Expires	Limits of Liability
Workmen's Compensation			
Public Liability		1 Person \$ _____ 1 Accident \$ _____	
Contingent Liability		1 Person \$ _____ 1 Accident \$ _____	
Property Damage			
Builder's Risk			
Automobile			
Other			



(SAMPLE FORM)

**CERTIFICATE OF INSURANCE** (Continued)

The foregoing policies (do) (do not) cover all sub-contractors.

Locations Covered: \_\_\_\_\_

Descriptions of Operations Covered: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The previously indicated policies either in the body thereof or by appropriate endorsement provide that they may not be changed or canceled by the insurer in less than fifteen (15) days after the insured has received written notice of such change or cancellation.

Where applicable local laws or regulations require more than fifteen (15) days actual notice of change or cancellation to the assured, the above policies contain such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

\_\_\_\_\_  
(NAME OF INSURER)

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

Title: \_\_\_\_\_



REPLACE THIS SHEET WITH  
CERTIFICATE OF INSURANCE



**EXHIBIT F-2**  
**Contractor's Release to City**



## CONTRACTOR'S RELEASE TO CITY

TO: CITY OF LANCASTER

**RE: PAVEMENT RECONSTRUCTION FOR  
LANCASTER-HUTCHINS RD**

(500' South Of Belt Line Rd to Pleasant Run Rd)

**AND ROGERS AVENUE**

(Pleasant Run Rd to Balkin Dr)

This is to certify that Pavecon Public Works, by acceptance of  
(NAME OF CONTRACTOR)  
this final payment, hereby releases the OWNER, the City of Lancaster, from all  
claims and all liabilities of the City of Lancaster for all things done or furnished in  
connection with work on this project and further releases the City of Lancaster  
from liabilities arising from any act of the OWNER or his/her agent arising in  
connection with this project. This release in no way operates to release the  
CONTRACTOR or his/her Surety from any obligations under this contract or the  
bond tendered pursuant thereto.

\_\_\_\_\_  
(NAME OF CORPORATION)

\_\_\_\_\_  
(AUTHORIZED AGENT)

## CORPORATION ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority in and for Dallas County, Texas, on  
this day personally appeared \_\_\_\_\_ known to me to be  
the person and officer whose name is subscribed to the foregoing instrument and  
acknowledged to me that he/she is the \_\_\_ of the said \_\_\_\_\_, a  
corporation, and that he/she is authorized by said corporation to execute the  
foregoing instrument as the act of such corporation for the purposes and  
consideration therein expressed, and in the capacity therein stated.



**CONTRACTOR'S RELEASE TO CITY *(Continued)***

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

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

*(Notary Public in and for the State  
of Texas)*

\_\_\_\_\_  
*(Type or Print Notary's Name)*

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



**EXHIBIT F-3**  
**Contractor's Affidavit of Final  
Payment**



## CONTRACTOR'S AFFIDAVIT OF FINAL PAYMENT

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

BEFORE ME, the undersigned authority, on this day personally appeared

Pavecon Public Works, (hereinafter referred to as Affiant), who,  
(NAME)

after being by me duly sworn, deposes and says that he/she is the \_\_\_\_\_  
(TITLE)

\_\_\_\_\_ of \_\_\_\_\_ (a  
(NAME OF COMPANY)

corporation, partnership, trade name) of \_\_\_\_\_ County,  
(“X” OUT THE INCORRECT)

State of Texas (hereinafter referred to as Contractor), which said Contractor  
was awarded the contract dated the \_\_\_\_\_ day of \_\_\_\_\_,  
for **PAVEMENT RECONSTRUCTION FOR Lancaster-Hutchins Rd** (500' South  
of Belt Line Rd to Pleasant Run Rd) **And Rogers Avenue** (Pleasant Run Rd to  
Balkin Dr)

(Hereinafter referred to as the “Work”), for a total consideration of \_\_\_\_\_  
\_\_\_\_\_ (\$\_\_\_\_\_) to be paid to the  
said Contractor (the Contract), and that Affiant has full power of authority to make  
this affidavit.

That **THE CITY OF LANCASTER**, (hereinafter referred to as “Owner”), has  
approved the final estimate on said Work, and that the said Contractor has fully  
satisfied and paid any and all claims that may be covered by Chapter 53 of the  
Texas Property Code, and Chapter 2253 of the Texas Government Code, or any  
other applicable statutes or charter provisions, and that all just bills for labor and  
materials have been paid and discharged by said Contractor insofar as they  
pertain to the Work in question.



That in addition to any funds which may have been previously paid by the Owner, the Contractor hereby accepts the amount of One Million Nine Hundred Sixty Five Thousand Nine Hundred Seventy Five and 63/100 (\$1,965,975.63) as **FULL AND FINAL PAYMENT** under the aforementioned Contract, and hereby waives and releases any right Affiant and/or the Contractor may have to pursue claims of any nature against the Owner arising out of or in any manner connected with the performance of the Work and/or the Contract, including but not limited to claims of third parties that supplied material and/or labor for the Work for or through the Contractor (hereinafter referred to as "Subcontractors"), as well as claims for delay, additional compensation or for recovery of liquidated damages which may have been withheld by the Owner. The Contractor shall defend, hold harmless and indemnify the Owner from any such claims of such Subcontractors. The Contractor further releases the Owner from any claim or liability arising from any act or neglect of the Owner related to or connected with the Contract. This affidavit is given pursuant to the final payment provisions of the Contract, and shall not be deemed to alter or modify the terms and provisions of said Contract.

This affidavit is made in compliance with the law and in compliance especially with Chapter 2253 of the Texas Government Code and that the undersigned, upon his/her oath, states that the facts indicated in the above instrument of writing are true and correct and that he/she is not incapacitated in any way from making this affidavit.

WITNESS my hand this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Printed Name)



SUBSCRIBED AND SWORN TO BEFORE ME, this the \_\_\_\_\_ day of

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

\_\_\_\_\_  
*(Notary Public in and for the State  
of Texas)*

\_\_\_\_\_  
*(Type or Print Notary's Name)*

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



## **SECTION II**

### **Exhibit G- SPECIAL PROVISIONS**



# **SPECIAL PROVISIONS**

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## **SPECIAL PROVISIONS**

### **SP-1: GENERAL**

For this contract, the General Provisions (Division 100) of the Standard Specifications for Public Works Construction, North Central Texas adopted by the North Central Texas Council of Governments (NCTCOG), Fourth Edition (2002), with all amendments thereto, shall govern and shall constitute as the Special Provisions except as herein amended, modified or supplemented. Omission of any section from this Project's Contract Documents does not mean that such section is not applicable to this Project. The NCTCOG General Provisions will be referred to as the General Provisions (GP) and will not be physically bound with the other contract documents. Copies may be obtained from the North Central Texas Council of Governments.

The following Special Provisions shall take precedence over all other contract conditions, specifications and agreements.

### **SP-2: PROJECT DESCRIPTION**

The work to be performed under the provisions of these contract documents consists of the pavement reconstruction for Lancaster-Hutchins Rd (500' south of belt line Rd to pleasant run Rd) and Rogers Avenue (Pleasant Run Rd to Balkin Dr) as identified on the cover sheet of these documents.

### **SP-3: DEFINITIONS**

Modify GP Item 1.0. Definitions as follows:

The word "City" or "OWNER" in these documents shall be understood as referring to:

City of Lancaster  
211 N Henry Street  
Lancaster, TX 75146

The word "Engineer" in these documents shall be understood as referring to the City Engineer, Engineer of the OWNER, or such other Engineer or Supervisor as may be authorized by the OWNER to act in any particular position. Both the Engineer and the Inspector shall be considered as the OWNER's "authorized representative".



The word "CONTRACTOR" in these documents shall be understood as referring to the person, firm or corporation with whom the OWNER has executed the contract or agreement.

The term "General Conditions of Agreement" when used in the Contract Documents shall be understood as referring to "Division 100, General Provisions" of the "Public Works Construction Standards" adopted by the North Central Texas Council of Governments.

Any reference to "Special Conditions" or "Supplemental Special Conditions" shall be understood as referring to these Special Provisions.

#### **SP-4: INFORMATION CONCERNING CONDITIONS**

Add the following to GP Item 102.3. Examination of Plans, Specifications and Site of the Work:

Prospective bidders shall make a careful examination of the entire site of the project and shall make such explorations as may be necessary to determine the subsoil and water conditions to be encountered; improvements and obstructions which may be encountered, especially those to be protected; methods of providing ingress and egress to private as well as public property; methods of handling traffic during construction and maintenance of the entire project as well as any section thereof; protection of all existing structures both above and below ground; and how the plans fit the proposed project and especially if any discrepancies exist.

The accuracy of the information furnished by the Engineer or the plans and specifications as to underground structures and surface structures, foundation conditions, character of soil, position and quality of ground and subsoil water, etc., are not guaranteed by the OWNER.

Subsurface exploration, to ascertain the nature of the soils at the project site, including the amount of rock, if any, is to be the responsibility of any and all prospective bidders. Whether prospective bidders perform this subsurface exploration jointly or independently, it shall be left to the discretion of such prospective bidders. Subsurface exploration shall not be attempted without the approval of the Engineer.

#### **SP-5: ADDENDA**

Bidders wanting further information, interpretation or clarification of the Contract Documents must make their request in writing to the Engineer **at least seven (7) days prior to the Bid Opening**. Answers to all such requests will be made a



part of the Contract Documents. No other explanation or interpretation will be considered official or binding.

Should a bidder find discrepancies in, or omission from the Contract Documents, or should he/she be in doubt as to their meaning, he/she should at once notify the Engineer in order that a written addendum may be sent to all bidders. Any addenda issued will be mailed or be delivered to each prospective bidder who has requested and received a bid packet. The bid proposal as submitted by the bidder must be so constructed as to include any addenda issued by the Engineer prior to 24 hours of the bid opening, with the appropriate recognition of addenda so noted in the bid proposal.

#### **SP-6: PREPARATION OF PROPOSAL**

Add the following to GP Item 102.4. Preparation of Proposals:

Bidder shall state his/her prices in ink or typewritten format.

#### **SP-7: PROPOSAL GUARANTY**

Modify GP Item 102.5. Proposal Guaranty to include:

The five percent (5%) proposal guaranty shall be five percent (5%) of the largest possible total for the bid submitted.

#### **SP-8: FILING OF PROPOSAL**

Add the following to GP Item 102.6. Filing of Proposals:

Bids, affidavits and proposed construction schedules must be submitted in sealed envelopes within the time limit for receiving proposals, as stated in the "NOTICE TO BIDDERS", which envelopes bear a legible notation, "PROPOSAL", and the name of the project. The original copy shall be filed with the City of Lancaster in the office of the City Secretary at City Hall.

#### **SP-9: REJECTION OF PROPOSALS**

Add the following reasons to GP Item 102.11. Rejection of Proposals:

- (e) Proposals received after the time limit for receiving proposals, as indicated in the NOTICE TO BIDDERS.



- (f) Proposals that are incomplete insofar as the required signatures, proposal guaranty, or containing any material irregularities.

#### **SP-10: DISQUALIFICATION OF BIDDERS**

Add the following reason to GP Item 102.12. Disqualification of Bidders:

- (l) Where more than one proposal for an individual firm, partnership, or corporation is filed under the same or different names and where such proposals are not identical in every respect;
- (j) Where bidder's previous work for the OWNER did not completely and fully meet all of the requirements and/or specifications of the contract documents for said work.

#### **SP-11: QUALIFICATION TO PERFORM**

The OWNER may make such investigations as he/she deems necessary to determine the bidder's ability to perform the work, and the bidder shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any bid if the evidence submitted fails to satisfy the OWNER that such bidder can properly carry out the obligations of the contract and to complete the work contemplated therein.

#### **SP-12: AWARD OF CONTRACT**

Add the following to GP Item 103.2. Award of Contract.

The award, if made, shall be on the basis of the lowest acceptable bid submitted by a qualified responsible bidder, as determined by the OWNER, within 60 days after the opening of proposals. In determining the lowest acceptable bid, the OWNER will consider all relative factors such as: efficiency of a single contractor in the project area, increase in public safety due to a single contractor's operations, length of construction, coordination of construction activities, previous experience the OWNER may have had with the bidder, effects on area traffic due to construction detours and efficient use of City funds. The right is reserved, as the interest of the OWNER may require, to reject any and all bids and to waive any formality in bids received. It is the intention of the OWNER to award a single contract for this work.



### **SP-13: PRIORITY OF CONTRACT DOCUMENTS**

Delete GP Item 105.1.1. Priority of Contract Documents and substitute the following:

In case of conflict between contract documents, priority of interpretation shall be in the following order:

1. Signed "Standard Form of Construction Agreement"
2. Any Addendums
3. "Notice to Bidders" advertisement
4. Bidder's Proposal
5. Special Instruction to Bidders
6. Performance, Payment and Maintenance Bonds
7. Certification of Insurance
8. Notice to Proceed
9. Special Provisions
10. Technical Specifications
11. General Provisions
12. Special Specifications
13. Project Construction Plans (Drawings)
14. Special Material and/or Equipment Specifications
15. Special Material and/or Equipment Drawings
16. North Central Texas Council of Government "Standard Specifications for Public Works Construction"
17. North Central Texas Council of Government "Standard Drawings for Public Works Construction"
18. North Central Texas Council of Government references

### **SP-14: COPIES OF PLANS AND SPECIFICATIONS FURNISHED**

Four (4) sets of plans and specifications (not including the General Provisions) shall be furnished to the CONTRACTOR at no charge for construction purposes. Additional sets may be obtained from the Engineer at **\$ 50.00 per set**.

### **SP-15: BONDS - AMOUNT AND TERMS**

In addition to GP Item 103.3 Surety Bonds, add the following:

With the execution and delivery of the contract, the CONTRACTOR shall furnish and file with the City in the amount herein required, the following surety bonds:

- (a) A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total awarded contract price,



guaranteeing the full and faithful execution of the work and performance of the contract and for the protection of the City against any improper execution of the work or the use of inferior materials.

- (b) A good and sufficient Payment Bond in an amount equal to one hundred percent (100%) of the total awarded contract price, guaranteeing payment for all labor, materials and equipment used in the construction of the project.
- (e) A good and sufficient Maintenance Bond in an amount equal to one hundred percent (100%) of the total awarded contract price, guaranteeing the maintenance in good condition of such project for a period of two (2) years from and after the time of its completion and acceptance by the City.

General conditions for bonds are as follows:

1. The surety on each bond must be a responsible surety company, which is licensed and qualified to do business in the State of Texas (surplus lines carriers are not acceptable) and satisfactory to the City. No surety will be accepted who is in default or delinquent on any bond or who is interested in any litigation against the City. Should any surety on the contract be determined unsatisfactory at any time by the City, notice will be given to the CONTRACTOR to the effect, and the CONTRACTOR shall forthwith substitute a new Surety or Sureties satisfactory to the City. (Texas Lloyd's Plan carriers are not acceptable.) No payment will be made under the contract until the new Surety or Sureties, as required, have qualified and have been accepted by the City. The contract shall not be operative nor shall any payments be due until approval of the bonds has been made by the City.
2. The surety company should be listed in the current circular of the "Federal Register - Department of the Treasury - Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies".
3. The surety shall have an underwriting limitation (as shown in the Federal Register) to cover 100% of the project cost. Exceptions to a requirement may be made in unusual circumstances, subject to approval by the Office of Risk Management and the City Attorney's Office.
4. All bonds shall be made on forms furnished by the City and shall conform to the requirements as set forth herein.



5. Each Bond shall be executed by the CONTRACTOR and the Surety. The name and residence of each individual party to the bond shall be inserted in the body thereof, and each such party shall sign the bond with his/her usual signature on the line opposite the scroll seal, and if signed in the States of Maine, Massachusetts, or New Hampshire, an adhesive seal shall be fixed opposite the signature.
6. If the principals are partners, their individual names will appear in the body of the bond or on proceeding pages to be included with said bond with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.
7. The signature of a witness shall appear in the appropriate place, attesting the signature of each individual party to the bond.
8. The principal or surety shall be a corporate surety; the name of the state in which incorporated shall be inserted in the appropriate place in the body of the bond or on proceeding pages to be included with said bond, and said instrument shall be executed and attested under the corporate seal, the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name.
9. The official character and authority of the person or persons executing the bond for the principal, if a corporation, shall be certified by the secretary or assistant secretary according to the form attached hereto. In lieu of such certificate, records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.
10. The date of any bond must not be prior to the date of the contract in connection with which it is given.

#### **SP-16: INSURANCE REQUIREMENTS**

In addition to the provisions of GP Item 103.4.1 Contractor's Insurance, add the following:

103.4.1.1 Worker's Compensation: Statutory requirements as specified by the Workmen's Compensation Law of the State of Texas and adopted by the Texas Workers' Compensation Commission per Title 28, TAC §110.110. Workers' Compensation Insurance Coverage:

A. Definitions:



- (1) Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project for the duration of the project.
- (2) Building or construction - Has the meaning defined in the Texas Labor Code, §406.096(e)(1).
- (3) Contractor - A Person bidding for or awarded a building or construction project by a governmental entity.
- (4) Coverage - Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).
- (5) Coverage Agreement - A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G, as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.
- (6) Duration of the project - Includes the time from the beginning of the work on the project until the work on the project has been completed and accepted by the governmental entity.
- (7) Persons providing services on the project ("subcontractor" in §406.096) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.



- (8) Project - Includes the provision of all services related to a building or construction contract for a governmental entity.
- B. The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the project for the duration of the project.
- C. The CONTRACTOR must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project the CONTRACTOR must prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The CONTRACTOR shall obtain from each person providing services on the project and provide to the governmental entity:
  - (1) A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) No later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The CONTRACTOR shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.



- I. The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) Provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) Provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) Obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
    - (a) A certificate of coverage, prior to the other person beginning work on the project; and
    - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.



- J. By signing this contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the governmental entity that all employees of the CONTRACTOR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the governmental entity to declare the contract void if the CONTRACTOR does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

In accordance with statutory requirements, the CONTRACTOR shall:

- (1) Provide coverage for its employees providing services on the project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) Provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) Provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project;
- (4) Obtain from each person providing services on the project, and provide to the governmental entity:
  - (A) A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (B) No later than seven (7) days after receipt by the contract, a new certificate of coverage showing extension of



coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (5) Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) Post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30-point bold type and text in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 1 provided by the commission on the sample notice, without any additional words or changes:

Figure 1:

#### REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee"

"Call the Texas Workers' Compensation Commission at (512) 440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."



#### **SP-17: POLICY ENDORSEMENTS AND SPECIAL CONDITIONS**

In addition to the provisions of GP Item 103.4.5, 'Policy Endorsements and Special Conditions', add the following:

- (a) CONTRACTOR will not be issued a Work Order to commence work on this Contract until he/she has obtained all the insurance required under this section and such insurance has been approved by the OWNER or his representative.
- (b) CONTRACTOR shall procure and shall maintain during the life of this Contract, insurance coverage as herein specified, and in case of any work sublet, shall require any subcontractor in like manner to secure and maintain such minimum limits of insurance coverage, also.
- (c) The CONTRACTOR shall furnish the OWNER with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of policies. Such certificates shall contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered except after thirty (30) days written notice has been received by the OWNER."

#### **SP-18: ORDER OF WORK**

Add the following to GP Item 107.23.4. Utility Coordination and Protection:

The CONTRACTOR shall be fully responsible for proper coordination for the relocation of utilities (i.e. power poles, electrical lines, gas lines, telephone lines, television (TV) cable lines, buried cables, etc.) public and private unless otherwise noted on the plans (drawings).

#### **SP-19: INDEMNIFICATION**

Delete GP Item 107.2. Indemnification and substitute the following:

CONTRACTOR agrees to defend, indemnify and hold OWNER, its officers, agents and employees harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR's breach of any of the terms or provisions of the Contract, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees or subcontractors, in the performance of the



Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of OWNER, its officers, agents, employees or separate contractors, and in the event of joint and concurring responsibility of the CONTRACTOR and OWNER, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the law of the State of Texas. This agreement, however, does not waive any governmental immunity available to the OWNER under Texas law and nor any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

#### **SP-20: CONSTRUCTION PROGRESS SCHEDULE**

Delete GP 108.1, Progress Schedule, and substitute the following:

The CONTRACTOR shall submit to the Engineer a Construction Progress Schedule on or prior to the effective date of the work order showing the proposed dates of starting and completing each of the various major sections of the work, including sufficient time being allowed for cleanup, as well as the schedule for the overall work, the anticipated monthly payments to become due to the CONTRACTOR, and the accumulated percent of progress each month. Revised Construction Progress Schedules shall be submitted when significant changes occur or when requested by the Engineer.

#### **SP-21: PROSECUTION OF CONSTRUCTION**

Add the following to GP Item 108.2. Prosecution of the Work:

The CONTRACTOR will, unless otherwise approved by the Engineer, prosecute the construction of this project during normal working hours as defined below:

- (a) Normal Work Day shall mean the normal eight (8) hour working day between the hours of 8:00am and 5:00pm
- (b) Normal Work Week shall mean the forty (40) hour work week encompassing the five (5) eight-hour days, Monday through Friday.
- (c) Holidays to be observed and to be included into the normal workweek will be:

New Years Day	January 1st
Presidents' Day	Third Monday in February
Good Friday	Third Friday in April



Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	
Christmas Eve	December 24th
Christmas Day	December 25th

Any of the above dates falling on a Sunday shall be observed on the following Monday.

All work contemplated to be done which will not be in accordance with the normal hours will require prior approval from the Owner. The CONTRACTOR shall request permission by the Owner 72 hours in advance of the time he/she intends to work.

Work, which is of necessity performed at times other than normal working hours, will not require prior approval unless construction scheduling can be arranged to prevent such conflict of time requirements.

All work performed other than the normal working hours, whether scheduled or required, will in no way increase the cost to the OWNER for the performance of such work.

## **SP-22: OCCUPATIONAL SAFETY AND HEALTH ACT**

All work performed under this contract shall meet the requirements of the Occupational Safety and Health Act. It is the responsibility of the CONTRACTOR to familiarize himself/herself with the latest provisions of regulations published by the Occupational Safety and Health Administration in the Federal Register and to perform all of his/her responsibilities thereunder.

The CONTRACTOR shall comply with the provisions of the Occupational Safety and Health Act and the standards and regulations issued thereunder and warrant that all work, materials and products furnished under this contract will conform to and comply with said standards and regulations, which are in existence on the date of this contract. The CONTRACTOR further agrees to indemnify, defend, and hold harmless the OWNER for all damages suffered by the OWNER as a result of the CONTRACTOR's failure to comply with the Act and the Standards issued thereunder and for the failure of any material and/or equipment furnished under this contract to so comply.

The CONTRACTOR shall also comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated



General Contractors of America, Inc., if not in conflict with those of the Occupational Safety and Health Act and shall maintain an accurate record of all cases of death, occupational disease and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment or work under the contract.

The CONTRACTOR alone shall be responsible for the safety, efficiency and adequacy of his/her equipment and employees and for any damage, which may result from their failure or their improper construction, maintenance or operation.

### **SP-23: EXISTING STRUCTURES, FACILITIES AND IMPROVEMENTS**

Add the following to GP Item 107.23. Existing Structures, Facilities and Appurtenances:

The CONTRACTOR's attention is directed to the necessity of taking adequate measures to protect all existing structures, facilities, improvements and utilities, including sprinkler systems, encountered.

The plans show the locations of most known surface and subsurface structures. However, the OWNER assumes no responsibility for failure to show any or all of these structures on the plans or in their exact location. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work, or for increasing the pay quantities in any manner, unless the obstruction encountered is such as to necessitate substantial changes in the lines or grades, or requires the building of special works not provided for in the Contract Documents.

Any non-City utilities (cable, electric, gas, telephone, etc.) damaged by the CONTRACTOR shall be the responsibility of the CONTRACTOR for relocation and/or repair as well as the costs associated with the relocation and/or repair of utilities. Any City utilities (sanitary sewer main and water distribution main) damaged by the non-negligent acts of the CONTRACTOR will not be the responsibility of the CONTRACTOR for repair. Any delays associated with the relocation and/or repair of utilities shall not be basis for a claim for extra pay.

In the progress of the work, the CONTRACTOR may have to relocate certain existing utility service lines. All relocation, repairs and replacement work shall be done at the expense of the CONTRACTOR to the satisfaction of the OWNER, except those for which specific pay items appear in the Bid Proposal.

Any utilities damaged during construction work shall be immediately repaired at the CONTRACTOR's expense.



The CONTRACTOR shall at all times maintain streets and drives in a condition which will provide easy ingress and egress and upon completion of the work, repair all damages to roads and streets used during construction, to a condition at least as good as existed prior to the start of work.

#### **SP-24: TRAFFIC CONTROL**

Add the following to GP Item 107.19.2. Protection of Persons and Property:

The CONTRACTOR shall not remove any regulatory sign, instructional sign, street name sign, or other sign that has been erected by the City. If it is determined that a sign must be removed to permit required construction, the CONTRACTOR shall contact the City to remove the sign. In the case of regulatory signs, the CONTRACTOR must replace the permanent sign with a temporary sign meeting the requirements of the above referenced manual and such temporary sign must be installed prior to the removal of the permanent sign. If the temporary sign is not installed correctly or if it does not meet the required specifications, the permanent sign shall be left in place until the temporary sign requirements are met. When construction work is completed to the extent that the permanent sign can be reinstalled, the CONTRACTOR shall again contact the City to reinstall the permanent sign and shall leave his temporary sign in place until such installation is completed.

The CONTRACTOR shall prosecute his traffic control work in such a manner as to create a minimum of interruption to traffic and pedestrian facilities and to the flow of vehicular and pedestrian traffic within the project area. Access to adjacent property shall be maintained at all times unless otherwise approved by the OWNER.

#### **SP-25: TRENCH SAFETY**

Add a new paragraph immediately after GP Item 107.19.3.3. Trench Safety Plan:

Per Chapter 756, Health and Safety Code, it shall be the responsibility of the CONTRACTOR to provide and maintain a viable trench safety system at all times during construction activities. The CONTRACTOR is directed to become knowledgeable and familiar with the standards as set forth by the Occupational Safety and Health Administration for trench safety that will be in effect during the period of construction of the project and the CONTRACTOR is responsible for conforming to such regulations as prescribed by Occupational Safety and Health Administration standards.



#### **SP-26: WARRANTY**

In GP Item 105.2. Workmanship, Warranties and Guarantees: change all references from one year to two (2) years and add the following:

Notwithstanding any certificate which may have been given by the Engineer, if any materials, equipment or any workmanship which does not comply with the requirements of this contract shall be discovered within two (2) years after completion of construction of the project, and acceptance by the OWNER, the CONTRACTOR shall replace such defective materials or equipment, or remedy any such defective workmanship within ten (10) days after notice in writing of the existence thereof shall have been given by the OWNER or Engineer. In the event of failure of the CONTRACTOR to replace any such defective materials or equipment or to remedy defective workmanship as herein provided, the OWNER may replace such defective materials or equipment or remedy such workmanship as the case may be and in such event the CONTRACTOR shall pay to the OWNER the cost and expense thereof.

#### **SP-27: SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

In addition to GP Item 1.28. Shop Drawings, Product Data and Samples, add:

Each submittal shall consist of five (5) quality copies, in accordance with the Submittal Section in the Technical Specifications, unless otherwise requested by the OWNER.

#### **SP-28: EASEMENTS / RIGHTS-OF-WAY**

Without cost to the CONTRACTOR, the OWNER will provide the necessary easements or rights-of-way required for the project. However, the CONTRACTOR may desire additional temporary easements for the duration of the work for his/her construction, storage or access. All such temporary easements shall be obtained by the CONTRACTOR at no additional cost to the contract or the OWNER.

Unless specifically provided otherwise, the CONTRACTOR, as part of his/her work, shall clear all easements or rights-of-way of all obstructions to the work. On conclusion of his/her operations, he/she shall replace, repair or restore any improvements that may have been removed or damaged, as directed by the Engineer.



## **SP-29: LINES AND GRADES**

In addition to GP Item 105.4. Construction Stakes, add the following:

All work under this contract shall be constructed in accordance with the lines and grades shown on the plans (drawings). The full responsibility for the holding to alignment and grade shall rest upon the CONTRACTOR.

The CONTRACTOR, at his expense, shall stake the project for horizontal alignment prior to construction.

The CONTRACTOR shall protect all property corner markers, and when any such markers or monuments are in danger of being disturbed, they shall be properly referenced and if disturbed shall be reset at the expense of the CONTRACTOR.

## **SP-30: RIGHT OF ENTRY**

The OWNER reserves the right to enter the property or location on which the works herein contracted for are to be constructed or installed, by such agent or agents as he/she may elect, for the purpose of inspecting the work, or for the purchase of constructing or installing such collateral work as said OWNER may desire.

## **SP-31: AUTHORITY AND DUTIES OF INSPECTOR**

Inspectors, designated by and acting under the direction of the OWNER, shall have the authority to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. He/She is authorized to call to the attention of the CONTRACTOR any failure of the work or materials to conform to the plans, specifications and contract documents. He/She shall have the authority to reject materials or suspend the work until any situation at issue can be referred to and decided by the OWNER.

The Inspector is not authorized to revoke, alter or waive any requirements of the plans and specifications. He/She shall in no case act as foreman or perform other duties for the CONTRACTOR, interfere with the management of the work by the latter. Any advice that the Inspector may give the CONTRACTOR shall otherwise not be construed as binding the Engineer in any way, or releasing the CONTRACTOR from fulfilling all of the terms of the Contract.

If the CONTRACTOR refuses to suspend operations on verbal order of the Inspector, a written order will be presented to the CONTRACTOR by the



Inspector giving the reason for suspension of work. After placing the order in the hand of the "man-in-charge", the Inspector shall immediately leave the job. Work performed during the absence of the Inspector will not be accepted nor paid for, and shall be removed and replaced.

Notwithstanding any other provision of this agreement or any other Contract Documents, the Inspector shall not be in any way responsible or liable for any act, errors, omissions or negligence of the CONTRACTOR, any subcontractor or any of the CONTRACTOR's or subcontractor's agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the work.

### **SP-32: OWNER-ENGINEER RELATIONSHIP**

The Engineer will be the OWNER's representative during construction. The duties, responsibilities and limitations of authority of the Engineer as the OWNER's Representative during construction are as set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER and Engineer. The Engineer will advise and consult with the OWNER, and all of OWNER's instructions to the CONTRACTOR shall be issued through the Engineer.

### **SP-33: PROFESSIONAL INSPECTION BY ENGINEER**

The Engineer shall make periodic visits to the Site to familiarize himself/herself generally with the progress of the executed work and to determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the Engineer shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspection of the quality or quantity of the work or be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith.

Notwithstanding any other provision of this agreement or any other Contract Documents, the Engineer shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any subcontractor or any of the CONTRACTOR's or subcontractor's agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the work.



#### **SP-34: INSPECTION AND TESTING**

Add the following to GP Item 106.5. Samples and Tests of Materials:

During the progress of the work, all materials, equipment and workmanship shall be subjected to such inspections and tests as will assure conformance with the contract requirements.

The CONTRACTOR shall furnish at his/her expense all necessary specimens and samples for testing.

Sampling and testing of all materials or construction methods shall be performed by a commercial laboratory approved by the Engineer.

When the CONTRACTOR's materials, construction items or products incorporated in the project fail to satisfy the minimum requirements of the initial test and he/she has to bear the cost of any retesting, he/she shall be responsible for any and all cost associated with such retesting. If in this situation, the CONTRACTOR utilizes the same testing laboratory as the OWNER, the CONTRACTOR shall pay said testing laboratory in full or the testing laboratory shall be able to gain recourse through the CONTRACTOR's Payment Bond.

In the event a conflict arises concerning the interpretation of A.S.T.M., A.C.I., A.W.W.A., etc., specifications/standards, the Engineer shall make his/her determination of the interpretation and his/her determination shall be final.

#### **SP-35: SALES TAX**

Add the following to GP Item 107.14. State and Local Sales and Use Taxes:

The OWNER qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, as amended. Therefore, the OWNER shall not be liable for, or pay the CONTRACTOR's cost of such sales and use taxes which would otherwise be payable in connection with the performance of this contract.

#### **SP-36: VERIFICATION OF MEASUREMENTS**

Before ordering any material or doing any work, the CONTRACTOR shall verify all measurements involved and shall be responsible for the correctness of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions shown on the



drawings; any difference that may be found shall be called to the attention of the Engineer for consideration before proceeding with the work.

#### **SP-37: PAY ITEMS - INCIDENTAL CONSTRUCTION**

The CONTRACTOR shall be paid only for those items which are listed in the proposal or which are added to the job through a change order. All construction or removal considerations, which are not listed as a separate pay item, shall be considered as incidental construction. Cost for these items shall be considered in the most appropriate item listed in the schedule(s) of pay items.

#### **SP-38: OMISSIONS**

- (a) In the event that the specifications inadvertently omit some of the usual and customary work, auxiliary equipment or material required for the satisfactory installation and operation of all work, equipment or material, the CONTRACTOR shall provide these items as directed by the Engineer at his/her own expense. The CONTRACTOR will be assumed to be an experienced and qualified CONTRACTOR in this type of work, and to have studied the purpose of operation of the equipment and the results to be obtained, and is to furnish equipment suitable for the work to be done.
- (b) In the event that the specifications inadvertently fail to contain a specification for work to be done and material to be furnished, then the Standard Current Specification or Requirements of the A.W.W.A., A.S.T.M., A.S.C.E., A.S.E.E., A.S.M.E., N.B.F.U., N.E.C., N.E.M.A., O.S.H.A., NCTCOG "Standard Specifications for Public Works Construction" or TxDOT "Standard Specifications for Construction of Highways, Streets and Bridges" shall apply. Should the above specifications not apply, then the work done, equipment or material furnished shall be as directed by the Engineer.

#### **SP-39: LOSSES FROM NATURAL CAUSES**

Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the CONTRACTOR at his/her own cost and expense.



**SP-40: EXPLOSIVES, BLASTING, ETC.**

Neither explosives nor blasting shall be allowed or used on this project.

**SP-41: WORK WITH OWN FORCES**

The CONTRACTOR shall perform with his own forces work of a value of not less than fifty percent (50%) of the contract amount.

**SP-42: PROJECT NAME CONSTRUCTION SIGNS**

The CONTRACTOR shall install two (2) Project Name Construction Signs, 36"x60", in this Project at the locations indicated by the OWNER and in accordance with the sign drawing on the last page of these Special Provisions. These Signs shall be installed within 14 calendar days from the date the OWNER awards the contract and shall remain in place during the entire construction period. These Signs shall be removed within 14 calendar days after the OWNER's acceptance of the project improvements.

The Project Name Construction Sign shall be constructed from  $\frac{3}{4}$  inch exterior grade plywood with one smooth side. Paint for the Sign shall be a commercial grade exterior paint that will not show signs of fading during the complete construction period defined above. If the sign fades before completion of the project, the CONTRACTOR shall repaint the sign to its original quality. Painting of the sign shall be of professional quality equivalent to commercial sign painting.

Mounting posts shall be either redwood or pressure treated pine. Mounting posts shall be either buried to the depth indicated on the drawing or placed on skids. The Sign shall be attached to the mounting posts with three (3) bolts per post. Bolts shall be standard grade, minimum  $\frac{3}{8}$ " inch diameter with flat washers on both sides of the sign, lock washer and double nuts. Bolts shall be spaced on the sign face between lettering so as not to obscure the wording on the Sign and shall be as evenly as possible.

Sign Data:

Project Name:	<b>PAVEMENT RECONSTRUCTION FOR (Street Name)</b>
Contractor:	<i>Name of Your Company</i>
Estimated Cost:	<i>Contract Amount</i>
Estimated Completion:	<i>To be Determined After Contract Award</i>

**Payment shall be considered as part of the scope of work included in Pay Item: General Site/ROW Preparation.**



#### **SP-43: WATER FOR CONSTRUCTION**

The CONTRACTOR shall make the necessary arrangements for securing and transporting all water required in the construction, including water required for mixing of concrete, sprinkling, testing, flushing or jetting.

The CONTRACTOR may remit to the City a deposit for a fire hydrant water meter. In addition, the Contractor will be billed for all City water measured and used for construction on this project. The cost of any temporary pipe line, metering or other equipment which may be necessary to make use of such fire hydrant water meter and water, shall be considered as incidental to the work and payment therefore shall be included in the various bid items of the proposal. If the CONTRACTOR chooses to use such fire hydrant water meter, he/she shall assume full responsibility for it and return it in the same or similar condition as received otherwise the CONTRACTOR will not be returned his/her deposit.

#### **SP-44: WORK-SITE AREA AND CLEAN-UP**

Add the following to GP Item 107.24 Project Cleanup:

During construction the CONTRACTOR shall at all times keep the job site free from waste, debris and rubbish, and shall maintain a daily routine of clean up.

The working operations of the CONTRACTOR shall at all times be conducted so as to create a minimum of inconvenience to the OWNER or to the public. Stringing of pipe, stockpiling of materials, etc., will be allowed only where no inconvenience is caused and only in amounts that can be readily used by the CONTRACTOR.

All trees, stumps, brush or other debris to be removed from the site, shall be disposed of in a manner consistent with Local Ordinances and all State Regulations. Burning of trash, etc., will only be permitted where allowed by Local Ordinances and State Pollution Regulations.

All excavated earth in excess of that required for project embankments and/or backfilling shall be removed from the job site and disposed of in a satisfactory manner. Disposal of excess material into area creeks and drainage ways will not be allowed.

Any trees or other landscape features scarred or damaged by the CONTRACTOR's operations shall be restored or replaced at the CONTRACTOR's expense. Trimming or pruning to facilitate the work will be permitted only by experienced workmen in an approved manner. Pruned



limbs of one inch (1") diameter or larger, shall be thoroughly treated as soon as possible with a tree wound dressing.

The CONTRACTOR shall take all precautions required to prevent soil erosion during construction. If, in the opinion of the Engineer, excessive erosion occurs, the CONTRACTOR shall take immediate measure to prevent further erosion and restore the disturbed surface with topsoil at completion of the work.

All property along and adjacent to the CONTRACTOR's operations including lawns, yards, shrubs, trees, etc., shall be preserved or restored after completion of the work, to a condition equal to or better than existed prior to start of work.

Upon completion of the work as a whole and prior to final acceptance, the CONTRACTOR shall clean and remove from the site all surplus and discarded materials, temporary structures and all debris. He/She shall leave the site in a neat and orderly condition with an appearance satisfactory to the Engineer and OWNER. Method and location of disposal of surplus and waste materials shall be satisfactory to the Engineer.

The CONTRACTOR shall then thoroughly clean all equipment and materials installed by him/her and shall present for final inspection materials and equipment in a clean, bright and new condition.

No extra payment will be made for any of this type of work required on the project.

#### **SP-45: RECORD DRAWINGS**

The Contractor shall as part of this contract provide record drawings. These drawings shall illustrate how the project was constructed in the field. All modifications to the proposed design shall be drawn on a set of construction drawings. No special pay will be made for providing these documents. One set of construction plans will be supplied to the Contractor by the Engineer for use in preparing record drawing.

#### **SP-46: OWNERSHIP OF DRAWINGS**

All drawings, specifications and copies thereof furnished by the Engineer shall not be reused on other work, and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.



#### **SP-47: ADEQUACY OF DESIGN**

It is understood that the OWNER believes it has employed competent engineers and designers. It is, therefore, agreed that the Engineer shall be responsible for the adequacy of the design, sufficiency of the Contract Documents, the safety of the structure and the practicability of the operations of the completed project; provided the CONTRACTOR has complied with the requirements of the Contract Documents, all approved modifications thereof, and additions and alterations thereto approved in writing by the OWNER. The burden of proof of such compliance shall be upon the CONTRACTOR to show that he/she has complied with the requirements of the Contract Documents, approved modifications thereof and all approved additions and alternations thereto.

#### **SP-48 CONSTRUCTION PAY ITEM - DESCRIPTIONS**

The following descriptions are intended to clarify the nature of the work required for this project, the provisions of the Standard Technical Specifications and those amended in the Technical Specifications section shall apply except as otherwise specified herein:

##### **General Site/ROW Preparation:**

In addition to the description of work in NCTCOG Item 203, work under this pay item shall include the following:

As part of the Contractor's work related to this item, he shall prepare a video-taped survey of the existing conditions prior to commencing his construction activities. Each property along the proposed alignment shall contain video footage depicting all public and private improvements, structures and appurtenances along with a vocal identification of each address. One acceptable video copy shall be provided to the City.

The Contractor shall remove, store and reinstall City signs as required and/or noted in the plans. Contractor shall salvage signs and provide them to the City. Salvage of materials shall be subsidiary to this item.

All existing structures above ground or below ground requiring demolition and removal for construction of the proposed improvements, not specifically listed as a separate pay item, shall be included in this pay item.

It is the intent of the City to preserve and protect as many trees as possible. Trees shown in the Demolition Plan are to be removed and hauled off site. No burning is allowed within City limits. Contractor shall take precautions to preserve trees not identified for removal. No separate payment shall be made for clearing and grubbing.



Under this pay item mailboxes shall be removed, temporarily stored, and securely relocated in a final position that meets federal and local mail delivery requirements and in equal or better condition than original. Temporary mail delivery arrangements shall be made during the relocation process.

Removal of fences and providing and installing temporary fences required during construction, including removal after construction, shall be subsidiary to this pay item and shall be provided as noted in the plans.

The Contractor shall include any temporary drainage pipes or crossings required to complete construction of the project in this pay item. Contractor must maintain proper drainage during construction.

### **2" Type D HMAC Surface Course & 4" Type B HMAC Base Course**

HMAC pavement shall be constructed as directed by the Engineer and in accordance with the plans, the City of Lancaster specifications and details, and NCTCOG Item 302. HMAC pavement shall be constructed to the thickness shown on the detail sheet or typical section, or as directed by the Engineer. HMAC base shall be constructed in three equal lifts with tack coats applied to each lift.

Measurement and payment shall be made on the basis of the unit price bid per square yard of HMAC pavement at the thickness described in the proposal, complete in place, and shall be full compensation for all labor, material, equipment, tools, testing, and incidentals necessary to construct the HMAC pavement. Tack and prime coats as shown on the plans will not be paid for directly but shall be considered subsidiary to HMAC pavement.

### **FULL WIDTH, BUTT OR WEDGE MILLING:**

Streets shall be "Full WIDTH Milling" or "Wedge Milled" from each gutter lip, concrete valley lip, and beginning and end of the proposed milling, approx. (STA. 17+51 to STA. 18+43), Lancaster Hutchins RD. Any required "wedge mill" shall taper from a 2" depth at the concrete lip to 0" over the 6' width, as directed by the Field Inspector and as shown on the Milling Details in Section VII of these Contract Documents. The "full mill" shall be a 2" minimum thickness over the full width of existing asphalt from concrete lip to concrete lip, taking care to avoid existing sewer manhole rims, cleanouts and water valve boxes, as directed by the Field Inspector. **The Contractor shall properly clean up and dispose of all millings at his cost and responsibility.**

Where the edge of milled asphalt abuts existing asphalt surfaces, except where specifically directed otherwise, the joint line shall be straight and perpendicular to the centerline of the existing asphalt pavement.

Measurement and payment for the "full width milling" shall be made on the basis



of the price bid per square yard. Measurement and payment for “wedge mill” shall be made on the basis of the price bid per linear foot, when measured along the line of cut at the edge of concrete. Measurement for “milled butt joint” shall be made on the basis of the price bid per linear foot, when measured along the line of cut where abutting existing pavement. PAYMENT FOR “MILLED BUTT JOINT” SHALL BE MADE ONLY WHERE PREVIOUSLY AUTHORIZED AND DIRECTED.

**HMAC OVERLAY:**

Type “D” HMAC Surface Course shall be installed for all overlays in accordance with the City of Lancaster Standards, NCTCOG Item 302 and these contract documents. This pavement will be used to replace and improve existing HMAC pavement that has been previously prepared by milling, and provide a smooth transition to the existing asphalt pavement.

Measurement and payment for the HMAC overlay shall be made on the basis of the price bid per square yard, compacted in place, including tack coat, tools, labor, equipment, materials, and any other incidentals necessary.

**SUBGRADE PULVERIZATION AND CEMENT STABILIZED SUBGRADE:**

This work consists of labor, equipment and materials required for excavating, pulverizing existing asphalt pavement, and stabilizing with cement as shown in the plans and details. Edges which abut existing asphalt or concrete pavement not scheduled for replacement shall be sawcut along smooth, straight lines.

Portland cement treatment of the recycled base shall be at a rate equivalent to 22 lbs cement per square yard of stabilized base (4% cement to soil weight for the thickness) applied and mixed. Mixing and compaction of cement stabilized materials shall be accomplished sequentially, without the need for cure / aging time.

The stabilized and recycled subgrade shall be graded and crowned as detailed. Thickness of the compacted subgrade shall be 6” minimum. Mixing and compaction should be done carefully near existing concrete surfaces designated to remain intact. The Contractor shall properly dispose of any excess subgrade material off site as part of this pay item. Refer to section 4.4 in the Geotechnical Report, prepared by CMJ Engineering, INC. dated January 2016, report number 131-15-148, included in the contract documents, Section VI.

Measurement for stabilized base shall be made to the neat lines shown in the plans. Additional depth required by the plans shall be measured separately.

Payment shall be made on the basis of the unit price bid per square yard, and shall be full compensation for all labor, materials, equipment, tools and other incidentals necessary to complete the work, including, sawcutting and



pulverization of existing pavement, treatment of the existing recycled asphalt and base, mixing, compaction and grading.

**ADJUSTMENT OF SANITARY SEWER MANHOLE RIMS, CLEANOUT RIMS AND WATER VALVE BOXES:**

Where street elevations are being RAISED with new HMAC paving, it will be necessary to adjust the rims of existing sewer manholes, cleanouts and water valve boxes which lie within the RAISED pavement. In addition, the Contractor shall be responsible for damage to manholes, valve boxes and water valves due to asphalt removal, additional grading, etc., as may occur at the time of construction. Cost for repair to such damaged items shall be at the Contractor's expense. Where "full mill" has been directed or called for in the Proposal, no adjustment of manhole rims, cleanouts or water valve boxes will be paid, even if the existing rim or box elevation is misaligned by 2" or less. Adjustment of manholes, cleanouts or water valve boxes lying within two feet of gutter line or butt joint shall also not be paid.

Measurement and payment for these items shall be made on the basis of the price bid per each and shall include all materials, tools, labor, and equipment required to RAISE the final manhole rim with grade rings, or cleanout / valve box elevation **flush** with pavement overlay.

**THERMO PLASTIC PAVEMENT MARKINGS:**

All pavement striping, markings and reflectors shall be provided and constructed per TxDOT Item 666, TxDOT spec DMS-8220, and detail PM (1)-12 and shall be installed in the locations noted in the plans. Roadway signs including steel posts and concrete footing construction shall meet the requirements of the current edition of the Manual of Uniform Traffic Control Devices (MUTCD).

Measurement and payment shall be made on the basis of the linear foot price bid for center striping, shoulder striping, left turn lane striping and markers, complete, in place. The price bid shall be full compensation for all materials, tools, labor, equipment and any incidental necessary to complete the work in compliance with the plans and specifications. Surface preparation shall be considered incidental to this pay item.

**Traffic Control**

Traffic control is the responsibility of the Contractor. Contractor shall provide appropriate traffic control facilities and measures for the project. The placement and location of traffic control and safety devices shall be in accordance with the requirements of the latest edition of the Texas Manual on Uniform Traffic Control Devices. If necessary, the Contractor shall engage a traffic engineer to develop a plan that accommodates the Contractor's means and methods.

Included in this pay item will be all traffic control requirements including but not limited to barricades, advance warning signs, notifications to property owners,



Included in this pay item will be all traffic control requirements including but not limited to barricades, advance warning signs, notifications to property owners, flaggers, any temporary asphalt roads or detours necessary, or other requirements to provide the continued movement of traffic and safety of the traveling public during all stages of construction. A certified traffic control plan prepared by a State certified traffic control specialist shall be provided to the Engineer prior to construction for any road closures, detours or temporary road routing. No roads shall be closed unless approved by the City of Lancaster. Two way traffic shall be restored after work hours at the end of each day.

### **Erosion Control**

The erosion control pay item shall include all construction items noted on the Erosion Control Plan including but not limited to, silt fence, inlet protection, hydromulch seeding and erosion control mats for parkways and channels, rock berms and preparation and implementation of a Storm Water Pollution Prevention Plan. All erosion controls shall be constructed in accordance with NCTCOG Item #201, Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control. Contractor shall include removal of all temporary erosion controls (silt fence, rock berms and inlet protection) upon completion of the project. All silt fence for this project shall be constructed with METAL support posts.

All disturbed non-paved areas shall be Hydromulched with Bermuda seed. All rocks larger than 1-inch shall be removed from top 2" of graded areas prior to application. Application shall be after fine grading and raking of application area. Payment shall include ground preparation and watering of hydromulched areas until seed germination. In areas where it is necessary to grade onto private property, the Contractor shall restore existing yards to the conditions that existed prior to construction.

Contractor shall comply with all TCEQ requirements as the sole "operator" for this project in compliance with Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit TXR150000. Contractor shall submit a Notice of Intent (NOI) to the TCEQ as sole operator for the construction project. Upon completion of the project and final stabilization of the site, the Contractor shall submit a Notice of Termination (NOT) to TCEQ. The preparation of the SWPPP, and submittal of all required permit documentation including NOI and NOT are subsidiary.

### **SP-49: NON-PAY ITEMS**

No direct or additional payment will be made for the following non-pay items or any other item of work required for the completion of this project but which is not specifically itemized in the bid proposal. These items will be considered



subsidiary to the contract, the cost of which shall be included in the unit price for the various construction pay items in the proposal.

**NON-PAY ITEM: FRANCHISE UTILITY COORDINATION**

The Contractor shall coordinate all work with the required franchise utilities within this area including, but not limited to City of Lancaster, Atmos Energy for gas line services and mains, Oncor for the electric, AT&T/Time Warner Cable for the telephone. It is the Contractor's responsibility to identify all underground utilities prior to construction on the project and coordinate the progress of construction with the noted franchise utilities. No additional compensation or additional time extensions shall be due the Contractor for failure to coordinate with the utility companies. The plans identify the contacts that are to be made with all franchise utility companies. Plans have been provided in advance to the utility companies for review.

**NON-PAY ITEM: PUBLIC NOTIFICATIONS**

Prior to beginning construction that will affect access to any residence or business or disrupt water service, the contractor shall prepare and deliver a notice or flyer of the pending construction to the front door of each residence or business that will be impacted. Notice will be provided for disruption of any water service, removal of any driveway, or temporary road shutdowns or detours. The notice will be coordinated with the City Inspector and shall be prepared as follows:

The flyer shall be prepared on the Contractor's letterhead and shall include the following information: Name of Project, Scope of Project (i.e. type of construction activity), actual construction duration, the name of the contractor's foreman and his phone number, the name of the City's inspector and his phone number and the City's after-hours phone number.

The contractor shall submit a schedule showing the construction start and finish time to the inspector. The contractor shall distribute the flyer to all residents a minimum of 48 hours prior to construction. Contractor shall describe the disruption and the approximate duration of interruption. In addition, a copy of all flyers shall be delivered to the City Inspector for his review prior to being distributed. The contractor will not be allowed to begin construction until the flyer is delivered to all affected residents.

All work involved with the pre-construction notification flyers shall be considered subsidiary to the contract price and no additional compensation shall be made.

**NON-PAY ITEM: TESTING OF ASPHALT**

Contractor shall be responsible for hiring a testing lab to test the asphalt pavement in accordance with NCTCOG standards. This work shall be considered subsidiary to the HMAC pavement bid items.



**NON-PAY ITEM: CONSTRUCTION LAYOUT AND STAKING**

The Engineer will provide, on the plans, horizontal control in the form of grid reference points and/or bearings and distances and vertical control in the form of benchmarks. From the controls provided in the plans, the Contractor shall be responsible for the complete layout of the work and for establishing lines and elevations as needed during construction. The Contractor shall furnish, at his own expense, labor (including the services of competent personnel), equipment (including accurate surveying instruments), stakes, templates, tools, and materials as may be required for laying out any and all parts of the work. This work shall be considered subsidiary to the total contract price.

**NON-PAY ITEM: SPRINKLING FOR DUST CONTROL**

The sprinkling of water on exposed grade prior to subgrade preparation to preparation to prevent dust in the construction area shall be in accordance with NCTCOG Item 203.8, "Sprinkling for Dust Control". This work shall be considered subsidiary to the bid item for Erosion Control.

**NON-PAY ITEM: ACCESS TO PRIVATE PROPERTIES**

The Contractor shall maintain access to private properties and driveways at all times unless pre-approved by the City Engineer or his designated representative for unavoidable construction activities. This work necessary to maintain access including moving trash cans to end of block etc. shall be considered subsidiary to the total contract price.

**NON-PAY ITEM: SAW-CUT & REMOVE EXISTING PAVEMENT**

All open trench construction within pavement, driveways, sidewalks, parking lots, flumes or along curb and gutter shall be per City standards and shall require sawcutting of the surface material to smooth straight lines. Any saw-cut required in the construction and/or removal of existing concrete, asphalt, curb and gutter, sidewalks, parking lots, driveways, valley gutters, flumes, etc. shall be subsidiary to the total contract price.

**NON-PAY ITEM: SITE CLEANUP AND DISPOSAL/SALVAGE OF EXCESS MATERIAL**

Clean-up of the site and disposal of excess material shall be considered incidental to, and part of the overall contract without separate payment. The Contractor shall notify the City Inspector of materials removed from the project so the City may be provided the opportunity to salvage the materials. Contractor shall deliver salvaged materials to locations as directed by the City of Lancaster and no separate payment shall be made for hauling and delivery of materials.

**SP-50: RESTORATION OF PROPERTY**

All work related to property restoration shall be considered incidental to the project, unless specific items are listed as pay items in the Proposal.



## **SP-50 WEEKEND / AFTER-HOURS INSPECTIONS**

In general, the Contractor shall not perform any work beyond the specified daily working times. If the Contractor, however, requests City approval for weekend (Saturday) or after-hours work, and receives approval for same, he shall be billed for overtime inspection at an hourly rate of \$47.00 and a minimum period of four (4) consecutive hours. No work will be performed or approved on Sundays.

General cleanup or any other type of work NOT requiring inspection may be performed at the Contractor's discretion, but he shall be required to receive City approval prior to the after-hours work. In general, all ground surfaces shall be restored to the same grades and conditions as existed immediately prior to beginning work.

**END SPECIAL PROVISIONS**



# PROJECT NAME CONSTRUCTION SIGN

7.5" X 10.5" WHITE AREA  
CITY OF LANCASTER  
LOGO

5.0' X 3.0' SIGN, BLUE BACKGROUND  
WITH WHITE LETTERS

HEIGHT OF LETTERS

DISTANCE BETWEEN  
BOTTOM OF LETTERS

3 $\frac{3}{8}$ "	LANCASTER	4 $\frac{7}{8}$ "
2"	YOUR TAX DOLLARS AT WORK _____	3 $\frac{1}{8}$ "
2 $\frac{3}{4}$ "	PROJECT TYPE _____	5 $\frac{3}{8}$ "
2 $\frac{3}{4}$ "	STREET NAME _____	3 $\frac{3}{4}$ "
1 $\frac{7}{8}$ "	Contractor: CONSTRUCTION CO. NAME. _____	3 $\frac{7}{8}$ "
1 $\frac{7}{8}$ "	Estimated Cost: CONTRACT AMOUNT _____	2 $\frac{7}{8}$ "
1 $\frac{7}{8}$ "	Estimated Completion: DATE _____	2 $\frac{7}{8}$ "
		3' - 0"

5' - 0"



## **SECTION III**

### **Exhibit H- TECHNICAL SPECIFICATIONS**



## TECHNICAL SPECIFICATIONS

For this contract, the Public Works Construction Standards of the North Central Texas Council of Governments, with all amendments thereto, shall govern and shall constitute as the Technical Specifications except as herein amended or modified. Omission of any section from this Project's Contract Documents does not mean that such section is not applicable to this Project. The NCTCOG Technical Specifications will not be physically bound with the other contract documents. Copies may be obtained from the North Central Texas Council of Governments.

### Item 302 ASPHALT PAVEMENT

#### 302.9.6.9 Pavement Thickness Test.

Upon completion of the work and before final acceptance and final payment shall be made, pavement thickness tests may be made by the Owner. The number of tests and location shall be at the discretion of the Owner, unless otherwise specified in the Special Provisions or on the plans. In the event a deficiency in the thickness of pavement is revealed during normal testing operations, subsequent tests necessary to isolate the deficiency shall be at the Contractor's expense.

Where the average thickness of asphalt pavement or overlay in the area found to be deficient in thickness by more than 0.2 inch, but not more than 0.50 inch, payment shall be made at an adjusted price as specified in the following table:

#### HMAC PAVEMENT DEFICIENCY

Deficiency in Thickness Determined by Cores (Inches)	(mm)	Proportional Part of Contract Price Allowed
0.00 to 0.20	(0.0 - 5.0)	100 percent
0.21 to 0.30	(5.3 - 7.5)	80 percent
0.31 to 0.40	(7.8 - 10.0)	70 percent
0.41 to 0.50	(10.3 - 12.5)	50 percent

Any area of pavement found in thickness by more than 0.5 of an inch shall be evaluated by the Owner. If, in the judgement of the Owner, the area of such deficiency warrants removal, the area shall be removed and replaced, at the Contractor's entire expense, with



pavement of the thickness shown on the plans

No additional payment over the contract unit price shall be made for any pavement of a thickness exceeding that required by the plans.

302.10      Measurement and Payment

This section is modified by the following:

“Where 2" Type ‘D’ HMA is called for in the plans, measurement shall be by the square yard of pavement in place. Payment under this item shall be full compensation for Type D Surface Course(s), Tack Coat, Sawcuts, and Joint Sealing.”

Item 402                      PAVEMENT CUT, EXCAVATION, AND REPAIR

402.3.10.      Payment for Pavement Replacement

This section shall be modified by the following:

“Permanent pavement repair shall be paid for at the contract unit price per square yard.”



## **HMAC Pavement Geotextile Technical Specifications:**

### **1 GENERAL**

#### **1.1 SECTION INCLUDES**

- A. This specification is applicable to the use of a paving fabric saturated with asphalt cement between pavement layers.
- B. The function of the paving fabric is to act as a waterproofing and stress relieving membrane within the pavement structure.
- C. The specification is not intended to describe fabric membrane systems specifically designed for pavement joints and localized (spot) repairs.

#### **1.2 RELATED SECTIONS**

Edit the following paragraphs to coordinate with other sections of the Project Manual.

- A. Section 203.4 Unclassified Street Excavation.
- B. Section 302 Asphalt Pavement.

#### **1.3 UNIT PRICES**

- A. Method of Measurement: By the square yard as indicated in contract documents including seams, overlaps, and wastage.
- B. Basis of Payment: By the square yard

#### **1.4 REFERENCES**

- A. American Association of State Highway and Transportation Officials (AASHTO) "Standard Specification for Geotextile Specification for Highway Applications" Designation M 288-05.
- B. Texas Department of Transportation, Manual of Testing Procedures: TEX-616-J: Asphalt Retention and Potential Change of Area.
- C. American Society for Testing and Materials (ASTM):
  - 1. D 276 - Method for Identification of Fibers in Textiles (Melting Point).
  - 2. D 4354 - Practice for Sampling of Geosynthetics for Testing.
  - 3. D 4355 - Test Method for Deterioration of Geotextiles from Exposure to Ultraviolet Light and Water (Xenon-Arc Type Apparatus).
  - 4. D 4439 - Terminology for Geotextiles.
  - 5. D 4533 - Test Method for Index Trapezoid Tearing Strength of Geotextiles.



6. D 4632 - Test Method for Grab Breaking Load and Elongation of Geotextiles.
7. D 4759 - Practice for Determining the Specification Conformance of Geosynthetics.
8. D 4873 - Guide for Identification, Storage, and Handling of Geotextiles.
9. D 5199 - Test Method for Measuring Nominal Thickness of Geotextiles and Geomembranes.
10. D 5261 - Test Method for Measuring Mass per Unit Area of Geotextiles.

D. Geosynthetic Accreditation Institute - Laboratory Accreditation Program (GAI-LAP).

1.5 DEFINITIONS

- A. Maximum Average Roll Value (MaxARV): Property value calculated as typical plus two standard deviations. Statistically, it yields a 97.7 percent degree of confidence that any sample taken during quality assurance testing will be below the value reported.
- B. Minimum Average Roll Value (MARV): Property value calculated as typical minus two standard deviations. Statistically, it yields a 97.7 percent degree of confidence that any sample taken during quality assurance testing will exceed value reported.
- C. Typical Roll Value: Property value calculated from average or mean obtained from test data.

1.6 SUBMITTAL:

Submit Under Provisions of Section 105.3 Shop Drawings, Product Data, And Samples.

1. Certification:

- A. The Contractor shall provide the Engineer a certificate stating the name of the geotextile manufacturer, product name, style, chemical compositions of filaments or yarns and other pertinent information to fully describe the geotextile.
- B. The Manufacturer is responsible for establishing and maintaining a quality control program to assure compliance with the requirements of the specification. Documentation describing the quality control program shall be made available upon request.
- C. The manufacturer's certificate shall state that the furnished geotextile meets MARV requirements of the specification as evaluated under the manufacturer's quality control program. A



person having legal authority to bind the Manufacturer shall attest to the certificate.

2. Manufacturing Quality Control (MQC) test results shall be provided upon request.

#### 1.7 DELIVERY, STORAGE, AND HANDLING

- A. Geotextile labeling, shipment and storage shall follow ASTM D 4873.
- B. Product labels shall clearly show the manufacturer or supplier name, style name, and roll number.
- C. Each shipping document shall include a notation certifying that the material is in accordance with the manufacturer's certificate.
- D. Each geotextile roll shall be wrapped with a material that will protect the geotextile from damage due to shipment, water, sunlight, and contaminants.
- E. The protective wrapping shall be maintained during periods of shipment and storage. If the wrapping is damaged prior to installation, the outer wrap of geotextile material must be discarded before installation.
- F. During storage, geotextile rolls shall be elevated off the ground and adequately covered to protect them from the following: Site construction damage, extended exposure to ultraviolet (UV) radiation, precipitation, chemicals that are strong acids or strong bases, flames, sparks, temperatures in excess of (160 deg F) and any other environmental condition that might damage the geotextile.

#### 1.8 QUALITY ASSURANCE SAMPLING, TESTING, AND ACCEPTANCE

- A. Geotextile:
  1. Geotextiles shall be subject to sampling and testing to verify conformance with this specification. Sampling for testing shall be in accordance with ASTM D 4354.
  2. Acceptance shall be in accordance with ASTM D 4759 based on testing of either conformance samples obtained using Procedure A of ASTM D 4354, or based on manufacturer's certifications and testing of quality control samples obtained using Procedure B of ASTM D 4354.
- B. Sewn Seams (if required):
  1. For seams that are to be sewn in the field, the Contractor shall provide at least a (6 ft) length of sewn seam for sampling by the Engineer before the geotextile is installed.



2. For seams that are sewn in the factory, the Engineer shall obtain samples of the factory seams at random from and roll of geotextile that is to be used on the project.
3. If seams are to be sewn in both directions, samples of seams from both directions shall be provided.
4. For seams that are field sewn, the seams sewn for sampling shall be sewn using the same equipment and procedures as will be used for the production seams.
5. The Contractor along with the sample of the seam shall submit the seam assembly description. The description shall include the seam type, sewing thread, and stitch density.
6. Do not expose geosynthetics to elements over 14 days between installation and placement of cover.

## 2 PRODUCTS

### 2.1 MANUFACTURERS

A. Propex Operating Company, LLC, Chattanooga, Tennessee, 37402 USA, Phone (800) 621-1273.

B. Substitutions: of any other manufactures must be approved by the city engineer.

### 2.2 MATERIALS

#### A) PETROMAT® 4598:

1. The geotextile construction shall be a needlepunched nonwoven geotextile composed of 75% polypropylene and 25% recycled polyester, staple fiber, calendared on one side.
2. The geotextile should be resistant to ultraviolet degradation.  
Minimum Average Roll Values:
3. The geotextile should meet the following Minimum Average Roll Values (MARV) for woven geotextile:

Property	Test Method	Units	Property Requirement
Grab Tensile Strength	ASTM D 4632	(lbs)	(101)
Grab Elongation	ASTM D 4632	percent	50
Mass Per Unit Area	ASTM D 5261	(oz/yd <sup>2</sup> )	(4.1)
Asphalt Retention	ASTM D 6140	(gal/yd <sup>2</sup> )	(0.20)



Melting Point	ASTM D 276	(Degrees F)	(320)
UV Resistance	ASTM D 4355	percent	70 at 150 hrs

#### 4. QUALITY CONTROL

a) Manufacturing Quality Control (MQC): Testing shall be performed at a laboratory accredited by GAI-LAP for tests required for the geotextile, at frequency exceeding ASTM D 4354.

#### B) Tack Coat:

1. The sealant material used to impregnate and seal the geotextile, as well as bond it to both the base pavement and overlay, shall be a paving grade asphalt recommended by the geotextile manufacturer and approved by the Engineer.
2. Uncut asphalt cements are the preferred sealants; however, cationic and anionic emulsions may be used. Cutbacks and emulsions, which contain solvents, shall not be used.
3. The grade of asphalt cement specified for hot-mix design in each geographic location is generally the most acceptable material.

#### C) Equipment:

1. The asphalt distributor shall be capable of spraying the asphalt sealant at the prescribed uniform application rate. No streaking, skipping, or dripping will be permitted. The distributor shall also be equipped with a hand spray having a single nozzle and positive shut-off valve.
2. Mechanical or manual lay down equipment shall be capable of laying the geotextile smoothly.
3. The following miscellaneous equipment shall be provided: stiff bristle brooms or squeegees to smooth the geotextile; scissors or blades to cut the geotextile; brushes for applying asphalt sealant to geotextile overlaps.
4. Pneumatic rolling equipment to smooth the geotextile into the sealant, and sanding equipment may be required for certain jobs. Rolling is especially required on jobs where thin lifts or chip seals are being placed. Rolling helps ensure the geotextile bond to the adjoining pavement layers in the absence of heat and weight associated with thicker lifts of asphaltic pavement.

### 3 EXECUTION

#### 3.1 PREPARATION

- A. Washed concrete sand may be spread over an asphalt-saturated geotextile to facilitate movement of equipment during construction or to



prevent tearing or delamination of the geotextile. Hot-mix broadcast in front of construction vehicle tires may also serve this purpose. If sand is applied, excess quantities shall be removed from the geotextile prior to placing the surface course.

- B. Sand is not usually required. However, ambient temperatures are occasionally sufficiently high to cause bleed-through of the asphalt sealant resulting in undesirable geotextile adhesion to construction vehicle tires.
- C. Neither the asphalt sealant nor the geotextile shall be placed when weather conditions, in the opinion of the Engineer, are not suitable. Air and pavement temperatures shall be sufficient to allow the asphalt sealant to hold the geotextile in place. For asphalt cements, air temperature shall be 10°C and rising. For asphalt emulsions, air temperature shall be (60°F) and rising.
- D. The surface on which the geotextile is to be placed shall be reasonably free of dirt, water, vegetation, or other debris. Cracks exceeding (1/8 in) in width shall be filled with suitable crack filler. Potholes shall be properly repaired as directed by the Engineer. Fillers shall be allowed to cure prior to geotextile placement.

### 3.2 INSTALLATION OF TACK COAT

- A. The specified rate of asphalt sealant application must be sufficient to satisfy the asphalt retention properties of the geotextile and bond the geotextile and overlay to the old pavement.
- B. When emulsions are used, the application rate must be increased to offset water content of the emulsion.
- C. Application of the sealant shall be by distributor spray bar, with hand spraying kept to a minimum. Temperature of the asphalt sealant shall be sufficiently high to permit uniform spray pattern. For asphalt cements the minimum temperature shall be (300°F). To avoid damage to the geotextile, however, the distributor tank temperatures shall not exceed (320°F).
- D. A spray pattern for asphalt emulsion is improved by heating. Temperatures in the (130°F) to (160°F) range are desirable. A temperature of (160°F) shall not be exceeded since higher temperatures may break emulsion.
- E. The target width of asphalt sealant application shall be the geotextile width plus (6 in). The asphalt sealant shall not be applied any farther in advance of geotextile placement than the distance the Contractor can maintain free of traffic.



- F. Asphalt spills shall be cleaned from the road surface to avoid flushing and geotextile movement.
- G. When asphalt emulsions are used, the emulsion shall be cured prior to placing the geotextile and final wearing surface. This means essentially no moisture remaining.

### 3.3 INSTALLATION OF THE GEOSYNTHETIC (PAVING FABRIC)

- A. The geotextile shall be placed onto the asphalt sealant (calendared or smooth side up) with minimum wrinkling prior to the time the asphalt has cooled and lost tackiness. As directed by the Engineer, wrinkles or folds in excess of (1 in) shall be slit and laid flat.
- B. Blooming and/or pneumatic rolling will be required to maximize geotextile contact with the pavement surface.
- C. Overlap of geotextile joints shall be sufficient to ensure full closure of the joint, but should not exceed (6 in). Transverse joints shall be lapped in the direction of paving to prevent edge pickup by the paver. A second application of asphalt sealant to the geotextile overlaps will be required if in the judgement of the Engineer additional asphalt sealant is needed to ensure proper bonding of the double geotextile layer.
- D. Removal and replacement of geotextile that is damaged will be the responsibility of the Contractor.

### 3.4 PROTECTION

- A. Trafficking the geotextile will be permitted for emergency and construction vehicles only.
- B. Placement of the hot-mix overlay should closely follow geotextile laydown. The temperature of the mix shall not exceed (320°F). In the event asphalt bleeds through the geotextile causing construction problems before the overlay is placed, the affected areas shall be blotted by spreading sand. To avoid movement of, or damage to the seal-coat saturated geotextile, turning of the paver and other vehicles shall be gradual and kept to a minimum.
- C. Prior to placing a seal coat (or thin overlay such as an open-graded friction course), lightly sand the geotextile at a spread rate of (0.15 to 0.20 lb/ft<sup>2</sup>), and pneumatically roll the geotextile tightly into the sealant.

## **END TECHNICAL SPECIFICATIONS**



# **SECTION IV**

## **Exhibit M- CONSTRUCTION PLANS** (Bound Separately)



## **SECTION V**

### **Exhibit N- GEOTECHNICAL REPORT**



**GEOTECHNICAL ENGINEERING STUDY  
LANCASTER STREETS REFURBISHMENT  
LANCASTER, TEXAS**

Presented To:

**Teague Nall and Perkins**

January 2016

**PROJECT NO. 131-15-148**



January 5, 2016  
Report No. 131-15-148

Teague Nall & Perkins  
1100 Macon Street  
Fort Worth, Texas 76102

Attn: Mr. Scott Wilhelm, P.E.

**GEOTECHNICAL ENGINEERING STUDY  
LANCASTER STREETS REFURBISHMENT  
LANCASTER, TEXAS**


Dear Mr. Wilhelm:

Submitted here are the results of a geotechnical engineering study for the referenced project. This study was performed in general accordance with CMJ Proposal 15-5635R1 dated November 11, 2014. The geotechnical services were authorized on November 11, 2015.


Engineering analyses and recommendations are contained in the text section of the report. Results of our field and laboratory services are included in the appendix of the report. We would appreciate the opportunity to be considered for providing the materials engineering and geotechnical observation services during the construction phase of this project.


We appreciate the opportunity to be of service to Teague Nall & Perkins. Please contact us if you have any questions or if we may be of further service at this time.

Respectfully submitted,  
CMJ ENGINEERING, INC.  
TEXAS FIRM REGISTRATION NO. F-9177



Matthew W. Kammerdiener, E.I.T.  
Staff Engineer  
Texas No. ET-48854



  
Garrett E. Williams, P.E.  
President  
Texas No. 52525  
1-5-16

copies submitted: (2) Mr. Scott Wilhelm, P.E.; Teague Nall & Perkins (mail and email)



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## APPENDIX A

	<u>Plate</u>
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Key to Classification and Symbols-----	A.3
Logs of Borings -----	A.4 – A.12
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## **1.0 INTRODUCTION**

### **1.1 General**

The project, as currently planned, will consist of replacing the following existing 2-lane asphalt roads:

- Lancaster-Hutchins Road from its intersection with 342 north to Pleasant Run Road  
~ 9,500 linear feet
- Rogers Road from Pleasant Run Road to Balkin Drive  
~ 4,500 linear feet

The existing roadways are comprised of asphalt and exhibit various forms of pavement distress. New hot-mix asphalt is planned, with consideration being given to a full-depth reclaimed base pavement subgrade. Plate A.1, Plan of Borings, depicts the site vicinity and locations of the exploration borings.

### **1.2 Purpose and Scope**

The purpose of this geotechnical engineering study has been to determine the general subsurface conditions, evaluate the engineering characteristics of the subsurface materials encountered and develop recommendations for the type or types of pavement subgrade preparation suitable for the project.

To accomplish its intended purposes, the study has been conducted in the following phases: (1) drilling sample borings to determine the general subsurface conditions and to obtain samples for testing; (2) performing laboratory tests on appropriate samples to determine pertinent engineering properties of the subsurface materials; and (3) performing engineering analyses, using the field and laboratory data to develop geotechnical recommendations for the proposed construction.

The preliminary design is currently in progress and the locations and/or elevations of the road could change. Once the final design is near completion (80-percent to 90-percent stage), it is recommended that CMJ Engineering, Inc. be retained to review those portions of the construction documents pertaining to the geotechnical recommendations, as a means to determine that our recommendations have been interpreted as intended.



### **1.3 Report Format**

The text of the report is contained in Sections 1 through 7. All plates and large tables are contained in Appendix A. The alpha-numeric plate and table numbers identify the appendix in which they appear. Small tables of less than one page in length may appear in the body of the text and are numbered according to the section in which they occur.

Units used in the report are based on the English system and may include tons per square foot (tsf), kips (1 kip = 1,000 pounds), kips per square foot (ksf), pounds per square foot (psf), pounds per cubic foot (pcf), and pounds per square inch (psi).

## **2.0 FIELD EXPLORATION AND LABORATORY TESTING**

### **2.1 Field Exploration**

Subsurface materials at the project site were explored by nine (9) vertical soil borings. Borings B-1 through B-9 were drilled to a depth of 5 feet using continuous flight augers at the approximate locations shown on the Plan of Borings, Plate A.1. The boring logs are included on Plates A.4 through A.12 and keys to classifications and symbols used on the logs are provided on Plates A.2 and A.3.

Undisturbed samples of cohesive soils were obtained with nominal 3-inch diameter thin-walled (Shelby) tube samplers at the locations shown on the logs of borings. The Shelby tube sampler consists of a thin-walled steel tube with a sharp cutting edge connected to a head equipped with a ball valve threaded for rod connection. The tube is pushed into the soil by the hydraulic pulldown of the drilling rig. The soil specimens were extruded from the tube in the field, logged, tested for consistency with a hand penetrometer, sealed, and packaged to limit loss of moisture.

The consistency of cohesive soil samples was evaluated in the field using a calibrated hand penetrometer. In this test a 0.25-inch diameter piston is pushed into the relatively undisturbed sample at a constant rate to a depth of 0.25 inch. The results of these tests, in tsf, are tabulated at respective sample depths on the logs. When the capacity of the penetrometer is exceeded, the value is tabulated as 4.5+.



## **2.2 Laboratory Testing**

Laboratory soil tests were performed on selected representative samples recovered from the borings. In addition to the classification tests (liquid limits and plastic limits), moisture content, unconfined compressive strength, and unit weight tests were performed. Results of the laboratory classification tests, moisture content, unconfined compressive strength, and unit weight tests conducted for this project are included on the boring logs.

Soluble sulfate tests were conducted on selected soil samples recovered from the borings. The sulfate testing was conducted to help identify sulfate-induced heaving potential of the soils. Sulfate-induced heaving can cause detrimental volumetric changes to a lime modified subgrade. The result of the sulfate tests are presented on Plate A.13.

Two Eades and Grim Lime Series tests were performed on selected samples to evaluate the appropriate concentration of lime to add to soils for stabilization purposes. The results of the lime series tests are presented on Plate A.14.

The above laboratory tests were performed in general accordance with applicable ASTM procedures, or generally accepted practice.

## **3.0 SUBSURFACE CONDITIONS**

### **3.1 Soil Conditions**

Specific types and depths of subsurface strata encountered at the boring locations are shown on the boring logs in Appendix A. The generalized subsurface stratigraphy encountered in the borings are discussed below. Note that depths on the borings refer to the depth from the existing grade or ground surface present at the time of the investigation, and the boundaries between the various soil types are approximate.

Existing paving consists of 1 to 5 inches of asphalt. Sand and gravel base was present beneath the asphalt with thicknesses of 4 to 10 inches. Fill materials are present below the pavement to a depth of 1 foot in Boring B-4 and 2 feet in Boring B-9, consisting of brown and tan sandy silty clays containing calcareous nodules and limestone fragments.



Natural soils encountered consist dark brown, brown and tan silty clays and clays. The various clays often contain calcareous nodules and occasionally contain limestone fragments and iron stains. Tan limestone is present below 3 feet in Boring B-5 and extends to boring termination at a depth of 5 feet.

The various soils encountered in the borings had Liquid Limits (LL) ranging from 30 to 82 with Plasticity Indices (PI) ranging from 14 to 56 and are classified as CL and CH by the USCS. The various clay soils range from firm to hard (soil basis) in consistency with pocket penetrometer readings of 1.25 to over 4.5 tsf. Tested unit weight values varied from 83 to 117 pcf and unconfined compressive strengths ranged from 1,210 to 13,900 psf.

### **3.2 Ground-Water Observations**

The borings were drilled using continuous flight augers in order to observe ground-water seepage during drilling. Ground-water seepage was not encountered during drilling and all borings were dry at completion.

Fluctuations of the ground-water level can occur due to seasonal variations in the amount of rainfall; site topography and runoff; hydraulic conductivity of soil strata; and other factors not evident at the time the borings were performed. The possibility of ground-water level fluctuations should be considered when developing the design and construction plans for the project. Ground water may occur atop the limestones, joints in the clays, or via more permeable strata.

## **4.0 PAVEMENTS**

### **4.1 General Pavement Considerations**

Pavement performance is impacted by many factors far beyond what is normally included in engineering design. Wherein pavement analyses should include establishing an appropriate thickness of pavement for the expected loading and appropriate subgrade remediation/stabilization, other factors such as location waterways adjacent to the existing paving impact the performance of the pavement. In addition, the activity of the soil below the pavement can cause differential expansive soil conditions under the pavement.

Several options exist for preparing the subgrade for the new pavement surfacing. Highly plastic clay materials are normally best stabilized using lime. It may also be possible that the existing



asphaltic surfacing with underlying soils be pulva mixed, cement treated, and utilized as the subgrade for the new pavement. If this is the case, utilization of Portland cement to stabilize this pulva mixed material would be recommended.

With either case, the most appropriate stabilization agent and concentration will depend directly on the type of subgrade soil. Based on the borings, the majority of the soils appear to be mostly clayey materials with higher plasticity, more amenable to lime as the stabilization agent. Portland cement also can be used to stabilize clay soils, but it should be planned that to pulva mix/cement modify/moisten/compact clayey subgrade using Portland cement requires a short period of time in order to attain the initial set of the cement modified material. A contractor with proven experience performing this type of pavement reclamation and familiarity with appropriate construction methods necessary to reduce the occurrence of shrinkage cracking of the cement treated, pulva-mixed subgrade is strongly recommended.

On-site soils are moderately to highly plastic and subject to expansive movement with soil wetting and drying. Estimates of expansive movement potential are on the order of up to 6½ inches. Movements in excess of this estimate can occur if poor drainage, excessive water collection, leaking pipelines, etc. occur. Any such excessive water conditions should be rectified as soon as possible. In order to minimize rainwater infiltration through the pavement surface, and thereby minimizing future upward movement of the pavement slabs, all cracks and joints in the pavement should be sealed on a routine basis after construction.

In areas where surface water is allowed to pond adjacent to pavement edges or accumulates in depressed or rutted pavements where distress cracks are present, an increase in subgrade soil moisture inevitably occurs, with resulting loss of pavement subgrade support. This condition is undesirable with regard to pavement performance.

#### **4.2 Sulfate-Induced Heaving**

Soluble sulfate testing was conducted to check for sulfate-induced heaving potential. Sulfate-induced heaving is caused when hydrated lime is added to a soil with high sulfate concentration. The lime reacts with the sulfates to cause potentially large volumetric changes in the soil.

Soluble sulfate levels in soils on the order of 1,000 parts-per-million (ppm) or less are usually of low concern and warrant only observation of the subgrade during the stabilization process. The



soluble sulfate levels of the tested samples were less than 100 ppm. Since the samples tested were below 1,000 ppm, a single treatment process is recommended. The single treatment is described in Section 4.3. In addition, it is recommended that during the curing period of the lime treatment, the subgrade be supplied with ample moisture to allow proper hydration, and it should be checked for any volumetric changes that may indicate a sulfate-induced heaving condition.

#### **4.3 Pavement Subgrade Preparation Using Lime Treatment**

The moderately to highly plastic clays are subject to loss in support value with the moisture increases which occur beneath pavement sections. They react with hydrated lime, which serves to improve and maintain their support value. Treatment of these soils with hydrated lime will improve their subgrade characteristics to support the overlying paving. As an alternative to lime stabilization, consideration can be given to substituting a suitable flexible base on an equal basis.

Prior to lime stabilization, the subgrade should be proofrolled with heavy pneumatic equipment. Any soft or pumping areas should be undercut to a firm subgrade and properly backfilled as described in the Earthwork section. The stabilized subgrade should be scarified to a minimum depth of 6 inches and uniformly compacted to a minimum of 95 percent of ASTM D 698, to minus 2 to plus 4 percentage points of the optimum moisture content determined by that test. It should then be protected and maintained in a moist condition until the pavement is placed. The presence of limestone fragments and calcareous nodules in the surficial soils can complicate the mixing of the soil and lime.

It is recommended a minimum of 8 percent hydrated lime be used to modify the clay subgrade soils. The estimated amount of hydrated lime required to stabilize the subgrade should be on the order of 36 pounds per square yard for a 6-inch depth, based on a dry unit weight of 100 pcf. The hydrated lime should be thoroughly mixed and blended with the upper 6 inches of the clay subgrade (TxDOT Item 260). The hydrated lime should meet the requirements of Item 260 (Type A) in the Texas Department of Transportation (TxDOT) Standard Specifications for Construction of Highways, Streets and Bridges, 2004 Edition.

It is recommended that subgrade stabilization extend to at least one foot beyond pavement edges to aid in reducing pavement movements and cracking along the curb line due to seasonal moisture variations after construction. Each construction area should be shaped to allow drainage of surface water during earthwork operations, and surface water should be pumped immediately from



each construction area after each rain and a firm subgrade condition maintained. Water should not be allowed to pond in order to prevent percolation and subgrade softening, and lime should be added to the subgrade after removal of all surface vegetation and debris. Sand should be specifically prohibited beneath pavement areas, since these more porous soils can allow water inflow, resulting in heave and strength loss of subgrade soils (lime stabilized soil will be allowed for fine grading). After fine grading each area in preparation for paving, the subgrade surface should be lightly moistened, as needed, and recompact to obtain a tight non-yielding subgrade.

Surface drainage is critical to the performance of this pavement. Water should be allowed to exit the pavement surface quickly and not allowed to pond at the pavement edges.

#### **4.4 Pulva-Mixed Pavement Preparation Using Portland Cement (Full-Depth Reclamation)**

Where final grades allow pulva-mixing of the existing pavement as the sub base to the pavement, consideration may be given to pulva-mixing these materials with Portland cement to construct a full-depth reclaimed base pavement system with a minimum thickness of 6 inches. We recommend that the FDR extend to at least one foot beyond pavement edges to aid in reducing pavement movements and cracking along the curb line due to seasonal moisture variations after construction.

Construction of cement treated and pulva-mix asphalt/subgrade material should follow Item 275 of Texas Department of Transportation (TxDOT) Standard Specifications for Construction of Highways, Streets, and Bridges, 2014 Edition or equivalent. It is recommended a minimum of 4 percent Portland cement be used to treat the pulva-mix asphalt/base material. The estimated amount of cement required to stabilize the subgrade should be on the order of 22 pounds per square yard for a 6-inch depth, based on an estimated dry unit weight of 120 pcf for the pulva-mixture. The cement should be thoroughly mixed and blended with the upper 6 inches of the pulva-mixed subgrade (TxDOT Items 275). The Portland cement should meet the requirements of Item 275 in the Texas Department of Transportation (TxDOT) Standard Specifications for Construction of Highways, Streets and Bridges, 2014 Edition.

Before processing begins, the area to be processed should be graded and shaped to lines and grades as shown on the plans. During this process, any unsuitable soil or material shall be removed and replaced with acceptable material. Any buried structures should be protected from damage prior to processing. The subgrade should be firm and able to support, without yielding or



subsequent settlement, the construction equipment and the compaction of the FDR material. Soft or yielding subgrade should be corrected and made stable before construction proceeds.

The processed materials should be uniformly compacted to a minimum of 98 percent of ASTM Standard Test Method for Moisture-Density Relations of Soil-Cement Mixtures (ASTM D 558), near minus 3 to plus 1 percentage points of the optimum moisture content determined by that test. The operation of cement application, mixing, spreading, compacting, and finishing shall be continuous and completed within 2 hours from the start of mixing. Any processed material that has not been compacted and finished shall not be left undisturbed for longer than 30 minutes. Smaller sections should be completed at one time, rather than overly long sections.

**After completion of final finishing, the surface should be cured by application of a bituminous or other approved sealing membrane, or by being kept continuously moist for a period of 7 days with a water spray that will not erode the surface of the FDR base.** If curing material is used, it should be applied as soon as possible, but not later than 24 hours after completing finishing operations. The surface should be kept continuously moist prior to application of curing material.

The Texas Transportation Institute has performed studies to reduce "block cracks" common to cement-treated base materials. Microcracking is the application of several vibratory roller passes to a cement-treated base after a short curing stage, typically after one to three days, to create a fine network of cracks. Microcracking is one technique to help reduce the risk of shrinkage cracks forming in the cement-treated base and thereby reducing the risk of reflective cracking upward through the asphalt surface. The goal of microcracking is to form a network of fine cracks and prevent the wider, more severe cracks from forming. **Proper moisture control during cement placement/mixing and curing are also key factors to reducing shrinkage cracking.**

Completed portions of FDR base can be opened immediately to low-speed local traffic and to construction equipment, provided the curing material or moist curing operations are not impaired, and provided the FDR base is sufficiently stable to withstand marring or permanent deformation. The section can be opened up to all traffic after the FDR base has received a curing compound or subsequent surface and is sufficiently stable to withstand marring or permanent deformation. If continuous moist curing is employed in lieu of a curing compound or subsequent surfacing within 7



days, the FDR base can be opened to all traffic after the 7-day moist curing period, provided the FDR base has hardened sufficiently to prevent marring or permanent deformation.

Subsequent pavement layers (asphalt) can be placed any time after finishing, as long as the soil-cement is sufficiently stable to support the required construction equipment without marring or permanent distortion of the surface.

#### **4.5 Pavement Material Requirements**

Material and process specifications developed by the Texas Department of Transportation (TxDOT) have been utilized. These specifications are outlined in the TxDOT Standard Specifications for Construction of Highways, Streets and Bridges, 2014 Edition. Specific construction recommendations for pavements are given below.

Hot Mix Asphaltic Concrete Surface Course: Item 340, Type D, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

Hot Mix Asphaltic Concrete Base Course: Item 340, Type B, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

Lime Stabilized Subgrade: Lime treatment for base course (road mix) - Item 260, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

Cement Stabilized Subgrade: Cement treatment for base course (road mix) - Item 275, Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, 2014 Edition.

#### **4.6 General Pavement Construction and Considerations**

The design of the pavement drainage and grading should consider the potential for differential ground movement due to future soil swelling of up to 6½ inches. In order to minimize rainwater infiltration through the pavement surface, and thereby minimizing future upward movement of the



pavement slabs, all cracks and joints in the pavement should be sealed on a routine basis after construction.

## **5.0 EARTHWORK**

### **5.1 Site Preparation**

The subgrade should be firm and able to support the construction equipment without displacement. Soft or yielding subgrade should be corrected and made stable before construction proceeds. The subgrade should be proof rolled to detect soft spots, which if exist, should be reworked to provide a firm and otherwise suitable subgrade. Proof rolling should be performed using a heavy pneumatic tired roller, loaded dump truck, or similar piece of equipment. The proof rolling operations should be observed by the project geotechnical engineer or his/her representative.

### **5.2 Placement and Compaction**

Fill material should be placed in loose lifts not exceeding 8 inches in uncompacted thickness. The uncompacted lift thickness should be reduced to 4 inches for structure backfill zones requiring hand-operated power compactors or small self-propelled compactors. The fill material should be uniform with respect to material type and moisture content. Clods and chunks of material should be broken down and the fill material mixed by disking, blading, or plowing, as necessary, so that a material of uniform moisture and density is obtained for each lift. Water required for sprinkling to bring the fill material to the proper moisture content should be applied evenly through each layer.

The on-site soils are suitable for use in site grading. Imported fill material should be clean soil with a Liquid Limit less than 60 and no rock greater than 4 inches in maximum dimension. The fill materials should be free of vegetation and debris.

The fill material should be compacted to a minimum of 95 percent of the maximum dry density determined by the Standard Proctor test, ASTM D 698. In conjunction with the compacting operation, the fill material should be brought to the proper moisture content. The moisture content for general earth fill should range from 2 percentage points below optimum to 5 percentage points above optimum (-2 to +5). These ranges of moisture contents are given as maximum recommended ranges. For some soils and under some conditions, the contractor may have to maintain a more narrow range of moisture content (within the recommended range) in order to consistently achieve the recommended density.



Field density tests should be taken as each lift of fill material is placed. As a guide, one field density test per lift for each 5,000 square feet of compacted area is recommended. For small areas or critical areas the frequency of testing may need to be increased to one test per 2,500 square feet. A minimum of 2 tests per lift should be required. The earthwork operations should be observed and tested on a continuing basis by an experienced geotechnician working in conjunction with the project geotechnical engineer.

Each lift should be compacted, tested, and approved before another lift is added. The purpose of the field density tests is to provide some indication that uniform and adequate compaction is being obtained. The actual quality of the fill, as compacted, should be the responsibility of the contractor and satisfactory results from the tests should not be considered as a guarantee of the quality of the contractor's filling operations.

### **5.3 Trench Backfill**

Trench backfill for pipelines or other utilities should be properly placed and compacted. Overly dense or dry backfill can swell and create a mound along the completed trench line. Loose or wet backfill can settle and form a depression along the completed trench line. Distress to overlying structures, pavements, etc. is likely if heaving or settlement occurs. On-site soil fill material is recommended for trench backfill. Care should be taken not to use free draining granular material, to prevent the backfilled trench from becoming a french drain and piping surface or subsurface water beneath structures, pipelines, or pavements. If a higher class bedding material is required for the pipelines, a lean concrete bedding will limit water intrusion into the trench and will not require compaction after placement. The soil backfill should be placed in approximately 4- to 6-inch loose lifts. The density and moisture content should be as recommended for fill in Section 5.2, Placement and Compaction, of this report. A minimum of one field density test should be taken per lift for each 150 linear feet of trench, with a minimum of 2 tests per lift.

### **5.4 Excavation**

The side slopes of excavations through the overburden soils should be made in such a manner to provide for their stability during construction. Existing structures, pipelines or other facilities, which are constructed prior to or during the currently proposed construction and which require excavation, should be protected from loss of end bearing or lateral support.



Temporary construction slopes and/or permanent embankment slopes should be protected from surface runoff water. Site grading should be designed to allow drainage at planned areas where erosion protection is provided, instead of allowing surface water to flow down unprotected slopes.

Trench safety recommendations are beyond the scope of this report. The contractor must comply with all applicable safety regulations concerning trench safety and excavations including, but not limited to, OSHA regulations.

### **5.5 Acceptance of Imported Fill**

Any soil imported from off-site sources should be tested for compliance with the recommendations for the particular application and approved by the project geotechnical engineer prior to the materials being used. The owner should also require the contractor to obtain a written, notarized certification from the landowner of each proposed off-site soil borrow source stating that to the best of the landowner's knowledge and belief there has never been contamination of the borrow source site with hazardous or toxic materials. The certification should be furnished to the owner prior to proceeding to furnish soils to the site. Soil materials derived from the excavation of underground petroleum storage tanks should not be used as fill on this project.

### **5.6 Soil Corrosion Potential**

Specific testing for soil corrosion potential was not included in the scope of this study. However, based upon past experience on other projects in the vicinity, the soils at this site may be corrosive. Standard construction practices for protecting metal pipe and similar facilities in contact with these soils should be used.

### **5.7 Erosion and Sediment Control**

All disturbed areas should be protected from erosion and sedimentation during construction, and all permanent slopes and other areas subject to erosion or sedimentation should be provided with permanent erosion and sediment control facilities. All applicable ordinances and codes regarding erosion and sediment control should be followed.



## **6.0 CONSTRUCTION OBSERVATIONS**

In any geotechnical investigation, the design recommendations are based on a limited amount of information about the subsurface conditions. In the analysis, the geotechnical engineer must assume the subsurface conditions are similar to the conditions encountered in the borings. However, quite often during construction anomalies in the subsurface conditions are revealed. Therefore, it is recommended that CMJ Engineering, Inc. be retained to observe earthwork and foundation installation and perform materials evaluation during the construction phase of the project. This enables the geotechnical engineer to stay abreast of the project and to be readily available to evaluate unanticipated conditions, to conduct additional tests if required and, when necessary, to recommend alternative solutions to unanticipated conditions. Until these construction phase services are performed by the project geotechnical engineer, the recommendations contained in this report on such items as final foundation bearing elevations, proper soil moisture condition, and other such subsurface related recommendations should be considered as preliminary.

It is proposed that construction phase observation and materials testing commence by the project geotechnical engineer at the outset of the project. Experience has shown that the most suitable method for procuring these services is for the owner or the owner's design engineers to contract directly with the project geotechnical engineer. This results in a clear, direct line of communication between the owner and the owner's design engineers and the geotechnical engineer.

## **7.0 REPORT CLOSURE**

The borings for this study were selected by CMJ Engineering, Inc. The locations and elevations of the borings should be considered accurate only to the degree implied by the methods used in their determination. The boring logs shown in this report contain information related to the types of soil encountered at specific locations and times and show lines delineating the interface between these materials. The logs also contain our field representative's interpretation of conditions that are believed to exist in those depth intervals between the actual samples taken. Therefore, these boring logs contain both factual and interpretive information. Laboratory soil classification tests were also performed on samples from selected depths in the borings. The results of these tests, along with visual-manual procedures were used to generally classify each stratum. Therefore, it should be understood that the classification data on the logs of borings represent visual estimates of classifications for those portions of each stratum on which the full range of laboratory soil



classification tests were not performed. It is not implied that these logs are representative of subsurface conditions at other locations and times.

With regard to ground-water conditions, this report presents data on ground-water levels as they were observed during the course of the field work. In particular, water level readings have been made in the borings at the times and under conditions stated in the text of the report and on the boring logs. It should be noted that fluctuations in the level of the ground-water table can occur with passage of time due to variations in rainfall, temperature and other factors. Also, this report does not include quantitative information on rates of flow of ground water into excavations, on pumping capacities necessary to dewater the excavations, or on methods of dewatering excavations. Unanticipated soil conditions at a construction site are commonly encountered and cannot be fully predicted by mere soil samples, test borings or test pits. Such unexpected conditions frequently require that additional expenditures be made by the owner to attain a properly designed and constructed project. Therefore, provision for some contingency fund is recommended to accommodate such potential extra cost.

The analyses, conclusions and recommendations contained in this report are based on site conditions as they existed at the time of our field investigation and further on the assumption that the exploratory borings are representative of the subsurface conditions throughout the site; that is, the subsurface conditions everywhere are not significantly different from those disclosed by the borings at the time they were completed. If, during construction, different subsurface conditions from those encountered in our borings are observed, or appear to be present in excavations, we must be advised promptly so that we can review these conditions and reconsider our recommendations where necessary. If there is a substantial lapse of time between submission of this report and the start of the work at the site, if conditions have changed due either to natural causes or to construction operations at or adjacent to the site, or if structure locations, structural loads or finish grades are changed, we urge that we be promptly informed and retained to review our report to determine the applicability of the conclusions and recommendations, considering the changed conditions and/or time lapse.

Further, it is urged that CMJ Engineering, Inc. be retained to review those portions of the plans and specifications for this particular project that pertain to earthwork and foundations as a means to determine whether the plans and specifications are consistent with the recommendations contained in this report. In addition, we are available to observe construction, particularly the



compaction of structural fill, or backfill and the construction of foundations as recommended in the report, and such other field observations as might be necessary.

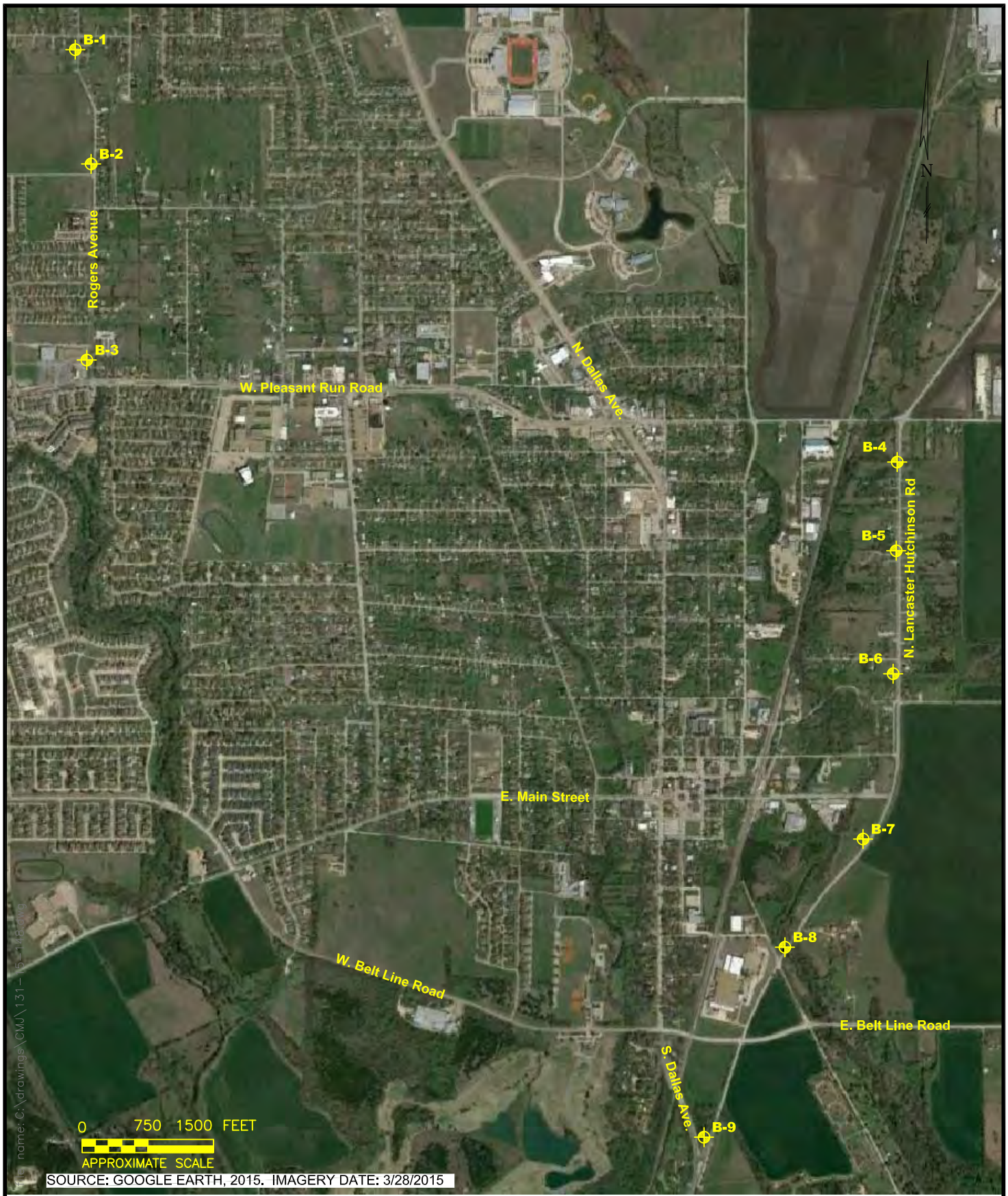
The scope of our services did not include any environmental assessment or investigation for the presence or absence of wetlands or hazardous or toxic materials in the soil, surface water, ground water or air, on or below or around the site.

This report has been prepared for use in developing an overall design concept. Paragraphs, statements, test results, boring logs, diagrams, etc. should not be taken out of context, nor utilized without a knowledge and awareness of their intent within the overall concept of this report. The reproduction of this report, or any part thereof, supplied to persons other than the owner, should indicate that this study was made for design purposes only and that verification of the subsurface conditions for purposes of determining difficulty of excavation, trafficability, etc. are responsibilities of the contractor.

This report has been prepared for the exclusive use of Teague Nall & Perkins for specific application to design of this project. The only warranty made by us in connection with the services provided is that we have used that degree of care and skill ordinarily exercised under similar conditions by reputable members of our profession practicing in the same or similar locality. No other warranty, expressed or implied, is made or intended.

\* \* \* \*





CMJ PROJECT NO. 131-15-148

# PLAN OF BORINGS LANCASTER STREETS REFURBISHMENT LANCASTER, TEXAS

PLATE  
A.1



Major Divisions			Grp. Sym.	Typical Names	Laboratory Classification Criteria			
Coarse-grained soils (more than half of the material is larger than No. 200 sieve size)	Gravels (More than half of coarse fraction is larger than No. 4 sieve size)	Clean gravels (Little or no fines)	GW	Well-graded gravels, gravel-sand mixtures, little or no fines	Determine percentages of sand and gravel from grain size curve. Depending on percentage of fines (fraction smaller than No. 200 sieve size), coarse-grained soils are classified as follows:  Less than 5 percent.....GW, GP, SW, SP More than 12 percent.....GM, GC, SM, SC 5 to 12 percent.....Borderline cases requiring dual symbols	$C_u = \frac{D_{60}}{D_{10}}$ greater than 4: $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 and 3		
			GP	Poorly graded gravels, gravel-sand mixtures, little or no fines		Not meeting all gradation requirements for GW		
		Gravels with fines (Appreciable amount of fines)	GM	Silty gravels, gravel-sand-silt mixtures		Liquid and Plastic limits below "A" line or P.I. greater than 4	Liquid and plastic limits plotting in hatched zone between 4 and 7 are borderline cases requiring use of dual symbols	
			GC	Clayey gravels, gravel-sand-clay mixtures		Liquid and Plastic limits above "A" line with P.I. greater than 7		
	Sands (More than half of coarse fraction is smaller than No. 4 sieve size)	Clean sands (Little or no fines)	SW	Well-graded sands, gravelly sands, little or no fines		$C_u = \frac{D_{60}}{D_{10}}$ greater than 6: $C_c = \frac{(D_{30})^2}{D_{10} \times D_{60}}$ between 1 and 3		
			SP	Poorly graded sands; gravelly sands, little or no fines		Not meeting all gradation requirements for SW		
		Sands with fines (Appreciable amount of fines)	SM	Silty sands, sand-silt mixtures		Liquid and Plastic limits below "A" line or P.I. less than 4	Liquid and plastic limits plotting between 4 and 7 are borderline cases requiring use of dual symbols	
			SC	Clayey sands, sand-clay mixtures		Liquid and Plastic limits above "A" line with P.I. greater than 7		

Fine-grained soils (More than half of material is smaller than No. 200 sieve)	Sils and clays (Liquid limit less than 50)	ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands, or clayey silts with slight plasticity		
		CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, and lean clays		
		OL	Organic silts and organic silty clays of low plasticity		
	Sils and clays (Liquid limit greater than 50)	MH	Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts		OH and MH
		CH	Inorganic clays of high plasticity, fat clays		
		OH	Organic clays of medium to high plasticity, organic silts		
	Highly Organic soils	Pt	Peat and other highly organic soils		

UNIFIED SOIL CLASSIFICATION SYSTEM

PLATE A.2



## SOIL OR ROCK TYPES

	GRAVEL		LEAN CLAY		LIMESTONE						
	SAND		SANDY		SHALE						
	SILT		SILTY		SANDSTONE						
	HIGHLY PLASTIC CLAY		CLAYEY		CONGLOMERATE	Shelby Tube	Auger	Split Spoon	Rock Core	Cone Pen	No Recovery

## TERMS DESCRIBING CONSISTENCY, CONDITION, AND STRUCTURE OF SOIL

### Fine Grained Soils (More than 50% Passing No. 200 Sieve)

Descriptive Item	Penetrometer Reading, (tsf)
Soft	0.0 to 1.0
Firm	1.0 to 1.5
Stiff	1.5 to 3.0
Very Stiff	3.0 to 4.5
Hard	4.5+

### Coarse Grained Soils (More than 50% Retained on No. 200 Sieve)

Penetration Resistance (blows/foot)	Descriptive Item	Relative Density
0 to 4	Very Loose	0 to 20%
4 to 10	Loose	20 to 40%
10 to 30	Medium Dense	40 to 70%
30 to 50	Dense	70 to 90%
Over 50	Very Dense	90 to 100%

### Soil Structure

Calcareous	Contains appreciable deposits of calcium carbonate; generally nodular
Slickensided	Having inclined planes of weakness that are slick and glossy in appearance
Laminated	Composed of thin layers of varying color or texture
Fissured	Containing cracks, sometimes filled with fine sand or silt
Interbedded	Composed of alternate layers of different soil types, usually in approximately equal proportions

## TERMS DESCRIBING PHYSICAL PROPERTIES OF ROCK

### Hardness and Degree of Cementation

Very Soft or Plastic	Can be remolded in hand; corresponds in consistency up to very stiff in soils
Soft	Can be scratched with fingernail
Moderately Hard	Can be scratched easily with knife; cannot be scratched with fingernail
Hard	Difficult to scratch with knife
Very Hard	Cannot be scratched with knife
Poorly Cemented or Friable	Easily crumbled
Cemented	Bound together by chemically precipitated material; Quartz, calcite, dolomite, siderite, and iron oxide are common cementing materials.


### Degree of Weathering

Unweathered	Rock in its natural state before being exposed to atmospheric agents
Slightly Weathered	Noted predominantly by color change with no disintegrated zones
Weathered	Complete color change with zones of slightly decomposed rock
Extremely Weathered	Complete color change with consistency, texture, and general appearance approaching soil


## KEY TO CLASSIFICATION AND SYMBOLS

PLATE A.3



Project No. <b>131-15-148</b>		Boring No. <b>B-1</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>		CMJ ENGINEERING INC.									
Location <b>See Plate A.1</b>				Water Observations <b>No seepage encountered during drilling; dry at completion</b>											
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>													
Surface Elevation		Type <b>B-47 w/ CFA</b>													
Depth, Ft.	Symbol	Samples		Stratum Description		REC %	RQD %	Blows/Ft. or Pen Reading, T.S.F.	Passing No 200 Sieve, %	Liquid Limit, %	Plastic Limit, %	Plasticity Index	Moisture Content, %	Unit Dry Wt. Lbs./Cu. Ft.	Unconfined Compression Pounds/Sq. Ft.
				ASPHALT, 4 inches thick				2.25					42		
				SAND AND GRAVEL BASE, 6 inches thick				2.5		69	24	45	32	86	2470
				CLAY, dark brown, w/ calcareous nodules, stiff to hard				4.5+							
5				CLAY, tan, calcareous, hard				4.5+					14		

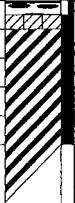


Project No. <b>131-15-148</b>		Boring No. <b>B-2</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>											
Location <b>See Plate A.1</b>				Water Observations <b>No seepage encountered during drilling; dry at completion</b>											
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>													
Surface Elevation		Type <b>B-47 w/ CFA</b>													
Depth, Ft.	Symbol	Samples	Stratum Description		REC %	RQD %	Blows/Ft. or Pen Reading, T.S.F.	Passing No 200 Sieve, %	Liquid Limit, %	Plastic Limit, %	Plasticity Index	Moisture Content, %	Unit Dry Wt. Lbs./Cu. Ft.	Unconfined Compression Pounds/Sq. Ft.	
			ASPHALT, 3 inches thick												
			SAND AND GRAVEL BASE, 7 inches thick				3.75		64	22	42	25			
			CLAY, dark brown, w/ calcareous nodules, very stiff				4.25					21	103	5120	
			CLAY, tan, w/ calcareous nodules, very stiff to hard				4.5					21			
5							4.5+								



Project No. <b>131-15-148</b>		Boring No. <b>B-3</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>											
Location <b>See Plate A.1</b>				Water Observations <b>No seepage encountered during drilling; dry at completion</b>											
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>													
Surface Elevation		Type <b>B-47 w/ CFA</b>													
Depth, Ft.	Symbol	Samples	Stratum Description		REC %	RQD %	Blows/Ft. or Pen Reading, T.S.F.	Passing No 200 Sieve, %	Liquid Limit, %	Plastic Limit, %	Plasticity Index	Moisture Content, %	Unit Dry Wt. Lbs./Cu. Ft.	Unconfined Compression Pounds/Sq. Ft.	
							2.25					36			
							2.25					36	83	2730	
							2.25	82	26	56	31				
							2.5								
5			<u>ASPHALT</u> , 5 inches thick <u>SAND AND GRAVEL BASE</u> , 6 inches thick <u>CLAY</u> , dark brown, w/ calcareous nodules, stiff												




Project No. <b>131-15-148</b>		Boring No. <b>B-4</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>	
Location <b>See Plate A.1</b>		Water Observations <b>No seepage encountered during drilling; dry at completion</b>			
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>			
Surface Elevation		Type <b>B-47 w/ CFA</b>			
Depth, Ft.	Symbol	Samples	Stratum Description		
5			<b>ASPHALT</b> , 1 inch thick <b>SAND AND GRAVEL BASE</b> , 4 inches thick <b>SANDY SILTY CLAY</b> , dark brown and tan, w/ calcareous nodules and limestone fragments, stiff (fill) <b>CLAY</b> , brown, w/ calcareous nodules and iron stains, very stiff		
			REC %	RQD %	Blows/Ft. or Pen Reading, T.S.F.
					Passing No 200 Sieve, %
					Liquid Limit, %
					Plastic Limit, %
					Plasticity Index
					Moisture Content, %
					Unit Dry Wt. Lbs./Cu. Ft.
					Unconfined Compression Pounds/Sq. Ft.
					2.0
					3.5
					4.25
					3.75
					4.0
					32
					14
					18
					7
					29
					23
					35
					97
					5440







Project No. <b>131-15-148</b>		Boring No. <b>B-7</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>											
Location <b>See Plate A.1</b>				Water Observations <b>No seepage encountered during drilling; dry at completion</b>											
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>													
Surface Elevation		Type <b>B-47 w/ CFA</b>													
Depth, Ft.	Symbol	Samples	Stratum Description		REC %	RQD %	Blows/Ft. or Pen Reading, T.S.F.	Passing No 200 Sieve, %	Liquid Limit, %	Plastic Limit, %	Plasticity Index	Moisture Content, %	Unit Dry Wt. Lbs./Cu. Ft.	Unconfined Compression Pounds/Sq. Ft.	
			ASPHALT, 2 inches thick												
SAND AND GRAVEL BASE, 6 inches thick						77	25	52	34						
CLAY, dark brown, w/ calcareous nodules, stiff to very stiff									36						
									22	102	4790				
5															

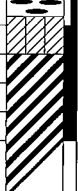
LOG OF BORING 131-15-148.GPJ CMJ.GDT 12/31/15

LOG OF BORING NO. **B-7****PLATE A.10**



Project No. <b>131-15-148</b>		Boring No. <b>B-8</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>		CMJ ENGINEERING INC.									
Location <b>See Plate A.1</b>				Water Observations <b>No seepage encountered during drilling; dry at completion</b>											
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>													
Surface Elevation		Type <b>B-47 w/ CFA</b>													
Depth, Ft.	Symbol	Samples	Stratum Description		REC %	RQD %	Blows/Ft. or Pen Reading, T.S.F.	Passing No 200 Sieve, %	Liquid Limit, %	Plastic Limit, %	Plasticity Index	Moisture Content, %	Unit Dry Wt. Lbs./Cu. Ft.	Unconfined Compression Pounds/Sq. Ft.	
			<u>ASPHALT</u> , 6 inches thick												
			<u>SAND AND GRAVEL BASE</u> , 7 inches thick				2.25					13	117		
			<u>SILTY CLAY</u> , brown and tan, w/ calcareous nodules, stiff to hard				2.5					15	110	2120	
							4.5+								
5							3.75		49	18	31	20			



Project No. <b>131-15-148</b>		Boring No. <b>B-9</b>		Project <b>Lancaster Streets Refurbishment Lancaster, TX</b>	
Location <b>See Plate A.1</b>		Water Observations <b>No seepage encountered during drilling; dry at completion</b>			
Completion Depth <b>5.0'</b>		Completion Date <b>12-14-15</b>			
Depth, Ft.	Symbol	Samples	Surface Elevation	Type	
			<b>B-47 w/ CFA</b>		
<b>Stratum Description</b>					REC %
					RQD %
					Blows/Ft. or Pen Reading, T.S.F.
					Passing No 200 Sieve, %
					Liquid Limit, %
					Plastic Limit, %
					Plasticity Index
					Moisture Content, %
					Unit Dry Wt. Lbs./Cu. Ft.
					Unconfined Compression Pounds/Sq. Ft.
5			<b>ASPHALT</b> , 1.5 inches thick <b>SAND AND GRAVEL BASE</b> , 6 inches thick <b>SANDY SILTY CLAY</b> , brown and tan, w/ calcareous nodules and limestone fragments, hard (fill) <b>CLAY</b> , dark brown, w/ calcareous nodules, very stiff to hard		4.5+ 4.5+ 4.5+ 4.0
					31
					14
					17
					4
					24
					100
					13900
					23



## **SOLUBLE SULFATE TEST RESULTS**

Project:        Lancaster Streets Refurbishment  
                  Lancaster, Texas

Project No.:    131-15-148

<b>Boring No.</b>	<b>Depth (ft.)</b>	<b>Material</b>	<b>Soluble Sulfates (ppm)</b>
B – 1	10" – 2'	Clay	<100
B – 3	1' – 2'	Clay	<100
B – 5	6" – 1'	Clay	<100
B – 8	1' – 2'	Silty Clay	<100

Note: Test Method TxDOT Tex 145-E.



## LIME SERIES TEST RESULTS

Project: Lancaster Streets Refurbishment  
Lancaster, Texas

Project No.: 131-15-148

Boring No.: B – 2	Depth: 10" to 2'
Material: Clay	
Percent Lime	pH
0	7.95
2	11.89
4	12.38
6	12.40
8	12.41
10	12.41

Boring No.: B – 7	Depth: 8" to 2'
Material: Clay	
Percent Lime	pH
0	7.86
2	12.06
4	12.22
6	12.40
8	12.41
10	12.41



January 15, 2016

Teague Nall & Perkins  
1100 Macon Street  
Fort Worth, Texas 76102

Attn: Mr. Andrew Luce, P.E.

**RE: ADDENDUM TO CMJ REPORT 131-15-148  
PAVEMENT SECTIONS  
LANCASTER STREETS REFURBISHMENT  
LANCASTER, TEXAS**

Dear Mr. Luce:

CMJ Engineering, Inc. was contacted by you to provide pavement section calculations for the above referenced project. The calculations are based upon the results in the original geotechnical investigation CMJ Report 131-15-148 dated January 5, 2016. We understand the planned section will consist of hot-mix asphalt with a design life of 10 years.

At the time of this investigation, site paving plans or vehicle traffic studies were not available. Pavement analyses were performed using methods outlined in the AASHTO Guide for Design of Pavement Structures, 1993 Edition, published by the American Association of State Highway and Transportation Officials. The design equations were solved using AASHTO Pavement Analysis Software. In the AASHTO method, traffic loads are expressed in Equivalent 18-kip Single Axle Loads (ESAL) over the design life of the pavement structure.

Based on the results of the field and laboratory investigation and on soil plasticity properties, the following design parameters were used in our thickness design calculations (soil parameters were conservatively established for the soils that are expected to exhibit lower bearing strengths):

Subgrade Soils .....	Clay
Design California Bearing Ratio .....	3
Initial Serviceability .....	4.5
Terminal Serviceability .....	2.25
Reliability .....	90%
Overall Deviation (flexible) .....	0.45
Drainage Coefficient .....	1.0



**CMJ ENGINEERING, INC.**

Teague Nall & Perkins  
 Addendum to CMJ Report 131-15-148  
 January 15, 2016  
 Page 2

**Layer Coefficients**

Hot-Mix Asphaltic Concrete (Type D).....0.44  
 Hot-Mix Asphaltic Concrete (Type B).....0.41  
 Stabilized Subgrade .....0.08

The following alternative pavement sections are provided for a range of traffic volumes. The traffic loadings are based on the daily frequency of fully-loaded, 80-kip, five-axle tractor semi-trailers over the 10-year service period. These sections are suitable for the previously mentioned assumptions. Any deviation from these assumptions should be brought to our attention immediately in order to assess their impact on our recommendations.

Flexible pavement sections are particularly susceptible to edge distress as edge support deteriorates over time. Therefore, care must be taken to provide and maintain proper edge support. Maintenance should be provided when edge support deteriorates.

<b>Flexible Pavement Sections</b>					<b>Design ESAL</b>	<b>Allowable Daily Truck Repetitions (10-yr life)</b>
<b>Thickness (in.)</b>	<b>Material</b>		<b>Thickness (in.)</b>	<b>Material</b>		
2 4 6	HMAC Type D HMAC Type B Lime Stabilized Subgrade or FDR	OR	2 8 6	HMAC Type D Flex Base Lime Stabilized Subgrade or FDR	128,700	14
2 5 6	HMAC Type D HMAC Type B Lime Stabilized Subgrade or FDR	OR	3 8 6	HMAC Type D Flex Base Lime Stabilized Subgrade or FDR	303,900	34
2 6 6	HMAC Type D HMAC Type B Lime Stabilized Subgrade or FDR	OR	4 8 6	HMAC Type D Flex Base Lime Stabilized Subgrade or FDR	662,700	75

Proper surface drainage in the shoulders is also critical to long term performance of the pavement. Water allowed to pond adjacent to the pavement will result in loss of edge and subgrade support and an increase in post construction heave of the pavement.

Material and process specifications developed by the Texas Department of Transportation (TxDOT) have been utilized. These specifications are outlined in the TxDOT Standard Specifications for Construction of Highways, Streets and Bridges, 2014 Edition. Specific construction recommendations for flexible pavements are provided in the referenced report, Section 4.5 plus the additional item given below.



**CMJ ENGINEERING, INC.**

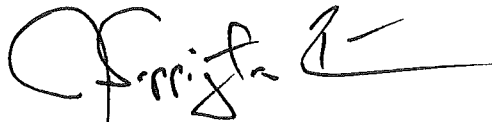
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Flexible Base: Crushed Stone Flexible Base – Item 247, Type A, Grade 1/2, Texas Department of Transportation Standard Specifications for Construction of Maintenance of Highways, Streets, and Bridges, 2014 Edition.

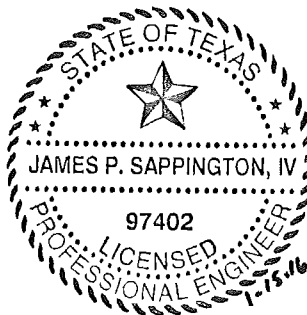
We appreciate the opportunity to perform these calculations. Recommendations for preparation of the roadway subgrade are presented within the referenced geotechnical report. Please contact us should questions arise on information contained herein.

\* \* \* \*

Respectfully,  
**CMJ ENGINEERING, INC.**  
TEXAS FIRM REGISTRATION NO. F-9177



James P. Sappington, IV, P.E.  
Senior Engineer  
Texas No. 97402

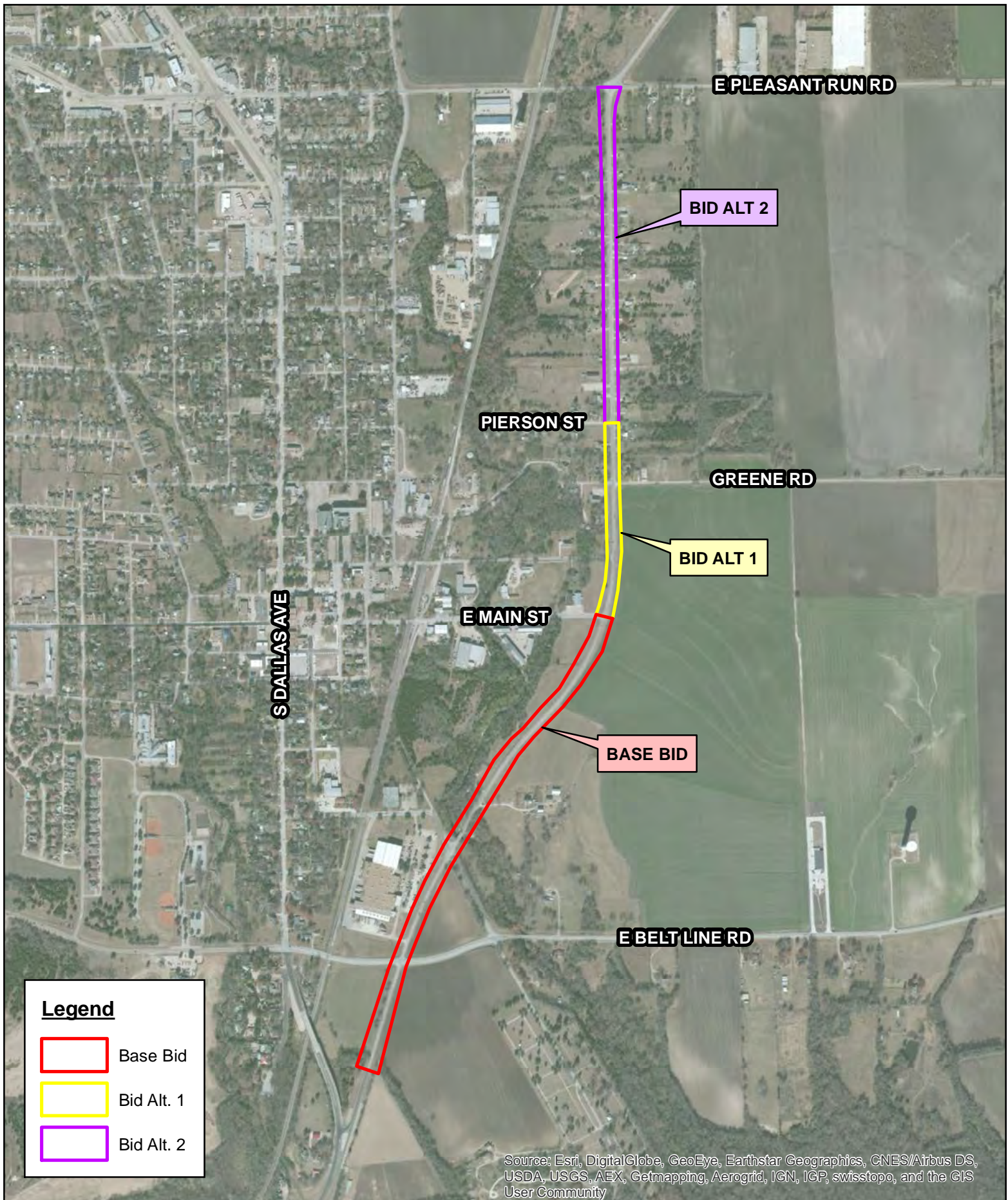


copies submitted: (1) Mr. Andrew Luce, P.E.; Teague Nall & Perkins (e-mail)

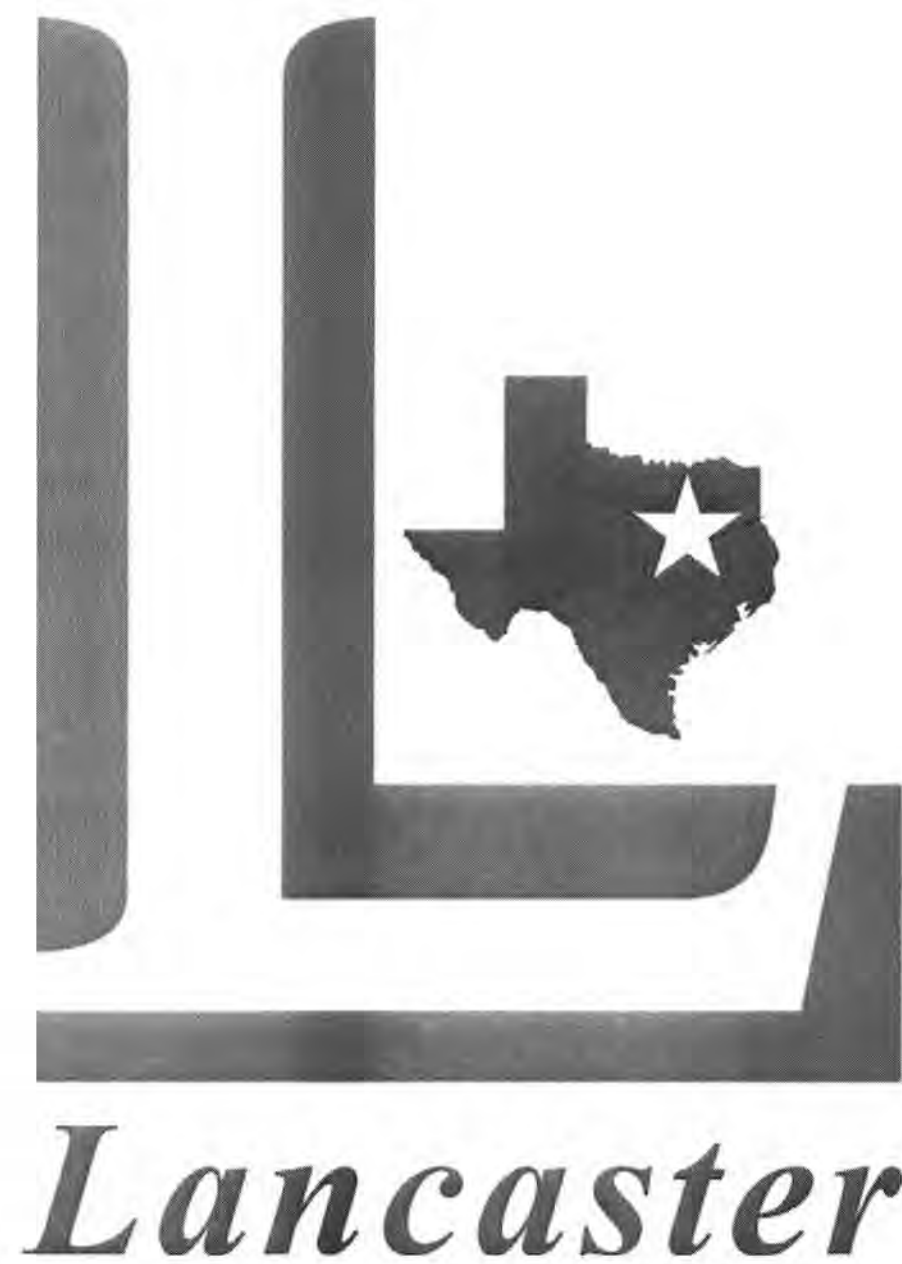












# THE CITY OF LANCASTER

## PAVEMENT RECONSTRUCTION

### FOR

## Lancaster-Hutchins Rd

(500' South of Belt Line Rd to Pleasant Run Rd)

### and

## Rogers Avenue

(Pleasant Run Rd to Balkin Dr)

CITY OF LANCASTER  
APPROVED FOR  
CONSTRUCTION

"These plans have been reviewed and approved by

Dipak Patel on 2-16-16

This approval will become void after one year of the indicated approval date. Exceptions to this approval are as follows:

By approving these plans, the Public Works & Development Services Department does not assume any liability for engineering design nor does approval release the design engineer from liability for errors or omissions in the design both during and after construction.

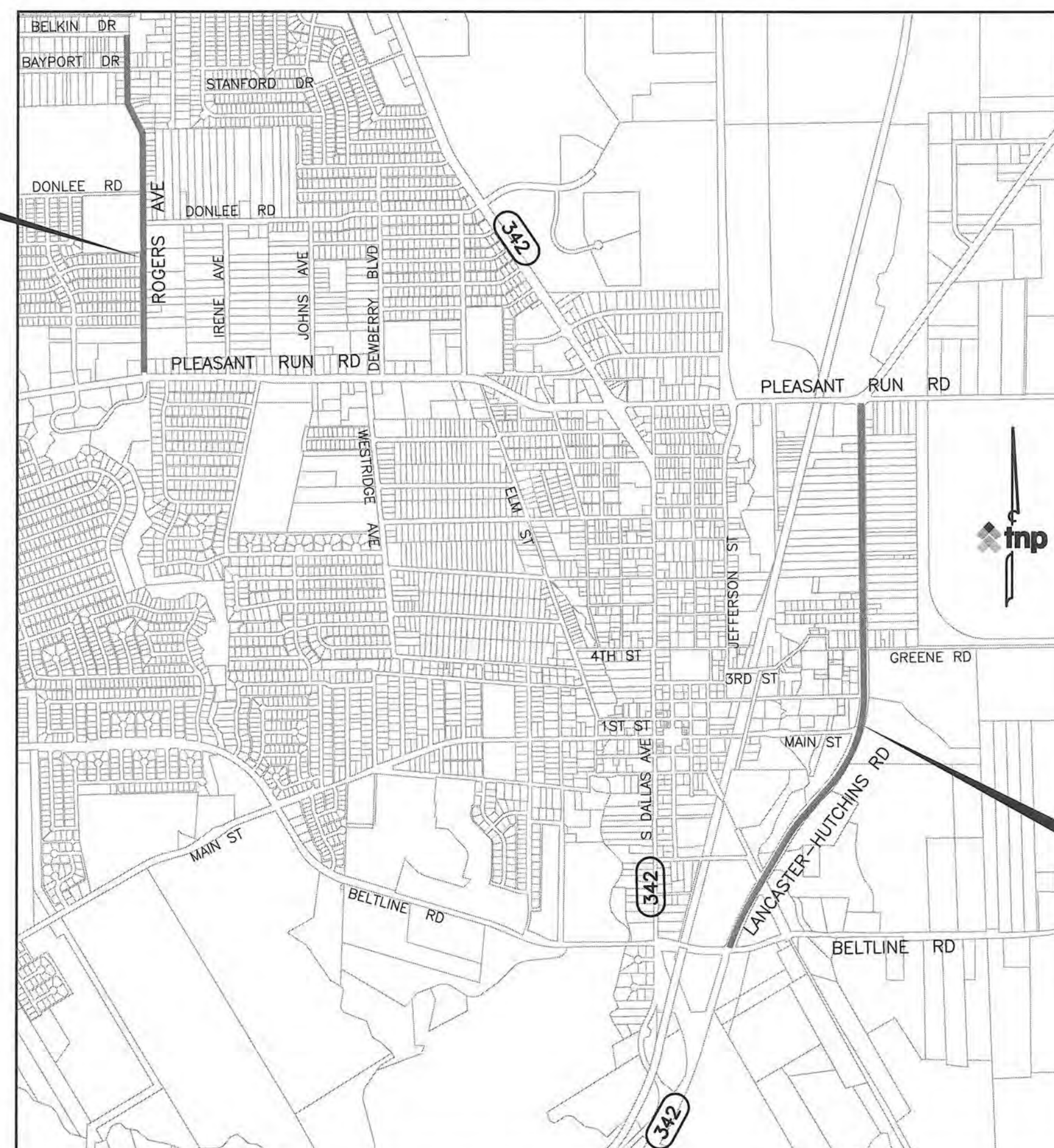
MAYOR  
**MARCUS E. KNIGHT**

CITY COUNCIL  
**CAROL STRAIN-BURK**  
**STANLEY JAGLOWSKI**  
**MARCO MEJIA**  
**JAMES DANIELS**  
**LaSHONJIA HARRIS**  
**NINA MORRIS**

CITY MANAGER  
**OPAL MAULDIN-ROBERTSON**

DIRECTOR OF PUBLIC WORKS  
**JIM BREWER**

PROJECT LOCATION  
ROGERS AVENUE



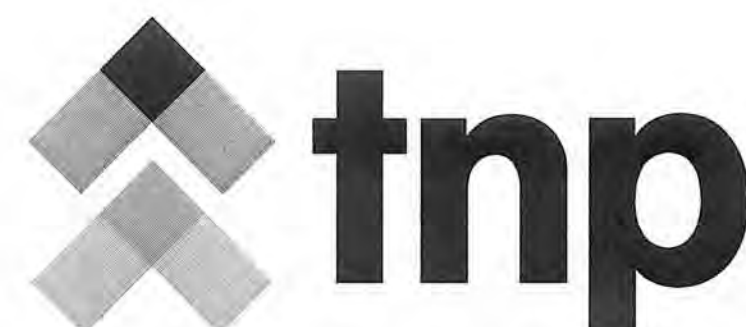
PROJECT LOCATION  
LANCASTER-HUTCHINS RD

### INDEX OF SHEETS

SHEET NO.	DESCRIPTION
1	GENERAL NOTES & LEGEND
2	PROJECT LAYOUT & CONTROL DATA
3	ROGERS AVENUE PAVING PLAN - STA 1+00 TO STA 19+50
4	ROGERS AVENUE PAVING PLAN - STA 19+50 TO STA 37+00
5	ROGERS AVENUE PAVING PLAN - STA 37+00 TO END
6	LANCASTER-HUTCHINS ROAD PAVING PLAN - STA 1+00 TO STA 20+50 (BASE BID)
7	LANCASTER-HUTCHINS ROAD PAVING PLAN - STA 20+50 TO STA 40+50 (BASE BID)
8	LANCASTER-HUTCHINS ROAD PAVING PLAN - STA 40+50 TO STA 55+50 (ALT BID 1)
9	LANCASTER-HUTCHINS ROAD PAVING PLAN - STA 55+50 TO STA 75+50 (ALT BID 2)
10	LANCASTER-HUTCHINS ROAD PAVING PLAN - STA 75+50 TO END (ALT BID 2)
11	PAVING DETAILS
12	PAVEMENT MARKING & TRAFFIC CONTROL DETAILS

### LOCATION MAP

N.T.S.



**teague nall & perkins**  
1100 Macon Street  
Fort Worth, Texas 76102  
817.336.5773 ph 817.336.2813 fx  
TBPE Registration No. F-230  
www.tnpinc.com





GENERAL NOTES

GENERAL CONSTRUCTION NOTES:

- ALL MATERIAL AND CONSTRUCTION SHALL CONFORM TO APPLICABLE PROJECT SPECIFICATIONS, SPECIFICATIONS OF THE CITY OF LANCASTER, THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS' "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION", FOURTH EDITION, THE REFERENCED SPECIFICATIONS CONTAINED IN THE TxDOT STANDARD SPECIFICATIONS FOR CONSTRUCTION OF HIGHWAYS, STREETS AND BRIDGES, 2004, AND APPLICABLE CITY OF LANCASTER "STANDARD DETAILS OF CONSTRUCTION".
- PRIOR TO BEGINNING CONSTRUCTION, THE CONTRACTOR OR HIS/HER AUTHORIZED REPRESENTATIVE SHALL CONVENE A PRE-CONSTRUCTION CONFERENCE BETWEEN LANCASTER PERSONNEL, THE CONSULTING ENGINEER, OWNER (IF APPLICABLE), PUBLIC UTILITY COMPANIES AND ANY OTHER AFFECTED PARTIES. NOTIFY THE DIRECTOR OF PUBLIC WORKS, JIM BREWER, P.E., AT (972)218-1208 AT LEAST 48 HOURS PRIOR TO BEGINNING CONSTRUCTION.
- PRIOR TO ANY CONSTRUCTION, THE CONTRACTOR SHALL APPLY FOR AND SECURE ALL PROPER PERMITS FROM THE APPROPRIATE AUTHORITIES.
- THE CONTRACTOR SHALL VERIFY ALL DEPTHS AND LOCATIONS OF EXISTING UTILITIES PRIOR TO ANY CONSTRUCTION. ANY DISCREPANCIES WITH THE CONSTRUCTION PLANS FOUND IN THE FIELD SHALL BE BROUGHT IMMEDIATELY TO THE ATTENTION OF THE CONSULTING ENGINEER AND/OR PUBLIC WORKS DIRECTOR AND THE CITY OF LANCASTER'S CONSTRUCTION INSPECTOR (PROJECT INSPECTOR).
- THE CONTRACTOR SHALL GIVE THE CITY OF LANCASTER 48 HOURS NOTICE BEFORE BEGINNING EACH PHASE OF CONSTRUCTION.
- ANY EXISTING UTILITIES, PAVEMENT, CURBS, SIDEWALKS, STRUCTURES, SIGNS (AND THEIR POLES), TREES, ETC., WILL BE ASSUMED TO BE IN GOOD CONDITION UNLESS OTHERWISE BROUGHT TO THE ATTENTION OF THE PROJECT INSPECTOR.
- WHEN CONSTRUCTION IS BEING CARRIED OUT WITHIN EASEMENTS, THE CONTRACTOR SHALL CONFINE HIS/HER WORK TO WITHIN THE PERMANENT AND/OR TEMPORARY EASEMENTS. PRIOR TO FINAL ACCEPTANCE, THE CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVING ALL TRASH AND DEBRIS WITHIN THE PERMANENT AND TEMPORARY EASEMENTS. CLEAN-UP SHALL BE TO THE SATISFACTION OF THE CITY OF LANCASTER.
- DURING CONSTRUCTION, ALL MATERIAL TESTING SHALL BE COORDINATED WITH THE PROJECT INSPECTOR. THE CONTRACTOR WILL BE RESPONSIBLE TO COMPLY WITH ALL SPECIFICATIONS. ALL TESTING SHALL BE DONE BY AN INDEPENDENT TESTING LABORATORY THAT IS APPROVED BY THE CITY OF LANCASTER. THE PROJECT INSPECTOR SHALL BE PRESENT DURING ALL TESTS. THE PROJECT INSPECTOR SHALL BE GIVEN A MINIMUM OF 24 HOURS ADVANCE NOTICE PRIOR TO ANY TESTING. INSPECTIONS AND TESTS AS REQUIRED BY THE CITY WILL INITIALLY BE PAID FOR BY THE CITY OF LANCASTER. THE CONTRACTOR SHALL FURNISH AT HIS/HER EXPENSE ALL NECESSARY SPECIMENS AND SAMPLES FOR TESTING. ANY TEST RESULTS NOT MEETING THE SPECIFICATIONS SHALL REQUIRE ADDITIONAL TESTS AND INSPECTIONS, BOTH OF WHICH SHALL BE PAID FOR BY THE CONTRACTOR. THE PUBLIC WORKS DIRECTOR AND/OR THE PROJECT INSPECTOR WILL DETERMINE THE ADDITIONAL TESTING AND EXTRA INSPECTION REQUIRED TO INSURE CONFORMANCE WITH THE CONTRACT DOCUMENTS.
- ANY UTILITIES (CABLE, SANITARY SEWER, WATER, STORM DRAIN, ELECTRIC, GAS, TELEPHONE, ETC.) DAMAGED BY THE CONTRACTOR WILL BE THE RESPONSIBILITY OF THE CONTRACTOR TO REPAIR.
- ALL AREAS DISTURBED OR EXPOSED DURING CONSTRUCTION SHALL BE REVEGETATED IN ACCORDANCE WITH THE CONSTRUCTION PLANS AND/OR PROJECT SPECIFICATIONS. REVEGETATION OF ALL DISTURBED OR EXPOSED AREAS SHALL CONSIST OF SODDING, SEEDING OR HYDROMULCH AS APPROVED BY THE PROJECT INSPECTOR. HOWEVER, THE TYPE OF REVEGETATION MUST EQUAL OR EXCEED THE TYPE OF VEGETATION PRESENT BEFORE CONSTRUCTION UNLESS OTHERWISE REQUESTED BY THE PROPERTY OWNER IN WRITING.
- THE PUBLIC WORKS DIRECTOR SHALL NOT BE PETITIONED FOR ACCEPTANCE OF THE CONSTRUCTION IMPROVEMENTS UNTIL THE CONTRACTOR HAS CONSULTED WITH THE PROJECT INSPECTOR TO DETERMINE IF A FINAL INSPECTION IS WARRANTED.
- COORDINATE SYSTEM USED FOR THIS PROJECT IS BASED ON NAD 83.
- ALL BARRICADES, WARNINGS, AND DETOUR SIGNS ALONG WITH ANY OTHER PROVISIONS FOR PUBLIC SAFETY AND CONVENIENCE SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL BE PROVIDED AT HIS/HER EXPENSE.

UTILITY PROTECTION:

- THE CONTRACTOR SHALL MAKE NECESSARY PROVISIONS FOR THE PROTECTION AND SUPPORT OF ALL UTILITY FACILITIES AND EXISTING STRUCTURES (INCLUDING BUT NOT LIMITED TO, UTILITY POLES, GAS MAINS, TELEPHONE CABLES, ELECTRIC CABLES, TV CABLES, DRAINAGE PIPES AND STRUCTURES, UTILITY SERVICES, OTHER UTILITIES, FENCES, TREES AND SHRUBS) BOTH ABOVE AND BELOW THE GROUND DURING CONSTRUCTION. IT IS THE CONTRACTOR'S RESPONSIBILITY TO NOTIFY ALL UTILITY OWNERS PRIOR TO ANY CONSTRUCTION IN THE AREA AND VERIFY THE ACTUAL LOCATION OF ALL BURIED UTILITIES THAT MAY OR MAY NOT BE SHOWN ON THE PLANS. THE CONTRACTOR SHALL PRESERVE AND PROTECT ALL UNDERGROUND AND OVERHEAD FACILITIES AND BE RESPONSIBLE FOR ANY DAMAGE CAUSED BY CONTRACTOR'S OPERATIONS.
- THE UTILITY COMPANIES SHALL BE NOTIFIED BY CALLING 1-800-DIG-TESS (1-800-344-8377) AT LEAST 48 HOURS PRIOR TO CONSTRUCTION. WHEN CALLING THIS AGENCY, THE CONTRACTOR SHALL PROVIDE MAPSCO GRID NUMBERS FOR THE WORK AREA AND SHALL RECORD THE CONFORMATION NUMBERS ISSUED BY DIG TESS. THESE NUMBERS SHALL BE PROVIDED TO THE CITY ON DEMAND.

PAVING NOTES

- CONSTRUCTION OF CEMENT TREATED AND PULVA-MIX ASPHALT/SUBGRADE MATERIAL SHOULD FOLLOW ITEM 275 OF TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION OF HIGHWAYS, STREETS, AND BRIDGES, 2014 EDITION OR EQUIVALENT.
- THE ESTIMATED AMOUNT OF CEMENT REQUIRED TO STABILIZE THE SUBGRADE SHOULD BE ON THE ORDER OF 22 POUNDS PER SQUARE YARD FOR A 6-INCH DEPTH, BASED ON AN ESTIMATED DRY UNIT WEIGHT OF 120 pcf FOR THE PULVA-MIXTURE. (REFERENCE GEOTECHNICAL ENGINEERING STUDY FOR PROJECT). THE CEMENT SHOULD BE THOROUGHLY MIXED AND BLENDED WITH THE UPPER 6 INCHES OF THE PULVA-MIX SUBGRADE (TxDOT ITEM 275).
- THE PORTLAND CEMENT SHOULD MEET THE REQUIREMENTS OF ITEM 275 IN THE TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION OF HIGHWAYS, STREETS AND BRIDGES, 2014 EDITION.
- BEFORE PROCESSING BEGINS, THE AREA TO BE PROCESSED SHOULD BE GRADED AND SHAPED TO LINES AND GRADES AS SHOWN ON PLANS. ANY BURIED STRUCTURES SHOULD BE PROTECTED FROM DAMAGE PRIOR TO PROCESSING.
- THE SUBGRADE SHOULD BE FIRM AND ABLE TO SUPPORT, WITHOUT YIELDING OR SUBSEQUENT SETTLEMENT, THE CONSTRUCTION EQUIPMENT AND THE COMPACTION OF THE FULL DEPTH RECLAMATION MATERIAL. SOFT OR YIELDING SUBGRADE SHOULD BE CORRECTED AND MADE STABLE BEFORE CONSTRUCTION PROCEEDS.
- THE PROCESSED MATERIALS SHOULD BE UNIFORMLY COMPACTED TO A MINIMUM OF 98 PERCENT OF ASTM STANDARD TEST METHOD FOR MOISTURE-DENSITY RELATIONS OF SOIL-CEMENT MIXTURES (ASTM D 558).
- SUBSEQUENT PAVEMENT LAYERS (HMAC) CAN BE PLACED ANY TIME AFTER FINISHING, AS LONG AS THE SOIL-CEMENT IS SUFFICIENTLY STABLE TO SUPPORT THE REQUIRED CONSTRUCTION EQUIPMENT WITHOUT MARRING OR PERMANENT DISTORTION OF THE SURFACE.
- PROPOSED 6" HMAC PAVEMENT WIDTH SHALL MATCH EXISTING ASPHALT TO WITHIN 6"+.
- A PRIME COAT SHALL BE PLACED ON STABILIZED AND PULVERIZED ASPHALT BASE PRIOR TO 4" TYPE B HMAC BASE COURSE.
- A TACK COAT SHALL BE PLACED ON 4" TYPE B HMAC BASE COURSE PRIOR TO 2" TYPE D HMAC SURFACE COURSE.
- ALL FILL SHALL BE COMPACTED BY MECHANICAL METHODS. MAXIMUM LOOSE LIFT FOR COMPACTION SHALL BE 8 INCHES. ALL LIFTS SHALL BE TESTED FOR DENSITY BY AN INDEPENDENT LABORATORY APPROVED BY THE CITY. DENSITY REQUIREMENT SHALL BE AS SHOWN ON THE PLANS FOR THE TYPE OF MATERIAL CALLED FOR IN THE PLANS.
- ALL DISTURBED AREAS OF ROADWAY WORK SHALL HAVE GRASS ESTABLISHED IMMEDIATELY. GRASS SHALL MEET THE REQUIREMENTS OF ITEM 3.8, 3.9, 3.10 AND 3.11 OF NCTCOG.
- ALL AREAS TO BE EXCAVATED OR FILLED SHALL HAVE EROSION CONTROL PLACED PRIOR TO COMMENCING EARTHWORK. EROSION CONTROL DEVICES SHALL BE MAINTAINED THROUGHOUT THE PROJECT IN ACCORDANCE WITH NCTCOG ITEM 3.12.
- NO VEHICLES SHALL BE PERMITTED ON PAVEMENT WITHOUT APPROVAL FROM THE CITY.

LEGEND

(FOR PLAN & PROFILE SHEETS)

EXISTING FEATURES

- BOLLARD
- SAN SEWER CLEANOUT
- CONTROL POINT
- CABLE TV RISER
- FIRE HYDRANT
- GAS METER
- GAS VALVE
- FENCE
- IRON ROD FOUND (NO SIZE)
- IRON ROD FOUND (WITH SIZE)
- LIGHT POLE
- MAIL BOX
- ELECTRIC MANHOLE
- GAS MANHOLE
- STORM DRAIN MANHOLE
- SAN SEWER MANHOLE
- TELEPHONE MANHOLE
- WATER MANHOLE
- ELECTRIC PULL BOX
- POWER POLE W/GUY WIRE
- SIGN
- SIGN POST
- SPRINKLER HEAD
- SPRINKLER VALVE
- BENCH MARK
- TELEPHONE RISER
- TREE (WITH SIZE)
- WATER METER
- WATER VALVE

PROPOSED FEATURES

- FIRE HYDRANT
- WATER VALVE
- WATER METER BOX
- MANHOLE
- DOUBLE CLEANOUT ON PROP. SEWER SERVICE
- TREE REMOVAL
- CONCRETE PAVEMENT
- GRAVEL SURFACE
- HMAC PAVEMENT (PROP PMT RECONSTRUCTION)
- DRAINAGE DIRECTION & GRADE
- AIR & VACUUM RELEASE VALVE
- NATURAL GRADE ELEVATION
- TOP OF PAVEMENT ELEVATION
- POINT OF INFLECTION
- POINT OF VERTICAL INFLECTION
- BEGIN VERTICAL CURVE
- END VERTICAL CURVE
- TOP OF CURB
- FLOW LINE
- TOP OF PAVEMENT
- HYDRAULIC GRADE LINE
- REINFORCED CONC. WHEELCHAIR RAMPS (WITH TYPE)

- ASPHALT SURFACE
- OVERHEAD ELECTRICAL
- UNDER GROUND TELEPHONE
- PROPERTY LINE
- EXISTING WATER
- EXISTING SANITARY SEWER

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Jan 2016



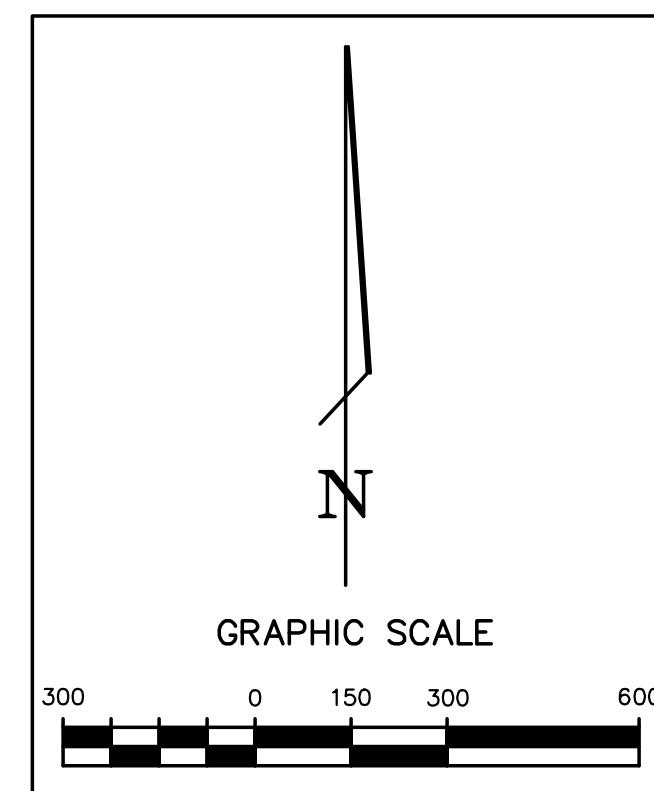
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Fort Worth, Texas 76102  
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City of Lancaster, Texas
Pavement Reconstruction for Lancaster Hutchins Rd & Rogers Avenue
GENERAL NOTES & LEGEND

tnp project LAN15135
sheet 1 of 12





BM 1 - BOX CUT ON THE NORTHEAST CORNER OF A  
CONCRETE DROP INLET. APPROX 13' WEST OF THE WEST  
EDGE OF ROGERS AVE AND APPROX 243' NORTH OF THE  
NORTH EDGE OF PLEASANT RUN ROAD.  
N 6908686.9  
E 2499147.2  
ELEV = 567.67

BM 2 - BOX CUT ON THE NORTH SIDE OF THE CONCRETE  
ALLEY, APPROX 150' NORTH OF THE CENTERLINE OF TRACY  
LANE AND APPROX 40' WEST OF THE WEST EDGE OF  
ROGERS AVE.  
N 6909681.9  
E 2499117.9  
ELEV = 594.62

BM 3 - BOX CUT ON THE SOUTHEAST CORNER OF THE  
CONCRETE BASE OF A TELEPHONE PEDESTAL. APPROX 18'  
SOUTH OF THE SOUTH EDGE OF DONLEE ROAD AND APPROX  
75' WEST OF THE WEST EDGE OF ROGERS AVE.  
N 6910728.9  
E 2499074.9  
ELEV = 594.92

BM 4 - BOX CUT ON THE SOUTH SIDE OF A CONCRETE  
DRIVEWAY OVER A RCP AT 2184 ROGERS AVE. APPROX 9.5'  
EAST OF THE EAST EDGE OF ROGERS AVE.  
N 6911744.4  
E 2499060.9  
ELEV = 601.87

BM 5 - BOX CUT ON THE NORTH SIDE AND ANGLE POINT  
OF A CONCRETE DRIVEWAY AT 702 BELKIN DR. APPROX 5'  
WEST OF THE WEST EDGE OF ROGERS AVE AND APPROX  
150' SOUTH OF BALKIN DR.  
N 6912630.2  
E 2498931.4  
ELEV = 612.14

BM 6 - BOX CUT ON THE SOUTH SIDE OF A CONCRETE DRIVEWAY. APPROX 30' WEST OF THE WEST EDGE OF S LANCASTER-HUTCHINS RD AND APPROX 140' NORTH OF THE NORTH EDGE OF BELTLINE RD.  
N 6901211.7  
F 2506710.2  
FLEV = 496.94

BM 7 - 3.5" BRASS DISK STAMPED "SSC SURVEY  
MONUMENT NO. BM508" FOUND AT THE NORTHEAST CORNER  
OF THE S LANCASTER-HUTCHINS RD BRIDGE OVER KELLER  
BRANCH CREEK, APPROX 3' EAST OF THE EAST EDGE OF S  
LANCASTER-HUTCHINS RD AND APPROX 180' NORTH OF THE  
NORTH EDGE OF NOKOMIS RD.

N 6902099.0  
F 2507219.0  
FIFV = 490.21

BM 8 - BOX CUT ON THE CENTER OF A CONCRETE  
HEADWALL. APPROX 7' WEST OF THE WEST EDGE OF N  
LANCASTER-HUTCHINS RD AND APPROX 415' SOUTH OF THE  
CENTERLINE OF E MAIN STREET.  
N 6903459.9  
E 2508159.6 ELEV = 507.69

BM 9 - PK NAIL SET IN THE ASPHALT PAVEMENT ON THE  
NORTH SIDE OF E SECOND STREET. APPROX 8.5' SOUTH OF  
THE NORTH END OF AN 18" RCP AND APPROX 27' WEST OF  
THE CENTERLINE OF N LANCASTER-HUTCHINS RD.  
N 6904331.6  
E 2508397.0  
ELEV = 514.98

BM 10 - BOX CUT ON THE CENTER OF A CONCRETE  
HEADWALL AND WEST OF A SIDEWALK. APPROX 25' EAST OF  
THE EAST EDGE OF N LANCASTER-HUTCHINS RD AND  
APPROX 240' NORTH OF THE CENTERLINE OF E THIRD ST.  
N 6905170.6  
F 2508462.2  
FILEV = 520.43

BM 11 - BOX CUT ON THE WEST SIDE OF CONCRETE  
SIDEWALK. APPROX 24' EAST OF THE EAST EDGE OF N  
LANCASTER-HUTCHINS RD AND APPROX 37' SOUTH OF THE  
SOUTH EDGE OF A CONCRETE DRIVEWAY AT 734 N  
LANCASTER-HUTCHINS RD.  
N 6906201.0  
F 2508450.7  
FILE# = 533.92

BM 12 - BOX CUT ON THE NORTH SIDE OF A CONCRETE  
SIDEWALK, APPROX 26' EAST OF THE EAST EDGE OF N  
LANCASTER-HUTCHINS RD AND APPROX 18' NORTH OF THE  
NORTH EDGE OF AN ASPHALT DRIVEWAY AT 1058 N  
LANCASTER-HUTCHINS RD.  
N 6907301.7  
F 2508434.8  
ELEV = 538.14

BM 13 - PK NAIL SET IN THE ASPHALT PAVEMENT OF S  
LANCASTER-HUTCHINS RD. APPROX 5' EAST OF THE EAST  
EDGE OF N LANCASTER-HUTCHINS RD AND APPROX 425'  
NORTH OF A DRIVEWAY AT 441 N LANCASTER-HUTCHINS RD.  
N 6902786.5  
E 2507635.4  
ELEV - 197.19



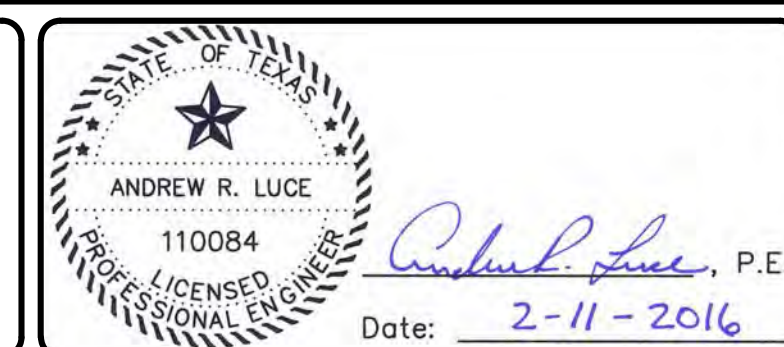
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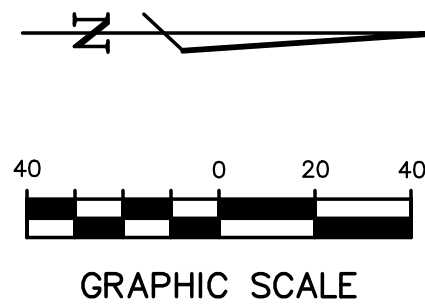
<b>City of Lancaster, Texas</b> Pavement Reconstruction for <b>Lancaster Hutchins Rd &amp; Rogers Avenue</b> <b>Project Layout &amp; Control Data</b>
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tnp project  
LAN15135  
sheet  
**2**  
of  
**12**

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SEE SHEET 1 FOR LEGEND


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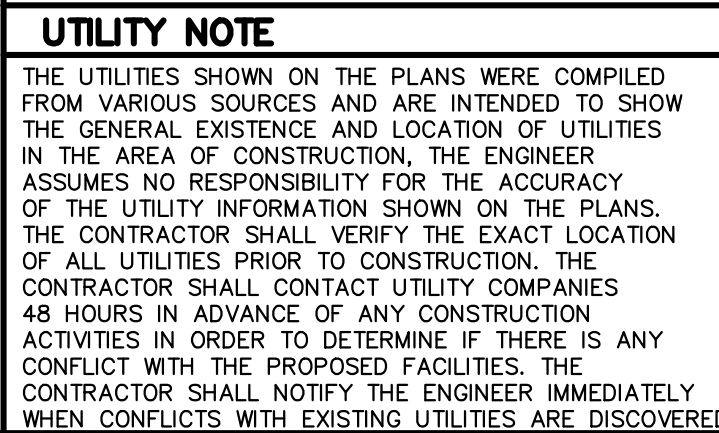
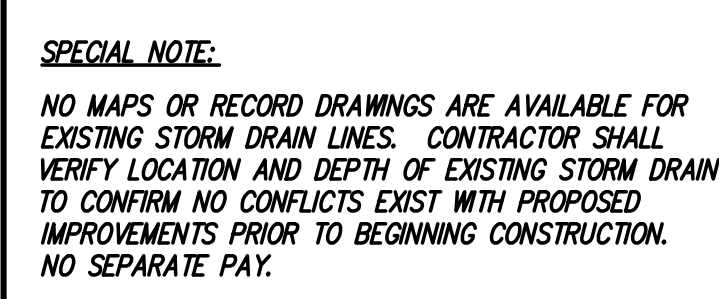


Andrew R. Luce, P.E.  
Date: 2-11-2016

**City of Lancaster, Texas**  
Pavement Reconstruction for  
**Lancaster Hutchins Rd & Rogers Avenue**  
Rogers Avenue Paving Plan  
Sta 1+00 to Sta 19+50

tnp project  
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sheet  
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of  
**12**





tnp project  
LAN15135  
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**12**



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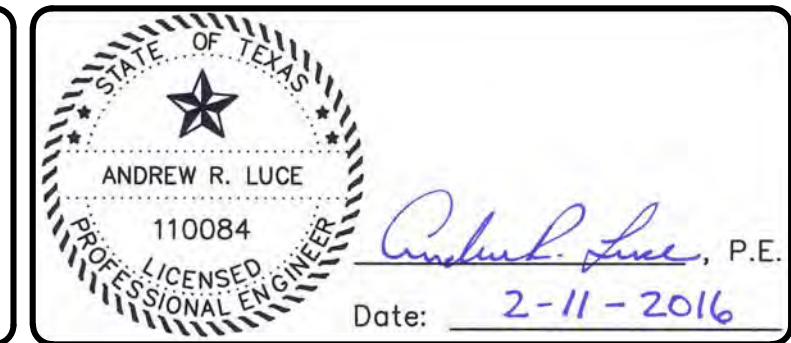
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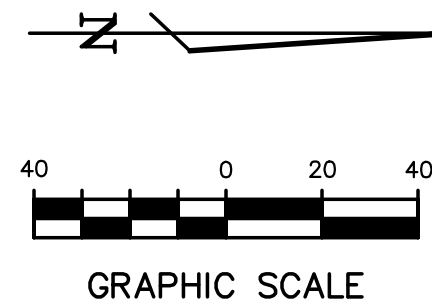
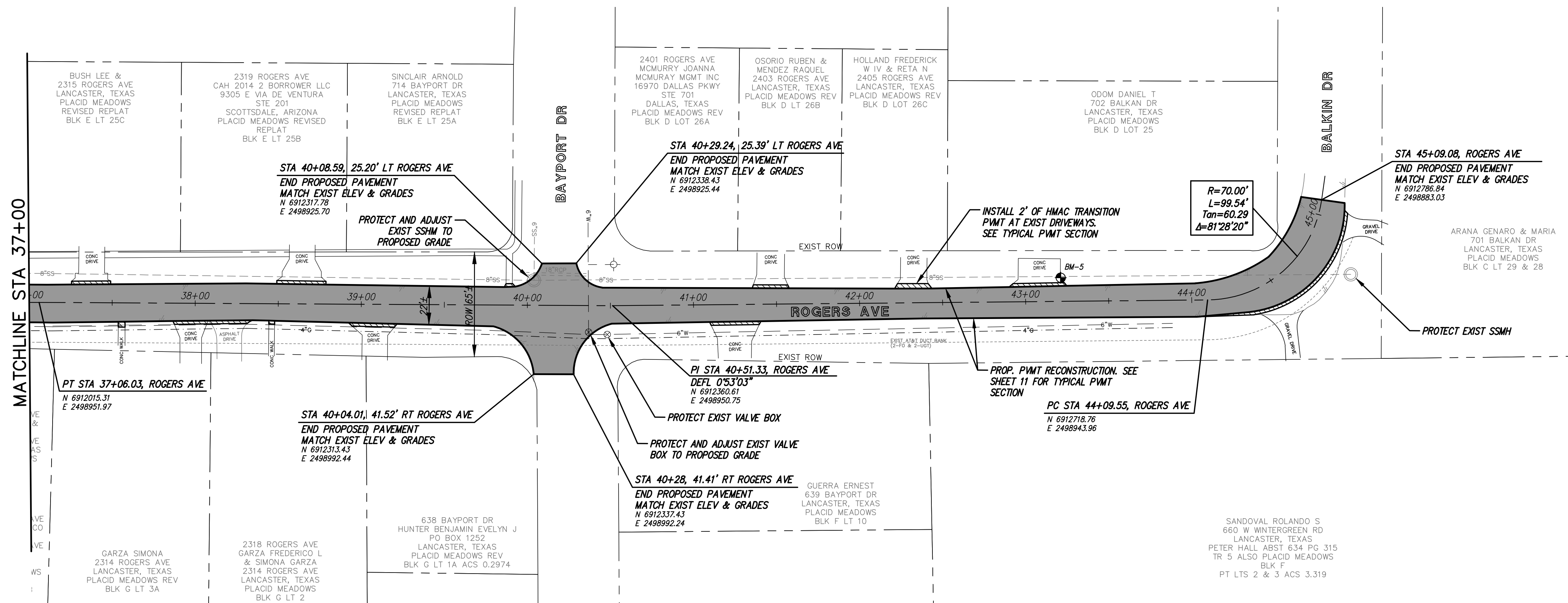


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**Rogers Avenue Paving Plan**  
**Sta 37+00 to End**

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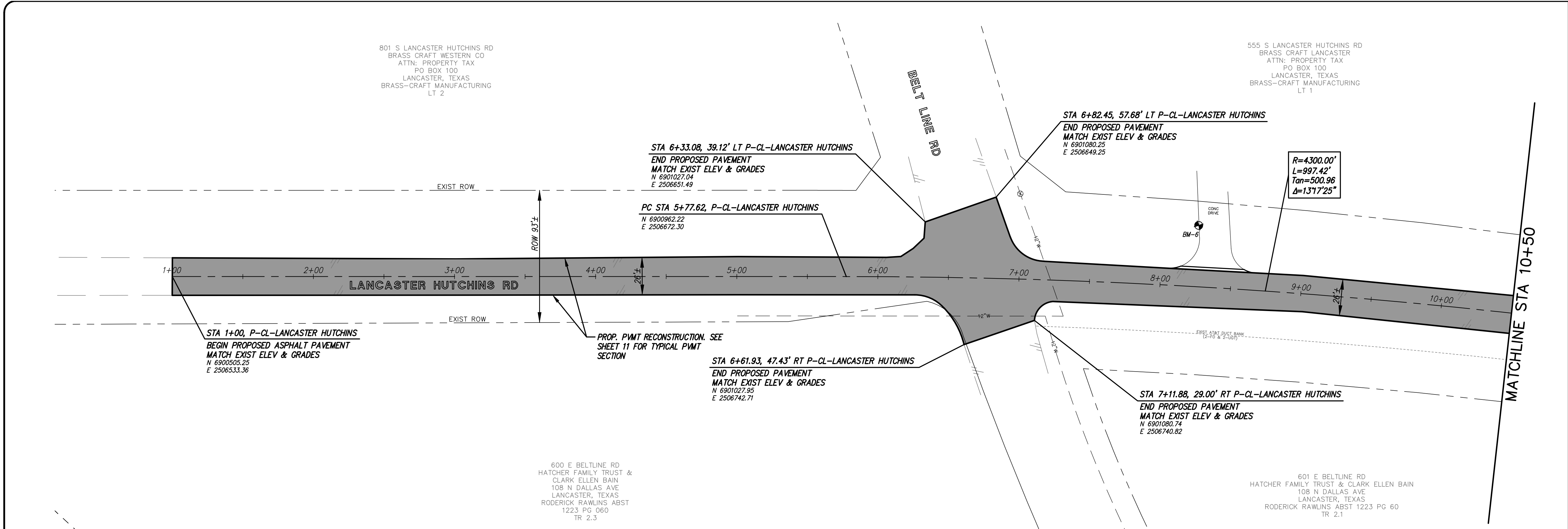
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SEE SHEET 1  
FOR LEGEND

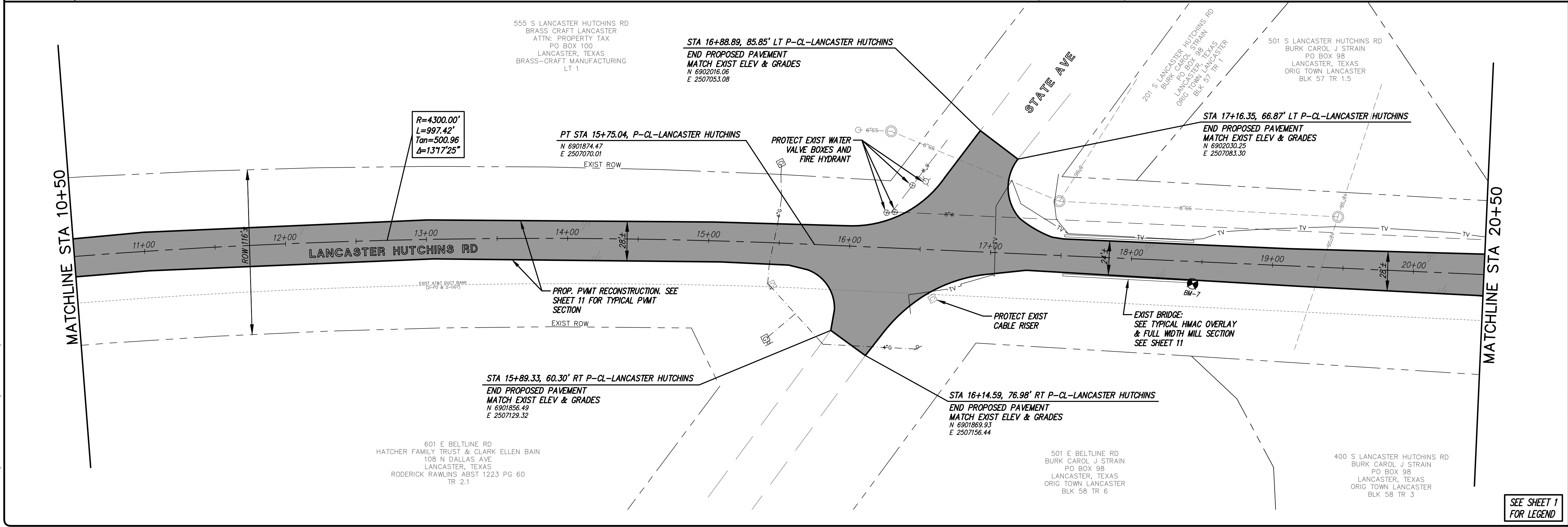


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**NOTES:**  
1. SEE SHEET 11 FOR BRIDGE MILLING TYPICAL CROSS SECTION.

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Jan 2016



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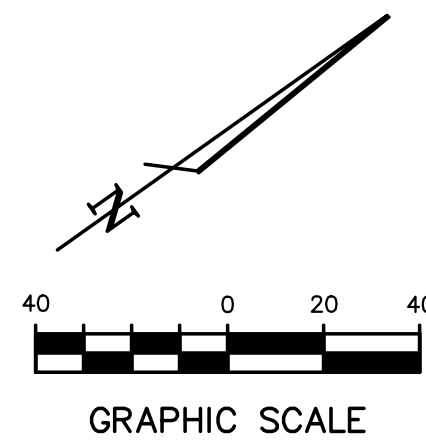
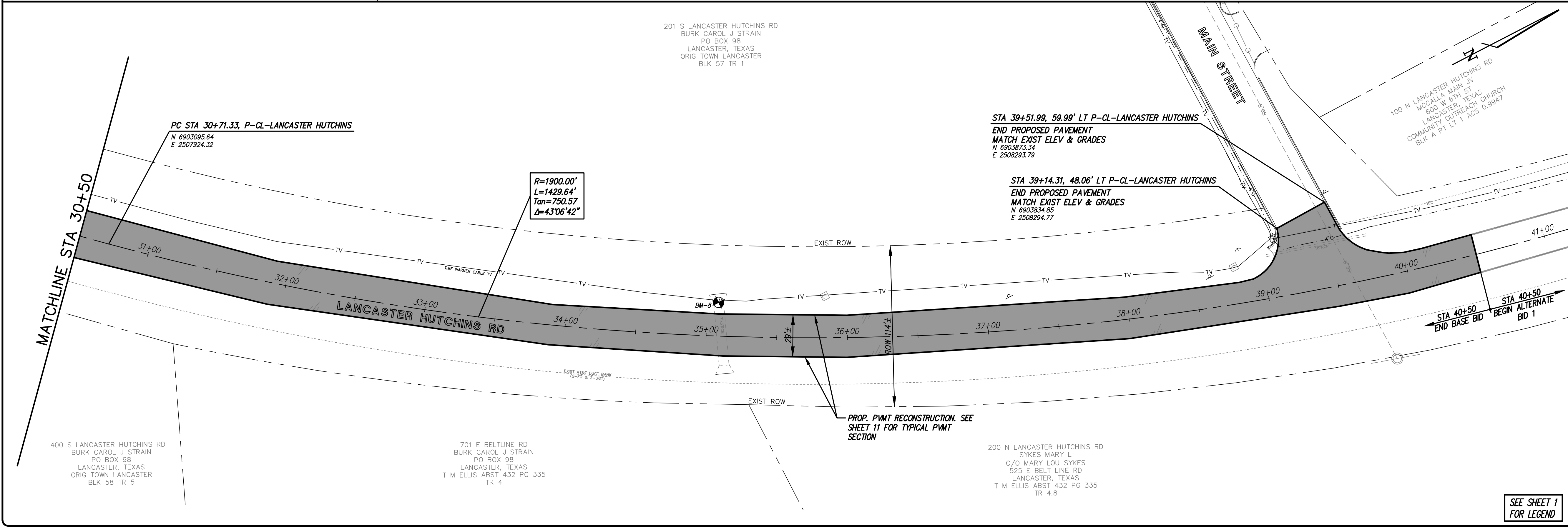
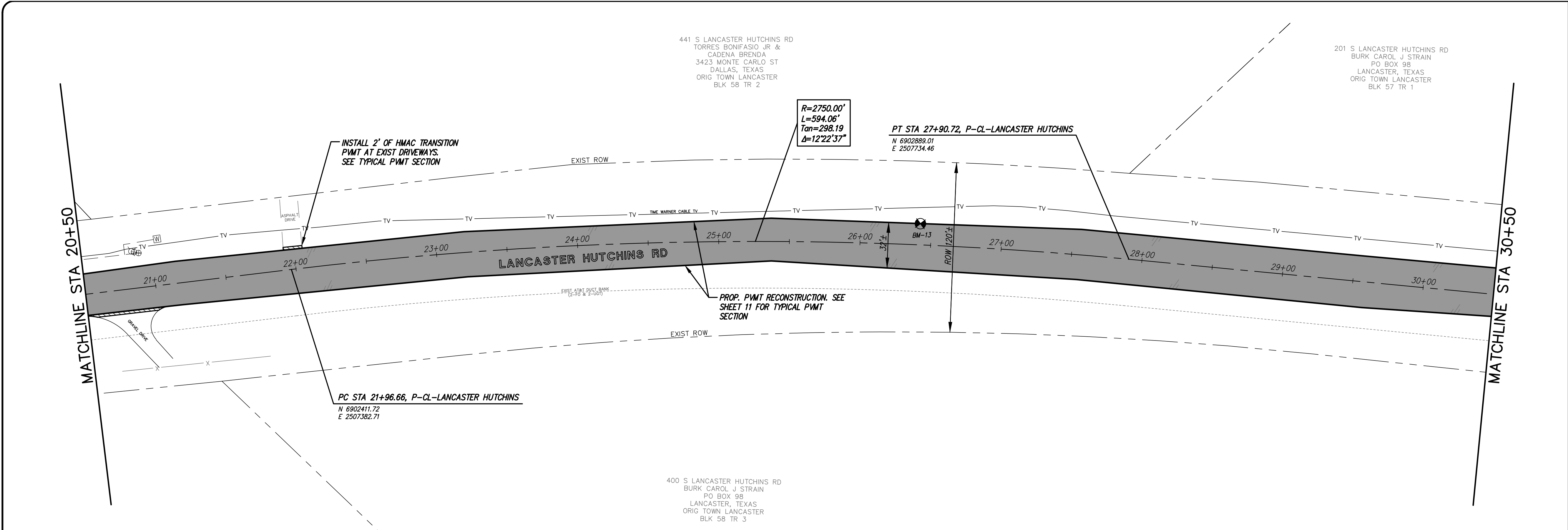
ANDREW R. LUCE  
110084  
LICENSED PROFESSIONAL ENGINEER  
Date: 2-11-2016

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Pavement Reconstruction for  
**Lancaster Hutchins Rd & Rogers Avenue**  
**Lancaster Hutchins Road Paving Plan**  
**Sta 1+00 to Sta 20+50**

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sheet  
**6**  
of  
**12**



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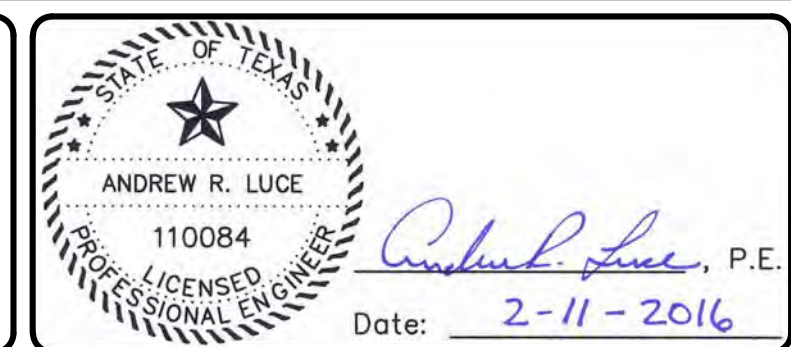
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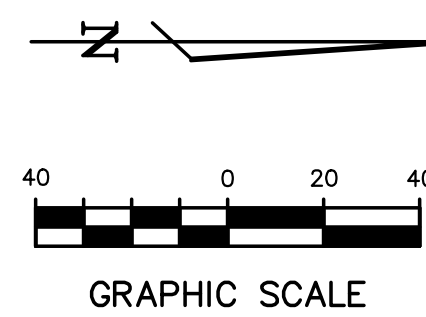
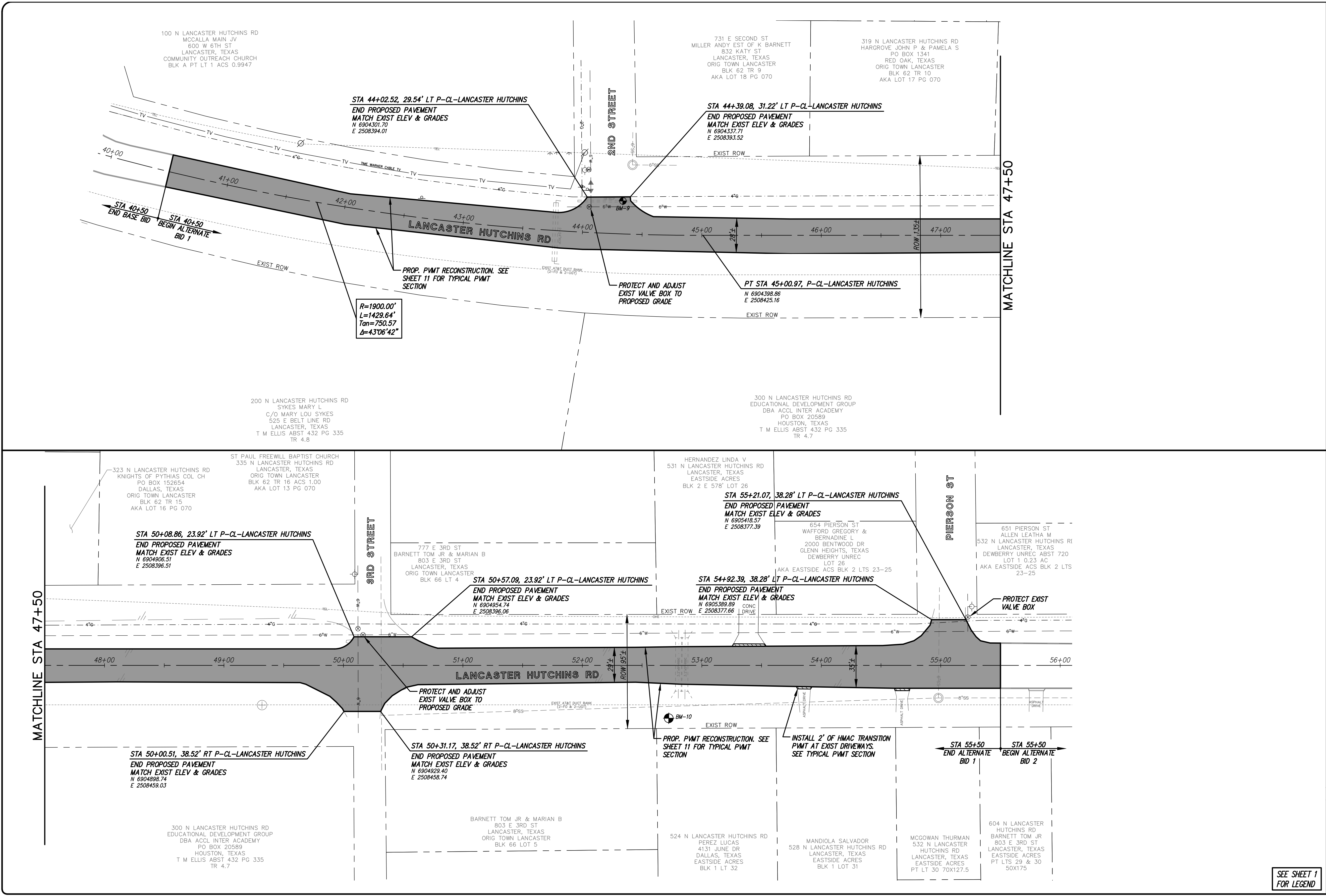


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Pavement Reconstruction for  
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**Sta 20+50 to Sta 40+50**

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**LAN15135**  
sheet  
**7**  
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**12**



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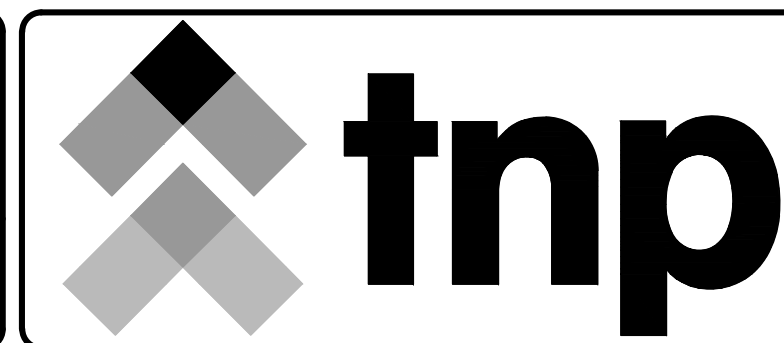
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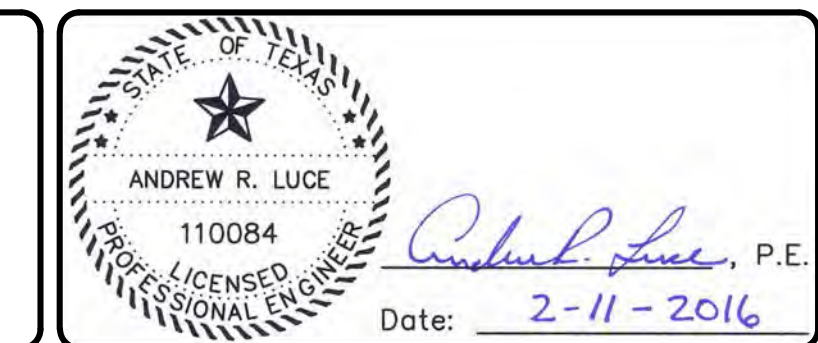
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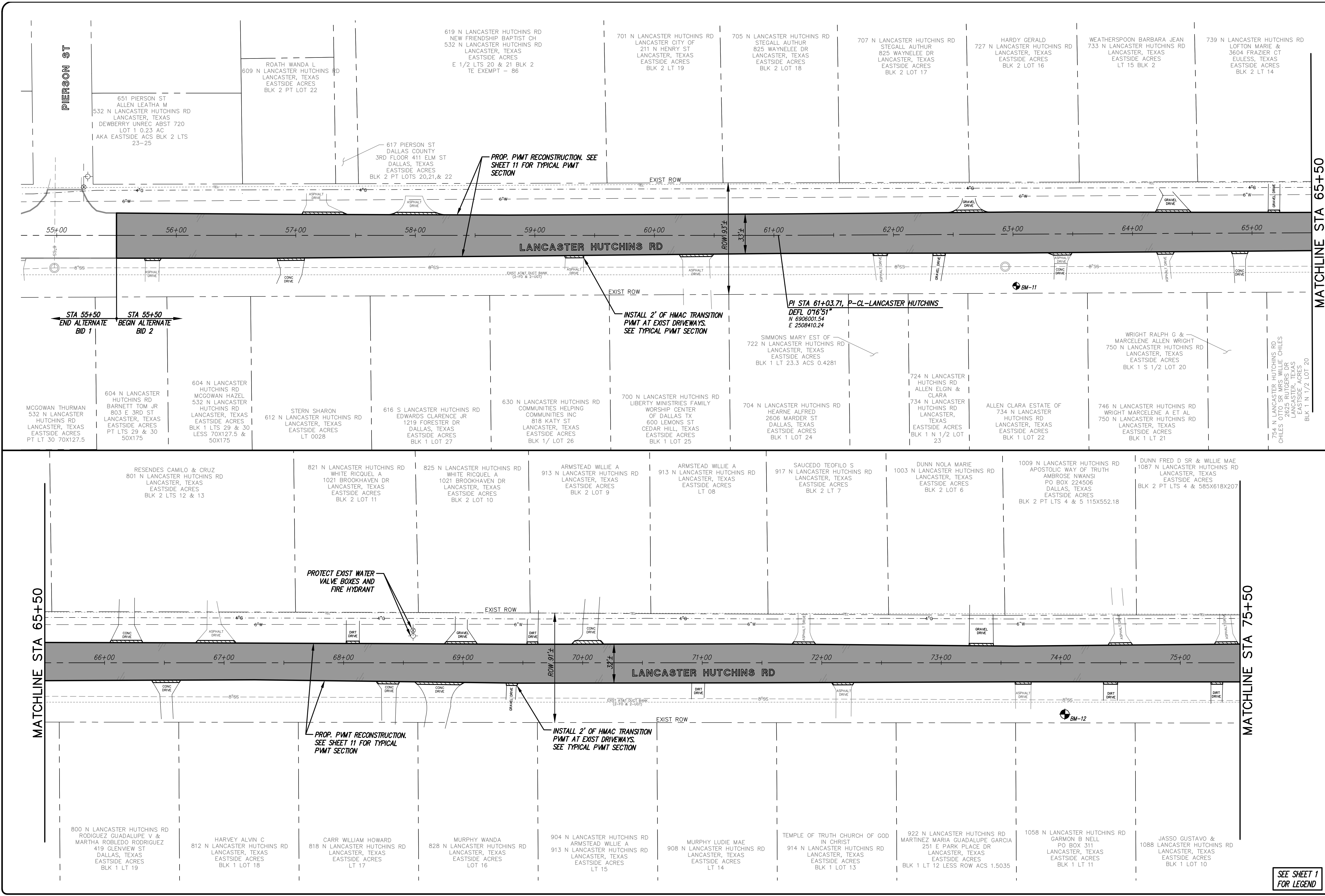


**City of Lancaster, Texas**  
Pavement Reconstruction for  
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**Lancaster Hutchins Road Paving Plan**  
**Sta 40+50 to Sta 55+50 (Alternate Bid 1)**

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**8**  
of  
**12**



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GRAPHIC SCALE

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**SEE SHEET 1 FOR LEGEND**

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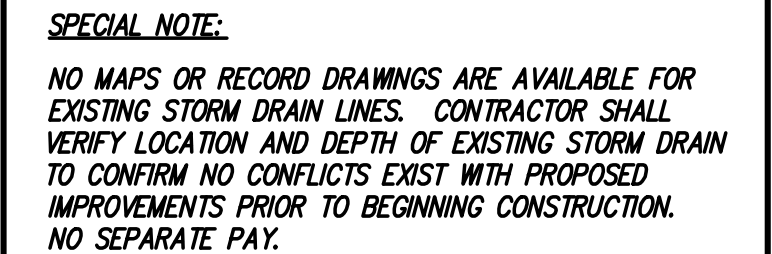
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ANDREW R. LUCE  
110084  
LICENSED PROFESSIONAL ENGINEER  
Date: 2-11-2016

City of Lancaster, Texas  
Pavement Reconstruction for  
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**Lancaster Hutchins Road Paving Plan**  
**Sta 55+50 to Sta 75+50 (Alternate Bid 2)**

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sheet  
**9**  
of  
**12**



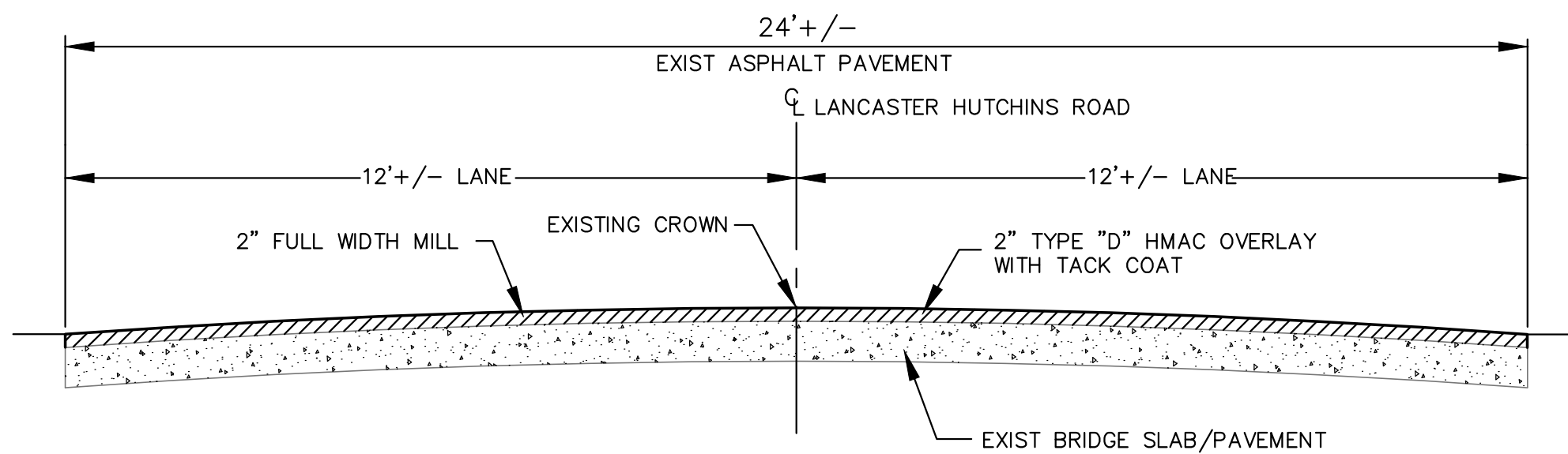


SEE SHEET 1  
FOR LEGEND

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LAN15135  
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**10**  
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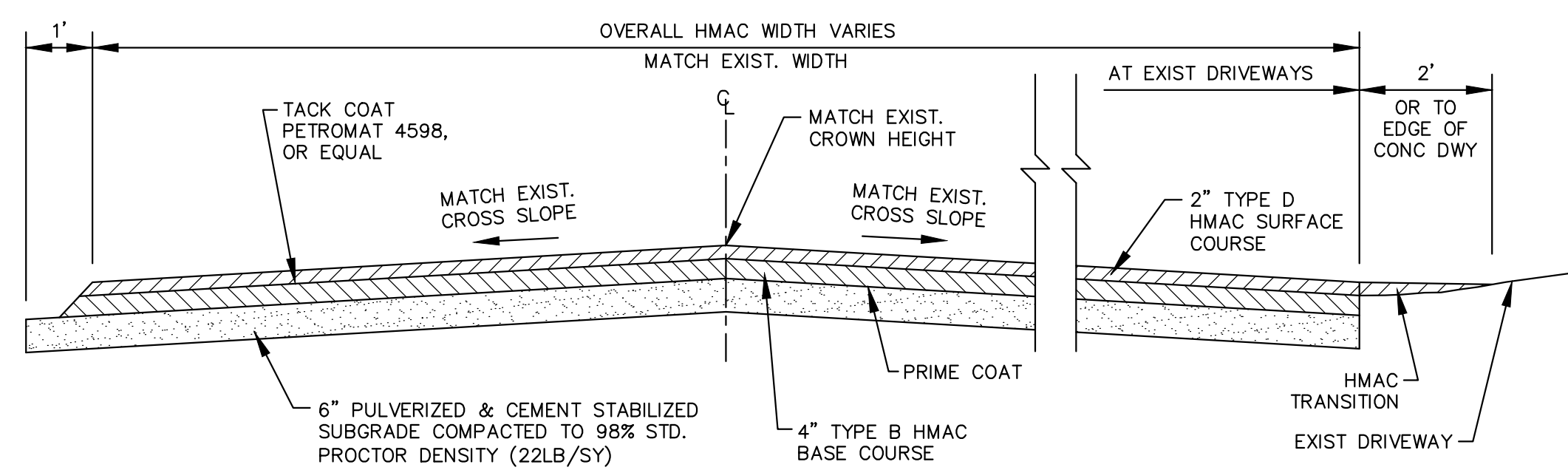


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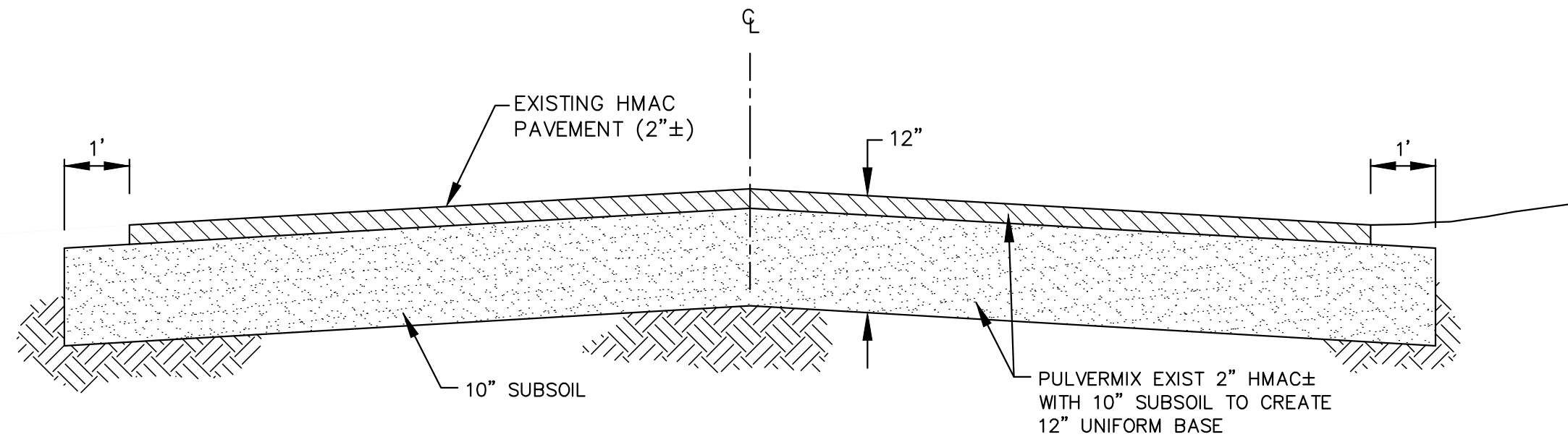


### TYPICAL HMAC OVERLAY & FULL WIDTH MILL SECTION

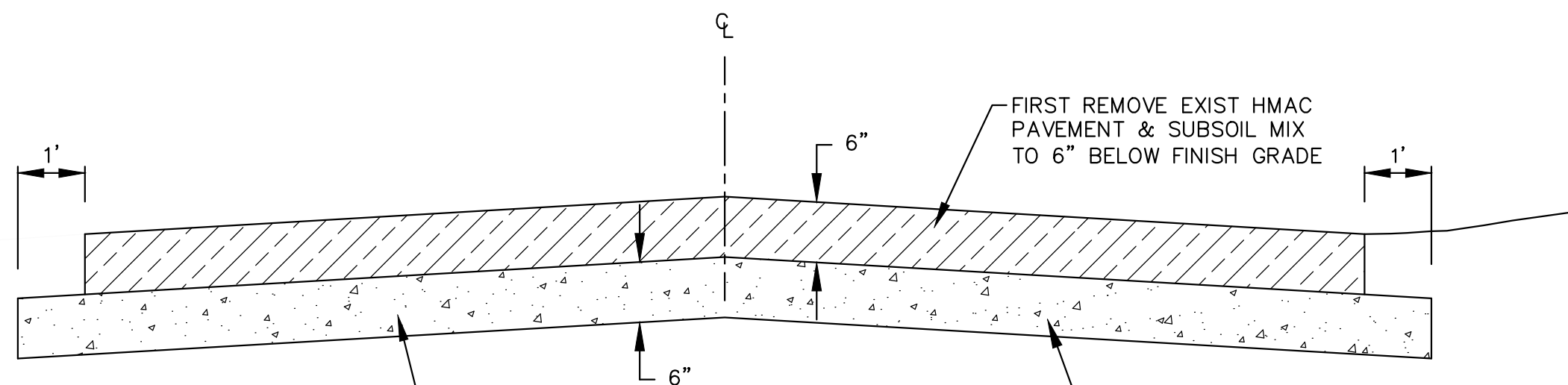
CROSS SECTION AT BRIDGE  
STA 17+51.84 TO STA 18+43.49 LANCASTER HUTCHINS RD



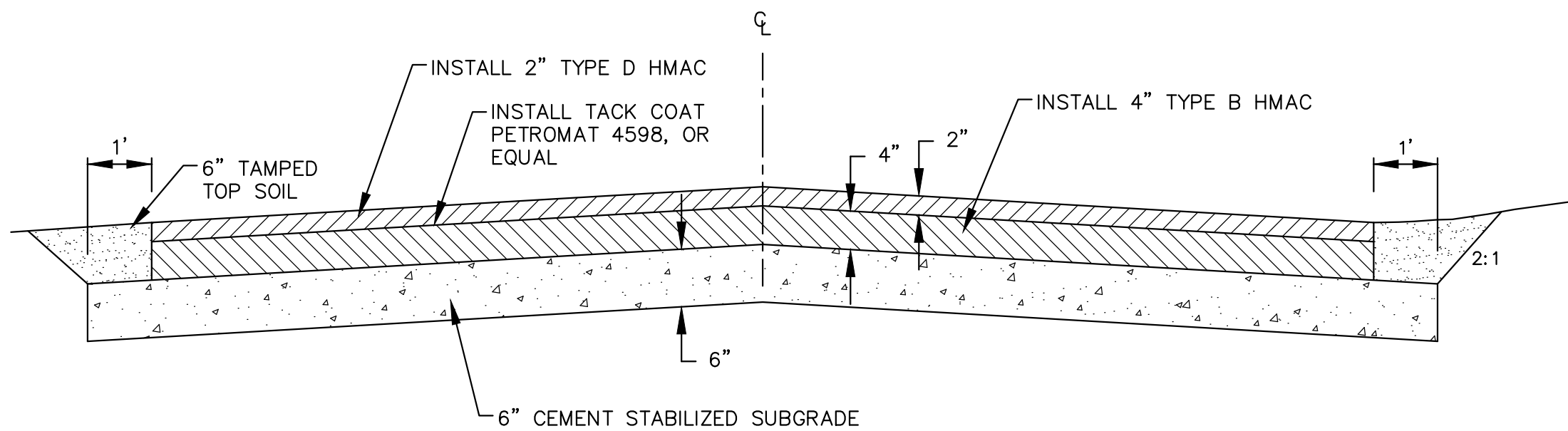
### TYPICAL PAVEMENT SECTION ROGERS AVE & LANCASTER HUTCHINS RD



#### STEP 1



#### STEP 2



#### STEP 3

### PAVEMENT RECLAMATION PROCESS FOR A 6" HMAC STREET

#### PAVING NOTES

1. EXISTING ASPHALT ROADWAY SHALL BE GROUND UP BY USING AN ASPHALT RECLAIMER OR PULVERMIXER AND RECLAIMED BACK INTO THE BASE AT A DEPTH OF NOT LESS THAN TWELVE INCHES.
2. BEFORE INSTALLING CEMENT STABILIZATION, REMOVE SURFACE MATERIAL TO ESTABLISH GRADE. ANY BURIED STRUCTURES SHOULD BE PROTECTED FROM DAMAGE PRIOR TO PROCESSING.
3. THE ESTIMATED AMOUNT OF CEMENT REQUIRED TO STABILIZE THE SUBGRADE SHOULD BE ON THE ORDER OF 22 POUNDS PER SQUARE YARD FOR A 6-INCH DEPTH, BASED ON AN ESTIMATED DRY UNIT WEIGHT OF 120pcf FOR THE PULVA-MIXTURE. (REFERENCE GEOTECHNICAL ENGINEERING STUDY FOR PROJECT). THE CEMENT SHOULD BE THOROUGHLY MIXED AND BLENDED WITH THE UPPER 6 INCHES OF THE PULVA-MIX SUBGRADE (TxDOT ITEM 275).
4. THE SUBGRADE SHOULD BE FIRM AND ABLE TO SUPPORT, WITHOUT YIELDING OR SUBSEQUENT SETTLEMENT, THE CONSTRUCTION EQUIPMENT AND THE COMPACTION OF THE FULL DEPTH RECLAMATION MATERIAL. SOFT OR YIELDING SUBGRADE SHOULD BE CORRECTED AND MADE STABLE BEFORE CONSTRUCTION PROCEEDS.
5. THE PROCESSED MATERIALS SHOULD BE UNIFORMLY COMPACTED TO A MINIMUM OF 98 PERCENT OF ASTM STANDARD TEST METHOD FOR MOISTURE-DENSITY RELATIONS OF SOIL-CEMENT MIXTURES (ASTM D 558).
6. STABILIZED SUBGRADE SHALL BE CURED FOR NOT LESS THAN 16 HOURS AND SHALL NOT EXCEED 72 HOURS WITH AN EMULSIFIED ASPHALT (SS1) APPLIED WITH AN ASPHALT DISTRIBUTOR AT AN APPLICATION RATE OF NOT LESS THAN 0.10 GALLONS PER SQUARE YARD AND NOT EXCEED 0.20 GALLONS PER SQUARE YARD. SPECIFIC APPLICATION RATES SHALL BE DETERMINED BY THE CITY INSPECTOR.
7. STABILIZED SUBGRADE SHALL BE FINAL GRADED IN ORDER TO ACHIEVE STREET GRADE UPON APPLICATION OF THE FOUR INCH (TYPE B) WITH TWO INCH (TYPE D) HMAC SURFACE COURSE. ELEVATION SHOTS SHALL BE PROVIDED BY THE CONTRACTOR ESTABLISHING SUCH CROWN THROUGHOUT THE LENGTH OF THE PROJECT.
8. SUBSEQUENT PAVEMENT LAYERS (HMAC) CAN BE PLACED ANY TIME AFTER FINISHING, AS LONG AS THE SOIL-CEMENT IS SUFFICIENTLY STABLE TO SUPPORT THE REQUIRED CONSTRUCTION EQUIPMENT WITHOUT MARRING OR PERMANENT DISTORTION OF THE SURFACE.
9. THE CITY OF LANCASTER WILL PROVIDE SITE TESTING AND RETAIN DOCUMENTATION OF REPORTS AS TO COMPLIANCE WITH SUBGRADE DENSITY AND MOISTURE CONTENT SPECIFICATIONS.
10. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL TRAFFIC CONTROL NEEDS AND SHALL SUBMIT A TRAFFIC CONTROL PLAN FOR APPROVAL BY THE CITY PRIOR TO ANY WORK ON THE PROJECT.
11. LIMITS OF PAVEMENT WILL BE TO REQUIRED THICKNESS.
12. CONTRACTOR SHALL OBTAIN ELEVATIONS OF THE EXISTING TOP OF PAVEMENT IN ORDER TO RE-ESTABLISH THIS ELEVATION UPON CONSTRUCTION OF THE NEW CURB AND GUTTER AND ESTABLISH A CROWN THAT MATCHES EXISTING FROM THE ELEVATIONS.
13. PAYMENT FOR REMOVAL AND HAUL OFF OF EXCESS ASPHALT PAVEMENT NECESSARY TO ACHIEVE FINAL GRADE SHALL BE SUBSIDIARY TO ITEMS PAID.
14. PAVING FABRIC SHALL BE SKAPS GC140, PETROMAT 4598, OR APPROVED EQUAL. CONTRACTOR TO FOLLOW MANUFACTURERS INSTALLATION PROCEDURE.
15. CONSTRUCTION OF CEMENT TREATED AND PULVA-MIX ASPHALT/SUBGRADE MATERIAL SHOULD FOLLOW ITEM 275 OF TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION OF HIGHWAYS, STREETS, AND BRIDGES, 2014 EDITION OR EQUIVALENT.
16. THE PORTLAND CEMENT SHOULD MEET THE REQUIREMENTS OF ITEM 275 IN THE TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION OF HIGHWAYS, STREETS AND BRIDGES, 2014 EDITION.
17. PROPOSED 6" HMAC PAVEMENT WIDTH SHALL MATCH EXISTING ASPHALT TO WITHIN 6".
18. AFTER COMPLETION OF FINAL FINISHING, THE SURFACE SHOULD BE CURED BY APPLICATION OF A BITUMINOUS OR OTHER APPROVED SEALING MEMBRANE, OR BY BEING KEPT CONTINUOUSLY MOIST FOR A PERIOD OF 7 DAYS WITH A WATER SPRAY THAT WILL NOT ERODE THE SURFACE OF THE FDR BASE. IF CURING MATERIAL IS USED, IT SHOULD BE APPLIED AS SOON AS POSSIBLE, BUT NOT LATER THAN 24 HOURS AFTER COMPLETING FINISHING OPERATIONS. THE SURFACE SHOULD BE KEPT CONTINUOUSLY MOIST PRIOR TO APPLICATION OF CURING MATERIAL.

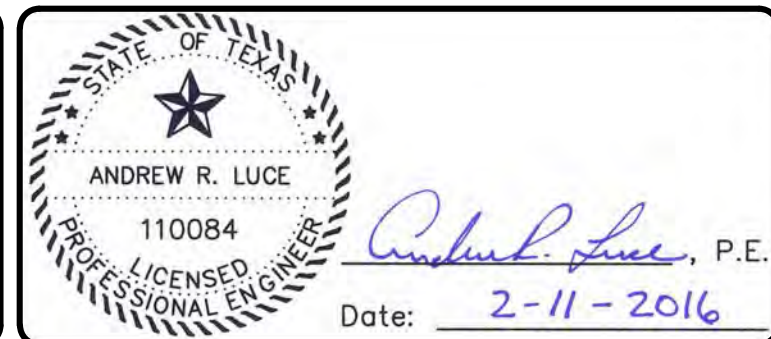
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N/A	date
Jan 2016	



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Fort Worth, Texas 76102  
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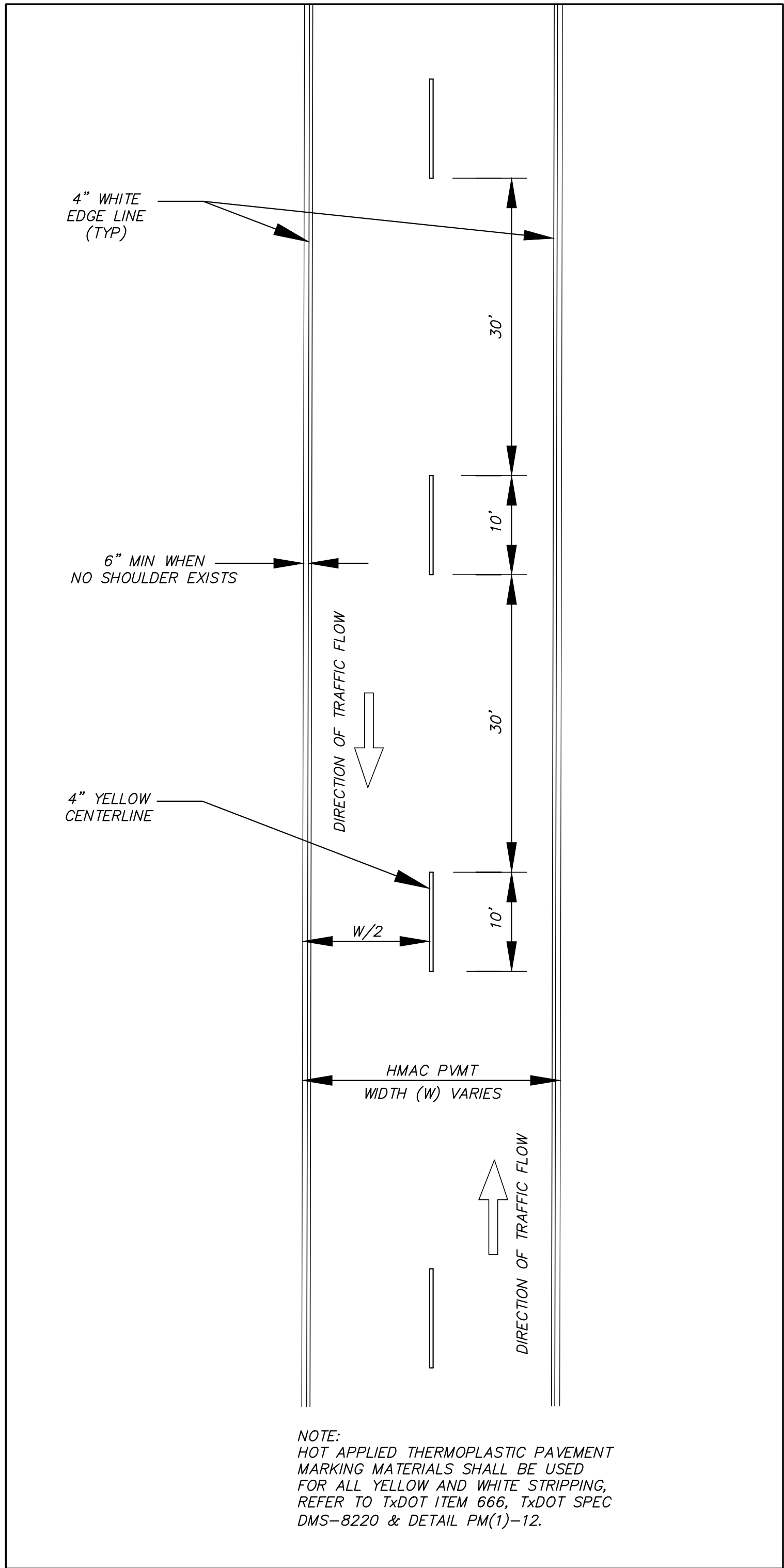


<b>City of Lancaster, Texas</b>
Pavement Reconstruction for
<b>Lancaster Hutchins Rd &amp; Rogers Avenue</b>
<b>Paving Details</b>

tnp project	LAN15135
sheet	11
of	12



Drawing: C:\PROJECTS\LAN15135\Drawings\PAVING PLAN SET\XX-PAVING TRAFFIC CONTROL DETAILS.dwg at Feb 11, 2016--10:50am by Paul.L  
Layout: Export - Web - 12x24 - B1.dwg - DLS-HRL.dwg



PAVEMENT MARKINGS - TWO LANE TWO-WAY  
ROADWAY WITH OR WITHOUT SHOULDER

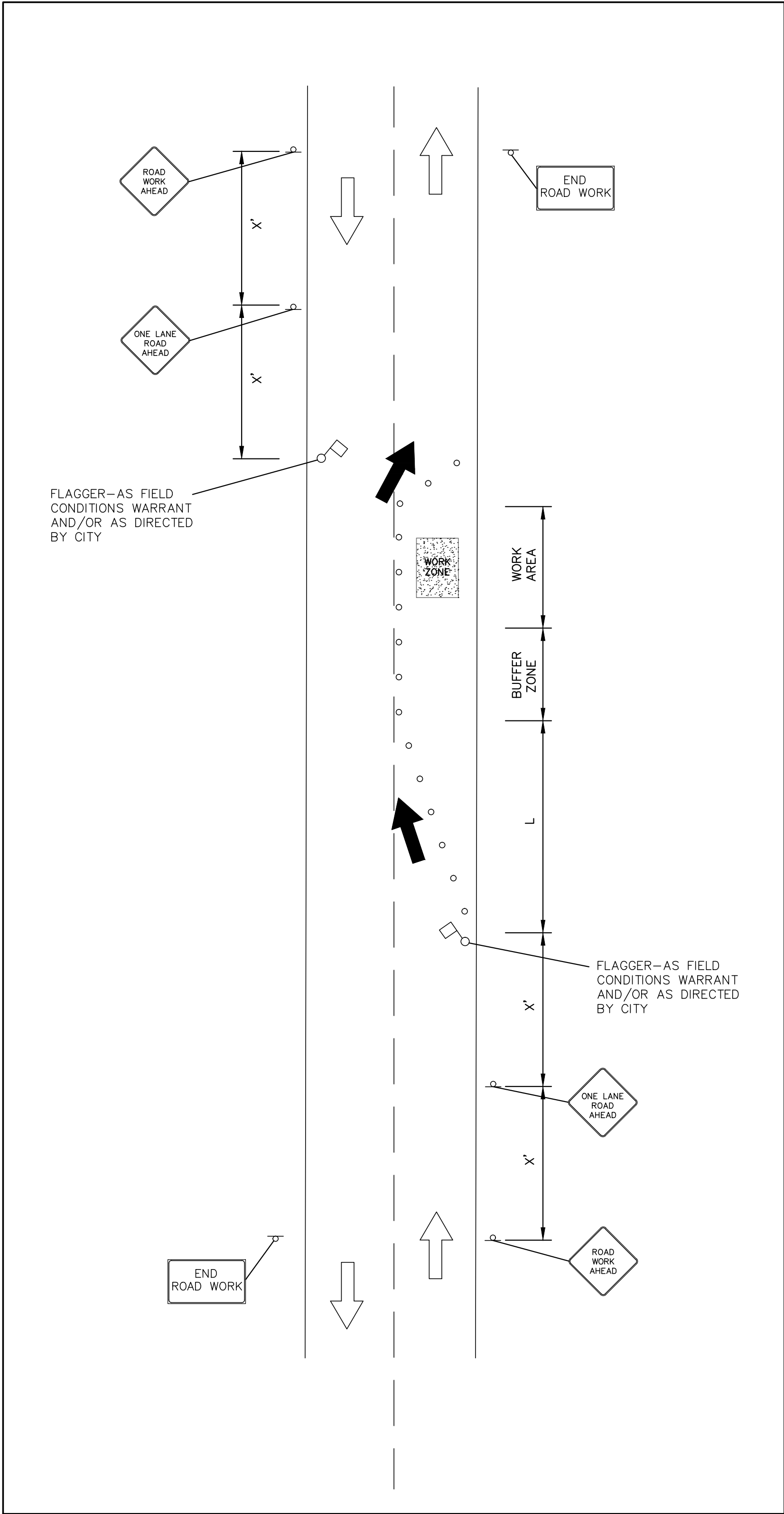
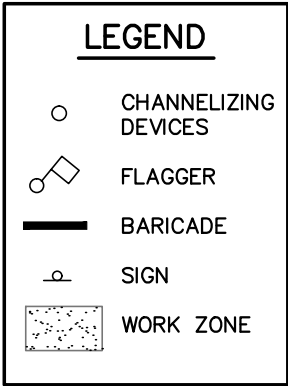
GENERAL NOTES

1. ALL CHANNELIZING DEVICES SHALL BE IN ACCORDANCE WITH THE CURRENT EDITION OF THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (TMUTCD).
2. ALL TRAFFIC CONTROL DEVICES SHALL HAVE WORKING VISIBLE WARNING LIGHTS AS REQUIRED IN ACCORDANCE WITH THE CURRENT EDITION OF TMUTCD.
3. FOR TEMPORARY SITUATIONS, WHEN IT IS NOT FEASIBLE TO REMOVE AND RESTORE PAVEMENT MARKINGS, CHANNELIZATION MUST BE MADE DOMINANT BY USING A VERY CLOSE DEVICE SPACING. THIS IS ESPECIALLY IMPORTANT IN LOCATIONS OF CONFLICTING INFORMATION SUCH AS WHERE TRAFFIC IS DIRECTED OVER A DOUBLE YELLOW CENTERLINE. IN SUCH LOCATIONS, CHANNELIZING DEVICE SPACING OF 10 FEET IS REQUIRED.
4. FOR LONG TERM STATIONARY WORK, ALL CONFLICTING PAVEMENT MARKINGS MUST BE REMOVED AND CENTERLINE STRIPING PROVIDED WHERE TWO WAY TRAFFIC IS IN ADJACENT LANES.
5. CONTRACTOR SHALL PROVIDE SIDEWALK CLOSURE, CROSSWALK CLOSURE AND/OR WALKWAY BYPASS WHEREVER PEDESTRIAN MOVEMENTS ARE AFFECTED BY CONSTRUCTION ACTIVITIES. ALL SIDEWALKS AND CROSSWALKS SHALL BE ACCESSIBLE WHEN CONTRACTOR IS NOT WORKING UNLESS OTHERWISE APPROVED BY THE CITY TRAFFIC ENGINEER.
6. THE USE OF TRAILER MOUNTED ARROW DISPLAYS MAY BE REQUIRED ON ALL LANE CLOSURES. THE CONTRACTOR SHALL PROVIDE ONE (1) STAND-BY UNIT IN GOOD WORKING CONDITION AT THE JOB SITE, READY FOR USE, IF HIS OPERATION REQUIRES 24-HOUR A DAY CLOSURE SET-UPS AND IF REQUIRED BY THE CITY.
7. CITY TRAFFIC ENGINEER AND/OR INSPECTORS MAY REQUIRE ADDITIONAL TRAFFIC CONTROL DEVICES.
8. CONTRACTOR SHALL OPEN THE ROADWAY TO TWO WAY TRAFFIC AT THE END OF EACH WORK DAY UNLESS APPROVED BY THE CITY. STEEL PLATING SHALL BE PLACED OVER ANY OPEN UTILITY TRENCHES.
9. CONTRACTOR SHALL SUBMIT A TRAFFIC CONTROL PLAN 48 HOURS PRIOR TO BEGINNING WORK FOR APPROVAL BY CITY.
10. THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR PUBLIC SAFETY WITHIN AND ADJACENT TO THE PROJECT SITE. THE CITY AND ENGINEER ASSUME NO RESPONSIBILITY FOR PROJECT SITE SAFETY.
11. ALL TRAFFIC CONTROL MEASURES SHALL BE PAID FOR UNDER THE ITEM FOR TRAFFIC CONTROL INCLUDING SIGNAGE, CHANNELIZATION DEVICES, FLAGMEN, TEMPORARY STRIPING, TEMPORARY RIDING SURFACES, TEMPORARY SHORING, LOW PROFILE CONCRETE TRAFFIC BARRIER, ETC. NO SEPARATE PAYMENT SHALL BE MADE FOR THE ADDITIONAL MEASURES BY THE CITY OR ENGINEER.
12. CONTRACTOR SHALL COVER, RELOCATE AND/OR TEMPORARILY REMOVE ANY CONFLICTING PAVEMENT MARKINGS OR REGULATORY SIGNS. NO SEPARATE PAY.
13. EXCEPT WHERE SPECIFICALLY NOTED, CONTRACTOR SHALL MAINTAIN ACCESS TO ALL INTERSECTING STREETS AND DRIVEWAYS AT ALL TIMES.

POSTED SPEED MPH	FORMULA*	MINIMUM DESIRABLE TAPER LENGTHS (L) FEET			SUGGESTED MAXIMUM DEVICE SPACING		SUGGESTED SIGN SPACING (FEET)
		10' LANE OFFSET	11' LANE OFFSET	12' LANE OFFSET	ON A TAPER (FEET)	ON A TANGENT (FEET)	
30	$L=WS^2/60$	150	165	180	30	60-75	120
35		205	225	245	35	70-90	160
40	L=WS	265	295	320	40	80-100	240
45		450	495	540	45	90-110	320
50		500	560	600	50	100-125	400

\*L-TAPER LENGTH IN FEET      W=WIDTH OF OFFSET IN FEET      S=POSTED SPEED

NOTE: BUFFER ZONE WILL BE 25 FEET (MAXIMUM).



TYPICAL TWO-WAY STREET LANE CLOSURE

NOT TO SCALE

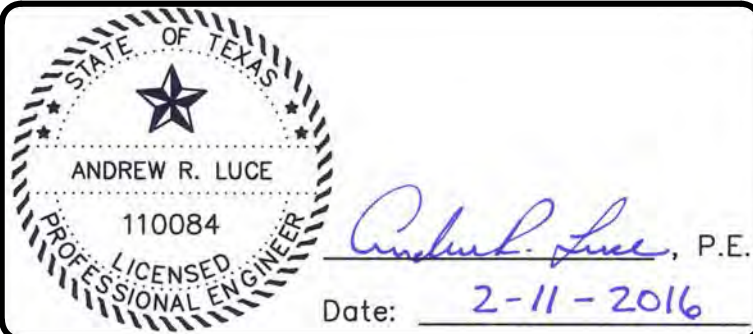
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Jan 2016



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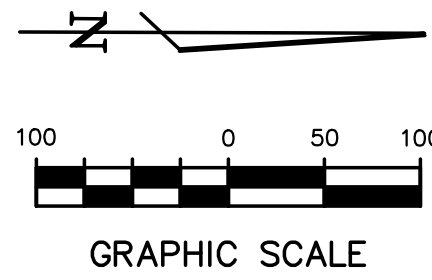
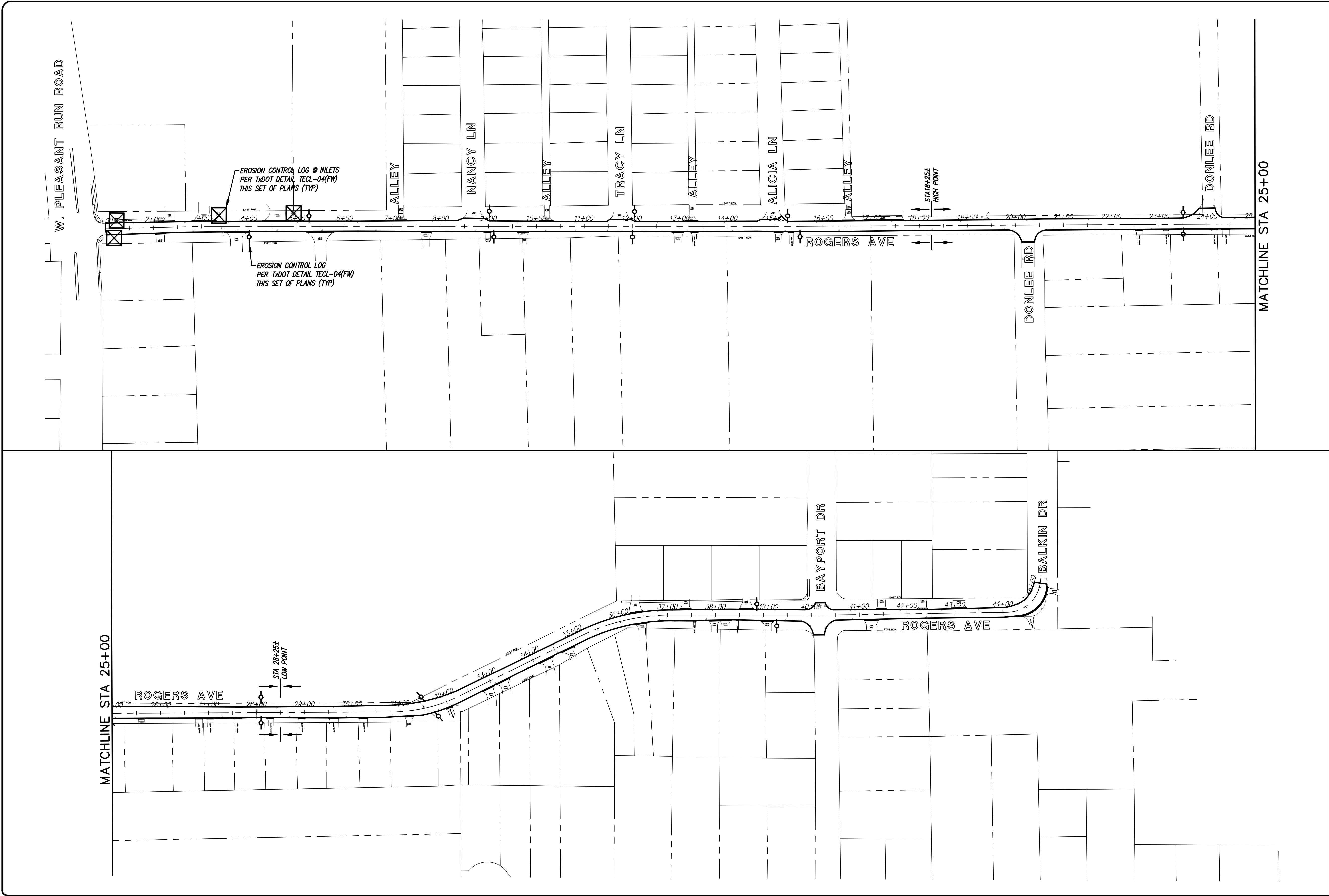


City of Lancaster, Texas  
Pavement Reconstruction for  
**Lancaster Hutchins Rd & Rogers Avenue**  
Pavement Marking &  
Traffic Control Details

tnp project  
LAN15135  
sheet  
**12**  
of  
**12**



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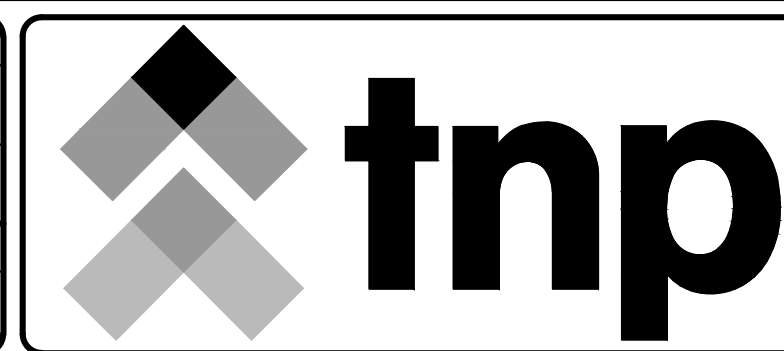
LEGEND

- EROSION CONTROL LOG
- CURB INLET PROTECTION (ALL DOWNSTREAM EX. INLETS)
- TEMPORARY ROCK BERM
- DRAINAGE FLOW DIRECTION

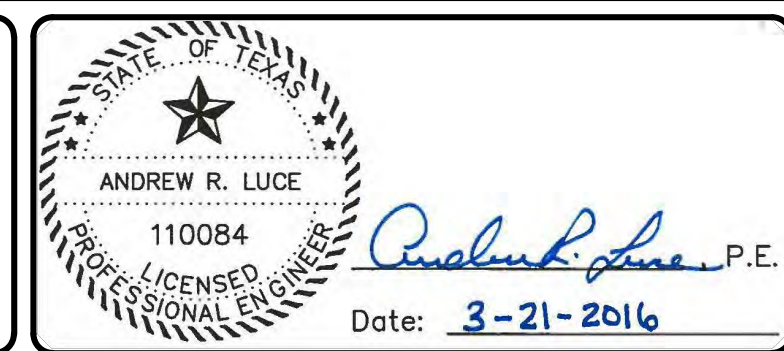
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1" = 100'
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date
April 2016



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City of Lancaster, Texas  
Pavement Reconstruction for  
**Lancaster Hutchins Rd & Rogers Avenue**  
Rogers Avenue Erosion Control Plan  
Sta 1+00 to End

tnp project  
LAN15135  
sheet  
**12A**  
of  
12

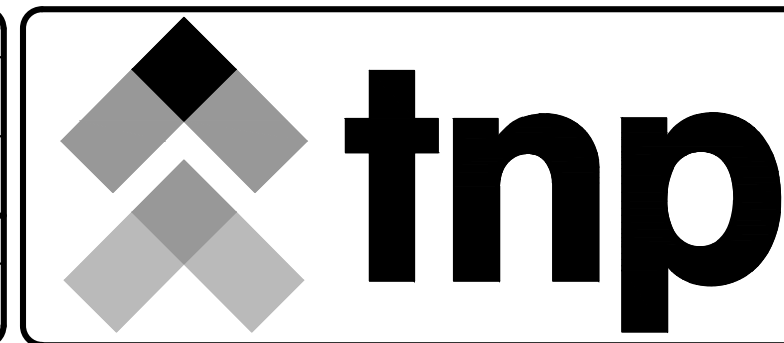


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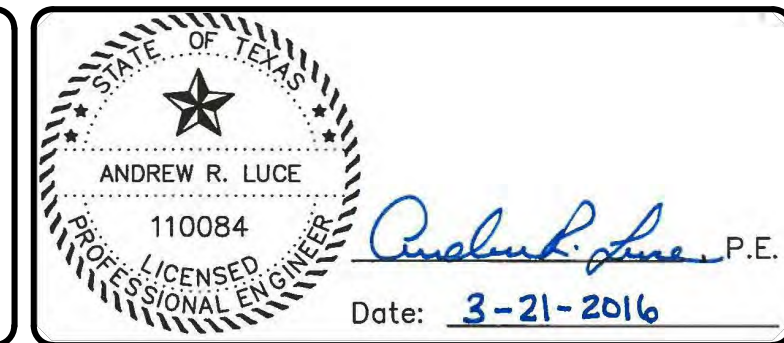
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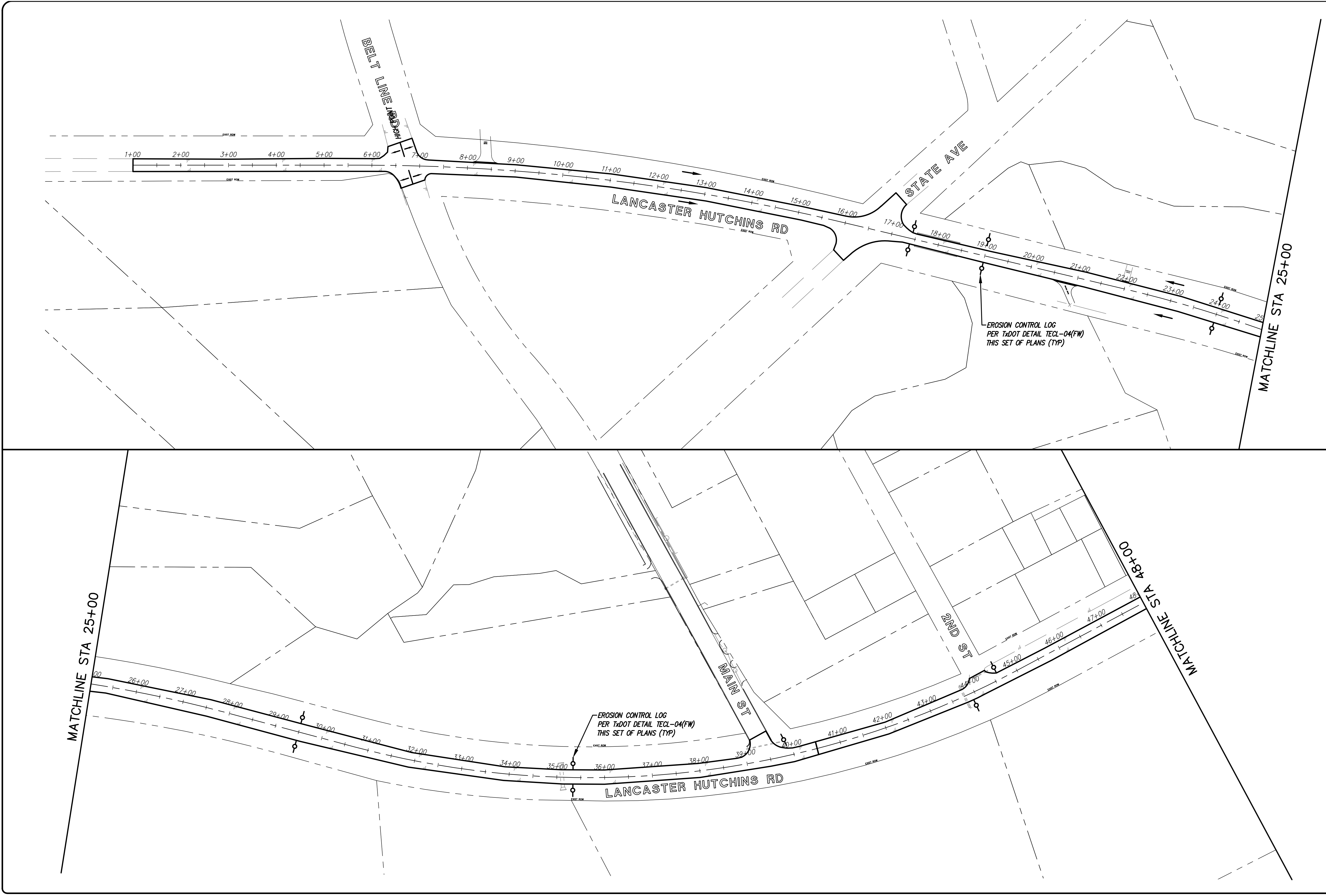


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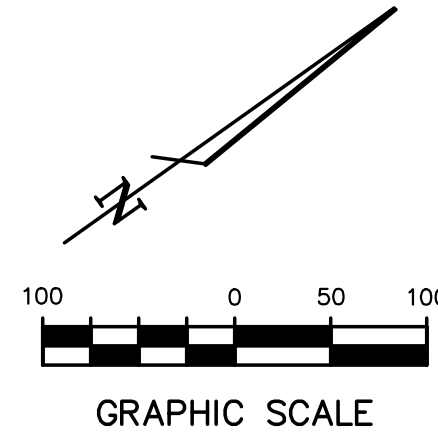


City of Lancaster, Texas  
Pavement Reconstruction for  
**Lancaster Hutchins Rd & Rogers Avenue**  
**Lancaster Hutchins Erosion Control Plan**  
Sta 1+00 to Sta 48+00

tnp project  
LAN15135  
sheet  
**12B**  
of  
12



LEGEND	
	EROSION CONTROL LOG
	CURB INLET PROTECTION (ALL DOWNSTREAM EX. INLETS)
	TEMPORARY ROCK BERM
	DRAINAGE FLOW DIRECTION





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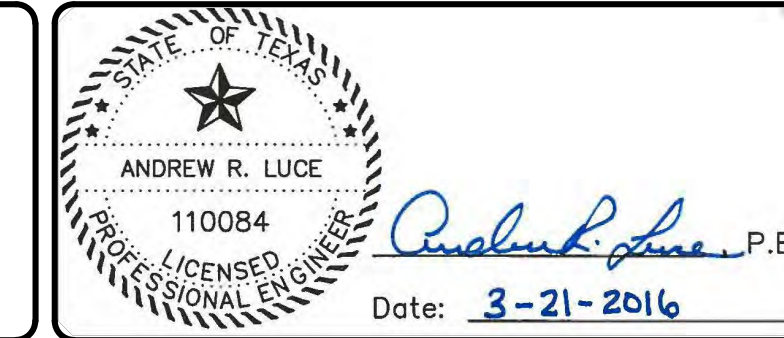
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April 2016

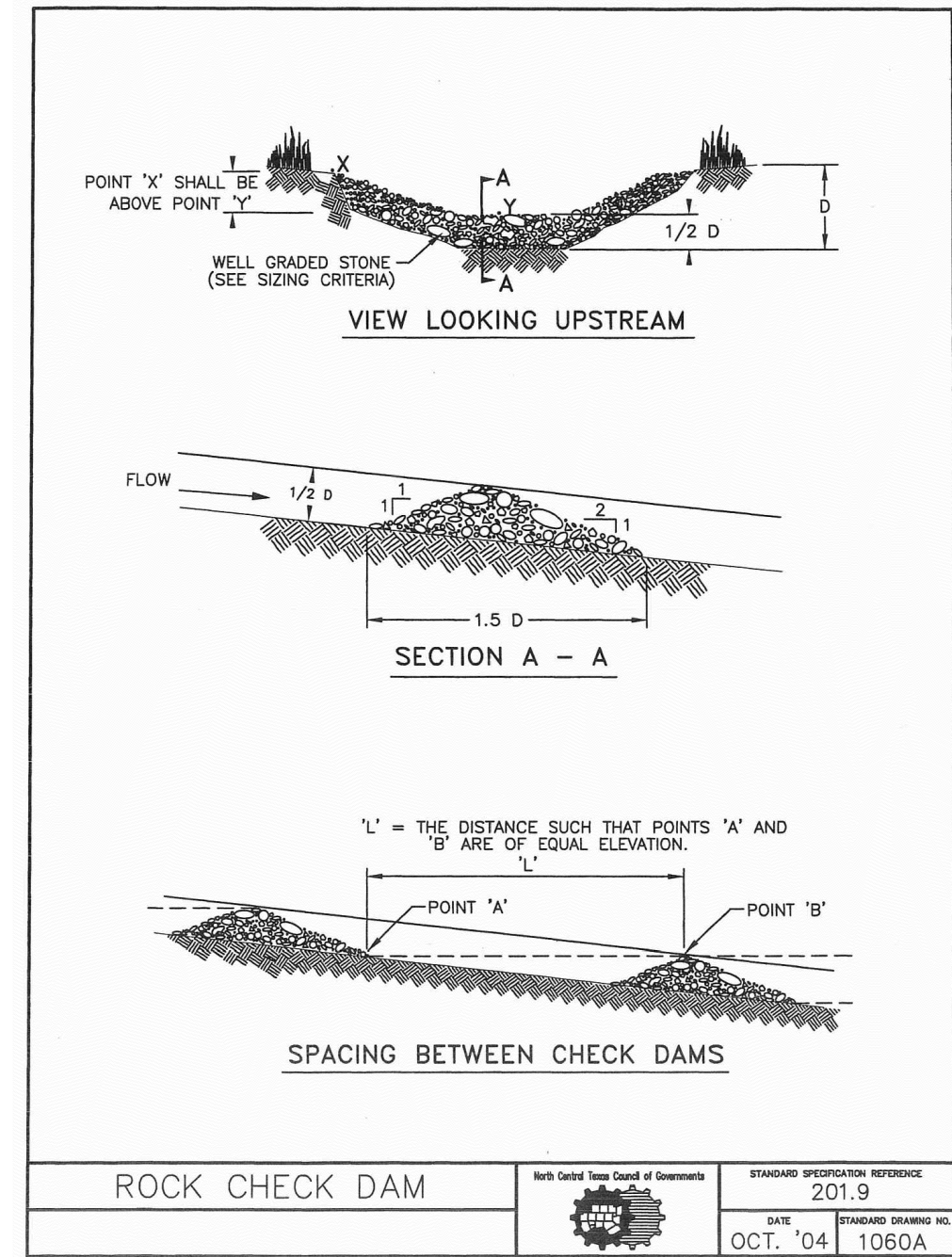
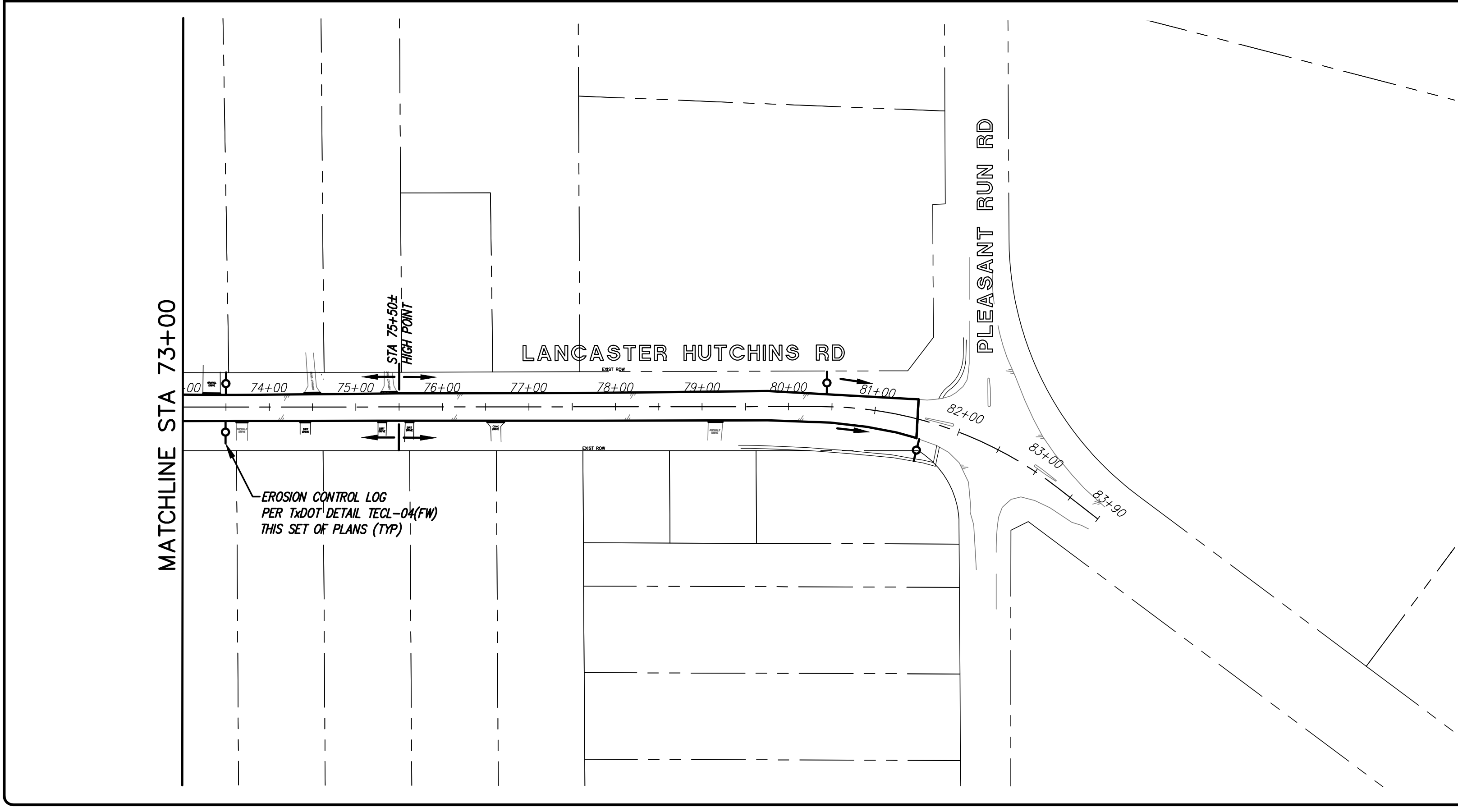
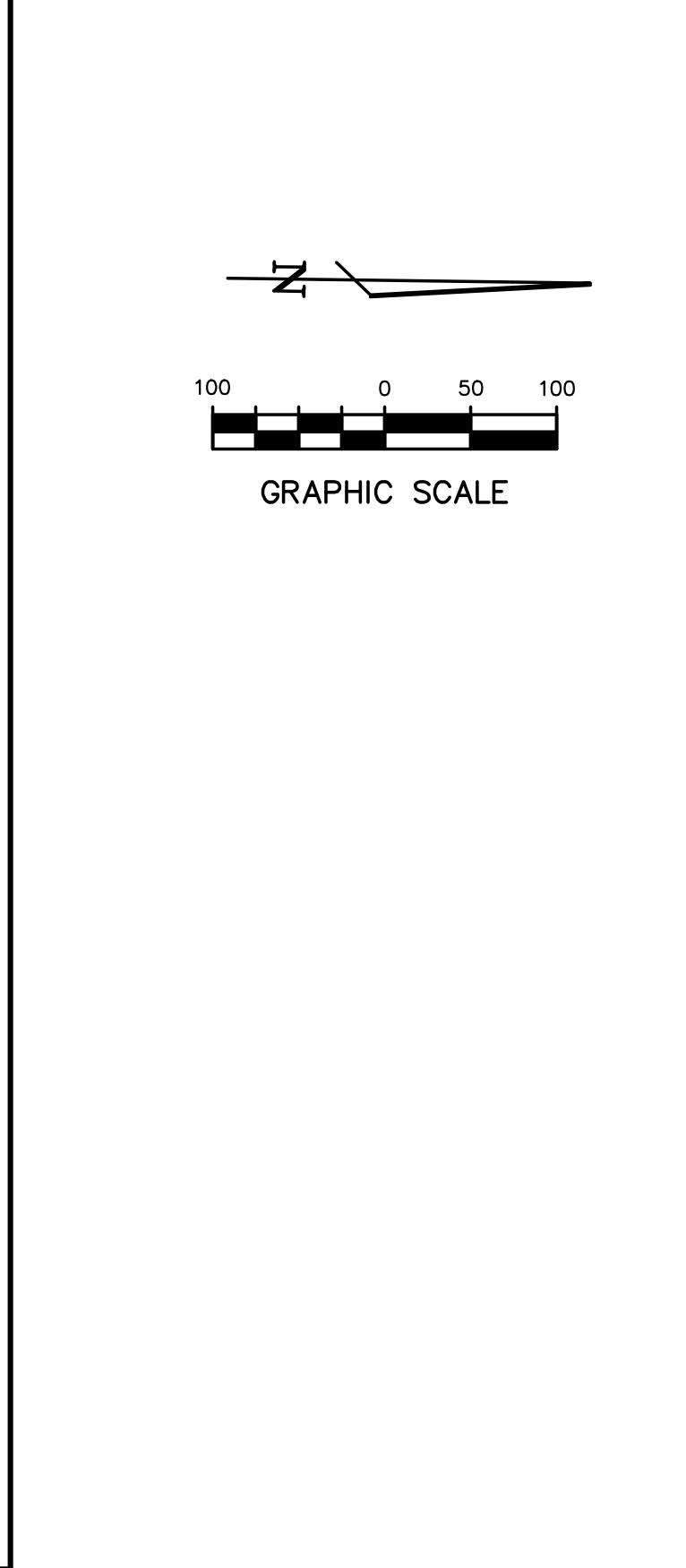
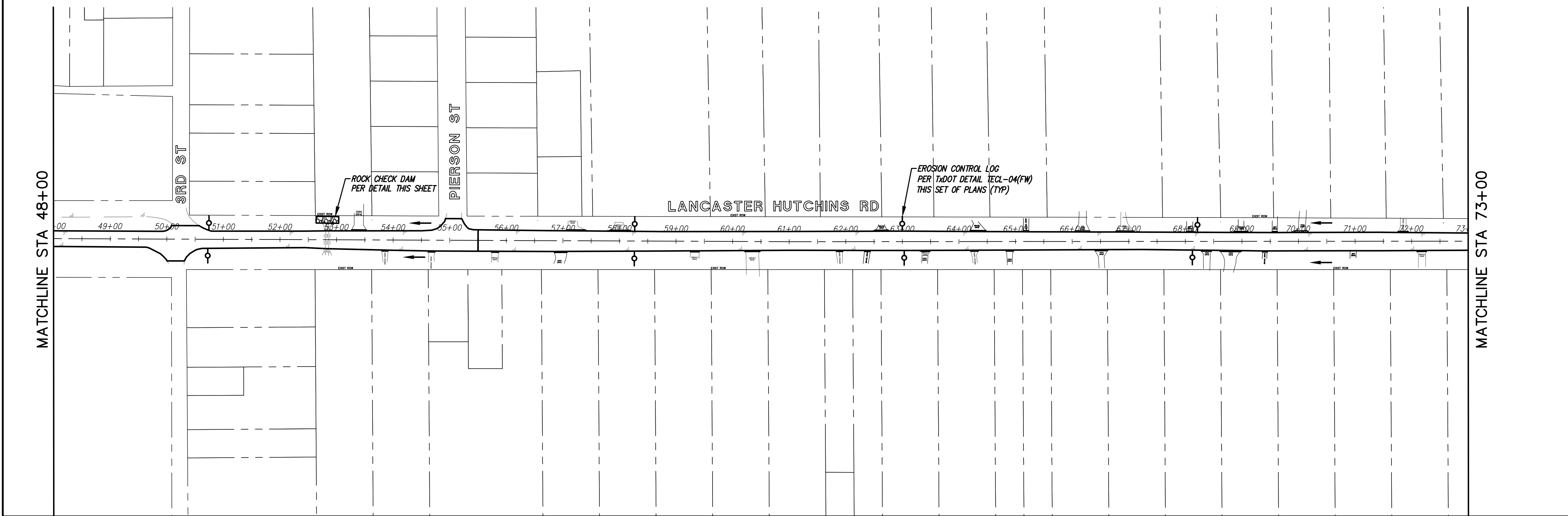


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City of Lancaster, Texas  
Pavement Reconstruction for  
**Lancaster Hutchins Rd & Rogers Avenue**  
**Lancaster Hutchins Erosion Control Plan**  
**Sta 48+00 to End**

tnp project  
LAN15135  
sheet  
**12C**  
of  
12



**ROCK CHECK DAM GENERAL NOTES:**

1. STONE SHALL BE WELL GRADED WITH SIZE RANGE FROM 1½ TO 3½ INCHES IN DIAMETER DEPENDING ON EXPECTED FLOWS.
2. THE CHECK DAM SHALL BE INSPECTED AS SPECIFIED IN THE SWPPP AND SHALL BE REPLACED WHEN THE STRUCTURE CEASES TO FUNCTION AS INTENDED DUE TO SILT ACCUMULATION AMONG THE ROCKS, WASHOUT, CONSTRUCTION TRAFFIC DAMAGE, ETC.
3. WHEN SILT REACHES A DEPTH EQUAL TO ONE-THIRD OF THE HEIGHT OF THE CHECK DAM OR ONE FOOT, WHICHEVER IS LESS, THE SILT SHALL BE REMOVED AND DISPOSED OF PROPERLY.
4. WHEN THE SITE HAS ACHIEVED FINAL STABILIZATION OR ANOTHER EROSION OR SEDIMENT CONTROL DEVICE IS EMPLOYED, THE CHECK DAM AND ACCUMULATED SILT SHALL BE REMOVED AND DISPOSED OF IN AN APPROVED MANNER.

**ROCK CHECK DAM**

North Carolina State of Documents  
STANDARD INFORMATION REFERENCE  
201.9  
DATE  
OCT. '04  
STANDARD DRAWING NO.  
1060A

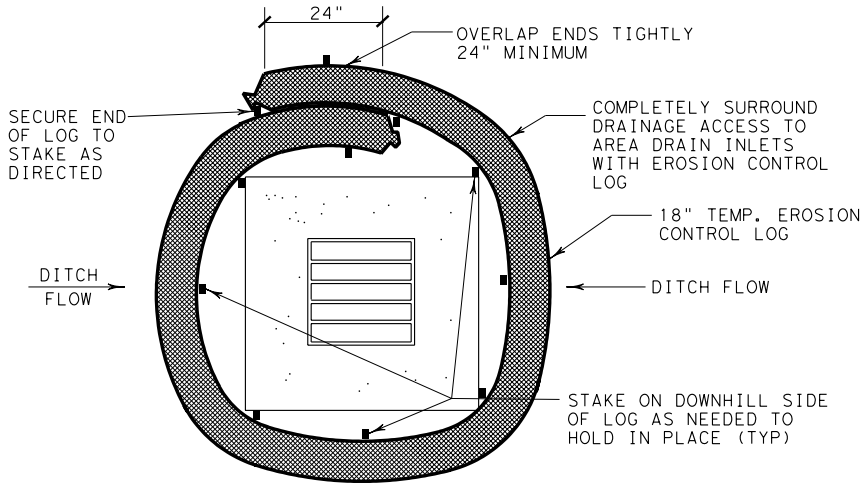
LEGEND	
	EROSION CONTROL LOG
	CURB INLET PROTECTION (ALL DOWNSTREAM EX. INLETS)
	TEMPORARY ROCK BERM
	DRAINAGE FLOW DIRECTION



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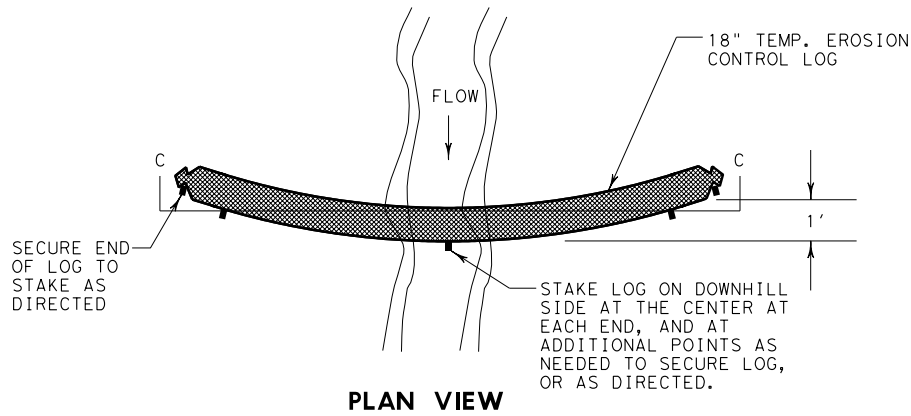
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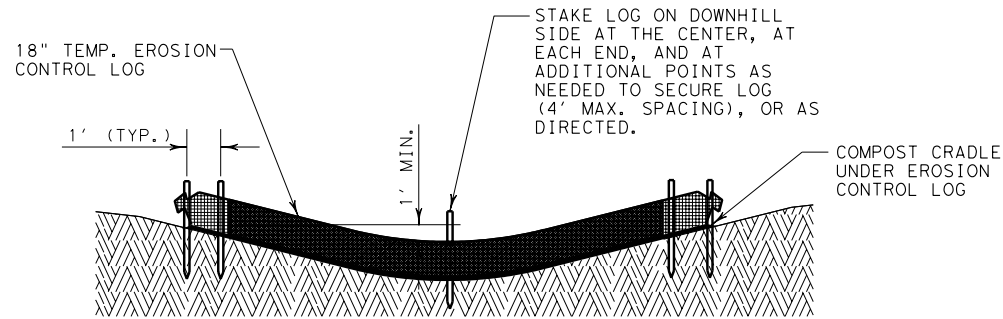


LOGS PLACED AT AREA DRAIN INLETS

NTS



PLAN VIEW



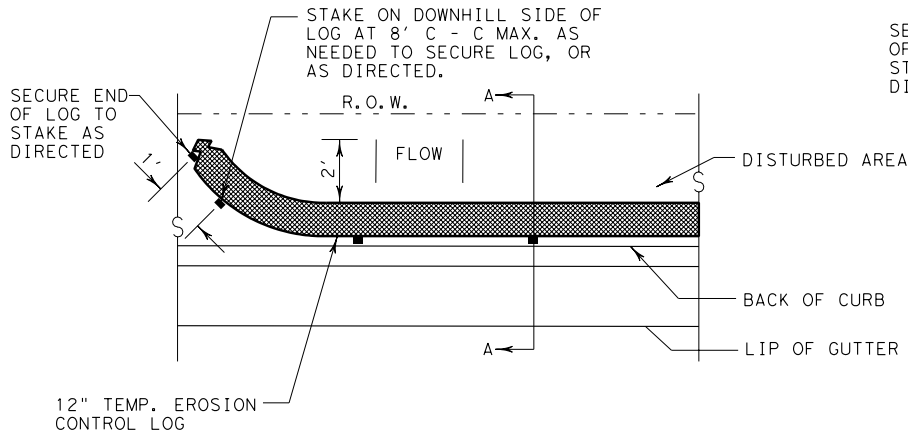
SECTION C-C

EROSION CONTROL LOG CHECK DAM

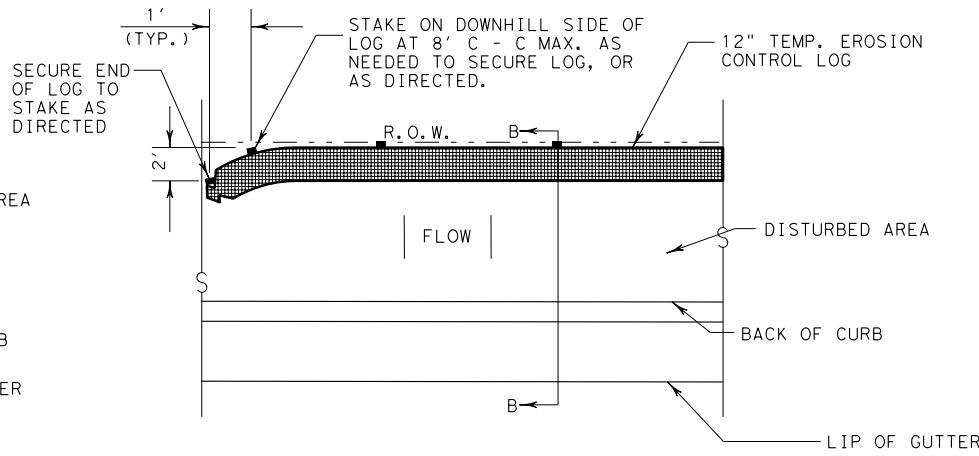
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GENERAL NOTES:

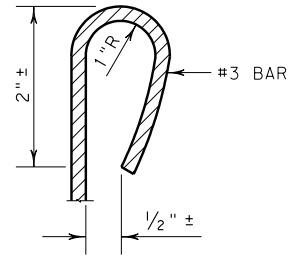
1. LENGTHS OF EROSION CONTROL LOGS SHALL BE IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS AND AS REQUIRED FOR THE PURPOSE INTENDED. MAXIMUM LENGTH OF LOGS SHALL BE 60' FOR 18" DIAMETER OR 30' FOR 12" DIAMETER LOGS.
2. UNLESS OTHERWISE DIRECTED, USE BIODEGRADABLE OR PHOTODEGRADABLE CONTAINMENT MESH ONLY WHERE LOG WILL REMAIN IN PLACE AS PART OF A VEGETATIVE SYSTEM. FOR TEMPORARY INSTALLATIONS, USE RECYCLABLE CONTAINMENT MESH.
3. STUFF LOGS WITH SUFFICIENT FILTER MATERIAL TO ACHIEVE DENSITY THAT WILL HOLD SHAPE WITHOUT EXCESSIVE DEFORMATION.
4. STAKES SHALL BE 2" X 2" WOOD OR #3 REBAR, 4' LONG, EMBEDDED SUCH THAT 2" PROTRUDES ABOVE LOG, OR AS DIRECTED.
5. DO NOT PLACE STAKES THROUGH CONTAINMENT MESH.



PLAN VIEW

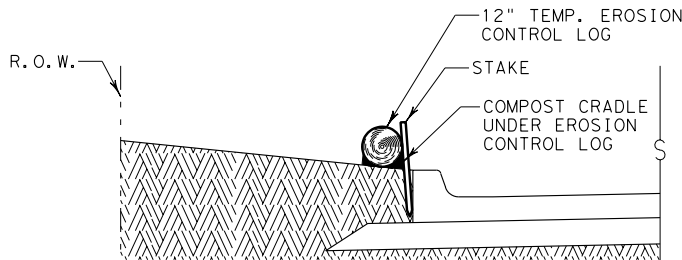


PLAN VIEW



REBAR STAKE DETAIL

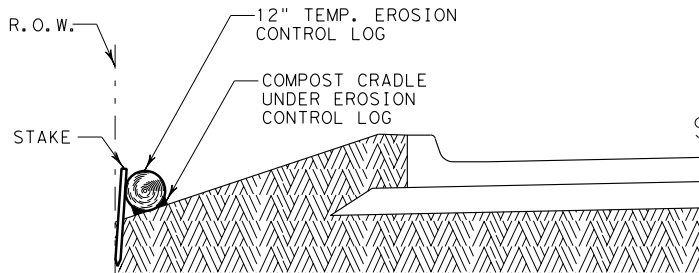
NTS



SECTION A-A

LOG PLACED AT BACK OF CURB

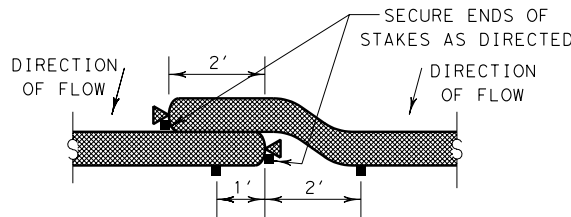
NTS



SECTION B-B

LOG PLACED AT EDGE OF RIGHT-OF-WAY

NTS



LAP DETAIL

NTS

Texas Department of Transportation  
FORT WORTH DISTRICT

TEMPORARY EROSION  
CONTROL LOGS

TECL-04 (FW)

FED. RD. DIV. NO. 6	FEDERAL AID PROJECT NO.		HIGHWAY NO.
STATE	DISTRICT	COUNTY	SHEET NO.
TEXAS	FTW		12D
CONTROL	SECTION	JOB	

ORIGINAL OCT. 2004



June 13, 2016

Alton Dixon  
City of Lancaster  
Purchasing Department  
211 N Henry Street  
Lancaster, Texas 75146

RE: Pavement Reconstruction for Lancaster-Hutchins Rd. and Rogers Ave.  
TNP Project No. LAN 15135

Dear Mr. Dixon:

On Thursday, March 24<sup>th</sup>, 2016, bids were opened for the above referenced project. One contractor submitted a bid for this project. A summary of the bid received is provided in the table below and a bid tabulation is attached at the end of this memo.

Bidder	Unit I - Rogers Ave	Unit II – Lancaster- Hutchins (Belt Line to Main St)	Base Bid (Unit I +Unit II)	Bid Alternate 1 Unit III – L-H (Main St to Pierson)	Bid Alternate 2 Unit IV –L-H (Pierson to Pleasant Run)	Total Bid
Pavecon Public Works	\$582,675.64*	\$686,243.08	\$1,268,918.72*	\$250,097.36*	\$446,959.55	\$1,965,975.63*

\* Corrected Total

The bid submitted by PaveCon Public Works contained the following errors as described below:

1. Bid Item I-12, Adjust Existing Sanitary Sewer Manhole to Grade line item total was miscalculated to be \$4,280.00 when it should be \$4,820.00. This miscalculation also caused the Unit 1 Total and Base Bid Total to be incorrect. The table provided above and bid tabulation attached have been corrected.
2. Unit III, Bid Alternate 1 Lancaster Hutchins (Main St to Pierson) was incorrectly totaled in the bid received to be \$250,098.26. The table provided above and bid tabulation attached have been corrected to be \$250,097.36.

Please note these corrections increased the Total Bid by \$539.10.

After research by our firm and based on our experience with PaveCon on several previous paving projects, I recommend that the City of Lancaster award the contract to the low bidder, PaveCon Public Works.

If you have any further questions, please feel free to contact me.



Sincerely,

**tnp**

teague nall & perkins

A handwritten signature in blue ink, appearing to read "Andrew Luce", is positioned above the printed name.

Andrew Luce, P.E.

Senior Project Manager

Cc: Dipak Patel