



AGENDA

REGULAR MEETING OF THE CITY COUNCIL

**City of Garland
Council Chambers, City Hall
200 North Fifth Street
Garland, Texas
November 5, 2013
7:00 p.m.**

The City Council extends to each visitor a sincere welcome. We value your interest in your community and your participation in the meetings of this governing body. Regular meetings of the City Council are held the 1st and 3rd Tuesdays of each month, beginning at 7:00 p.m.; the City Council meets regularly in work sessions at 6:00 p.m. the Monday preceding each regular meeting.

The Garland City Hall and Council Chambers are wheelchair accessible. Special parking is available on the north side of City Hall and the building may be accessed by a sloped ramp from the parking area to the door facing Fifth Street. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services must contact the City Secretary's Office at (972) 205-2404 at least two working days prior to the meeting so that appropriate arrangements can be made. BRAILLE IS NOT AVAILABLE.

CITY COUNCIL GOALS 2020

- Sustainable quality development and redevelopment
- Financially stable government with tax base that supports community needs
- Embrace diversity
- Fully informed and engaged citizenry
- Consistent and safe delivery of reliable City services
- Safe, family-friendly neighborhoods
- Defends rightful powers of municipalities

MAYORAL PROCLAMATIONS, RECOGNITIONS AND ANNOUNCEMENTS

The Mayor may present proclamations and recognize attendees or award winners, and may make announcements regarding upcoming City events and matters of interest to citizens. There will be no Council deliberations or votes on these matters.

CONSENT AGENDA

All items under this section are recommended for approval by a single motion of Council, without discussion. Council has been briefed on these items at a previous work session and approval of the consent agenda authorizes the City Manager to implement each item. The Mayor will announce the agenda and provide an opportunity for members of the audience and the City Council to request that an item be removed and considered separately.

1. Consider approval of the minutes of the October 15, 2013 City Council Regular Meeting.
2. Consider approval of the following bids:

a. Installation of Optical Ground Wire

Bid No. 3703-13

Southeast Power Corporation	\$286,074.92
Optional Contingency	<u>28,607.08</u>
TOTAL	<u>\$314,682.00</u>

This request is to provide the necessary labor and equipment for the installation of Optical Ground Wire from Gibbons Creek to Bryan East Substation. An optional contingency fee is included for unforeseen changes in the requirements.

b. Roof Replacement for Various City Facilities

Bid No. 3856-13

Supreme Roofing, LLC

\$552,900.00

This request is to provide labor and materials to replace roofs that have met or exceeded their life expectancies at the following City facilities: South Garland Library, Walnut Creek Library, Firewheel Golf Clubhouse, Bradfield Concession Stand, Firewheel Pump Station, and Surf & Swim Bathhouse.

c. Breaker Replacement and Relay Modifications

Bid No. 3770-13

Techline, Inc.

\$184,624.34

Optional Contingency

18,986.42

TOTAL

\$203,610.76

This request is to provide the materials required for the breaker replacements and relay modifications at the Bryan East, Dansby, and Gibbons Creek Substations. An optional contingency fee is included for unforeseen changes in the requirements.

d. Concrete Construction Materials

Bid No. 3899-13

Barnsco, Inc.

\$107,788.92

This request is to provide for the purchase of steel reinforcing bar and related materials to be used by the Street Department for concrete paving. This is a 12-month Term Contract with one optional renewal.

e. Transmission Line Relocation

Bid No. 3809-13

American Site Builders

\$876,663.23

Optional Contingency

87,666.77

TOTAL

\$964,330.00

This request is to provide the labor and equipment required to relocate transmission lines to accommodate the Pleasant Valley bridge relocation. An optional contingency fee is included for any unforeseen additional material or labor that may be required.

f. Audubon Park Soccer Field Lighting **Bid No. 3954-14**

Musco Lighting, Inc. \$388,121.00

This request is to install sports lighting on existing fields at Audubon Park Soccer Facility. The area to be lighted includes a layout that that accommodates two large-size fields. The installation is anticipated to be complete for the 2014 spring soccer season.

g. Underground Cable Replacement **Bid No. 3826-13**

T & D Solutions	\$692,500.00
Optional Contingency	<u>50,000.00</u>
TOTAL	<u>\$742,500.00</u>

This request is to provide the labor and equipment necessary for the replacement of five underground cable loops as part of Garland Power & Light's maintenance operations. An optional contingency fee is included for any unforeseen work that may be required.

h. Materials for Substation Transmission Line Relocation **Bid No. 3838-13**

Techline, Inc.	\$177,964.23
Optional Contingency	<u>17,796.77</u>
TOTAL	<u>\$195,761.77</u>

This request is to provide the materials required for the Wynn Joyce Substation Transmission Line Relocation. An optional contingency fee is included for any unforeseen additional materials that may be required.

i. 138 KV Breaker Foundation Replacement **Bid No. 3901-13**

Chapman Construction \$146,000.00

This request is to provide labor, materials, and equipment for the removal and installation of 138 kV breaker foundations at Texas Municipal Power Agency.

- 3. Consider a resolution authorizing the Mayor to abandon the alley right-of-way and execute a deed without warranty conveying the 7,600 square feet of Avenue C from Eleventh Street to the alley right-of-way behind 313 and 401 Eleventh Street for \$7,600 to Mr. Louis Moore.**

Mr. Moore recently purchased the property at 401 Eleventh Street and now owns both sides of Avenue C from Eleventh Street to the alley. Zoning requires a minimum 60 feet wide lot. The existing ROW is only 40 feet wide. Since the ROW is not of adequate width to be purchased and developed separately Mr. Moore is the only potential purchaser that can effectively utilize the property.

4. Consider a resolution reappointing Tom Jefferies to the Board of Directors of Texas Municipal Power Agency.

This item was considered was scheduled for consideration by Council at the November 4, 2013 Work Session. Council is requested to consider the reappointment of Tom Jefferies to serve as a City of Garland representative on the Texas Municipal Power Agency Board of Directors for an additional two-year term. Mr. Jefferies has indicated his desire to be reappointed.

5. Consider an ordinance amending Chapter 33, "Transportation" of the Code of Ordinances of the City of Garland, providing a penalty under the provisions of Sec. 10.05 of the Code of Ordinances.

This item was considered by Council at the October 14, 2013 Work Session. The Wellington Run Homeowners Association requested time limit parking restrictions between 9:00 a.m. and 4:00 p.m. on school days only for portions of Hamlett Lane and Fondren Drive near Lakeview Centennial High School.

6. Consider approval by minute action authorizing the City Manager to execute a lease agreement with Shana Tova Realty ADA Compliant Limited Partnership.

This item was considered by Council during this year's Operating Budget presentation. The Facilities Management Department has been operating out of temporary construction trailers. This space will not only accommodate the necessary supplies and equipment to allow the department to more efficiently conduct its day-to-day operations, but it will also provide the necessary space required to store surplus furniture currently being housed in buildings slated for demolition as part of the Downtown Redevelopment Phase II program and space to temporarily store furniture that will be displaced as part of the City Hall renovation. The average annual lease amount is \$142,000. The term of the lease is 10 years.

ITEMS FOR INDIVIDUAL CONSIDERATION

Speaker Regulations:

Anyone wishing to speak for, against, or on agenda items must fill out a speaker card and give it to the City Secretary before speaking (cards located at the entrance to the Council Chambers). The Mayor will recognize speakers; he may impose a time limit and may provide for rebuttal. All comments and testimony are to be presented from the podium.

7. Citizen comments.

Persons wishing to address issues not on the agenda may have three minutes to address Council at this time. Council is prohibited from discussing any item not posted according to the Texas Open Meetings Act.

8. Adjourn.

All Regular Council meetings are broadcast live on CGTV, Time Warner Cable Channel 16, and Verizon FIOS TV 44. Meetings are rebroadcast at 9:00 a.m. and 7:00 p.m. on Wednesday-Sunday and at 7:30 p.m. on Thursday. Live streaming and on-demand videos of the meetings are also available online at www.garlandtx.gov. Copies of the meetings can be purchased through the City Secretary's Office – audio CD's are \$1 each and DVD's are \$3 each.

The City Council of the City of Garland, Texas convened in regular session at 7:00 p.m. on Tuesday, October 15, 2013, in the Council Chambers at City Hall with the following members present:

Mayor	Douglas Athas
Mayor Pro Tem	Lori Barnett Dodson
Councilmember	Marvin 'Tim' Campbell
Councilmember	Anita Goebel
Councilmember	Stephen W. Stanley
Councilmember	B.J. Williams
Councilmember	John Willis
Councilmember	Scott LeMay
Councilmember	Jim Cahill

STAFF PRESENT:	City Manager	William E. Dollar
	City Attorney	Brad Neighbor
	City Secretary	Lisa Palomba

CALL TO ORDER: The meeting was called to order by Mayor Douglas Athas. Mayor Pro Tem Dodson led the Invocation and Pledge of Allegiance.

CEREMONIALS: 1) Mayor Athas recognized Planning and Community Development staff members and presented two awards on behalf on the Texas Chapter of the American Planning Association: Garland's Residential Idea Book received an Honorable Mention award for project planning. The department was also awarded the 2013 Certificate for Achievement for Planning Excellence and 2) Mayor Athas recognized the presence of Boy Scout Troop No, 440 working toward their Citizenship in the Community badge.

ANNOUNCEMENTS: Mayor Athas commented on the following: 1) Garland's annual Neighborhood Summit is scheduled for Saturday, October 26th; 2) Keep Garland Beautiful will host the Fall Trash Bash on Saturday, November 2nd from 8:30 a.m. to 1:30 p.m.; and 3) Mayor to host reception to be held at the Granville Art Theatre November 17, from 6:30 to 8 p.m. for the Garland Eyes Exhibit. Additionally, Councilman Williams and Councilman Stanley will host a small business owner's informational session at the South Garland Branch Library from 8 to 9 a.m. on October 21, 2013 and Councilman Williams announced he will be hosting a Community Town Hall Meeting for District 4 residents on October 22, 2014 from 6:30 to 8 p.m. at the South Garland Branch Library on the topic of Crime Prevention.

- CONSENT AGENDA: All items marked with asterisks (**) on the Consent Agenda were voted on in a single motion at the beginning of the meeting. A motion was made by Mayor Pro Tem Dodson, seconded by Councilman LeMay, to approve Items: 1, 2a, 2b, 2c, 2d; 3a, 3b, 3c, 4, and 5. A vote was cast and the motion carried with 9 Ayes; 0 Nays.
1. APPROVED** City Council minutes of the October 2, 2013 Regular Meeting.
- 2a. APPROVED** Award of Bid No. 3768-13 in the amount of \$200,000 to Boyd Electric, Ltd. to provide for the installation, repair, and replacement of electrical equipment facilities throughout the City on an as-needed basis.
- 2b. APPROVED** Award of Bid No. 3769-13 in the amount of \$1,261,365.81 and a contingency fee of \$120,000 for a total award of \$1,381,635.81 to provide the construction labor associated with the relocation of the Wynn Joyce to Miller Road and the Wynn Joyce to Ben Davis 138kV transmission line.
- 2c. APPROVED** Award of Bid No. 3781-13 in the amount of \$309,978.85 to Taser International to provide Taser X26Ps for use by the Garland Police Department for subjects threatening harm or evading arrest and for deterring dangerous animals.
- 2d. APPROVED** Award of Bid No. 3903-13 in the amount of \$220,900 and a contingency fee of \$22,000 to R-Delta Engineers to provide professional engineering and design services for the reconstruction of the Kraft substation. The reconstruction is necessary to accommodate 138kV transmission into and out of the substation and provide a tap to the existing electrical bus.
- 3a. APPROVED** Ordinance No. 6655 amending the zoning laws of the City of Garland by approving an amended Detail Plan for Medical Office, on a 0.895-acre tract of land zoned Planned Development (PD) District for Freeway Uses and in the SH 190 Overlay District located at 6520 President George Bush Turnpike; Zoning File No. 13-39, Mercy Realty, LLC.
- 3b. APPROVED** Ordinance No. 6656 amending the zoning laws of the City of Garland by approving a Detail Plan for Medical Office, on a 0.988-acre tract of land zoned Planned Development (PD) District for Shopping Center Uses and in the SH 190 Overlay District located on the south side of Bunker Hill Road, approximately 270 linear feet southeast from the south corner

of Lavon Drive and Bunker Hill Road; Zoning File No. 13-41, King Family Medical.

3c. APPROVED**

Ordinance No. 6657 amending the zoning laws of the City of Garland by approving a Specific Use Permit for a Tattooing/Body Piercing Establishment, on a 1.129-acre tract of land zoned Industrial 1 (I-1) District located at 1901 South Jupiter Road, Suite 103; Zoning File. No. 13-42; Southern Blues.

4. APPROVED**

Minute action authorizing the City Manager, or his representative, to execute the Independent Contractor Agreement for Tommy Weathersbee in an amount no to exceed \$128,880.

5. APPROVED**

Ordinance No. 6658 approving a negotiated resolution between the Atmos Cities Steering Committee and Atmos Energy Corp., Mid-Tex Division regarding the Company's 2013 Annual Rate Review Mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; requiring the company to reimburse cities' reasonable ratemaking expenses; repealing conflicting resolutions or ordinances; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; providing a Most Favored Nations clause and the Steering Committee's Legal Counsel.

ITEMS FOR INDIVIDUAL CONSIDERATION

6. APPOINTMENTS

Mayor Pro Tem Dodson nominated Lindy Perkins for appointment to the Garland Health Facilities Development Corporation and Garland Economic Development Authority Boards. A vote was cast and the motion carried with 9 ayes, 0 nays.

8. CITIZEN COMMENTS None

There being no further business to come before the City Council, Mayor Athas adjourned the meeting at 7:15 p.m.

CITY OF GARLAND

Signed:

Mayor

Attest:

City Secretary



GARLAND
PURCHASING

Bid No.: 3703-13
Agenda Item: 2a.
Meeting: Council
Date: 11/05/13

Purchasing Report

INSTALLATION OF OPTICAL GROUND WIRE OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide the necessary labor and equipment for the installation of Optical Ground Wire from Gibbons Creek to Bryan East Substation. Southeast Power Corporation received the highest evaluated score and was the lowest overall bidder. Due to the size and scope of the project, an optional \$28,607.08 contingency is included for unforeseen changes in the requirements. This is an approved GP&L Capital Improvement project. Expenditures will not exceed appropriated funds.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Southeast Power Corporation	All	\$286,074.92
Optional Contingency		28,607.08
TOTAL:		\$314,682.00

BASIS FOR AWARD:

Best Value

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

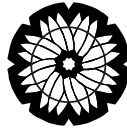
William E. Dollar
City Manager

Date: 10/23/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$ 500,000		Operating Budget: <input type="checkbox"/>	CIP: <input checked="" type="checkbox"/>	Year: 2013
Expended/Encumbered to Date: 28,814		Document Location: Page E01		
Balance: \$ 471,186		Account #: 215-3542-3141601-7111 (EC-T5416-002-1-7111)		
This Item: 314,682				
Proposed Balance: \$ 156,504		Fund/Agency/Project – Description: Electric CIP Fund / Transmission Lines – T13003 TMPA Bryan East Car Rep		
Matt Watson 10/24/13				
Budget Analyst Date		Comments:		
Ron Young 10/24/13				
Budget Director Date				



GARLAND

PURCHASING

Executive Summary **Bid 3703-13** **Installation of Optical Ground Wire**

Recommended Vendor:

Southeast Power Corporation

Total Recommended Award:

\$314,862.00

Basis for Award:

Best Value

Purpose:

The purpose of this contract is to provide the necessary labor and equipment associated with the installation of Optical Ground Wire from Gibbons Creek Substation to Bryan East Substation.

Evaluation:

Requests for Bids were issued in accordance with Purchasing procedures. Six (6) bids were received and evaluated based on the criteria of price, experience with similar projects, percentage of work to be completed by primary contractor, bidder's safety training program, and past relationship with the City of Garland. Southeast Power Corporation received the highest evaluated score and was the lowest overall bidder.

Recommendation:

Staff recommends awarding the contract to Southeast Power Corporation as the best value provider meeting all requirements of the specifications.

Funding Information:

TMPA Project 215-3542-3141601-7111 (EC-T5416-002-1-7111)

Department Director:

Tommy Weathersbee, Interim Transmission & Distribution Director, 972-205-3532



GARLAND
PURCHASING

Bid No.: 3856-13
Agenda Item: 2b.
Meeting: Council
Date: 11/05/13

Purchasing Report

ROOF REPLACEMENT PACKAGE FOR VARIOUS CITY FACILITIES OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide labor and materials to replace roofs that have met or exceeded their life expectancies at the following City facilities: South Garland Library, Walnut Creek Library, Firewheel Golf Clubhouse, Bradfield Concession Stand, Firewheel Pump Station, and Surf & Swim Bath House. This is an approved Capital Improvement project. Expenditure will not exceed appropriated funds.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Supreme Roofing, LLC	All	\$552,900.00

TOTAL: \$552,900.00

BASIS FOR AWARD:

Best Value

Submitted by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

Reviewed by:

William E. Dollar
City Manager

Date: 10/23/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$ 1,162,757

Expended/Encumbered to Date: 80,800

Balance: \$ 1,081,957

This Item: 552,900

Proposed Balance: \$ 529,057

Matt Watson 10/24/13

Budget Analyst Date

Ron Young 10/24/13

Budget Director Date

Operating Budget: ☐ CIP: ☒ Year: 2013

Document Location: Pages L05 and MF02

Account #: 692-4749-1958612-9002 \$336,350.00
692-4749-1603800-9002 216,550.00

Fund/Agency/Project – Description:

CO-Funded CIP / Library / South Garland
Library Roof
CO-Funded CIP / Municipal Facilities
Tax-Supported / Facilities Management /
Roof Replacement

Comments: Expenditures were not scheduled to begin until 2014; however, funding is currently available.

CITY OF GARLAND - BID RECAP SHEET OPENED: 10/08/2013 REQ. NO. PR 32159 BID NO. 3856-13 PAGE: 1 of 2 BUYER: Rose Berger				SUPREME ROOFING LLC		CASTRO ROOFING OF TEXAS		CS ADVANTAGE USAA, INC		AA APPLICATORS		PROGRESSIVE ROOFING		CHAMBERLIN ROOFING	
ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	1	LT	Bid Price for Evaluation		\$552,900.00		\$604,000.00		\$631,000.00		\$679,000.00		\$679,245.00		\$692,600.00
			Evaluation Criteria:												
			Price	Maximum = 40	40	36.3	34.35		32.6		32.6		31.9		
			Qualifications	Maximum = 30	30	30	29								
			Methodology	Maximum = 20	20	14.6	11								
			Reference/Past performance	Maximum = 10	6.8	6.6	6.4								
			Total Score:	Maximum = 100	96.8	87.5	80.75								
TOTAL GROSS PRICE				\$552,900.00		\$604,000.00		\$631,000.00		\$679,000.00		\$679,245.00		\$692,600.00	
CASH DISCOUNT															
TOTAL NET PRICE				\$552,900.00		\$604,000.00		\$631,000.00		\$679,000.00		\$679,245.00		\$692,600.00	
F.O.B.				DELIVERED		DELIVERED		DELIVERED		DELIVERED		DELIVERED		DELIVERED	
DELIVERY															
NEXT LOW: \$604,000.00				1051 # BidSync Notifications		All bids submitted for the designated project are reflected on this bid tab sheet. However, the listing of a bid on this sheet should not be construed as a comment on the responsiveness of such bid or as any indication that the city accepts such bid as responsive. The City will notify the successful bidder upon award of the contract and, according to the law, all bids received will be available for inspection at that time.									
LOW: \$552,900.00				34 # BidSync HUBS											
SAVINGS: \$51,100.00				0 # Direct Contact HUBS											
				3 # HUBS Responded											
CITY OF GARLAND - BID RECAP SHEET				Duval Inc.		Mueller Services Co.		DELIVERED		DELIVERED		DELIVERED		DELIVERED	



GARLAND

PURCHASING

Executive Summary **Bid 3856-13** **Roof Replacement Package for Various City Facilities**

Recommended Vendor:

Supreme Roofing, LLC

Total Recommended Award:

\$552,900.00

Basis for Award:

Best Value

Purpose:

The purpose of this contract is to provide labor and materials to replace roofs that have met or exceeded their life expectancies at the following City facilities: South Garland Library; Walnut Creek Library; Firewheel Golf Clubhouse; Bradfield Concession Stand; Firewheel Pump Station; Surf and Swim Bath House.

Evaluation:

Requests for Bids were issued in accordance with Purchasing procedures. Nine (9) bids were received and initially evaluated on price. The three (3) lowest bidders within the competitive range were further evaluated based on the criteria of qualifications, work flow methodology and references of past performances. Supreme Roofing, LLC received the highest evaluated score and was the lowest overall bid.

Recommendation:

Staff recommends awarding the roof replacement package to Supreme Roofing, LLC as the best value provider meeting all requirements of the specifications.

Funding Information:

CIP Accounts 692-4749-1958612-9002 and 692-4749-1603800-9002

Department Director:

Ginny Holliday, Facilities Management Director, 972-205-3225



GARLAND
PURCHASING

Bid No.: 3770-13
Agenda Item: 2c.
Meeting: Council
Date: 11/05/13

Purchasing Report

BREAKER REPLACEMENT AND RELAY MODIFICATIONS **OPEN MARKET**

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide the materials required for the breaker replacements and relay modifications at the Bryan East, Dansby, and Gibbons Creek Substations. Due to the complexity of the project, an optional contingency is included for unforeseen changes in the requirements. This is an approved GP&L Capital Improvement project. Expenditures will not exceed appropriated funds.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Techline, Inc.	All	\$184,624.34
Optional Contingency		18,986.42
TOTAL:		\$203,610.76

BASIS FOR AWARD:

Straight Low Bid

Submitted by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

Reviewed by:

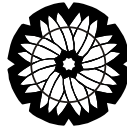
William E. Dollar
City Manager

Date: 10/23/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$ 6,394,581		Operating Budget: <input type="checkbox"/>	CIP: <input checked="" type="checkbox"/>	Year: 2013
Expended/Encumbered to Date: 748,533		Document Location: Page E11		
Balance: \$ 5,646,048		Account #: 215-3542-3175301-7111 215-3542-3175401 (EC-S5753) (EC-TS5754)		
This Item: 203,611				
Proposed Balance: \$ 5,442,437		Fund/Agency/Project – Description: Electric / Cash-Funded CIP		
Trent Schulze 10/28/13		Comments: Provides materials required for breaker replacements and relay modifications at Bryan East, Dansby, and Gibbons Creek Substations. An optional contingency is included for unforeseen changes in requirements. Expenditures will not exceed appropriations.		
Budget Analyst Date				
Ron Young 10/28/13				
Budget Director Date				



GARLAND

PURCHASING

Executive Summary **Bid 3770-13** **Breaker Replacement and Relay Modification Materials**

Recommended Vendor:

Techline, Inc.

Total Recommended Award:

\$203,610.76

Basis for Award:

Straight Low Bid

Purpose:

The purpose of this contract is to provide the materials for needed for the breaker replacements and relay modifications at the Bryan East, Dansby and Gibbons Creek Substations.

Evaluation:

Requests for Bids were issued in accordance with Purchasing procedures. Although over 1,800 requests were issued, only one bid was received due to the complex nature of the materials requirements. Techline Inc.'s bid was evaluated and determined to be within budget and met all requirements of the specifications.

Recommendation:

Staff recommends awarding the materials contract to Techline, Inc. as the straight low bidder meeting all requirements of the specifications.

Funding Information:

CIP 215-3542-3175301-7111 (EC-S5753) and 215-3542-3175401 (EC-TS5754)

Department Director:

Tommy Weathersbee, Interim Transmission & Distribution Director, 972-205-3532



GARLAND
PURCHASING

Bid No.: 3899-13
Agenda Item: 2d.
Meeting: Council
Date: 11/05/13

Purchasing Report

CONCRETE CONSTRUCTION MATERIALS TERM CONTRACT

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide for the purchase of steel reinforcing bar and related materials to be used by the Street Department for concrete paving. This is a 12-month Term Contract with one (1) optional renewal. Quantities are estimated and may be more or less depending on actual needs. Pricing will remain firm for the first term. Any subsequent price increases must be justified and mutually agreed upon.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Barnsco, Inc.	All	\$107,788.92
TOTAL:		<u>\$107,788.92</u>

BASIS FOR AWARD:

Lowest Responsible Bid

Submitted by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

Reviewed by:

William E. Dollar
City Manager

Date: 10/23/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$	N/A	Operating Budget: <input checked="" type="checkbox"/> CIP: <input type="checkbox"/> Year: 2013-14
Expended/Encumbered to Date:	N/A	Document Location: Page C-18 (Proposed)
Balance: \$	N/A	Account #: 451-6999 (831-4693-6051)
This Item:	107,789	Fund/Agency/Project – Description: Term Contract – Infrastructure Repair & Replacement Fund – Street Replacement
Proposed Balance: \$	N/A	Comments: Term Contract sets price but does not commit funds. Expenses will be charged to accounts as incurred.
Matt Watson	10/24/13	
Budget Analyst	Date	
Ron Young	10/24/13	
Budget Director	Date	



GARLAND

PURCHASING

Executive Summary

Bid 3899-13

Term Contract for Concrete Construction Materials

Recommended Vendor:

Barnsco Inc.

Total Recommended Award:

\$107,788.92

Basis for Award:

Lowest Responsible Bid

Purpose:

The purpose of this contract is to provide for the purchase of steel reinforcing bar and related materials to be used by the Street Department for concrete paving. This is a term contract with one (1) optional renewal.

Evaluation:

Requests for Bids were issued in accordance with purchasing procedures. Two (2) bids were received and evaluated. While Barnsco was not low on every item, they offered the lowest total bid. Barnsco has performed satisfactorily in previous similar contracts.

Recommendation:

Staff recommends awarding the contract to Barnsco Inc.

Funding Information:

FY 2013-14 Operating Budget

Department Director:

Steven L. Oliver, P.E., Streets Director, 972-205-3558



GARLAND
PURCHASING

Bid No.: 3809-13
Agenda Item: 2e.
Meeting: Council
Date: 11/05/13

Purchasing Report

TRANSMISSION LINE RELOCATION OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide the labor and equipment required to relocate transmission lines to accommodate the Pleasant Valley bridge relocation. Due to the complex nature of the project, an optional contingency is included for unforeseen additional material or labor that may be required. This is an approved GP&L Capital Improvement project. Expenditures will not exceed appropriated funds.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
American Site Builders	All	\$876,663.23
Optional Contingency		87,666.77
TOTAL:		\$964,330.00

BASIS FOR AWARD:

Best Value

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.

William E. Dollar

Director of Purchasing

City Manager

Date: 10/23/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$ 1,516,000

Expended/Encumbered to Date: 526,370

Balance: \$ 989,630

This Item: 964,330

Proposed Balance: \$ 25,300

Trent Schulze 10/28/13

Budget Analyst Date

Ron Young 10/28/13

Budget Director Date

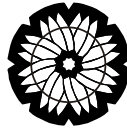
Operating Budget: ☐ CIP: ☒ Year: 2013

Document Location: Page E01

Account #: 215-3599-3140701-7111
(EC-T5407-001-1-7111)

Fund/Agency/Project – Description:
Electric / Cash-Funded CIP

Comments: Provides labor and equipment required to relocate transmission lines to accommodate Pleasant Valley bridge relocation. An optional contingency is included for unforeseen material or labor that may be required. Expenditures will not exceed appropriations.



GARLAND

PURCHASING

Executive Summary **Bid 3809-13** **Transmission Line Relocation**

Recommended Vendor:

American Site Builders

Total Recommended Award:

\$964,330.00

Basis for Award:

Best Value

Purpose:

The purpose of this contract to provide the labor and equipment required to relocate transmission lines to accommodate the Pleasant Valley Bridge relocation project.

Evaluation:

Requests for Bids were issued in accordance with Purchasing procedures. Three (3) bids were received and evaluated based on the criteria of price, compliance to specifications, availability of services, capability of bidder and experience of bidder. American Site Builders received the highest evaluated score and was the lowest overall bidder.

Recommendation:

Staff recommends awarding the contract to American Site Builders as the best value provider meeting all requirements of the specifications.

Funding Information:

CIP Account 215-3599-3140701-7111

Department Director:

Tommy Weathersbee, Interim Transmission & Distribution Director, 972-205-3532



GARLAND
PURCHASING

Bid No.: 3954-14
Agenda Item: 2f.
Meeting: Council
Date: 11/05/13

Purchasing Report

AUDUBON PARK SOCCER FIELD LIGHTING OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to install sports lighting on existing fields at Audubon Park Soccer Facility. The area to be lighted includes a layout that accommodates two large-size fields, and the installation is anticipated to be complete for the 2014 spring soccer season. The project was approved in the 2013 Park Capital Improvements Program.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Musco Lighting, Inc.	All	\$388,121.00

TOTAL: \$388,121.00

BASIS FOR AWARD:

Cooperative Purchase

Submitted by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

Reviewed by:

William E. Dollar
City Manager

Date: 10/22/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$	400,000
Expended/Encumbered to Date:	-0-
Balance: \$	400,000
This Item:	388,121
Proposed Balance: \$	11,879

Matt Watson 10/24/13
Budget Analyst Date

Ron Young 10/24/13
Budget Director Date

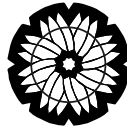
Operating Budget: ☐ CIP: ☒ Year: 2013

Document Location: Page P22

Account #: 614-2499-1833904-9002
(CP8339-1-1-9002)

Fund/Agency/Project – Description:
Park CIP / Parks & Recreation /
Audubon Soccer Field Lighting

Comments:



GARLAND

PURCHASING

Executive Summary **Bid 3954-14** **Audubon Park Soccer Field Lighting**

Recommended Vendor:

Musco Lighting, Inc.

Total Recommended Award:

\$388,121.00

Basis for Award:

Cooperative Purchase

Purpose:

The purpose of this contract is to install sports lighting on existing fields at Audubon Park Soccer Facility. The area to be lighted includes a layout that accommodates two large-size fields and the installation is anticipated to be complete for the 2014 spring soccer season.

Evaluation:

At their August 7 meeting the Park Board approved, for Council consideration, the award to Musco Lighting. Musco has successfully provided sports lighting equipment and installation on City sports fields such as baseball field #5 in Central Park; and installed automated lighting controls at various sports fields and picnic pavilions. The Lighting and installation is being provided through the BuyBoard Purchasing Cooperative Contract 423-13.

Recommendation:

Staff recommends awarding the sports lighting installation at Audubon Park soccer fields to Musco Lighting, Inc.

Funding Information:

CIP CP8339-1-1-9002

Department Director:

Jim Stone, Managing Director, Parks Recreation and Cultural Arts, 972-205-2759



GARLAND
PURCHASING

Bid No.: 3826-13
Agenda Item: 2g.
Meeting: Council
Date: 11/05/13

Purchasing Report

UNDERGROUND CABLE REPLACEMENT OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide the labor and equipment necessary for the replacement of five (5) underground cable loops as part of Garland Power & Light's maintenance operations. Due to the nature of underground maintenance, an optional contingency is included for any unforeseen additional work that may be required. This is an approved Capital Improvement project, and expenses will not exceed appropriated funds.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
T & D Solutions	All	\$692,500.00
Optional Contingency		50,000.00
TOTAL:		\$742,500.00

BASIS FOR AWARD:

Best Value

Submitted by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

Reviewed by:

William E. Dollar
City Manager

Date: 10/24/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$ 2,243,648		Operating Budget: <input type="checkbox"/> CIP: <input checked="" type="checkbox"/> Year: 2013
Expended/Encumbered to Date: 1,384,499		Document Location: Page E10
Balance: \$ 859,149		Account #: 215-3299-3162501-7111 (EC-D5625)
This Item: 742,500		Fund/Agency/Project – Description: Electric CIP
Proposed Balance: \$ 116,649		Comments: Provides labor and equipment necessary for replacement of five underground cable loops as part of GP&L's maintenance operations. An optional contingency is included for any unforeseen work that may be required. Expenses will not exceed appropriations.
Trent Schulze	10/28/13	
Budget Analyst	Date	
Ron Young	10/28/13	
Budget Director	Date	



GARLAND

PURCHASING

Executive Summary **Bid 3826-13** **Underground Cable Replacement**

Recommended Vendor:

T&D Solutions

Total Recommended Award:

\$742,500.00

Basis for Award:

Best Value

Purpose:

The purpose of this bid is to provide labor and equipment for construction related to the replacement of underground cable on five (5) loops for Garland Power & Light's maintenance operations.

Evaluation:

Requests for Bids were issued in accordance with Purchasing procedures. Four (4) bids were received and evaluated based on the criteria of price, experience with similar projects, percentage of work to be completed by primary contractor, summation of additional items, safety and training programs, and bidder's past relation with the City. T&D Solutions received the highest evaluated score offering the Best Value to the City. T&D Solutions was also the lowest overall bidder.

Recommendation:

Staff recommends awarding the contract to T&D Solutions as the best Value provider meeting all requirements of the specifications.

Funding Information:

CIP Project 215-3299-3162501-7111 (EC-D5625)

Department Director:

Tommy Weathersbee, Interim Transmission & Distribution Director, 972-205-3532



GARLAND
PURCHASING

Bid No.: 3838-13
Agenda Item: 2h.
Meeting: Council
Date: 11/05/13

Purchasing Report

MATERIALS FOR SUBSTATION TRANSMISSION LINE RELOCATION OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide the materials required for the Wynn Joyce Substation Transmission Line Relocation. Due to the size and scope of the project, an optional contingency is included for any unforeseen additional materials that may be required. This is an approved CIP project, and expenditures will not exceed appropriated funds.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Techline, Inc.	All	\$177,964.23
Optional Contingency		17,796.77
TOTAL:		\$195,761.00

BASIS FOR AWARD:

Straight Low Bid

Submitted by:

Reviewed by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

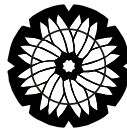
William E. Dollar
City Manager

Date: 10/24/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$ 1,159,124		Operating Budget: <input type="checkbox"/>	CIP: <input checked="" type="checkbox"/>	Year: 2013
Expended/Encumbered to Date: 639,173		Document Location: Page E01		
Balance: \$ 519,951		Account #: 217-3599-3138701-6051 \$170,561.00		
This Item: 195,761		(EC-T7387-008-1-6051) 25,200.00		
Proposed Balance: \$ 324,190		Fund/Agency/Project – Description: Electric CIP		
Trent Schulze	10/28/13	Comments: Provides materials for Wynn Joyce Substation transmission line relocation and includes optional contingency for any unforeseen materials required. Expenditures will not exceed appropriations.		
Budget Analyst	Date			
Ron Young	10/28/13			
Budget Director	Date			



GARLAND

PURCHASING

Executive Summary **Bid 3838-13** **Materials for Substation Transmission Line Relocation**

Recommended Vendor:

Techline, Inc.

Total Recommended Award:

\$195,761.00

Basis for Award:

Straight Low Bid

Purpose:

The purpose of this contract is to provide materials required for the Wynn Joyce Substation transmission line relocation.

Evaluation:

Request for Bids was issued in accordance with Purchasing procedures. Although over 400 requests were issued, only one (1) bid was received and evaluated. Techline, Inc.'s bid was determined to be within budget and met all requirements of the specifications.

Recommendation:

Staff recommends awarding the materials contract to Techline, Inc. as the straight low bidder meeting all requirements of the specifications.

Funding Information:

CIP 217-3591-3138701-6051 (EC-D7387-008-1)
GP&L Warehouse Account (211-1313) expensed to the correct cost areas as used

Department Director:

Tommy Weathersbee, Interim Transmission & Distribution Director, 972-205-3532



GARLAND
PURCHASING

Bid No.: 3901-13
Agenda Item: 2i.
Meeting: Council
Date: 11/05/13

Purchasing Report

138 KV BREAKER FOUNDATION REPLACEMENT OPEN MARKET

PURCHASE JUSTIFICATION:

The purpose of this contract is to provide labor, materials, and equipment for the removal and installation of 138 kV breaker foundations at Texas Municipal Power Agency. Funding for this project was approved in the 2013 Capital Improvement Program.

AWARD RECOMMENDATION:

<u>Vendor</u>	<u>Item</u>	<u>Amount</u>
Chapman Construction	All	\$146,000.00

TOTAL: \$146,000.00

BASIS FOR AWARD:

Straight Low Bid

Submitted by:

Gary L. Holcomb, CPPO, C.P.M.
Director of Purchasing

Reviewed by:

William E. Dollar
City Manager

Date: 10/23/13

Date: 10/29/13

FINANCIAL SUMMARY:

Total Project/Account: \$	4,407,603
Expended/Encumbered to Date:	189,236
Balance: \$	4,218,367
This Item:	146,000
Proposed Balance: \$	4,072,367

Matt Watson 10/24/13
Budget Analyst Date

Ron Young 10/24/13
Budget Director Date

Operating Budget: ☐ CIP: ☒ Year: 2013

Document Location: Page E01

Account #: 215-3542-3175301-7111

Fund/Agency/Project – Description:
Electric CIP / Transmission Lines –
T13001 TMPA Breaker Replacement

Comments:



GARLAND

PURCHASING

Executive Summary **Bid 3901-13** **138 kV Breaker Foundation Replacement**

Recommended Vendor:

Chapman Construction

Total Recommended Award:

\$146,000.00

Basis for Award:

Straight Low Bid

Purpose:

The purpose of this contract is to provide labor, materials and equipment for the removal and installation of 138 kV breaker foundations at Texas Municipal Power Agency.

Evaluation:

Requests for Bids were issued in accordance with Purchasing procedures. Due to the nature of the work being performed in a live substation, Chapman Construction submitted the only bid. Their bid was within budget, and this project is well within their capabilities.

Recommendation:

Staff recommends awarding the contract for breaker foundation replacement to Chapman Construction.

Funding Information:

CIP project 215-3542-3175301-7111 (EC-T5753-001-1-7111)

Department Director:

Tommy Weathersbee, Interim Transmission & Distribution Director, 972-205-3532



City Council Item Summary Sheet

☐ Work Session

Date: November 5, 2013

☒ Agenda Item

Sale of Avenue C From Eleventh Street to 190 LF West

Summary of Request/Problem

Council was briefed on this item at the August 19, 2013 Work Session. Council agreed to close Avenue C from Eleventh Street to Garland High School and proceed with the sale of the Avenue C Right-of-Way.

Subsequently, Mr. Moore recently purchased the property at 401 Eleventh Street and now owns both sides of Avenue C from Eleventh Street to the alley. Zoning requires a minimum 60 feet wide lot. The existing ROW is only 40 feet wide. Since the ROW is not of adequate width to be purchased and developed separately Mr. Moore is the only potential purchaser that can effectively utilize the property.

Both Council Policy DEV-07 and state law indicate that the City must receive fair market value for the sale or exchange of property. Based on Dallas County Appraisal District values of the adjacent lots, the estimated land value of the remainder tract is \$2.00/SF. The City, however, does not own Avenue C in fee simple, but has an easement interest only in the ROW. The typical value of an easement interest is 50% of the land value \$1.00/SF or a total of \$7,600. Mr. Moore will be responsible for replatting, removal of the street paving, and adding curb and gutter in Eleventh Street.

City staff routed the proposed sale of the Avenue C ROW through the Real Estate Management Organization (REMO) group and received written responses from the Franchise Utilities. No City department deemed to have a use for the ROW nor did any Franchise Utility request an easement be retained for any facilities. Council approval is required to authorize the Mayor to execute a deed without warranty conveying the property to the buyer.

City Attorney's Office has reviewed.

Recommendation/Action Requested and Justification

Approve by Resolution authorizing the Mayor to abandon the alley right-of-way and execute a deed without warranty conveying the 7,600 square feet of Avenue C from Eleventh Street to the alley ROW behind 313 and 401 Eleventh Street for \$7,600 to Mr. Louis Moore.

Submitted By:

Michael C. Polocek, P.E.
Director of Engineering

Approved By:

William E. Dollar
City Manager

RESOLUTION NO. 10122

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DEED WITHOUT WARRANTY AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

Section 1

That the Mayor is hereby authorized to execute a deed without warranty in the form and substance of that attached hereto as Exhibit "A".

Section 2

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

PASSED AND APPROVED this the ____ day of _____, 2013.

CITY OF GARLAND, TEXAS

Mayor

ATTEST:

City Secretary

DEED WITHOUT WARRANTY

Date: November 4, 2013

Grantor: City of Garland, Texas

Grantor's Mailing Address: City Hall, 200 N. 5th Street, Garland, Dallas County, Texas 75040.

Grantee: Louis A. Moore

Grantee's Mailing Address: 313 S. 11th Street, Garland, Texas 75040.

Consideration: SEVEN THOUSAND SIX HUNDRED DOLLARS AND NO/100 (\$7600.00).

Property: Property is as described in real property description attached hereto as Exhibit A.

Reservations from Conveyance: None.

Exceptions to Conveyance: None.

Pursuant to Resolution No. 10122 of the City Council of the City of Garland, Texas, Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Conveyance, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

When the context requires, singular nouns and pronouns include the plural.

Douglas Athas - Mayor
City of Garland, Texas

ACKNOWLEDGMENT

State of Texas §
County of Dallas §

This instrument, a Deed Without Warranty, was acknowledged before me on _____, 2013, by Douglas Athas as Mayor of the City of Garland, Dallas County, Texas.

Notary Public in and for the State of Texas

EXHIBIT 'A'

**ABANDONMENT OF 7,600 SQUARE FEET OF AVENUE 'C' RIGHT-OF-WAY
WEST OF ELEVENTH STREET IN INTERURBAN LAND
COMPANY'S TRAVIS COLLEGE HILL ADDITION REVISED**

BEING situated in the Joel B. Crumpacker Survey, Abstract No. 328, Dallas County, Texas, and being part of that same tract of land conveyed to R.O. Travis by R.C. Wyatt and wife, S.F. Wyatt, as evidenced by Warranty Deed recorded in Volume 588, Page 161, of the Deed Records of Dallas County, Texas (hereinafter "DRDCT"), and being a part of Interurban Land Company's Travis College Hill Addition Revised, an addition to the City of Garland, Texas, according to the plat thereof recorded in Volume 1, Page 465, of the DRDCT, and being all of that particular 40' wide street right-of-way of Avenue 'C' (formerly Thorpe Street by said addition plat) west of Eleventh St. (formerly Garland Avenue by said addition plat), and being more particularly described as follows:

Coordinates and bearings of lines in the following description refer to Grid North of the Texas Coordinate System of 1983 (North Central Zone, NAD83) as computed from conventional traverse from City of Garland geodetic monument GPS193 (Y=7018685.548, X=2536818.423) and monument GPS82 (Y=7017616.956, X=2536569.569) for azimuth. At the **PLACE OF BEGINNING** described below, True Azimuth = Grid Azimuth - 01°00'36".

Distances in the following description are Horizontal Surface Distances in units of US Survey Feet computed using the Combined Grid Factor of 0.99985413 (Surface Distance = Grid Distance / 0.99985413) calculated at GPS193;

BEGINNING at a point (Y=7019039.33, X=2538165.44) at the intersection of the north right-of-way line of Avenue 'C' (40' R.O.W.- formerly Thorpe St.) and the west right-of-way line of Eleventh Street (70' R.O.W.- formerly Garland Ave.), from which a 1/2" iron rod found bears N 89°28'32" E a distance of 0.26 feet;

THENCE South 00 deg. 31 min. 18 sec. East with said west right-of-way line 40.00 feet to a 3-1/4" aluminum disk stamped "CITY OF GARLAND SURVEY MONUMENT" (3-1/4" ADCOG) set for the southwest intersection of said Avenue 'C' (40' R.O.W.) and Eleventh Street (70' R.O.W.);

THENCE South 89 deg. 28 min. 32 sec. West with the south line of said Avenue 'C' (40' R.O.W.) a distance of 190.00 feet to a 3-1/4" ADCOG set (Y=7018997.60, X=2537975.84) for corner in the recognized and apparent west right-of-way line of said Avenue 'C' (40' R.O.W.), and also being in the recognized and apparent east line of a 15' wide alley (13' by said addition plat);

THENCE North 00 dg. 31 min. 18 sec. West with said recognized west right-of-way line of Avenue 'C' (40' R.O.W.), and recognized east line of a 15' wide alley 40.00 feet to point for corner, from which a 1/2" iron rod found bears N 88d27'53" E a distance of 0.22 feet;

THENCE North 89 deg. 28 min. 32 sec. East with north right-of-way line of Avenue 'C' (40' R.O.W.) a distance of 190.00 feet to the **PLACE OF BEGINNING** and containing calculated area of 7,600 square feet or 0.174 acres of land, more or less.


GLENN S. BREYSACHER, RPLS
CITY SURVEYOR, CITY OF GARLAND, TEXAS



GARLAND

TEXAS MADE HERE

ENGINEERING DEPARTMENT

EXHIBIT "A"
SHEET 1 OF 2

PATH: C:\DWG\SUBOVN\TRAVISCOLLEGEHILL\13262TRAVISCHILL.dwg

DRAWN: GSB
DATE: 10/22/13
SCALE: NONE

EXHIBIT 'A'

ABANDONMENT OF 7,600 SQUARE FEET OF AVENUE 'C' RIGHT-OF-WAY WEST OF ELEVENTH STREET IN INTERURBAN LAND COMPANY'S TRAVIS COLLEGE HILL ADDITION REVISED

Block B
Interurban Land
Company's Travis
College Hill
Addition
Revised
Vol. 1, Pg. 465
D.R.D.C.T.

N 00°29'20" W
285.83' to
3/8" IRF at S.
R.O.W. of Ave.
B.
1/2" IRF
N 89°28'32" E
0.26'

P.O.B.
Y=7019039.33
X=2538165.44

1/2" IRF
N 68°27'53" E
0.22'
N 89°28'32" E
190.00'
40.00'
AVENUE 'C' (40' R.O.W.)
(formerly Tharpe St.)
7,600 Square Feet
190.00'
S 89°28'32" W

3-1/4" ADCOG
SET
Y=7018997.80
X=2537975.84

3/4" O.D.P.F.
S 59°53'40" E
5.11'

S 00°51'56" E
286.95' to
5/8" IRF at
Ave. 'D'

Block A
Interurban Land
Company's Travis
College Hill
Addition
Revised
Vol. 1, Pg. 465
D.R.D.C.T.

LEGEND

IRF - Iron rod found

Y CIRF - Yellow capped iron rod found

O.D.P.F. - Outside diameter pipe found

3-1/4" ADCOG - Alum. disc stamped "City of Garland
Survey Monument" set on 5/8" iron rod

0 30 60 90



S 00°31'18" E
40.00'

3-1/4" ADCOG
SET

3/4" O.D.P.F.
S 51°55'32" E
5.11'

S 00°33'20" E
288.94' to
1/2" IRF at
Ave. 'D'

S 00°33'20" E
288.94' to
1" O.D.P.F. at
Ave. 'D'

ELEVENTH STREET (70' R.O.W.)

(formerly Garland Avenue by this plat)

1/2" Y CIRF
"PLS 3063"



The bearings shown hereon are NAD83 (CORS 96, EPOCH 2002) tied to the Texas Coordinate System of 1983, North Central Zone (4202), established from conventional survey methods, using City of Garland geodetic monument GPS193 (Y=7018685.548, X=2536818.423) and monument GPS82 (Y=7017618.956, X=2536569.569) for azimuth. At the PLACE OF BEGINNING described below, True Azimuth = Grid Azimuth - 01°00'36". All distances are reported as horizontal surface measurements. To convert reported distances to the projection plane apply the combined scale factor of 0.99985413.



GARLAND
TERRY MADE HERE
ENGINEERING DEPARTMENT

EXHIBIT 'A'
SHEET 2 OF 2

PATH: C:\DWG\SUBDW\TRAVISCOLLEGEHILL\132621TRAVISCHILL.dwg

DRAWN: GSB
DATE: 10/22/13
SCALE: 1"=30'



City Council Item Summary Sheet

☐ Work Session

Date: November 5, 2013

☒ Agenda Item

Reappointment to the TMPA Board of Directors

Summary of Request/Problem

At the November 4, 2013 Work Session, Council was scheduled to consider reappointing Tom Jefferies to serve as a City of Garland representative on the Texas Municipal Power Agency Board of Directors for an additional two-year term.

Recommendation/Action Requested and Justification

Approve a resolution reappointing Tom Jefferies to the Board of Directors of the Texas Municipal Power Agency.

Submitted By:

Approved By:

William E. Dollar
City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL REAPPOINTING TOM JEFFERIES TO THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Tom Jefferies is currently serving on the Board of Director of the Texas Municipal Power Agency ("TMPA") on behalf of the City of Garland; and

WHEREAS, his appointment expired on July 18, 2013 and he has continued in that capacity since that date; and

WHEREAS, the City Council desires that Mr. Jefferies be reappointed to the TMPA Board of Directors for a two year term deemed to have commenced on July 18, 2013;

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

Section 1

The City Council hereby reappoints Tom Jefferies to the TMPA Board of Directors for a two year term commencing July 18, 2013.

Section 2

That this Resolution shall be and become effective immediately upon and after its adoption and approval.

PASSED AND APPROVED this the 5th day November of 2013.

THE CITY OF GARLAND, TEXAS

By: _____
Mayor

ATTEST:

City Secretary



City Council Item Summary Sheet

☐ Work Session

Date: November 5, 2013

☒ Agenda Item

PARKING RESTRICTIONS

Summary of Request/Problem

Council considered this item at the October 14, 2013 Work Session.

The Transportation Department received a complaint that students from Lakeview Centennial High School are parking and leaving their vehicles on portions of Hamlett Lane and Fondren Drive during school hours. Observations from Transportation personnel confirmed the complaint and staff implemented the Parking Management Plan. A representative of the Wellington Run Home Owners Association under the direction of the Transportation Department surveyed the residence which resulted in the 80% support needed to move forward with the parking restrictions. Please note of the 42 residents surveyed three residents are opposed including one resident located within in the proposed parking restricted area.

Recommendation/Action Requested and Justification

Staff recommends adopting the proposed parking restriction. Restriction will eliminate the vehicles left on the street all day while students attend class therefore freeing up spaces for residents and their guest.

Submitted By:

Paul Luedtke
Director of Transportation

Approved By:

William E. Dollar,
City Manager

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 33, “TRANSPORTATION” OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS; PROVIDING A PENALTY UNDER THE PROVISIONS OF SEC. 10.05 OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS; PROVIDING A SAVINGS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

Section 1

That Sec. 33.51(A)(2) of Article IV, “Stopping, Standing and Parking”, of Chapter 33, “Transportation”, of the Code of Ordinances of the City of Garland, Texas, is hereby amended by adding the following street segments, extents, and sides in appropriate alphabetic order:

<u>“Street</u>	<u>Extent</u>	<u>Side</u>
Hamlett Lane	Waterhouse Boulevard to Fondren Drive	Both
Fondren Drive	Hamlett Lane to 5010 Fondren Drive	Both”

Section 2

That a violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Section 10.05 of the Code of Ordinances of the City of Garland, Texas.

Section 3

That Chapter 33, “Transportation” of the Code of Ordinances of the City of Garland, Texas, as amended, shall remain in full force and effect save and except as amended by this Ordinance.

Section 4

That the terms and provisions of this Ordinance are severable and are governed by Section 10.06 of the Code of Ordinances of the City of Garland, Texas.

Section 5

That this Ordinance shall be and become effective immediately upon and after its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2013.

CITY OF GARLAND, TEXAS

Mayor

ATTEST:

City Secretary



City Council Item Summary Sheet

☐ Work Session

Date: November 5, 2013

☒ Agenda Item

Facilities Management Lease

Summary of Request/Problem

As previously discussed with the Council during this year's Operating Budget presentation, the Facilities Management Department has been operating out of temporary construction trailers.

Council is being asked to authorize the City Manager to execute a lease agreement for 24,000 square feet at Firewheel Commerce Center, just west of Highway 78 at Crist Road. Approximately one third of the site will be used for office space to house the department's staff with the remaining two thirds being used as active warehouse space. This space will not only accommodate the necessary supplies and equipment to allow the department to more efficiently conduct its day-to-day operations, but it will also provide the necessary space required to store surplus furniture currently being housed in buildings slated for demolition as part of the Downtown Redevelopment Phase II program and space to temporarily store furniture that will be displaced as part of the City Hall renovation.

The average annual lease amount is \$142,000. The term of the lease is 10 years.

Recommendation/Action Requested and Justification

Approve by Minute Action to authorize the City Manager to execute a lease agreement with Shana Tova Realty ADA Compliant Limited Partnership.

Submitted By:

**Ginny Holliday
Director of Facilities Management**

Approved By:

**William E. Dollar
City Manager**

LEASE AGREEMENT
INDUSTRIAL
(TRIPLE NET)

THIS LEASE AGREEMENT, dated 19th day of October 2013 entered into by and between SHANA TOVA REALTY ADA COMPLIANT LIMITED PARTNERSHIP, a Texas Limited Partnership (“Landlord”), by Dalfen Firewheel Enterprises, Inc., a Canadian Corporation as its sole General Partner, with its principal offices at 4444 Ste-Catherine West, Suite 100, Westmount, Quebec, Canada, H3Z 1R2, and CITY OF GARLAND (“Tenant”), with its principal offices at _____.

1. LEASE PROVISIONS

A. DESCRIPTION OF PREMISES

Suite Number(s): A700, A800 & A900
Project Name: Firewheel Commerce Center (2350 Crist Road)
County: Dallas County
City: Garland
State/Zip: Texas, 75040

B. LEASED AREA OF PREMISES

Rentable Area of the Premises stipulated to be 23,806 square feet.
Rentable Area of the Building currently stipulated to be 200,735 square feet.
Tenant’s Share currently stipulated to be: 11.86% (percent)

C. LEASE TERMS

Initial Lease Term (Months): One Hundred Twenty-Seven (127) Months

Lease Commencement Date: Upon the Substantial Completion of Landlord’s Work, estimated to be on or about December 1, 2013.
Deferred Rent Period: First seven (7) months of the Initial Lease Term, estimated to be from December 1, 2013 to June 30, 2014.

Interim Possession Period: Tenant may store inventory in the warehouse as well as install fixtures, including communication infrastructure and equipment related to Tenant’s business, from the full execution of Lease to the Lease Commencement Date, as long as Landlord’s Work and/or the Certificate of Occupancy are not hindered or delayed by Tenant’s inventory, personnel, and contractors during said period.

Expiration Date: One hundred twenty-seven (127) full calendar months following the Lease Commencement Date, estimated to be on or about June 30, 2024.

D. RENT

D.1 Subject to Clauses 1.C and 6, and Exhibit E, the Monthly Rent for each year of the Initial Lease Term is estimated to be:

Monthly Base Rent for the first twelve (12) months: \$8,034.53
Monthly Operating Expenses (Estimated): \$2,975.75
Total Monthly Rent (Estimated): \$11,010.28

D.2

Monthly Base Rent Commencing December 1, 2013 and ending June 30, 2014: \$8,034.53 (deferred)
Monthly Base Rent Commencing July 1, 2014 and ending June 30, 2015: \$8,034.53
Monthly Base Rent Commencing July 1, 2015 and ending December 31, 2015: \$8,034.53
Monthly Base Rent Commencing January 1, 2016 and ending December 31, 2016: \$8,232.91
Monthly Base Rent Commencing January 1, 2017 and ending December 31, 2017: \$8,232.91
Monthly Base Rent Commencing January 1, 2018 and ending December 31, 2018: \$8,431.29
Monthly Base Rent Commencing January 1, 2019 and ending December 31, 2019: \$8,431.29
Monthly Base Rent Commencing January 1, 2020 and ending December 31, 2020: \$8,629.68
Monthly Base Rent Commencing January 1, 2021 and ending December 31, 2021: \$8,629.68
Monthly Base Rent Commencing January 1, 2022 and ending December 31, 2022: \$8,828.06
Monthly Base Rent Commencing January 1, 2023 and ending December 31, 2023: \$8,828.06
Monthly Base Rent Commencing January 1, 2024 and ending June 30, 2024: \$8,828.06

Amount of Prepaid Rent: \$11,010.28 due upon Lease execution
Prepaid Rent to be applied to the month of July 2014.

E. DEPOSITS

Security Deposit: \$11,803.81 due upon Lease execution.

F. PAYMENTS

Landlord: Shana Tova Realty ADA Compliant Limited Partnership
Address: 17304 Preston Road, Suite 100
City/State/Zip: Dallas, TX 75252
Landlord Direct Deposit Account Number:

G. NOTICES

Tenant: City of Garland
Address: 2350 Crist Road, Suite 700
City/State/Zip: Garland, TX 75040

Copy to: N/A
Address:
City/State/Zip:

Landlord: Shana Tova Realty ADA Compliant Limited Partnership
Address: 4444 Ste. Catherine West, Suite 100
City/State/Zip: Westmount, Quebec, Canada H3Z 1R2

Copy to: Shana Tova Realty ADA Compliant Limited Partnership
Address: 17304 Preston Road, Suite 100
City/State/Zip: Dallas, TX 75252

H. BROKER

Landlord’s: Name: NAI Robert Lynn
Address: 4851 LBJ Fwy, Suite 1000
City/State/Zip: Dallas, TX 75244

Tenant’s: Name: TCS Central Region GP, L.L.C., d/b/a Transwestern
Address: 5000 Spring Valley Road, Suite 500W
City/State/Zip: Dallas, TX 75244

I. GUARANTOR(S): As per Exhibit ‘F’ Intentionally Deleted.

J. CERTAIN DEFINITIONS

Lease: means this Lease and all Exhibits and Schedules attached hereto.

Landlord: means Shana Tova Realty ADA Compliant Limited Partnership, a Texas Limited Partnership represented by Dalfen Firewheel Enterprises Inc., a Canadian corporation as its General Partner and shall include, when applicable, any assignees, successors and transferees.

Tenant: means **City of Garland** and shall include its assignees, successors, transferees and sublessees.

Guarantor: **N/A**

Project: known as **Firewheel Commerce Center** means the Building and all land described on Exhibit B.

Building: means the Buildings and/or out buildings and/or any improvements, equipment, furnishings and appurtenances thereto located on the Project.

Common Area: means all areas, roof membrane, improvements, space or equipment, (owned or controlled by Landlord) in or at the Project, provided by Landlord for the common or joint use and benefit of tenants and invitees.

Rent: means all sums listed in Clause 1(D) and as they may be adjusted from time to time plus any and all other sums due under this Lease and which begin on the Lease Commencement Date.

(i) Lease Commencement Date is described in Clause 1(C) and Exhibit E “Lease Commencement Date Certificate”.

Term: means the Initial Lease Term described in Clause 1 (C) plus any Renewal Terms described in Clause 47.

(i) Initial Lease Term means the first **one hundred twenty-seven (127) month** period after the Lease Commencement Date.

- (ii) Renewal Terms means the next **two (2) consecutive three (3) year periods** after the completion of the Initial Term or prior Renewal Term whichever is applicable, and subject to Clause 47.
- (iii) Lease Year means the successive twelve (12) month period beginning with the Lease Commencement Date and every successive twelve (12) month period thereafter and will include any partial month at beginning of Term.

Base Year: means the calendar year prior to the first year of the Term.

Consumer Price Index (C.P.I.): means the Bureau of Labor Statistics for all Urban Consumers with 1982-1984 as the base of 100 for changes in prices over the prices for the full month immediately preceding the Lease Commencement Date paid by Urban Consumers for goods and services.

Substantial Completion: means when Landlord and Tenant have determined that the Landlord’s Work is sufficiently complete, in accordance with plans and specifications that the Landlord may use, subject to minor items that remain of a punch list nature, and a Temporary Certificate of Occupancy or Certificate of Occupancy has been issued by the governing authority.

Interim Possession Period: means the period, if permitted by Landlord, when Tenant takes possession of the Premises prior to the Lease Commencement Date.

Expiration Date: is described in Clause 1(C) and Exhibit E “Lease Commencement Date Certificate” and is extended to the completion of any Renewal Term.

2. PREMISES: Landlord leases to Tenant and Tenant takes from Landlord the premises (“Premises”) shown on Exhibit A and described in Clause 1, to be used exclusively by Tenant, in the Building at the Project located at the address stated in Clause 1A under the terms and conditions contained in this Lease. The Premises includes 100% of the exterior walls and 50% of the demising walls which are shared by Tenant and its neighbors.

3. COMMON AREAS: Landlord may add to or reduce or otherwise modify Common Areas at any time. Landlord shall have the right at all times to alter, renovate and repair portions of the Building and the Common Areas which do not include the Premises, notwithstanding any temporary inconvenience or disturbance caused to Tenant.

4. TERM AND POSSESSION: The Term shall begin on the Lease Commencement Date and end on the last day of the Term unless expressly modified under other provisions in this Lease. Tenant shall sign the Exhibit “E” within 5 business days of receipt from Landlord.

Landlord agrees to Substantial Completion of Landlord’s Work on or before Lease Commencement Date, subject to causes or events beyond the reasonable control of Landlord (‘Unforeseen Causes’). Should there be a delay due to Unforeseen Causes, Tenant agrees to accept possession of the Premises within ten (10) days after receipt of written notice from Landlord of Substantial Completion. The Lease Commencement Date shall be the first day of the calendar month immediately following date of the Substantial Completion, and the last day of the Term shall be changed to maintain the Lease Term in Clause 1(C).

If Tenant takes possession during the Interim Possession Period, all terms and conditions of the Lease shall be in full force and effect except the obligation to pay Rent. However, Tenant will be responsible for the cost of utilities and services, and shall carry and pay for insurance according to Clause 21 of the Lease.

5. USE: Tenant shall use the Premises only for **office and warehouse** purposes and only for the purpose of receiving, storing, shipping and, and activities consistent with servicing the City of Garland’s facilities’ maintenance, as well as for demonstrations and hands on training of personnel of Tenant and Tenant’s invitees and distributors in the maintenance and repair of Tenant’s products, and for such other lawful purpose as may be incidental thereto.

Tenant shall not use or permit such use in any manner which: (a) is unlawful; (b) may be dangerous; (c) may invalidate or increase the cost of any insurance policy held by Landlord affecting the Project; (d) may create a nuisance, disturb other tenants of the Project or the occupants of neighboring property or injure the reputation of the Project; (e) violates the “Rules and Regulations” of the Project, Exhibit D, which are subject to change ; (f) places any restriction, covenant or encumbrance of record affecting the Project. Landlord makes no representation and Tenant holds Landlord harmless, with respect to the suitability of the Project or the Premises for the use by Tenant. Tenant has verified that its use is permitted by all governmental authorities that have jurisdiction and that no condition at the Project in any way limits the ability of Tenant to operate its business.

Tenant shall comply with (i) all governmental laws, ordinances and regulations applicable to the use and occupancy of the Premises, and promptly shall comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Tenant’s sole expense, and (ii) the requirements of all deed restrictions, restrictive covenants and other covenants, conditions and restrictions affecting the Building and/or the Project. Tenant shall not take any action that would constitute a nuisance or would unreasonably interfere with, or endanger Landlord or any other tenants of the Building of which the Premises are a part, nor take any action that would be incompatible with operating the Premises as described in this Lease. However, notwithstanding any

provision herein to the contrary, ADA requirements shall be Landlord’s responsibility up to commencement date. After Commencement Date, Tenant shall not be responsible for any exterior ADA requirements. Further, Tenant shall only be responsible for interior items where the ADA change requirement is linked solely to Tenant’s action(s).

No Offensive or Illegal Use. No use of the Premises during the Lease Term shall be offensive or illegal to the Project or neighborhood by reason of odor, fumes, noise, or traffic; and no activities on the Premises shall be permitted by Tenant, or by anyone claiming the right to use the Premises by or through Tenant, which are, in the sole discretion of Landlord, immoral or lewd or capable of subjecting the Premises to an unfavorable reputation or reducing the sale or rental value of the Premises or any unlawful purpose or in any way which in the sole discretion of the Landlord would create a legal nuisance or be an objectionable use to any tenants in the complex. Tenant will not use the Premises in a way that it may invalidate or increase the cost of any insurance policy held by Landlord affecting the Project; nor create any restriction, covenant or encumbrance of record affecting the Project.

Tenant shall not allow the Premises to be utilized as what is commonly referred to as a “Pill Mill” and Tenant shall not interfere or disturb the quiet enjoyment of Landlord’s other tenants.

Tenant shall be responsible for any costs incurred by Landlord by reason of Tenant’s and /or Tenant’s agents, employees’ or invitees’ misuse and/or damage of the Premises or Common Areas, such as but not limited to security costs and Landlord will have the right to charge an administrative fee of 5% over the security costs involved.

Upon taking possession of the Premises, it shall be conclusive evidence (a) that Tenant has inspected the Premises (and has sufficient knowledge and expertise to make such inspection or has caused the Premises to be inspected on its behalf by one or more persons with such knowledge and expertise), (b) that Tenant has accepted the Premises in “AS IS” condition on such date, suitable for the purposes herein intended (except for the items related to the Section 12 Landlord’s warranty), (c) that Tenant, to the extent permitted by applicable law, has waived any warranty, express or implied, as to the habitability, suitability, quality, condition or fitness of the Premises or Building (except for the Section 12 Landlord’s warranty), and (d) that the physical condition of the Premises comply fully with Landlord’s covenants and obligations under the Lease with respect to any construction of leasehold improvements that was the responsibility of Landlord under the Lease, except for any punch list items agreed to in writing by Landlord and Tenant with respect to any such construction.

During the Term, Tenant shall continuously operate its business and shall not vacate nor abandon the Premises.

6. RENT AND SALES/USE TAX: Rent shall commence on the Lease Commencement Date. Rent is due in advance on the first day of each month of the Term and will be delinquent on the sixth day of the month. Rent shall be paid without notice or demand and without any deduction. Tenant agrees to pay to Landlord all Rent at the address specified in Clause 1(F), or at any other place designated in writing by Landlord. Rent for any partial month shall be prorated. All delinquent Rent shall bear interest at 18% per year, from the date due until paid, plus Tenant shall pay a late payment service charge of **\$150.00**, for each month for which payment of Rent is not received by Landlord when due. Tenant shall pay a charge equal to **\$50.00** for each returned check.

7. OPERATING EXPENSES AND REAL ESTATE TAXES:

7.1 GENERAL:

In addition to Monthly Base Rent, beginning on the Lease Commencement Date, Tenant will pay Tenant’s Share of the Operating Expenses (defined below);

(a) As used in this Lease, the term “Operating Expenses” means, without limiting the generality of the following, Tenant’s Share of the aggregate of:

(i) the total annual charges of Landlord for the operation, management, maintenance, repair, and administration of the Project, including but not limited to Landlord’s charges for replacements, additions, alterations and improvements, fixtures and equipment, security, supervising, sprinklering, lighting, heating, air conditioning, ventilating, electric, plumbing, drainage, servicing, re-paving, resurfacing, sealing, striping, landscaping, reserves for replacements, as well as accounting, audit, management, professional and legal fees, all as the foregoing relate or are allocated to the Project, together, when applicable, with depreciation and/or amortization with interest thereon, hereinafter called “Controllable Operating Expenses”; and

(ii) real estate taxes and assessments (ad valorem, non ad valorem and charges in substitution thereof) liability, property and other types of insurance, utilities, utility deposits, fuel and garbage removal, hereinafter called “Uncontrollable Operating Expenses”.

(iii) CAP ON CONTROLLABLE OPERATING EXPENSES: After the third (3rd) Annual Settlement of Operating Expenses (clause 7.3) Landlord agrees that Controllable Operating Expenses, as

defined in Clause 7.1 (a)(i), may not increase by more than three percent (3%) annually during the Initial Lease Term. Tenant will be billed the following for the first three (3) years of Operating Expenses of the Initial Lease Term:

- 1) Year 1 – Controllable Operating Expenses - \$0.58/SF
Uncontrollable Operating Expenses - \$0.92/SF
- 2) Year 2 – Controllable Operating Expenses - \$0.68/SF
Uncontrollable Operating Expenses – Actual Cost
- 3) Year 3 – Controllable Operating Expenses - \$0.81/SF
Uncontrollable Operating Expenses – Actual Cost
- 4) Year 4 to end of Initial Lease Term– 3% cap on Controllable Operating Expenses.

(b) Notwithstanding any provision herein to the contrary, Landlord shall not charge Tenant for the following costs: repairs to the roof deck, joists, columns, load bearing walls, slab and foundations; improvements made or any costs related to the premises of another tenant; income taxes personal to Landlord; or expansion of the Project from the Base Year.

(c) **LIMITATIONS ON EXPENSES RELATED TO SERVICES.** Notwithstanding any provision herein to the contrary, the following shall not be included in the Tenant’s Share of the Operating costs: repairs and general maintenance paid by proceeds of insurance, by Tenant or by other third parties and/or alterations attributable solely to specific tenants of the Project;

(d) **EXCLUSIONS TO “REAL ESTATE TAXES AND ASSESSMENTS”.** Notwithstanding any provision herein to the contrary, the terms “real estate taxes” or “assessments” specifically exclude: federal and state taxes on income, death taxes, franchise taxes, gift, inheritance, and estate taxes, the Margin Tax and any taxes imposed or measured on or by the income of Landlord from the operation of the Project. The Landlord covenants to use commercially reasonable efforts to contest where appropriate appraised values of the Project in order to minimize ad valorem taxes.

(e) **LIMITATIONS ON EXPENSES RELATED TO MANAGEMENT EXPENSES.** Notwithstanding any provision herein to the contrary, the following shall not be included in the Tenant’s Share of the Operating costs:

- (1) Expenses related to any costs associated with an audit of the Landlord or its managing agent’s records that is performed at the request of or on behalf of a third party, including any tenant or occupant of the Project,
- (2) Overhead and profit paid to subsidiaries or affiliates of landlord for services on or to the Project and/or Premises, to the extent only that the costs of such services exceed competitive costs for such services were they not rendered by a subsidiary or affiliate,
- (3) Landlord’s general corporate overhead costs and general administrative expenses, organizational fees, and partnership expenses, and
- (4) Salaries of personnel of Landlord above the level of Project Manager.

(f) **LIMITATIONS ON EXPENSES RELATED TO PROFESSIONAL AND LEGAL FEES.** Notwithstanding any provision herein to the contrary, the following shall not be included in the Tenant’s Share of the Operating costs:

- (1) Legal fees, leasing commissions, costs of art and sculptures, advertising, and marketing expenses and other such costs incurred in connection with the development, marketing, advertising, or leasing of the building or project, including but not limited to expenses associated with maintaining a leasing office,
- (2) legal costs in connection with lease negotiations or the enforcement of leases, brokerage commissions, or construction or planning expenses,
- (3) reserves for bad debts, future repairs, improvements, additions or any expenditures that would be incurred subsequent to the initial term,
- (4) expenses in connection with services or other benefits of a type which Tenant is not entitled to receive under the Lease but which are provided to another tenant or occupant or which are provided to one or more, but not all, tenants of the Project,
- (5) penalties, fines, late fees, interest or similar charges incurred due to violations by Landlord or any tenant (other than the City/Tenant) of the Project of any laws, rules, regulations, or ordinances applicable to the Project,
- (6) fines, interests and penalties incurred due to late payment of Taxes,
- (7) costs incurred in connection with the sale, financing or refinancing of the Building or Project, and

(8) costs or allocations that are not properly documented by Landlord, in accordance with generally acceptable accounting and business principles.

7.2 **ESTIMATED PAYMENTS:** Tenant will pay to Landlord in advance on the first day of each month during the Term, one-twelfth (1/12) of Tenant's Share of Estimated Operating Expenses charged during the subject calendar year or partial calendar year (the "Estimated Operating Expenses"). The Estimated Operating Expenses are subject to revision according to the further provisions of this Clause 7.2 and Clause 7.3. As soon after December as practicable, but no later than April 30th, 2014, Landlord will give Tenant written notice of Landlord's reasonable estimate of the amounts payable under Clause 7.1 for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord in advance one-twelfth (1/12) of such estimated amount; however, if such notice is not given, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given. In the month Tenant first pays Landlord's new estimate, Tenant will pay to Landlord the difference between the new estimate and the amount payable under the prior year's estimate for each month, which has elapsed since December. If at any time or times it reasonably appears to Landlord that the amount payable under Clause 7.1 for the current calendar year will vary from Landlord's estimate, Landlord may, by written notice to Tenant, revise Landlord's estimate for such year, and subsequent payments by Tenant for such year will be based upon Landlord's revised estimate.

7.3 **ANNUAL SETTLEMENT:** For each calendar year, Landlord will deliver to Tenant a statement of amounts payable under Clause 7.1. Such statement will be final and binding upon Tenant unless Tenant objects to it in writing to Landlord within thirty (30) days after it is given to Tenant. If such statement shows an amount owing by Tenant that is less than the estimated payments previously made by Tenant for such calendar year, the excess will be refunded by Landlord. If such statement shows an amount owing by Tenant that is more than the estimated payments previously made by Tenant for such calendar year, Tenant will pay the deficiency to Landlord within thirty (30) days after the delivery of such statement.

8. **RULES AND REGULATIONS:** Tenant agrees for itself and for its employees, agents, and invitees to comply with the "Rules and Regulations" of the Project as outlined in Exhibit D.

9. **SIGNS:** Tenant shall place no signs or advertising matter on the exterior or interior of the Building or at any other location on the Project other than within the Premises and only visible therein, without Landlord's prior written consent. Tenant must abide by the Sign Exhibit "G" for the installation of any signs approved by Landlord.

10. **SERVICES:** Landlord shall not be liable for damages for failure to furnish any service in a timely manner due to any Unforeseen Causes. Any failure or delay shall not be considered a constructive or other eviction or disturbance of Tenant's quiet enjoyment, use or possession of the Premises nor will it permit an abatement of rent.

11. **UTILITIES:** Tenant will pay all utility deposits and fees and all monthly service charges for water, electricity, sewage, oil, gas, telephone and any other utility service furnished to the Premises and the improvements on the Premises during the Term of this Lease. **Tenant's responsibility for said utilities shall commence upon Landlord giving Tenant vacant possession of the Premises, either to perform work or start its operation.** If any such services are not separately metered or billed to Tenant but rather are billed to and paid by Landlord, Tenant will pay to Landlord Tenant's portion of the cost of such services in accordance with the proportion that the Premises bear to the total area serviced by said meter, or alternatively it shall be apportioned based on Tenant's use reasonably estimated by Landlord. Where another tenant of the Project has a disproportionate use of water on a common meter, the Landlord will agree to adjust the amount owed by Tenant based on a reasonable estimate of the amount used by Tenant. Failure by Tenant to pay utility charges promptly as provided in this Lease will result in Landlord suspending the service. Landlord shall not be liable for any interruption, surge, stoppage, or any other failure of the quality of utilities serving the Premises whether caused by the negligence of Landlord, its agents, employees, contractors or otherwise.

12. **ALTERATIONS/TENANT'S REPAIRS:** Upon final walk-through with Landlord, Tenant accepts the Premises as being in a good state of repair and condition. Tenant shall maintain the Premises in a first class condition, normal wear and tear excepted, including all facilities, equipment and services, both inside and outside the Premises which are available for the exclusive use by Tenant.

Tenant's obligation shall be to keep, maintain and repair the Premises in all respects and to do so in accordance with all laws and government regulations, including but not limited to the following: pest control, lights, floor, floor coverings, walls, ceilings, doors, locks and closing devices, windows and frames, glass, grills, all electrical equipment and systems, including inside lights and ballasts, all mechanical and HVAC equipment and systems, water and sewer connections, pipes, mains, toilets, sinks and accessories and all other equipment of every kind and nature attached to or serving the Premises.

On or before the Lease Commencement Date, Tenant shall secure an annual service contract with a recognized firm acceptable to Landlord on all mechanical systems servicing the Premises and shall provide Landlord with a copy thereof as well as all other renewals of said contract. Alternatively, Tenant may at its option, service the Premises and perform periodic inspections by employees of the Tenant whom are qualified and licensed, where required by law, to perform the work under this section. However, if Tenant fails to meet its maintenance obligations as stated herein, Landlord may at its option secure its own annual service contract to perform periodic inspections of the HVAC systems serving the Premises, and to perform any necessary work, maintenance, or repair of them. In that event, Tenant will reimburse Landlord for all amounts paid by Landlord in connection with such contract as additional rental

Landlord’s Warranty: Notwithstanding any provision herein to the contrary, outside of any manufacturer’s warranty, Landlord shall fully warranty the HVAC system for one (1) year following commencement; then during the remaining term of this Lease, if the HVAC units require repair or replacement, Tenant’s obligation for any expense related to such repairs and/or replacement shall be limited to the first \$500.00 of the total expense per incident, provided Tenant has maintained the HVAC system in accordance with the terms and conditions outlined in the Lease. Landlord shall be responsible for the remaining sum of such expenses in excess of Tenant’s \$500.00 contribution.

Except as set forth in Exhibit C, Tenant shall not make any alterations, additions, or improvements to the Premises, even if they are in accordance with all laws and government regulations, without Landlord’s prior written consent, unless such work is under \$10,000.00 and is not related to structural alterations, additions, or improvements to the Premises., in the event Landlord consents to such work, all work be carried out in a good workable manner and Tenant undertakes to conform to the conditions stipulated hereunder Tenant shall obtain all necessary permits before commencing Tenant’s Work and shall perform Tenant’s Work in accordance with all applicable laws and governmental regulations.

Construction Liens. Except to the extent contracted for by Landlord, the interest of Landlord in the Project shall not be subject in any way to any liens, including real estate sales commission liens and construction liens for improvements to or other work performed by or on behalf of Tenant. Tenant promptly shall pay for any labor, services, materials, supplies or equipment furnished to Tenant in or about the Premises. Tenant shall keep the Premises and the Project free from any liens arising out of any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to Tenant. Tenant shall take all steps permitted by law in order to avoid the imposition of any such lien. Should any such lien or notice of such lien be filed against the Premises or the Project, Tenant shall discharge the same by bonding or otherwise within 10 days after Tenant has notice that the lien or claim is filed regardless of the validity of such lien or claim.

If a lien or encumbrance placed on all or part of the Project arising out of work performed by or on behalf of Tenant Landlord may at its option discharge the lien or encumbrance by paying the amount claimed directly to the creditor or to the court and charge Tenant for the amount so paid plus any legal costs associated therewith, plus an administration fee of 15%.

13. RIGHT OF ENTRY:

- (a) Landlord and its agents shall have the right, at all reasonable times during the Term, to enter and inspect the Premises and to make repairs and alterations Landlord deems necessary, with reasonable notice, except in cases of an apparent emergency. In such cases, no notice shall be required.
- (b) Landlord has the right to show the Premises to prospective purchasers, lenders, tenants and/or brokers and post “for lease” signs outside the Premises during the last nine (9) months of the Term.

14. DESTRUCTION OF PREMISES: If a fire or any other casualty (“Casualty”) which damages the Premises or the Building occurs and materially affects the use of the Premises, Landlord shall determine whether the Premises are rendered substantially untenable and make an initial estimate of the time needed to complete necessary repairs to the Building and Premises. Within thirty (30) business days after the Casualty, Landlord shall notify Tenant in writing of Landlord’s determinations (“Landlord’s Notice”) as follows:

- (a) If Landlord’s Notice states that the Premises has been rendered substantially untenable by the Casualty and Landlord’s initial estimate of the time needed for repair exceeds one hundred and eighty (180) days, Landlord or Tenant may, by written notice, terminate this Lease as of the date of the Casualty. Written notice of Landlord’s or Tenant’s election to terminate the Lease pursuant to 14(a) and 14(c) will be given by the forty fifth (45th) business day after the date of the Casualty. If Landlord’s Notice states that the Premises have been rendered substantially untenable by the Casualty but Landlord’s initial estimate of the time needed for repair is one hundred and eighty (180) days or less, Landlord may at its option proceed with the restoration of the Premises and Building as set forth in 14(d) below, and this Lease shall remain in full force and effect.
- (b) If Landlord’s Notice pursuant to its Architect’s report states that the Premises are still substantially tenantable after the Casualty, then neither Landlord nor Tenant shall have the right to terminate this Lease.
- (c) Either party may terminate this Lease if the Casualty occurs within the last 6 months of the Term or Landlord’s estimate of the time needed to repair the damage caused by the Casualty exceeds more than 20% of the then remaining Term.
- (d) Unless the Lease is terminated, Landlord will repair the Premises and Building (other than leasehold improvements installed by Tenant and Tenant’s personal property) to substantially the same condition as existed immediately prior to the Casualty. Tenant shall relocate, at Tenant’s expense, all personal property from the Premises prior to and during the repairs.
- (e) If the Premises are damaged by Casualty and the Lease is not terminated, the Rent shall abate for that part of the Premises which have been rendered untenable and not occupied by Tenant on a per diem and proportionate area basis from the date of the Casualty until the date which Landlord has Substantially Completed the required work. If Landlord makes other space available to Tenant, Rent for the substitute premises shall be payable on an equitable basis as reasonably determined by Landlord.

15. CONDEMNATION: If all or part of the Project is taken or condemned by any authority for any public use or purpose (including a deed given in lieu of condemnation), which renders the Building or the Premises not suitable for its

intended purpose in Landlord's reasonable opinion, this Lease shall terminate as of the date title vests in such authority, and the Rent shall be apportioned as of such date. Otherwise, this Lease shall continue in full force and effect, except, the Rent shall abate for that part of the Premises which is rendered untenable and not occupied by Tenant on a per diem and proportionate area basis from the date when that part of the Premises is no longer available for the use of the Tenant. Landlord, upon receipt and to the extent of the award in condemnation or proceeds of sale, shall make necessary repairs and restoration (exclusive of leasehold improvements and personal property installed by Tenant) to restore the Premises remaining to as near their former condition as circumstances will permit and to the extent necessary to constitute the portion not so taken or condemned as complete.

Landlord shall be entitled to receive the entire award from any sale, taking or condemnation without any payment to Tenant. Tenant shall have the right separately to pursue against the condemning authority, an award in respect of Tenant's business damages and relocation expenses. Under no circumstances shall Tenant seek or be entitled to any compensation for the value of its leasehold estate which Tenant hereby assigns to Landlord.

16. ASSIGNMENT: As long as Tenant is not in Default, as further defined in Clause 23 hereunder, Tenant may, with Landlord's prior written consent, **which shall not be unreasonably withheld, delayed or conditioned**, assign the Lease or sublet the Premises, or transfer or permit the transfer of this Lease or the interest of Tenant in the Lease, in whole or in part. If Tenant desires to assign this Lease, or to enter into any sublease of the Premises, Tenant shall deliver written notice of such intent to Landlord together with a copy of the proposed assignment or sublease, at least 30 days prior to the effective date of the proposed assignment or subletting together with the latest audited and the latest unaudited quarterly financial statements of the Tenant and the proposed assignee or subtenant. Landlord shall provide notice of consent to an assignment or sublease within ten (10) business days after Landlord's receipt of Tenant's written notice. The consent by Landlord to an assignment or sublease will not be construed to relieve Tenant from obtaining Landlord's prior written consent in writing to any further assignment. Any approved assignment shall be expressly subject to the terms and conditions of this Lease. In the event of any approved assignment or sublease, Tenant and Guarantor shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any Renewal Term of this Lease. If the assignment or sublease provides for compensation in excess of the Rent payable to Landlord under the terms and conditions of this Lease, 100% of the difference between the compensation payable by the assignee or sublessee and the Rent payable to Landlord under the terms and conditions of this Lease shall be paid to Landlord, in consideration of its consent to the assignment or sublease. An assignment shall be considered to include a change in the majority ownership or control of Tenant, if Tenant is a corporation whose shares of stock are not traded publicly, or, if Tenant is a partnership, a change in the general partnership or a change in the persons holding more than 50% interest in the partnership, or a change in majority ownership or control of any general partner of the partnership. Tenant shall not mortgage, pledge or hypothecate its leasehold interest without Landlord's prior written consent.

17. SUBORDINATION, ATTORNMENT, AND ESTOPPEL: This Lease and the rights of Tenant are expressly subject and subordinate to the lien and provisions of any mortgage, deed of trust, deed to secure debt, or ground lease, now or hereafter encumbering the Premises, Building and Project, ("Security Instrument") or any part thereof, and all amendments, renewals, modifications and extensions of and to any such Security Instrument and to all advances made or hereafter to be made upon such Security Instrument. Tenant shall, within 10 business days after receipt of written notice by Landlord, execute and deliver such further instruments, in such form as may be required by Landlord or any holder of a proposed or existing Security Instrument, subordinating this Lease to the lien of any such Security Instrument as may be requested in writing by Landlord or security holder from time to time.

In the event of the foreclosure of any such Security Instrument by voluntary agreement or otherwise, or the commencement of any judicial action seeking such foreclosure, Tenant, at the request of the then Landlord, shall attorn to such mortgagee or purchaser in foreclosure. Tenant agrees to execute and deliver at any time upon request of such mortgagee, purchaser, or their successors, any instrument to further evidence such attornment. This provision will be self operative and no further instrument of Subordination will be required in order to effect it.

Tenant shall, within 10 business days of receipt of written notice by Landlord, deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect, or, if there have been modifications, that this Lease, as modified, is in full force and effect; providing a true, correct and complete copy of the Lease and any and all modifications of the Lease; the amount of each item of the Rent then payable under this Lease and the date to which the Rent has been paid; that Landlord is not in default under this Lease or, if in default, a detailed description of such default; that Tenant is or is not in possession of the Premises, as the case may be; and containing such other information and agreement as may be reasonably requested.

Landlord will use commercially reasonable efforts to obtain a Subordination and Non-Disturbance Agreement from the Lender or mortgage holder of the Project.

18. WAIVER AND INDEMNIFICATION: To the extent allowed by law, each of the Landlord and Tenant (the "Indemnifier") agrees to indemnify and hold harmless the other (the "Beneficiary"), and the Beneficiary's respective partners, agents and employees, from and against any and all liabilities, costs and expenses of every kind and nature incurred by the Beneficiary, as well as any claims and demands made against the Beneficiary, arising from any injury or damage (including death) to any person or property (subject, in the case of property, to the other provisions of this Lease) sustained in or about the Project and caused by the negligence or intentional act of the Indemnifier, save to the extent contributed to by the Beneficiary. Notwithstanding any language to the contrary found within this Lease, the Parties do not intend to, and have no obligation or implied duty to, assess and collect annually a sufficient sum to (1) pay any interest to fund the indemnification provisions found herein, or (2) create a sinking fund to fund any indemnification provision found herein.

<u>Initial</u>	<u>Initial</u>
x	x

19. AMERICAN DISABILITIES ACT (ADA): Any Landlord Work performed by the Landlord on behalf of the Tenant outlined in Exhibit K “Work Letter” shall be in compliance with the ADA. Any Tenant Work performed in the Premises by Tenant or its contractors, including but not limited to its interior décor, installations and equipment, shall be in compliance with ADA. Landlord shall be responsible for all common area and exterior ADA requirements throughout the term of the lease.

During the Term of the Lease and any renewal thereafter Tenant shall provide at all times adequate service to disabled people as per ADA requirements, including but not limited to lower cash registers, counters, tables, drinking fountains, dressing rooms, benches, showers etc., ensure a clear access path of minimum 36 inch wide for people in wheelchair to all goods, services and public amenities including ADA bathrooms in the Premises, and maintain adequate ADA signage properly installed and visible at all times, such as “Accessible washroom”, if any available in Tenant’s Premises, and “Assistance available upon request”.

Both Landlord and Tenant will indemnify and hold each other harmless against any legal action initiated by a third party relating to their respective ADA compliance obligations. Such indemnification shall include all alterations, damages, costs and attorney fees related to litigating and/or settling any ADA legal action.

20. QUIET ENJOYMENT: Landlord agrees with Tenant that so long as Tenant pays the Rent and observes and performs all the terms and conditions of this Lease, Tenant may peaceably and quietly enjoy the Premises.

21. INSURANCE:

21.1 The Tenant is self-insured and agrees to substantially maintain, at all times during the Term, commencing with the date Landlord gives Tenant vacant possession of Premises or any temporary premises, on an occurrence basis, coverage under Tenants self-insurance policy consistent with the following minimum limits under a commercial insurance policy: The Tenant will provide a self-insurance certificate to the Landlord.

(a) Commercial General Liability Insurance covering bodily injury, and for damage to property in an amount of not less than \$1 million per occurrence, with a General Aggregate limit per location of at least \$2 million.

(b) Tenant’s Legal Liability Insurance which pertains to the care custody and control of the Premises in the amount of not less than \$100,000.

(c) Worker's Compensation Insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the State of **Texas**, and Employer's Liability Insurance in the limits required by the laws of the State of **Texas**, but in an amount not less than \$100,000 each accident, \$500,000 disease - policy limit, \$100,000 disease - each employee;

(d) Product and Completed Operations Liability Insurance sufficient to indemnify and protect Landlord from any claims related thereto.

(e) Umbrella Liability Insurance in excess of the underlying coverage listed in SubClauses (a), (b), (c) and (d) above, with limits of not less than \$3 million per occurrence/\$3 million aggregate.

(f) Such other insurance (including without limitation plate glass insurance), in such amounts and increases in the limits of the coverage required above, as Landlord’s lender may require of Tenant upon thirty (30) days' prior written notice.

21.2 **Forms of Policies.** All policies of liability insurance which Tenant is obligated to maintain according to this Lease (other than any policy of Worker's Compensation Insurance) will name Landlord, its general partner, the building manager, and such other persons or firms as Landlord specifies from time to time as additional insured, or loss payee as appropriate, and will be in a form acceptable to Landlord, without modification. Certificates of Insurance naming Landlord and any others specified by Landlord as additional insured and evidence of the payment of all premiums of such policies satisfactory to Landlord will be delivered to Landlord prior to the earlier of the Lease Commencement Date or Tenant's Interim Possession of the Premises. Tenant shall provide additional Certificate of Insurance from time to time at least thirty (30) days prior to the expiration of the term of each such policy. Tenant’s insurer shall have a Best Rating of at least “A-” and be assigned a financial size category of at least “Class VIII” as rated in the most recent edition of “Best’s Key Rating Guide” for insurance companies. All such policies maintained by Tenant will provide that they may not be terminated or amended except after thirty (30) days' prior written notice to Landlord. No insurance required to be maintained by Tenant by this Clause 21 will be subject to more than a \$500 deductible limit without Landlord's prior written consent. The policy shall be written on an “occurrence” basis and not on a “claims made” basis and shall be endorsed to provide that it is primary to and not contributory to any policies carried by Landlord. Tenant assumes all risk of damage of Tenant’s property within the Property, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or other cause.

21.3 **Environmental Insurance.** Should the activities of Tenant pose an environmental risk to the Project, Landlord may require Environmental Insurance from Tenant in amounts sufficient to cover the risk as determined by Landlord.

21.4 Should any act in or use of the Premises by Tenant cause an increase in any Landlord insurance policy, Tenant will at Landlord’s option and demand by Landlord either cease such act or use, or pay to Landlord any increase in cost of any Landlord’s insurance policies.

22. RELOCATION: Landlord shall have the right at any time, upon reasonable notice to Tenant (the "Relocation Notice"), to relocate Tenant to different premises in the Project (the "Substitute Premises"), provided that the Substitute Premises are of approximately the same size and finished substantially similar to the Premises and provided that Landlord reimburses Tenant for reasonable out-of-pocket expenses incurred by Tenant as a result of the relocation. Tenant shall provide the details of such expenses within ten (10) days after the Relocation Notice is furnished to Tenant. Tenant shall relocate to the Substitute Premises within the time set out in the Relocation Notice. Upon the date Tenant takes possession of the Substitute Premises, this Lease shall be deemed amended to provide for the Substitute Premises and all other terms and conditions of the Lease shall remain in full force and effect. Tenant agrees to execute all documents reasonably required by Landlord to reflect the relocation to the Substitute Premises

23. DEFAULT: Each of the following shall constitute an event of default by Tenant ("Default"): (1) Tenant fails to pay any installment of Rent within five (5) days after the date on which the Rent is due; (2) Tenant fails to observe or perform any of the terms and conditions of this Lease (other than the payment of Rent) after written notice from Landlord and fails to commence to cure the Default within fifteen (15) days and the Default must be cured within thirty (30) days; (3) a petition is filed by or against Tenant or Guarantor to declare Tenant or Guarantor, as the case may be, bankrupt or to seek relief from Tenant or Guarantor under any chapter of the Bankruptcy Code, as amended, or under any other law imposing a moratorium on, or granting debtor's relief with respect to, the rights of creditors; (4) Tenant or any Guarantor becomes or is declared insolvent by law or Tenant or any Guarantor makes an assignment for the benefit of creditors; (5) a receiver is appointed for Tenant or Tenant's property or for any Guarantor or any of Guarantor's property; (6) interest of Tenant in this Lease is levied upon under execution or other legal process; (7) Tenant fails to comply with the strict compliance of the Use of the Premises, as per Clause 5; or, (8) Tenant shall repeatedly default in the timely payment of Rent or any other charges required to be paid, or shall repeatedly default in keeping, observing or performing any other covenant, agreement, condition or provision of this Lease, whether or not Tenant shall timely cure any such payment or other default. For the purpose of this Subsection (8), the occurrence of similar defaults two (2) times during any twelve (12) month period shall constitute a repeated default. Any notice periods provided for under this Clause 23 shall run concurrently with any statutory notice periods and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

Upon the occurrence of an event of Default by Tenant, Landlord, at its option, without further notice or demand to Tenant, may in addition to all other rights and remedies provided herein, at law or in equity:

23(a) Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease.

23(b) Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event and to repossess Premises and to expel or remove Tenant and any others who may be occupying or be within the Premises and to remove Tenant's signs and other evidence of tenancy and all other property of Tenant therefrom without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Tenant waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord under this Lease or by operation of law.

23(c) Upon any termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including any amounts treated as additional rent under this Lease, and other sums due and payable by Tenant on the date of termination, plus as liquidated damages and not as a penalty, an amount equal to the sum of : (a) an amount equal to the then present value of the rent reserved in this Lease for the residue of the stated Term of this Lease including any amounts treated as additional rent under this Lease and all other sums provided in this Lease to be paid by Tenant, minus the fair rental value of the Premises for such residue: (b) the value of the time and expenses necessary to obtain a replacement tenant or tenants and the estimated expenses described in Section 23(d) relating to recovery of the Premises, preparation for reletting and for reletting itself, and (c) the cost of performing any other covenants which would have otherwise been performed by Tenant. No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid, unless in writing signed by Landlord.

23(d) Upon any termination of Tenant's right to possession only without termination of the Lease:

23(d).1 Neither such termination of Tenant's right to possession nor Landlord's taking and holding possession thereof as provided in Section 23(b) shall terminate the Lease or release Tenant, on whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as additional rent, under this Lease for the full Term, and if Landlord so elects Tenant shall continue to pay to Landlord the entire amount of the rent as and when it becomes due, including any amounts treated as additional rent under this Lease, for the remainder of the Term plus any other sums provided in this Lease to be paid by Tenant for the remainder of the Term.

23(d).2 Landlord shall use commercially reasonable efforts to relet the Premises or portions thereof to the extent required by applicable law. Landlord and Tenant agree that nevertheless Landlord shall at most be required to use only the same efforts Landlord then uses to lease premises in the Building generally and that in any case that Landlord shall not be required to give any preference or priority to the showing or leasing of the Premises of portions thereof over any other space that Landlord may be leasing or have available and may place a suitable prospective tenant in any such other space regardless of when such other space becomes available and that Landlord shall have the right to relet the Premises for a greater or lesser term than that remaining under this Lease, the right to relet only a portion of the

Premises, or a portion of the Premises or the entire Premises as a part of a larger area, and the right to change the character or use of the Premises. In connection with or in preparation for any reletting, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extend Landlord deems necessary or desirable, and tenant shall pay the cost thereof, together with Landlord's expenses or reletting, including, without limitation, any commission incurred by Landlord, within five (5) days of Landlord's demand. Landlord shall not be required to observe any instruction given by Tenant about any reletting or accept any Tenant offered by Tenant unless such offered tenant has a credit-worthiness acceptable to Landlord and leases the entire Premises upon terms and conditions including a rate of rent (after giving effect to all expenditure by Landlord for tenant improvements, broker's commissions and other leasing costs) all no less favorable to Landlord than as called for in this Lease, nor shall Landlord be required to make or permit any assignment or sublease for more than the current term or which Landlord would not be required to permit under the provisions of Article 16 .

23(d).3 Until such time as Landlord shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified in such case in Section 23 (c), Tenant shall pay to Landlord upon demand the full amount of all rent, including any amounts treated as additional rent under this Lease and other sums reserved in this Lease for the remaining Term, together with the costs of repairs, alterations, additions, redecorating and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including reasonable attorney's fees and broker's commissions), as the same shall then be due or become due from time to time, less only such consideration as Landlord may have received from any reletting of the Premises, and Tenant agrees that Landlord may file suits from time to time to recover any sums falling due under this Article 23 as they become due. Any proceeds of reletting by Landlord in excess of the amount then owed by Tenant to Landlord from time to time shall be credited against Tenant's future obligations under this Lease but shall not otherwise be refunded to Tenant or inure to Tenant's benefit.

23(d).4 Upon the occurrence of an Event of Default, Landlord may (but shall not be obligated to) cure such default at Tenant's sole expense. Without limiting the generality of the foregoing, Landlord may, at Landlord's option, enter into and upon the Premises if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease or to otherwise effect compliance with its obligations under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom and Tenant agrees to reimburse Landlord within five (5) days of Landlord's demand as additional rent, for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, plus interest from the date of expenditure by Landlord at eighteen (18%) percent per year.

23(e) If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney or collection agency concerning or to enforce or defend any of Landlord's rights or remedies arising under this Lease or to collect any sums due from Tenant, Tenant agrees to pay all costs and fees so incurred by Landlord, including, without limitation, reasonable attorney's fees and costs. **TENANT EXPRESSLY WAIVES ANY RIGHT TO: (A) TRIAL BY JURY; AND (B) SERVICE OF ANY NOTICE REQUIRED BY ANY PRESENT OR FUTURE LAW OR ORDINANCE APPLICABLE TO LANDLORDS OR TENANTS BUT NOT REQUIRED BY THE TERMS OF THE LEASE.**

23(f) Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

24. SURRENDER OF PREMISES:

(a) Upon the Expiration Date, termination or Default of the Lease in which Tenant's right to possession is terminated, Tenant shall surrender and vacate the Premises immediately and deliver vacant possession to Landlord in a clean, good, and tenantable condition, except for reasonable use and ordinary wear and tear. Charges incurred by Landlord for removal of material and debris left in Premises shall be at the expense of Tenant. No personal property shall be removed from the Premises unless Tenant has fulfilled all Lease obligations. If there are no amounts owed by Tenant, any movable trade fixtures, and personal property shall be removed by Tenant. All telephone, communication and data lines, cables, electrical equipment, HVAC or other upgrades owned, installed or caused to be installed by Tenant in the Premises or in the plenum of the Building shall not be removed by Tenant unless otherwise required by Landlord. Upon Tenant vacating the Premises, Tenant agrees at Landlord's option to leave all wiring properly identified. All items authorized to be removed but subsequently not removed shall, at Landlord's option, be presumed to have been abandoned by Tenant, and title thereto shall pass to Landlord, or Landlord may, at its option, either store or dispose of these items at Tenant's expense. If any improvements have been made by Tenant, with or without Landlord's approval, Tenant will, at its expense, and upon request of Landlord, restore the Premises to their original condition.

(b) No act or thing done or omitted to be done by Landlord or Landlord's agent during the Term of this Lease will constitute a constructive eviction by Landlord, nor will it be deemed an acceptance of surrender of the Premises, and no agreement to accept such termination or surrender will be valid unless signed in writing by Landlord. The delivery of keys to any employee or agent of Landlord will not operate as a termination of this Lease or a surrender of the Premises unless such delivery of keys is done in connection with a written instrument executed by Landlord approving such termination or surrender.

- 25. HOLDING OVER:** If Tenant, shall continue to occupy the Premises after the termination or Expiration of this Lease without the prior written consent of Landlord, such tenancy shall be a month to month tenancy at sufferance. During the period of any hold over tenancy by Tenant, Landlord, by notice to Tenant, may increase the Rent by **25%** for the then base rental rate for the first two months and the following months shall not exceed **50%** over the last month’s Rent of the Term. Acceptance by Landlord of any Rent after termination shall not constitute a renewal of this Lease or a consent to such hold over occupancy, nor shall it waive Landlord’s right of re-entry or any other right contained in this Lease or provided by law.
- 26. SECURITY DEPOSIT:** As security for the performance of its obligations under this Lease, Tenant upon its execution of this Lease will pay to Landlord a security deposit (“Security Deposit”) in the amount stated in Clause 1E. The Security Deposit may be applied by Landlord to cure or partially cure any Default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by promptly paying to Landlord the amount so applied. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any Default by Tenant under this Lease, nor shall it be a bar or defense to any action which Landlord may at any time commence against Tenant. Should the Project be sold or transferred, the Security Deposit will be assigned to the Purchaser or Transferee upon which Landlord shall be released from all responsibilities as they relate to the Security Deposit. Upon termination of the Lease and so long as all of Tenant’s obligations under terms and conditions of this Lease have been fulfilled, Landlord will return Tenant’s Security Deposit.
- 27. LIMITATION OF LANDLORD’S LIABILITY:** No entity or person holding Landlord’s interest under this Lease (whether or not such entity or person is named as “Landlord”) shall have any liability after such entity or person ceases to hold such interest, except for any liability accruing while such entity or person held such interest. No principal, officer, employee, or partner (general or limited) of Landlord shall have any personal liability under any provision of this Lease. If Landlord defaults in the performance of any of its obligations under this Lease or otherwise, Tenant shall look solely to Landlord’s interest in the Project and not to the other assets of Landlord or the assets, interest, or rights of any principal, officer, employee or partner (general or limited) for satisfaction of Tenant’s remedies.
- 28. NO RECORDING OF LEASE:** This Lease **MUST NOT BE RECORDED** in any official Public Records, without Landlord's written consent. However, upon request of Landlord, Tenant will execute a short form of this Lease which may be recorded which states that the terms of this Lease expressly prohibit any liability to Landlord or its property for any improvements made by, through or at the request of Tenant.
- 29. ENCUMBRANCES ON LANDLORD’S TITLE:** Tenant will not register nor permit to be registered any document that will encumber Landlord’s title to the Project in any way at any time throughout the Term. Upon request of Landlord, Tenant will promptly release, or cause to be released at Tenant’s expense, any such encumbrance. If Tenant fails to do so, Landlord may release or cause to be released such encumbrance at Tenant’s expense plus Landlord’s 15% charge for overhead. Tenant’s obligations in this Lease shall survive termination of this Lease.
- 30. NOTICES:** For the purpose of any notice or demand under this Lease, the parties shall be served by hand delivery, by overnight delivery, personal delivery or certified mail, return receipt requested, addressed to the other party at the address in Clause 1(G) whether or not Tenant has departed from, abandoned or vacated the Premises or such other addresses designated in writing by Landlord or Tenant. Any notice shall be effective when delivered. Refusal to accept any notice shall be considered receipt of notice. Any notices from Landlord shall be deemed duly given if prepared by Landlord’s attorney.
- 31. LANDLORD LIEN: Intentionally Deleted.**
- 32. SUCCESSOR AND ASSIGNS:** This Lease shall bind and inure to the benefit of the successors, assigns, heirs, executors, administrators, and legal representatives of the Parties. In the event of the sale, assignment, or transfer by Landlord of its interest in the Project or in this Lease (other than a collateral assignment to secure a debt of Landlord prior to enforcement) to a successor in interest who expressly assumes the obligations of Landlord, Landlord shall be released and discharged from all of its covenants and obligations, except such obligations as Landlord shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor of Landlord for performance of such obligations. Landlord’s assignment of the Lease or of any or all of its rights shall in no manner affect Tenant’s obligations. Landlord shall have the right to freely sell, assign or otherwise transfer its interest in the Project and/or this Lease.
- 33. NO OFFER:** This Lease is submitted to Tenant on the understanding that it will not be considered an offer by Landlord and will not bind Landlord in any way until (a) Tenant has duly executed and delivered four (4) duplicate originals to Landlord and (b) Landlord has executed and delivered one of such originals to Tenant.
- 34. JOINT AND SEVERAL LIABILITY:** If there is more than one signatory to this Lease those signatories will be jointly and severally liable for the faithful performance of all the terms and conditions of this Lease throughout the Term .
- 35. TIME IS OF THE ESSENCE:** Time is of the essence for each and every provision of this Lease.
- 36. NO WAIVER OR ACCORD AND SATISFACTION:**
- (a) No waiver by Landlord of any breach or Default of the Tenant under this Lease shall constitute a continuing waiver and Landlord may at any time insist on compliance by the Tenant.

(b) Acceptance by Landlord of Rent or other amounts due, in whole or in part, following a Default will not be deemed to be a waiver of any existing or preceding Default by Tenant of any term or condition of this Lease, regardless of Landlord's knowledge of such preceding Default at the time of acceptance of such Rent or other payment.

(c) No payment by Tenant or receipt by Landlord of a lesser amount than the full amount of any installment or payment of Rent or other amount due, shall be deemed to be anything other than a payment on account of the amount due, and no endorsement or statement on any check or payment of Rent or related to it shall be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent, or pursue any other remedies available to Landlord.

37. WAIVER OF JURY TRIAL AND ATTORNEY’S FEES: IN ORDER TO AVOID DELAYS IN RESOLVING DISPUTES THAT MAY ARISE BETWEEN THE PARTIES, LANDLORD AND TENANT WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES TO THIS LEASE AGAINST THE OTHER. IN THE EVENT OF ANY LEGAL ACTION UNDER THIS LEASE, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS COSTS AND REASONABLE ATTORNEY’S FEES.

38. LANDLORD’S DEFAULT: Should the Landlord fail to comply with a specific provision of this Lease, Tenant shall give written notice to Landlord and Landlord shall have thirty (30) days to commence to cure, failing which, Tenant shall have, as its sole remedy, the right to seek judgment from a court of competent jurisdiction to require specific performance by Landlord to cure said default. Notwithstanding anything in this Lease to the contrary, Landlord shall never be liable to Tenant in the event of a default by Landlord or otherwise under any provision of this Lease for any fines or penalties, loss of good will, loss of business, business opportunity or profits or other direct, special, incidental, indirect or consequential damages or for punitive or special damages of any kind, whether in contract, tort or otherwise.

39. BROKERS: Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises except the Broker(s) named in Clause 1H, if any. Landlord and Tenant each will indemnify the other against, and hold the other harmless from, any claims for fees or commissions from anyone with whom either of them has consulted or negotiated with regard to the Premises . Landlord will pay any fees or commissions due only to the Brokers named in Clause 1H as Landlord's Broker, unless Landlord shall expressly agree to be obligated to another broker.

40. FORCE MAJEURE: Landlord will have no liability to Tenant because of Landlord's failure to perform any of its obligations in this Lease if the failure is due to Unforeseen Causes.

41. NOTICE CONCERNING RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a structure in sufficient quantities, may present health risks to persons who are exposed to it. Levels of radon that exceed federal and state guidelines have been found in buildings in the State of **Texas**. Additional information regarding radon and radon testing may be obtainable from the county public health unit. Landlord makes no representation to Tenant concerning the presence or absence of radon gas in the Premises or the Building at any time or in any quantity. By executing this Lease, Tenant expressly releases Landlord from any loss, claim, liability, or damage now or hereafter arising from or relating to the presence at any time of such substances in the Premises or the Building.

42. CONSENT: Whenever this Lease specifies that either party has the right of consent, said consent shall be effective only if in writing and signed by the consenting party.

43. SURVIVAL OF OBLIGATIONS: Any obligations of Tenant accruing prior to the date Tenant vacates or abandons the Premises shall survive the same, and Tenant shall promptly perform all such obligations whether or not this Lease has expired or been terminated.

44. FINANCIAL REPORTS: Throughout the Term, within fifteen (15) business days after Landlord’s request, Tenant and/or Guarantor will furnish their most recent audited annual and unaudited quarterly financial statements to Landlord, prepared by an independent Certified Public Accountant.

The Tenant and/or Guarantor hereby authorize Landlord, its employees, officers and/or representatives to obtain any credit, civil and criminal information about the corporation and/or its principals.

Landlord will have the right to disclose Tenant’s and/or Guarantor’s financial statements to lenders or prospective purchasers of the Project.

45. NO PENDING CLAIMS AGAINST TENANT: Tenant hereby warrants and represents that within Tenant’s knowledge, there are no claims, causes of action or other litigation or proceeding or, to the best of Tenant’s knowledge, threatened in respect to Tenant, except for claims which are fully insured and as to which the insurer has accepted defense without reservation.

46. HAZARDOUS MATERIALS. Tenant shall never incorporate into, or dispose of, at, in or under the Premises, the Building or the Project any toxic or hazardous materials (as defined hereafter). Tenant further agrees not to use at, place in, or store at the Premises any toxic or hazardous materials, except for those toxic or hazardous materials that are either a) office supplies, b) kitchen cleaning materials that are generally considered to be a household cleaner and are purchased in a container not larger than one (1) gallon, or c) if applicable, materials incidental to the use of the Premises as set forth in Section 5 of this Lease, and then only if (i) all such toxic or hazardous materials, supplies and materials are properly labeled and contained, (ii) all such toxic or hazardous materials are stored, handled, transported and disposed of in accordance with highest accepted industry standards and all applicable laws, rules and regulations, and (iii) if a

material safety data sheet is required under applicable laws to accompany the toxic or hazardous materials, supplies or materials, a copy of such current material safety data sheet is provided to Landlord. For purposes of this Lease, “toxic or hazardous materials” shall mean hazardous or toxic chemicals or any materials containing hazardous or toxic chemicals at levels or content which cause such materials to be classified as hazardous or toxic as then prescribed by the highest industry standards or by the then current levels or content as set from time to time by the U.S. Environmental Protection Agency (“EPA”) or the U.S. Occupational Safety and Health Administration (“OSHA”) or as defined under 29 CFR 1910 or 29 CFR 1925 or other applicable governmental laws, rules or regulations. In the event there is a spill of toxic or hazardous materials (other than permitted office supplies and kitchen cleaning supplies) at the Premises, the Building or the Project, Tenant shall notify Landlord of the method, time and procedure for any clean-up and removal of such toxic or hazardous materials; and, Landlord shall have the right to require reasonable changes in such method, time or procedure. In the event there is a spill of a toxic or hazardous material that comes from office supplies in the Premises, Tenant shall notify Landlord if the spill would in any way endanger or pose a threat to Tenant’s employees, Building maintenance or custodial personnel, other Building tenants or the general public. In the event of any breach of this provision by Tenant or any contamination of the Premises, the Building or the Project, by Tenant, Tenant shall pay all costs for the removal or abatement or clean-up of any toxic or hazardous materials at the Premises, the Building and the Project. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Tenant, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time a Landlord’s request concerning Tenant’s best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the Premises occurring while Tenant is in possession or elsewhere to the extent caused by Tenant or persons acting under Tenant. This Paragraph 46 shall survive the expiration or any termination of this Lease.

47. OPTION TO RENEW: Provided that Tenant is not in Default of any of the terms and conditions of this Lease, at anytime during the Term then Landlord grants to Tenant **two (2) options to renew** this Lease (“Option to Renew”) for a further period of **three (3) year each** commencing upon the expiration of the immediately prior Term, under the same terms and conditions as in this Lease save and except for Monthly Base Rent which shall be **at Fair Market Value for the Premises**. To be valid, Tenant must deliver to the Landlord at least nine (9) months prior the Expiration Date of the prior Term a written notice of its intention to exercise the Option to Renew, failing which the said Option to Renew shall become null and void and of no further effect.

48. DEFERRED RENT: The Monthly Base Rent for the first **seven (7) months** of the Initial Lease Term shall be deferred (“Deferred Rent”), and if Tenant fully and faithfully complies with all terms and conditions of this Lease throughout the Term, the Deferred Rent shall be, after the expiration of this Lease, forgiven. However, Tenant shall pay all additional Rent, other costs and expenses due by Tenant under the Lease.

49. RIGHT OF FIRST REFUSAL: Tenant is granted an ongoing Right of First Refusal to lease all contiguous space in the building. Said Right of First Refusal may be exercised by Tenant in the event that Landlord receives an Offer from a Third Party to lease any contiguous space which Offer Landlord is ready to accept (“Offer”). In the event Landlord is ready to accept the Offer then Landlord shall deliver to Tenant a Notice with its intention to accept the Offer (“Notice”) and the Notice shall be open for acceptance by Tenant for a period of ten (10) business days (“Acceptance Period”). The Right of First Refusal shall be deemed accepted if Tenant agrees to the same terms and conditions of the Offer within the Acceptance Period.

50. TERMINATION OPTION: Tenant shall have the right to terminate the lease after the 89th month of paid rent following Lease Commencement Date. Should tenant terminate, Tenant must provide Landlord 6 months prior written notice. Tenant shall be responsible to reimburse landlord for any unamortized tenant improvement costs, leasing commissions and Deferred Rent (see attached Exhibit J).

51. TRIPLE NET LEASE: It is the intention of the parties that this Lease shall be triple net to Landlord and that Tenant shall pay on its own account, to the complete exoneration of Landlord all costs and expenses affecting the Premises and the business carried on therein, as well as all other charges, expenses and amounts as are set forth in the Lease.

52. GOVERNING AUTHORITY: The Lease shall be construed and governed in accordance with the laws of the State of **Texas** and Tenant agrees to abide by all local, state and federal laws.

53. CAPTIONS: The captions in this Lease are for convenience only and in no way define, limit, construe or describe the scope or intent of the provisions of this Lease, unless otherwise determined by Landlord.

54. NONAPPROPRIATION. Landlord acknowledges that Tenant is a governmental subdivision of the State of Texas. As a governmental unit, Tenant’s obligations under this Lease are contingent upon the appropriation of funds by the Tenant’s legislative body. Notwithstanding anything in this Contract to the contrary, all obligations of Tenant to perform hereunder are subject to the appropriation of sufficient funds for such performance. Failure of the legislative body to appropriate funds to the Tenant sufficient to perform obligations herein shall relieve the Tenant from all such obligations during the term of the nonappropriation and shall terminate this Lease.

55. CONFIDENTIALITY: Notwithstanding any provision of this Agreement, the Parties acknowledge that the Tenant, as a governmental entity, is required to comply with the Texas Public Information Act (“TPIA”) when responding to records requests made under TPIA. Pursuant to the requirements of TPIA, if the Tenant receives a request for information which the Landlord has marked or identified as being confidential, trade secret, commercial, financial or proprietary information, Tenant will respond to the request in accordance with the procedures set forth in the TPIA.

Specifically, Tenant will notify the Landlord of its receipt of the request. The Parties acknowledge that TPIA requires a brief to be submitted to the attorney general explaining why the claimed exceptions apply to the information in issue. Tenant shall not be obligated to submit the brief supporting those claimed exceptions. The Landlord shall be solely responsible for submitting the brief and the documents in issue to the attorney general. Nothing in this agreement shall require Tenant to institute or participate in any litigation relating to an opens records request for information that Landlord considers to be confidential.

55. ENTIRE AGREEMENT: This Lease, the Exhibits, the Schedules and incorporated addenda contain the entire agreement between Landlord and Tenant and there are no other agreements, either oral or written. This Lease shall not be modified or amended except by a written document signed by Landlord and Tenant which specifically refers to this Lease. If any provision of this Lease or amendment is invalid or unenforceable in any instance, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision. All Exhibits, Schedules and addenda contained or attached to this Lease shall be deemed to be a part of and are incorporated in this Lease by reference.

- Exhibit A- The Leasing Plan
- Exhibit B- Legal Description of the land
- Exhibit C - Work Letter- Tenant Performs Work
- Exhibit D- Rules and Regulations
- Exhibit E- Lease Commencement Date Certificate
- Exhibit F- Guaranty, if attached
- Exhibit G- Sign Criteria
- Exhibit H- Substantial Completion Certificate
- Exhibit I- Tenant Resolution and Corporate Charter
- Exhibit J- Penalty Schedule, if attached
- Exhibit K- Work Letter- Landlord Performs Work, if attached
- Exhibit L- Texas Provisions

THE PROVISIONS CONTAINED IN Clauses 1 through 55 are incorporated into and become a part of this Lease by reference.

TENANT:

City of Garland (SEAL)

LANDLORD

Shana Tova Realty ADA Compliant Limited Partnership,
A Texas Limited Partnership
By: Dalfen Firewheel Enterprises Inc., (SEAL)
A Canadian Corporation, as its sole general partner

By: _____
Print Name: _____

Title: _____

Date: _____

By: _____
Print Name: _____

Title: President

Date: _____

WITNESSES AS TO TENANT:

Signed and Sealed in the presence of:

(1) _____
Print Name: _____

(2) _____
Print Name: _____

WITNESSES AS TO LANDLORD:

Signed and Sealed in the presence of:

(1) _____
Print Name: _____

(2) _____
Print Name: _____