

# Memorandum



CITY OF DALLAS

DATE May 22, 2020

TO Honorable Mayor and Members of the City Council

SUBJECT **Upcoming Agenda Item #21, Supplemental Agreement #2 to Multiple Use Agreement with TxDOT**

## **Background**

In December 1992, the City Council authorized a Multiple Use Agreement (MUA) with the Texas Department of Transportation (TxDOT) to permit the construction, maintenance and operation of a combination of parking lots and public parks on the highway right-of-way of IH-45 and IH-345 near Martin Luther King Boulevard to Good Latimer Expressway, then from Corinth Street to Spur 366 by Resolution No. 92-4298. The City and TxDOT executed the First Amendment to the MUA on July 11, 2019 to allow the City to carry out certain environmental measures for the future Carpenter Park in agreement with the Texas Commission on Environmental Quality (TCEQ). A copy of the First Amendment is attached as **Attachment 1**.

In November of 2018, TxDOT made a request for the City to amend the MUA to remove a section under IH-345 bordered by Henry Street, Taylor Street, and Canton Street, which is referred to as "Lot D" in order for TxDOT to recapture that section and provide alternative use by leasing it for recreational purposes. Department of Transportation staff briefed the Mobility Solutions, Infrastructure & Sustainability (MSIS) Committee in February 2019, and again in June 2019. The item was for informational purposes with the goal to move the item forward for full City Council consideration.

Since then, staff has worked with the City Attorney's office to draft agreements to amend the MUA. During the review process to remove only the land requested by TxDOT, City staff encountered two additional projects that would require amendments to the original MUA. Thus, Supplemental Agreement II was drafted to include the two additional projects instead of creating three separate amendments to the MUA.

The two additional projects that were added to the amendment are as follows:

- *to permit development of a portion of Carpenter Park within the right-of-way of Interstate Highway (IH) 345 and for the State to officially acknowledge the new design for Carpenter Park and formally permit its construction and ongoing use for the portion that lies within the State right-of-way.*
- *to add right-of-way to the MUA land adjacent to IH-45 between Martin Luther King Jr. Boulevard and Pennsylvania Avenue. This area is part of a larger community effort to activate and improve the neighborhood.*

DATE May 22, 2020  
SUBJECT **Upcoming Agenda Item #21, Supplemental Agreement #2 to Multiple Use Agreement with TxDOT**

Staff prepared an agenda item for City Council action for the May 27, 2020 meeting after briefing it to the Transportation and Infrastructure (TRNI) Committee on Monday, May 18, 2020. During the Committee meeting, concerns were raised about the following:

- TxDOT right-of-way (ROW) sale/ lease process
- Concept of use for the land being taken out of the MUA (Lot “D”)
- Deep Ellum Foundation’s long-term parking needs
- The ability to separate the three independent changes to the MUA
- Public input for IH-45 and IH-345
- Revision clause from TxDOT
- Air quality under IH-345

TxDOT ROW sale/leases process:

In conversations with TxDOT staff, they indicated that the sale of State surplus land follows a rigorous public process and public agencies typically have first right of refusal to acquire such land. Land not deemed surplus can be leased to public and private entities following TxDOT’s process that is unique to the State. For Lot “D”, TxDOT can lease directly to a private entity if the private entity meets TxDOT’s qualifications. Following the TRNI Committee meeting, TxDOT provided a copy of the proposed lease for Lot “D” with the private entity, a copy of which is included as **Attachment 2**.

Concept of use for the land being taken out of the MUA (Lot “D”):

The proposed amended MUA is to release TxDOT’s land from City liability for Lot “D” and TxDOT will recapture it. During the TRNI Committee meeting, several Councilmembers indicated uncertainty about the City’s current use and rights to the site. A portion of the original MUA which outlines the City’s limited rights to the site is included below:

14. USE OF RIGHT-OF-WAY

It is to be understood that the State by execution of this agreement does not impair or relinquish the State’s right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

Upon approval of the amended MUA, TxDOT would engage with the third-party developer to complete the work for their proposed development on Lot “D.”

Deep Ellum Foundation’s long-term parking concerns:

Transportation staff has toured the potential parking Lot “E” area with a representative from the North Central Texas Council of Governments (NCTCOG) to discuss a parking lot development plan, potential funding sources, and a construction timeline specific to that lot. The City worked with NCTCOG to secure \$10- \$15 million with the intention to

DATE May 22, 2020  
SUBJECT **Upcoming Agenda Item #21, Supplemental Agreement #2 to Multiple Use Agreement with TxDOT**

improve mobility circulation and transportation elements for the area around the Uber facilities to include the development of Lot “E.” When the City is ready to develop, staff will work with NCTCOG to secure the funding and construction of a smart parking facility with over 700 parking spaces intended to support businesses and residents in Deep Ellum and surrounding areas. **Attachment 3** is included to show the proximity of Lots “D” and “E”.

*The ability to separate the three independent changes to the MUA:*

The City Council may choose to separate and approve each amendment independent of other amendments. Since the amendments are a two-party agreement with TxDOT, they may or may not agree to separate them. TxDOT’s initial indication is to approve all amendments together.

*Public input for IH-45 & IH-345:*

The Real Estate Council (TREC) is leading a process to develop a reimagined MLK Boulevard. TREC is working with community stakeholders such as St. Phillips Community School to bring greater housing opportunities as well as economic vitality adjacent to the MLK corridor around IH-45. Public meetings have been coordinated through TREC and the community. For the IH-345 feasibility study, TxDOT has held several workshops during the past few months to solicit input from the public about the future state of IH-345 and received hundreds of comments. City staff attended the workshops and provided feedback. TxDOT anticipates holding the next round of feasibility study public meetings in the fall of 2020.

*Revision Clause from TxDOT:*

Language in the amendment states that if the property is not utilized by the proposed developer, the property will revert to City use for parking and/or Parks:

*“In the event that the property is no longer in use by the proposed developer, this area will revert back to the City of Dallas as shown in the original agreement.”*

*Air Quality Under IH-345:*

In a memo dated June 7, 2019 to the MSIS Committee, provided as **Attachment 4**, City staff from the Department of Transportation and the Office of Environmental Quality and Sustainability shared their communication with the Environmental Protection Agency (EPA) to obtain a recent Air Quality Report of the Dallas area from their nearest test site at the Convention Center. According to the EPA, the proposed land under the highway is expected to meet all national standards to protect human health and welfare according to the applicable National Ambient Air Quality Standards. No site-specific studies have been conducted on Lot “D” or any other facility the City utilizes under IH-345.

**Next Steps**

The item will be presented before the City Council for approval on May 27, 2020. Staff will continue to work NCTCOG, Deep Ellum Foundation, and other stakeholders to further

DATE May 22, 2020  
SUBJECT **Upcoming Agenda Item #21, Supplemental Agreement #2 to Multiple Use Agreement with TxDOT**

develop a schematic design plan for additional parking in the area to include Lot "E". Staff will also work with TREC to provide enhanced project communication.

If you have any questions or need additional information, please contact Michael Rogers, Director of the Department of Transportation, at [michael.rogers@dallascityhall.com](mailto:michael.rogers@dallascityhall.com).



Majed Al-Ghafry, P.E.  
Assistant City Manager

[Attachments]

c: T.C. Broadnax, City Manager  
Chris Caso, City Attorney  
Mark Swann, City Auditor  
Biliera Johnson, City Secretary  
Preston Robinson, Administrative Judge  
Kimberly Bizer Tolbert, Chief of Staff to the City Manager  
Jon Fortune, Assistant City Manager

Joey Zapata, Assistant City Manager  
Nadia Chandler Hardy, Assistant City Manager  
Dr. Eric A. Johnson, Chief of Economic Development and Neighborhood Services  
M. Elizabeth Reich, Chief Financial Officer  
Laila Alequresh, Chief Innovation Officer  
M. Elizabeth (Liz) Cedillo-Pereira, Chief of Equity and Inclusion  
Directors and Assistant Directors

MULTIPLE USE AGREEMENT  
BETWEEN  
CITY OF DALLAS  
AND  
TEXAS DEPARTMENT OF TRANSPORTATION  
CONCERNING  
RIGHT-OF-WAY OF I.H. 45 AND I.H. 345, DALLAS COUNTY

FIRST AMENDMENT

WHEREAS, the Texas Department of Transportation ("State") and the City of Dallas ("City") entered into a Multiple Use Agreement, effective December 15, 1992 ("Multiple Use Agreement"), concerning the City's use of certain highway right-of-way of I.H. 45 and I.H. 345 in Dallas County. The agreement concerned the right-of-way from near Martin Luther King Boulevard to Good Latimer Expressway, and from Corinth Street to Spur 366, and the City's construction, maintenance and operation of parking lots and public parks;

WHEREAS, the City operates and maintains John W. Carpenter Park located at 2300 Live Oak Street in Dallas. Exhibit A attached to this First Amendment shows the location of the park, and that the western portion of the park is on land owned by the City; the eastern portion is on land owned by the State; the City operates and maintains the portion of the park on State property according to the Multiple Use Agreement; and

WHEREAS, the City desires to redevelop Carpenter Park, both the portion owned by the City and the portion owned by the State, including carrying out certain environmental measures agreed to between the City and the Texas Commission on Environmental Quality ("TCEQ").

AGREEMENT

1. This First Amendment of the Multiple Use Agreement solely concerns the portion of Carpenter Park that is on property owned by the State, as shown in Exhibit A. The First Amendment does not apply to any other portion of the right-of-way that is the subject of the Multiple Use Agreement.

2. The City may submit an application concerning Carpenter Park (including State-owned property) under the Voluntary Cleanup Program (the "VCP") administered by the TCEQ. The general scope of work and description of the affected properties is shown in the attached Exhibit B.

3. Prior to submitting any significant document to TCEQ (for example, the application) the City shall submit it to TxDOT for its review and approval.

4. The City is solely responsible for the work and costs that are the result of the City submitting the application.

5. The City will provide to TxDOT a copy of all written materials submitted to TCEQ, and will inform TxDOT on a regular basis concerning the status of the application.

6. By entering into this First Amendment, TxDOT does not agree to any restrictive covenant, deed notice, or any other restriction on the use of State-owned property.

7. The State will reasonably cooperate with the City, its consultants, and the TCEQ to facilitate the VCP process.

8. Except as set forth in this First Amendment, the Multiple Use Agreement remains in effect.

EXECUTED as of this, the 11<sup>th</sup> day of July, 2019 by City, signing by and through its City Manager, duly authorized to execute same by Administrative Action No. 18-6202, on June 24 2019 and by Consultant acting through its duly authorized official.

APPROVED AS TO FORM:

CHRISTOPHER J. CASO

Interim City Attorney

BY: Christine Lanne  
C.C.

Interim City Attorney

CITY OF DALLAS

T. C. BROADNAX

City Manager

BY: T. C. Broadnax

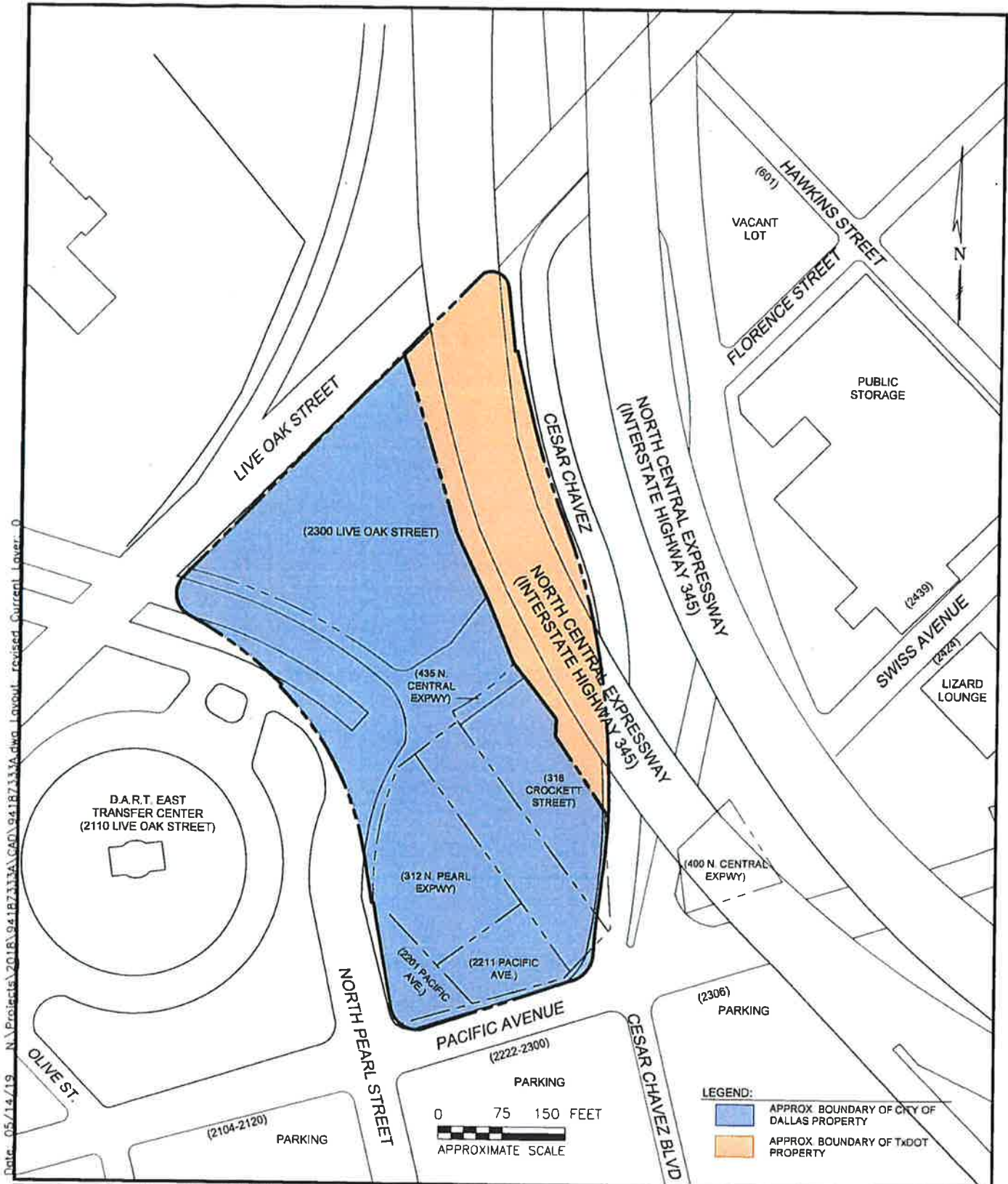
City Manager

TEXAS DEPARTMENT OF TRANSPORTATION

BY Alanna S. Betts

PRINTED NAME Alanna Betts

TITLE Contracts + MMS Support Section Director, MNT



Date: 05/14/19 N:\Projects\2018\94187333\CAD\94187333.dwg Layout - revised Current Layer: 0

Project Mgr	LWC	Project No	94187333
Drawn By	CDD	Scale	AS SHOWN
Checked By	LWC	Date	05/14/19
Approved By	LWC		

**Terracon**  
 Consulting Engineers and Scientists  
 (Registration No. F-3272)  
 8901 CARPENTER FREEWAY DALLAS, TEXAS 75247  
 PH (214) 630-1010 FAX (214) 630-7070

**SITE DIAGRAM**  
 CARPENTER PARK  
 2300 LIVE OAK STREET  
 DALLAS, DALLAS COUNTY, TEXAS

EXHIBIT  
**A**



May 14, 2019 - revised  
August 31, 2018 - original

Ms. Deborah Nixon  
Environmental Specialist  
Hazardous Materials SME  
Dallas District- Advanced Project Development (APD)  
Texas Department of Transportation  
4777 E. Highway 80  
Mesquite, Texas 75150-6643

Re: Voluntary Cleanup Program (VCP) Participation Request-Revised  
Carpenter Park  
2300 Live Oak Street, 312 N. Pearl Expressway, 435 N. Central Expressway, 2201 and  
2211 Pacific Avenue, and 318 Crocket Street  
Dallas, Texas  
Terracon Project No. 94187333A

Dear Ms. Nixon:

Terracon Consultants, Inc. (Terracon) recently conducted a Limited Site Investigation (LSI) for the above-referenced site on behalf of the City of Dallas. A link to Terracon's LSI is provided in the enclosure notation at the end of this letter. The site consists of six tracts of land including a portion of property currently owned by the Texas Department of Transportation (TxDOT), namely the right-of-way (ROW) beneath the elevated section of Interstate Highway 345, totaling approximately 5.70 acres. In general, the western portion of the site is owned by the City of Dallas and the eastern portion of the site is owned by TxDOT. Attached for reference is a figure (Figure 1) which generally depicts the areas owned by the City of Dallas and that owned by TxDOT. The City of Dallas intends to redevelop the site, both City of Dallas and TxDOT owned properties, to improve and expand Carpenter Park.

As part of Terracon's LSI, a total of 6 soil borings (SB-1, SB-3, SB-4, SB-5, SB-7, and SB-8) and 5 monitoring wells (MW-1, MW-2, MW-2A, MW-4, and MW-8) were installed across both City of Dallas and TxDOT property to evaluate potential releases associated with recognized environmental conditions (RECs) identified in Terracon's Phase I Environmental Site Assessment (ESA – Project No. 94177545), dated July 18, 2017 and revised July 21 and September 11, 2017. More specifically, 2 monitoring wells (MW-1 and MW-4) were installed on TxDOT property. Attached for referenced is a figure (Figure 2) which depicted the properties as well as the RECs, soil boring and monitoring well locations, and the existing mounded areas. It should be noted that the LSI was conducted across a larger tract of land, originally anticipated to be a part of Carpenter Park. Since completion of the LSI, the boundaries of Carpenter Park have been reduced to those depicted in the attached figures.

Terracon Consultants, Inc. 8901 Carpenter Freeway, Suite 100 Dallas, Texas 75247  
P (214) 630 1010 F (214) 630 7070 terracon.com



**VCP Participation Request**

Carpenter Park ■ Dallas, Texas

May 14, 2019 ■ Terracon Project No. 94187333A

**Terracon**

Various chemicals of concern were detected at both the City of Dallas and TxDOT properties but did not exceed their respective Texas Risk Reduction Program (TRRP) Action Levels, with the exception of arsenic, lead, and silver, of which arsenic and lead were detected in soils on TxDOT property. Terracon conducted additional analysis and further evaluation of the soil analytical data collected to date. For reference, attached are tables which summarize the soil and groundwater data for TxDOT property. Based on the findings, it can be reasonably anticipated that metals concentrations will not exceed TCEQ risk-based criteria and the site, including the TxDOT property, are anticipated to receive regulatory closure without the need for further investigation or response action.

Based on the results of Terracon's LSI, the City of Dallas intends to enroll the site, including TxDOT property, into the TCEQ Voluntary Cleanup Program (VCP) with the goal of achieving Residential Remedy Standard A regulatory closure. This form of closure will not result in activity and use limitations (AULs) and will allow for unrestricted use of the properties. The City of Dallas desires to enroll the entire site, including TxDOT owned properties, into the VCP as one contiguous site representing the future Carpenter Park. The City of Dallas respectfully requests TxDOT's approval to enroll the site into the VCP, acting upon TxDOT's behalf. Terracon will complete the VCP application, agreement and core data form. The City of Dallas will be named as "Applicant A". The cost to enroll the site into the VCP and pursue regulatory closure will be incurred by the City of Dallas.

Should you have any questions or require additional information, please do not hesitate to contact our office.

Sincerely,  
Terracon Consultants, Inc.



Lance Crabtree, P.G.  
Senior Project Manager

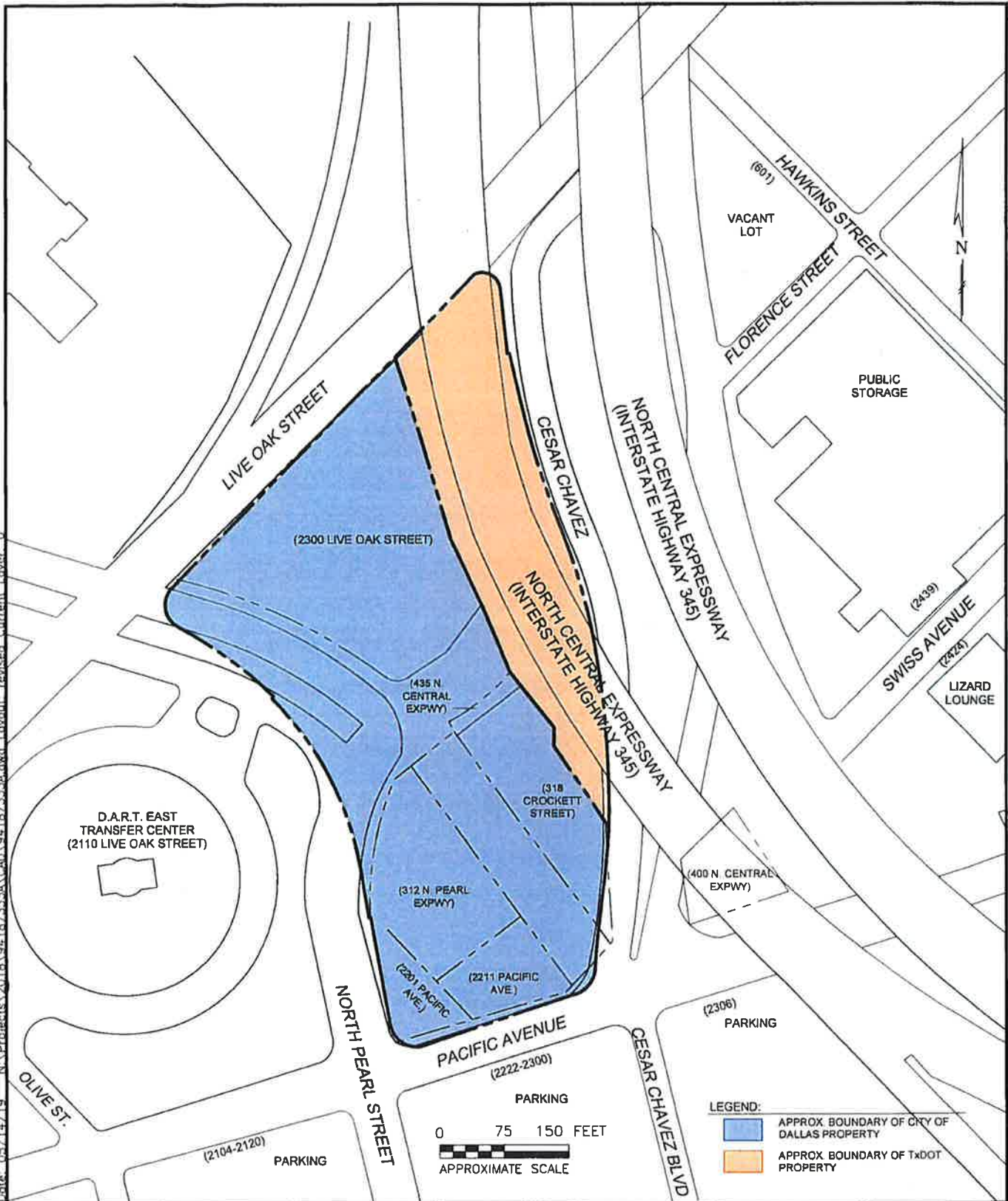


Michael Nibert, CHMM, C.E.M.  
Group Manager

## Enclosures:

- Figure 1-Site Diagram (depicting City of Dallas and TxDOT properties)
- Figure 2-Site Diagram with Features (depicting City of Dallas and TxDOT properties, RECs, soil boring and monitoring well locations, and mounded areas)
- Table 1-Soil Analytical Summary (TxDOT property only)
- Table 2-Groundwater Analytical Summary (TxDOT property only)
- Terracon Limited Site Investigation, dated August 31, 2018
- <https://terracon.sharefile.com/d-s8d5538411d94e369>

Date: 05/14/19 N:\Projects\2018\94187333A\CAD\94187333A.dwg Layout: revised\_Current Layer: 0



Project Mgr	LWC
Drawn By	CDD
Checked By	LWC
Approved By	LWC

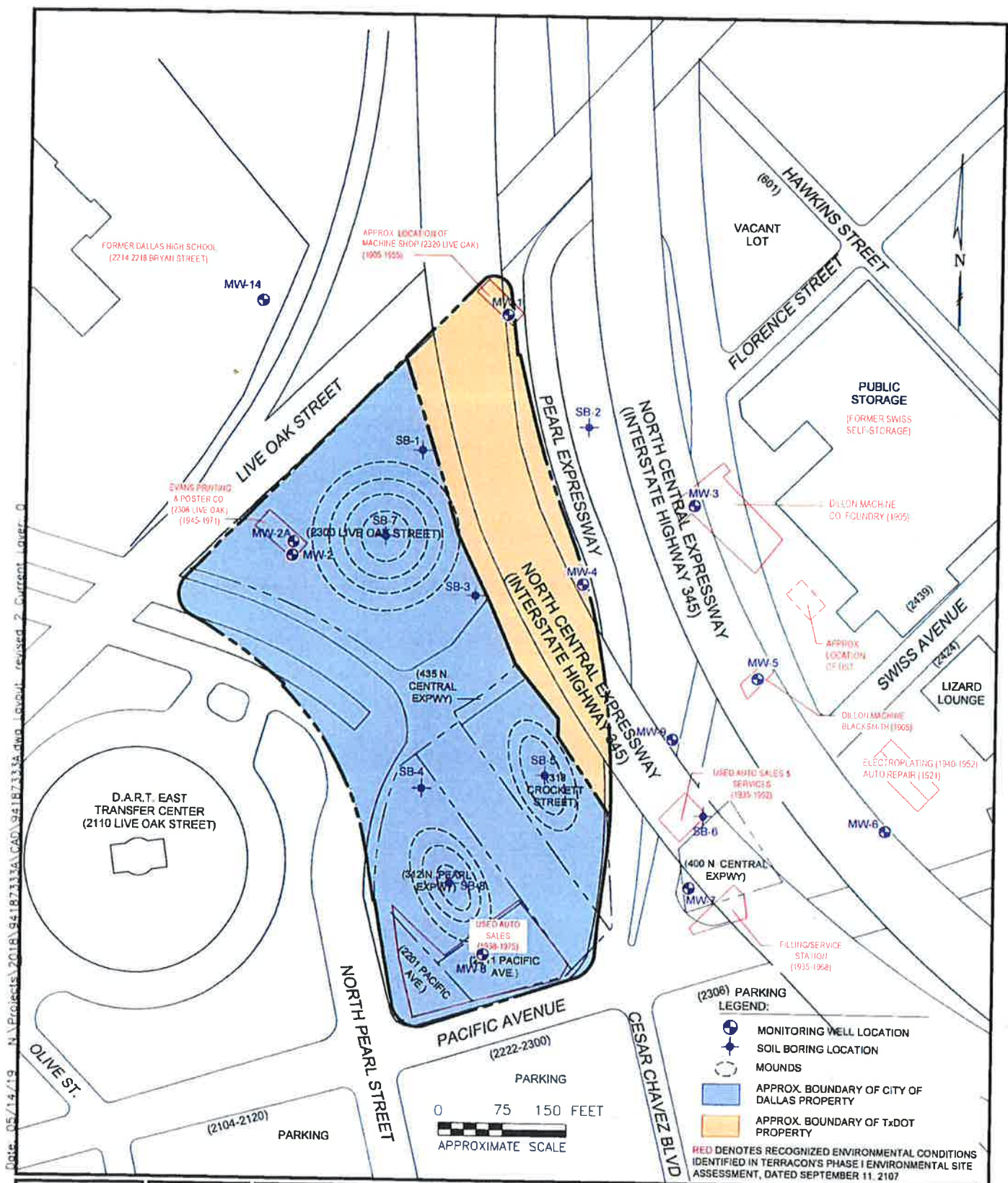
Project No	94187333
Scale	AS SHOWN
Date	05/14/19

**Terracon**  
 Consulting Engineers and Scientists  
 (Registration No. F-3272)  
 6901 CARPENTER FREEWAY DALLAS, TEXAS 75247  
 PH (214) 630-1010 FAX (214) 630-7070

**SITE DIAGRAM**

CARPENTER PARK  
 2300 LIVE OAK STREET  
 DALLAS, DALLAS COUNTY, TEXAS

FIGURE	1
--------	---



Date: 05/14/19 N:\Projects\2018\94187333\CAD\94187333.dwg Layout - revised 2 - Current Layer: 0

Project Mgr	LWC	Project No	94187333
Drawn By	CDD	Scale	AS SHOWN
Checked By	LWC	Date	05/14/19
Approved By	LWC		

**Terracon**  
Consulting Engineers and Scientists  
(Registration No. F-3272)  
8801 CARPENTER FREEWAY DALLAS, TEXAS 75247  
PH (214) 836-1010 FAX (214) 636-7070

**SITE DIAGRAM WITH FEATURES**  
CARPENTER PARK  
2300 LIVE OAK STREET  
DALLAS, DALLAS COUNTY, TEXAS

**FIGURE**  
**2**

Table 1  
Soil Analytical Summary  
Carpenter Park - TxDOT Property  
Dallas, Texas  
Project No. 94187333

Chemical of Concern	CAS Number	TRRP Action Level <sup>1</sup>	TRRP Action Level <sup>1</sup>	
			MW-1	MW-4
			1-3 2/6/2013	0-1 2/7/2016
<b>Metals (mg/kg)</b>				
Antimony	7440-36-0	5.4	—	—
Arsenic	7440-38-2	5.8	11.8	3.48
Barium	7440-39-3	440	107	97.7
Beryllium	7440-41-7	1.8	—	—
Cadmium	7440-43-0	1.5	1.12 J	0.2228 J
Chromium, Total	7440-47-3	2400	17.8	8.73
Chromium, Hexavalent	18540-29-9	28	—	—
Copper	7440-50-8	1000	—	—
Lead	7439-92-1	15	188	238
Nickel	7440-02-0	160	—	—
Selenium	7782-49-2	2.3	0.645 J	< 0.505 U
Silver	7440-22-4	0.48	0.325 J	0.228 J
Thallium	7440-28-0	1.7	—	—
Zinc	7440-66-8	2400	—	—
Mantury (pH=8.6)	7478-97-8A	2.1	8.512	0.269
<b>Cyanide (mg/kg)</b>				
Cyanide	57-12-5	40	—	—
<b>Biothetic Precipitation Leaching Procedure (BPLP) (mg/L)</b>				
Arsenic	7440-38-2	0.01	0.00494	—
Lead	7439-92-1	0.015	—	0.0716
Silver	7440-22-4	0.12	—	—
<b>Total Petroleum Hydrocarbons (TPH) (mg/kg)</b>				
C6-C12	TPH-1005-1	65	< 9.34 U	< 8.38 U
C12-C28	TPH-1005-2	200	48.8 J	< 6.38 U
C28-C35	TPH-1005-4	200	147	< 8.38 U
C6-C35	NA	NA	184	< 8.38 U
<b>Volatiles Organic Compounds (VOCs) (mg/kg)</b>				
Benzene	71-43-2	0.026	< 0.000156 U	< 0.000133 U
Bromobenzene	108-95-1	2.3	< 0.00660 U	< 0.000372 U
Bromochloromethane	74-97-5	3	< 0.000474 U	< 0.000403 U
Bromodichloromethane	75-27-4	0.065	< 0.000265 U	< 0.000225 U
Bromotoluene	75-25-2	0.63	< 0.000697 U	< 0.000593 U
Methyl bromide	74-83-9	0.13	< 0.00105 U	< 0.000897 U
2-Butanone (MEK)	78-93-3	20	< 0.00291 U	< 0.00247 U
tert-Butylbenzene	96-09-8	100	< 0.00462 U	< 0.000175 U
sec-Butylbenzene	135-68-8	85	< 0.0110 U	< 0.000418 U
n-Butylbenzene	104-51-8	150	< 0.0447 U	< 0.00170 U
Carbon Tetrachloride	56-23-5	0.082	< 0.000233 U	< 0.000188 U
Chlorobenzene	108-90-7	1.1	< 0.000239 U	< 0.000203 U
Chloroethane	75-00-3	31	< 0.000547 U	< 0.000468 U
Chloroform	67-66-3	11	< 0.000292 U	< 0.000248 U
Methyl Chloride	74-87-3	0.41	< 0.000258 U	< 0.000225 U
2-Chlorobutane	95-49-8	9.1	< 0.00478 U	< 0.000333 U
4-Chlorobutane	106-43-4	11	< 0.00683 U	< 0.000373 U
p-Cymene (p-isopropyltoluene)	99-87-6	230	< 0.00941 U	< 0.000357 U
1,2-Dibromo-3-Chloropropane	96-12-8	0.0017	< 0.0347 U	< 0.00132 U
Dibromochloromethane	124-48-1	0.049	< 0.000472 U	< 0.000401 U
1,2-Dibromothane	109-83-4	0.00021	< 0.000422 U	< 0.000398 U
Methylene bromide	74-95-3	1.1	< 0.000351 U	< 0.000299 U
1,2-Dichlorobenzene	95-50-1	18	< 0.00844 U	< 0.000354 U
1,3-Dichlorobenzene	541-73-1	8.7	< 0.00831 U	< 0.000315 U
1,4-Dichlorobenzene	106-46-7	2.1	< 0.00532 U	< 0.000202 U
Dichlorodifluoromethane	75-71-8	240	< 0.000425 U	< 0.000361 U
1,2-Dichloroethane	107-06-2	0.014	< 0.000350 U	< 0.000298 U
1,1-Dichloroethane	75-34-3	18	< 0.000201 U	< 0.000171 U
trans-1,2-dichloroethylene	156-60-5	0.49	< 0.000292 U	< 0.000248 U
cis-1,2-Dichloroethylene	156-60-5	0.25	< 0.000292 U	< 0.000248 U
1,1,1-Dichloroethane	75-28-4	0.69	< 0.000201 U	< 0.000201 U
2,2-Dichloropropane	59-42-7	0.12	< 0.00118 U	< 0.00100 U
1,3-Dichloropropane	142-28-0	0.084	< 0.000249 U	< 0.000212 U
1,2-Dichloropropane	78-87-5	0.023	< 0.000471 U	< 0.000401 U
trans-1,3-dichloropropane	10051-02-0	0.036	< 0.000300 U	< 0.000258 U
1,1-Dichloropropane	563-56-6	0.13	< 0.000422 U	< 0.000359 U
cis-1,3-Dichloropropane	10051-01-5	0.0068	< 0.000427 U	< 0.000383 U
Cyclohexane	100-41-4	7.6	< 0.000429 U	< 0.000365 U
Hexachlorobutadiene	87-68-3	3.3	< 0.0447 U	< 0.00170 U
hexachlorobenzene	98-82-8	350	< 0.000187 U	< 0.000142 U
Methylene Chloride	75-00-2	0.013	< 0.00499 U	< 0.00424 U
MTBE	1634-04-4	0.82	< 0.000098 U	< 0.000084 U
Naphthalene	91-20-3	31	0.8978 J	< 0.00170 U
n-Propylbenzene	103-65-1	45	< 0.00401 U	< 0.00152 U
Styrene	100-42-5	3.3	< 0.00150 U	< 0.00127 U
1,1,1,2-Tetrachloroethane	630-02-8	1.4	< 0.000408 U	< 0.000345 U
1,1,2,2-Tetrachloroethane	79-34-5	0.023	< 0.0103 U	< 0.000389 U
Tetrachloroethylene	127-18-4	0.05	< 0.000255 U	< 0.000217 U
Toluene	108-88-3	8.2	< 0.000098 U	< 0.000049 U
1,2,3-Trichlorobenzene	87-81-6	28	< 0.0447 U	< 0.00170 U
1,2,4-Trichlorobenzene	120-82-1	4.8	< 0.0447 U	< 0.00170 U
1,1,1-Trichloroethane	79-00-5	0.02	< 0.000325 U	< 0.000278 U
1,1,1-Trichloroethane	71-56-9	1.8	< 0.000338 U	< 0.000287 U
Trichloroethylene	79-01-6	0.034	< 0.000328 U	< 0.000277 U
Trichlorofluoromethane	75-69-4	130	< 0.000484 U	< 0.000412 U
1,2,3-Trichloropropane	96-18-4	0.00053	< 0.0197 U	< 0.000098 U
1,2,4-Trimethylbenzene	95-63-6	33	< 0.00252 U	< 0.0000958 U
1,3,5-Trimethylbenzene	108-97-6	30	< 0.00889 U	< 0.000337 U
Vinyl Chloride	75-01-4	0.022	< 0.000825 U	< 0.000702 U
m-Xylene	95-47-6	7.1	< 0.000499 U	< 0.000424 U
p-Xylene	119601-23-1	0	< 0.000608 U	< 0.000842 U
Total Xylenes	1330-20-7	120	< 0.000499 U	< 0.000474 U
<b>Polyaromatic Hydrocarbons (PAHs)</b>				
Acenaphthene	83-32-9	240	0.9233	0.6385
Acenaphthylene	208-69-8	410	8.123	0.5832
Anthracene	120-12-7	6900	0.192	0.148
Benzo[a]anthracene	56-55-3	41	0.846	0.409
Benzo[a]pyrene	50-32-8	4.1	8.438	0.428
Benzo[b]fluoranthene	205-89-2	42	9.354	0.373
Benzo[k]fluoranthene	191-24-2	1800	0.328	0.289
Benzo[k]perylene	207-09-9	420	0.488	0.483
Chrysene	218-01-0	4100	0.491	0.536
Dibenz[a,h]anthracene	53-70-3	4	0.183	0.11
Dibenzofuran	132-64-9	33	0.268	0.244
Fluoranthene	270-44-0	1900	1.12	1.88
Fluorene	86-73-7	300	0.289	0.572
Indeno[1,2,3-c,d]pyrene	193-39-6	42	0.281	0.248
Naphthalene	91-20-3	31	0.842	0.289
Phenanthrene	85-01-6	420	0.587	0.62
Pyrene	129-00-0	1100	0.997	0.848

Notes  
 All results reported in milligrams per kilogram (mg/kg)  
<sup>1</sup> TRRP Action Levels as defined in the TCEQ guidance Determining Which Roles are Subject to TRRP, revised November 19, 2010  
 < = Constituent not detected above the indicated laboratory SDL  
 U = The analyte was analyzed for but was not detected above the level of the associated value. The associated value is the Sample Detection Limit (SDL)  
 B = Analyte also detected in the associated blank  
 J = Estimated value, analyte detected above laboratory SDL, but below the method quantitation limit (MQL)  
 — = Not applicable and/or not analyzed  
 Bold denotes concentrations above laboratory SDL  
 Bold and italicized denotes concentrations exceeding Action Levels  
 Light blue background denotes laboratory SDL greater than the (MQL)/(SDL) ratio

Table 2  
Groundwater Analytical Summary  
Carpenter Park - TxDOT Property  
Dallas, Texas  
Project No. 94187333

Chemical of Concern	CAS Number	TRRP Action Level*	Sample Identifier			
			MW-1 2/15/2018	MW-1 6/25/2018	MW-4 2/15/2018	MW-4 6/25/2018
<b>Metals (mg/L)</b>						
Antimony	7440-36-0	0.008	—	0.000348 J	—	< 0.000240 U
Arsenic	7440-38-2	0.01	—	0.00113 J	—	0.000409 J
Barium	7440-39-3	2	—	0.0900	—	0.0800
Beryllium	7440-41-7	0.004	—	0.000195 J	—	< 0.000131 U
Cadmium	7440-43-9	0.005	—	< 0.000147 U	—	< 0.000147 U
Chromium, Total	7440-47-3	0.1	—	0.00265 J	—	0.000363 J
Chromium, Hexavalent	10540-29-9	0.1	—	—	—	—
Copper	7440-50-8	1.3	—	0.00748	—	< 0.000747 U
Lead	7439-92-1	0.015	—	0.00188 J	—	0.00435 J
Nickel	7440-02-0	0.49	—	0.00257	—	0.00313
Selenium	7782-49-2	0.05	—	0.00143 J	—	0.00209
Silver	7440-22-4	0.12	—	< 0.000251 U	—	< 0.000251 U
Thallium	7440-28-0	0.002	—	< 0.000332 U	—	< 0.000332 U
Zinc	7440-66-6	7.3	—	0.0188 J	—	0.00415 J
Mercury (pH=8)	7439-97-6A	0.002	—	< 0.0000263 U	—	< 0.0000263 U
<b>Cyanide (mg/kg)</b>						
Cyanide	57-12-5	0.2	—	—	—	—
<b>Total Petroleum Hydrocarbons (TPH) (mg/L)</b>						
<b>C8-C12</b>						
>C12-C28	TPH-1005-1	0.98	< 0.683 U	—	< 0.689 U	—
>C28-C35	TPH-1005-2	0.98	< 0.683 U	—	< 0.689 U	—
C8-C35	TPH-1005-4	0.98	< 0.683 U	—	< 0.689 U	—
<b>Volatile Organic Compounds (VOCs) (mg/L)</b>						
Benzene	71-43-2	0.005	< 0.000185 U	—	< 0.000185 U	—
Bromobenzene	108-86-1	0.2	< 0.000258 U	—	< 0.000258 U	—
Bromochloromethane	74-97-5	0.98	< 0.000328 U	—	< 0.000328 U	—
Bromodichloromethane	75-27-4	0.015	< 0.000184 U	—	< 0.000184 U	—
Bromoforn	75-25-2	0.12	< 0.000348 U	—	< 0.000348 U	—
Methyl bromide	74-83-9	0.034	< 0.000127 U	—	< 0.000127 U	—
2-Butanone (MEK)	78-93-3	15	< 0.00132 U	—	< 0.00132 U	—
n-Butylbenzene	104-51-6	1.2	< 0.00209 U	—	< 0.00209 U	—
Sec-Butylbenzene	135-98-8	0.98	< 0.000124 U	—	< 0.000124 U	—
tert-Butylbenzene	98-08-8	0.98	< 0.000177 U	—	< 0.000177 U	—
Carbon Tetrachloride	56-23-5	0.005	< 0.000243 U	—	< 0.000243 U	—
Chlorobenzene	108-90-7	0.1	< 0.000110 U	—	< 0.000110 U	—
Chloroethane	75-00-3	9.8	< 0.000190 U	—	< 0.000190 U	—
Chloroform	67-66-3	0.24	< 0.000107 U	—	< 0.000107 U	—
Methyl Chloride	74-87-3	0.07	< 0.00500 U	—	< 0.00500 U	—
2-Chlorotoluene	95-49-8	0.49	< 0.000293 U	—	< 0.000293 U	—
4-Chlorotoluene	108-43-4	0.49	< 0.000114 U	—	< 0.000114 U	—
p-Cymene (p-Isopropyltoluene)	99-87-8	2.4	< 0.000150 U	—	< 0.000150 U	—
Dibromochloromethane	124-48-1	0.011	< 0.000212 U	—	< 0.000212 U	—
1,2-Dibromo-3-Chloropropane	96-12-8	0.0002	< 0.000707 U	—	< 0.000707 U	—
1,2-Dibromoethane	106-93-4	0.00005	< 0.000380 U	—	< 0.000380 U	—
Methylene bromide	74-95-3	0.12	< 0.000186 U	—	< 0.000186 U	—
1,2-Dichlorobenzene	95-50-1	0.6	< 0.000175 U	—	< 0.000175 U	—
1,3-Dichlorobenzene	541-73-1	0.73	< 0.000169 U	—	< 0.000169 U	—
1,4-Dichlorobenzene	106-48-7	0.075	< 0.000222 U	—	< 0.000222 U	—
Dichlorodifluoromethane	75-71-8	4.9	< 0.000148 U	—	< 0.000148 U	—
1,1-Dichloroethane	75-34-3	4.9	< 0.000162 U	—	< 0.000162 U	—
1,2-Dichloroethane	107-06-2	0.005	< 0.000283 U	—	< 0.000283 U	—
1,1-Dichloroethene	75-35-4	0.007	< 0.000178 U	—	< 0.000178 U	—
cis-1,2-Dichloroethylene	156-59-2	0.07	< 0.000162 U	—	< 0.000162 U	—
trans-1,2-dichloroethylene	156-60-5	0.1	< 0.000167 U	—	< 0.000167 U	—
1,2-Dichloropropane	78-87-5	0.005	< 0.000170 U	—	< 0.000170 U	—
1,3-Dichloropropane	142-28-0	0.0091	< 0.000199 U	—	< 0.000199 U	—
2,2-Dichloropropane	594-20-7	0.013	< 0.000154 U	—	< 0.000154 U	—
1,1-Dichloropropene	563-58-0	0.0091	< 0.000257 U	—	< 0.000257 U	—
cis-1,3-Dichloropropene	10061-01-5	0.0017	< 0.000126 U	—	< 0.000126 U	—
trans-1,3-dichloropropene	10061-02-6	0.0091	< 0.000198 U	—	< 0.000198 U	—
Ethylbenzene	100-41-4	0.7	< 0.000190 U	—	< 0.000190 U	—
Hexachlorobutadiene	87-68-3	0.012	< 0.00200 U	—	< 0.00200 U	—
Isopropylbenzene	98-82-8	2.4	< 0.000218 U	—	< 0.000218 U	—
Methylene Chloride	75-09-2	0.005	< 0.00200 U	—	< 0.00200 U	—
MTBE	1634-04-4	0.24	< 0.000500 U	—	< 0.000500 U	—
Naphthalene	91-20-3	0.49	< 0.00200 U	—	< 0.00200 U	—
n-Propylbenzene	103-65-1	0.98	< 0.000173 U	—	< 0.000173 U	—
Styrene	100-42-5	0.1	< 0.000197 U	—	< 0.000197 U	—
1,1,1,2-Tetrachloroethane	830-20-6	0.035	< 0.000195 U	—	< 0.000195 U	—
1,1,2,2-Tetrachloroethane	79-34-5	0.0040	< 0.000365 U	—	< 0.000365 U	—
Tetrachloroethylene	127-18-4	0.005	0.000390 J	—	< 0.000347 U	—
Toluene	108-88-3	1	< 0.000500 U	—	< 0.000500 U	—
1,2,3-Trichlorobenzene	87-61-6	0.073	< 0.00200 U	—	< 0.00200 U	—
1,2,4-Trichlorobenzene	120-82-1	0.07	< 0.00200 U	—	< 0.00200 U	—
1,1,1-Trichloroethane	71-55-6	0.2	< 0.000130 U	—	< 0.000130 U	—
1,1,2-Trichloroethane	79-00-5	0.005	< 0.000272 U	—	< 0.000272 U	—
Trichloroethylene	79-01-8	0.005	< 0.000216 U	—	< 0.000216 U	—
Trichlorofluoromethane	75-69-4	7.3	< 0.000191 U	—	< 0.000191 U	—
1,2,3-Trichloropropane	98-18-4	0.00003	< 0.000214 U	—	< 0.000214 U	—
1,2,4-Trimethylbenzene	95-63-6	0.83	< 0.000113 U	—	< 0.000113 U	—
1,3,5-Trimethylbenzene	108-67-8	0.83	< 0.000178 U	—	< 0.000178 U	—
o-Xylene	95-47-8	10	< 0.000500 U	—	< 0.000500 U	—
m,p-Xylenes	179601-23-1	—	< 0.00100 U	—	< 0.00100 U	—
Vinyl Chloride	75-01-4	0.002	< 0.000232 U	—	< 0.000232 U	—
Total Xylenes	1330-20-7	10	< 0.000500 U	—	< 0.000500 U	—

Notes  
 All results reported in milligrams per liter (mg/L)  
 \* TRRP Action Levels as defined in the TCEQ guidance *Determining Which Releases are Subject to TRRP*, revised November 19, 2010  
 < = Constituent not detected above the indicated laboratory SDL  
 U = The analyte was analyzed for but was not detected above the level of the associated value. The associate value is the Sample Detection Limit (SDL)  
 J = Estimated value, constituent detected above laboratory SDL but below the method quantitation limit (MQL)  
 — = Not analyzed and/or not applicable  
 Bold denotes concentrations above laboratory SDL  
 Light blue highlight denoted laboratory SDL greater than the RALC/Critical PCL

## STANDARD LEASE AGREEMENT

**STATE OF TEXAS** §

**COUNTY OF DALLAS** § **LEASE NO. L18-057-481**

This lease is made and entered into this 11/15/2018, by and between the State of Texas acting through the Texas Department of Transportation ("the Department," or, "the State"), and West Fields, LLC ("Lessee").

The Department is authorized to lease state highway assets pursuant to Chapter 202, Subchapter C, Section 202.052, of the Texas Transportation Code; and

The State is the owner of the real property situated in Dallas, Dallas County, Texas, described on Exhibit "A" attached hereto, and made a part of this lease ("premises");

Lessee wishes to lease the premises from the State desires to lease the premises to Lessee;

Now, therefore, in consideration of the mutual terms, covenants, and conditions set forth herein, the Department and Lessee hereby agree as follows:

### ARTICLE 1. TERM

1.01 **Term.** The term of this Lease is 25 years, beginning on 11/15/2018 ("Commencement Date"), and ending on 11/14/2046 ("Term"), unless terminated sooner.

1.02 **Early Cancellation.** Except as provided in Article 11 of this lease, either of the parties may cancel this lease upon 24 months written notice to the other party.

### ARTICLE 2. RENT

2.01 **Rent.** As consideration for the lease of the premises pursuant to this Lease, Lessee shall pay a total rent in the amount of \$X to be paid annually as set forth in Exhibit "B".

2.02 **Method of Payment.** Payment shall be made to the Department at: Texas Department of Transportation, Finance Department Office at PO Box 149001, Austin, TX 78714-9001, or at such other place as the Department may from time to time direct by notice delivered to Lessee.

2.03 **Late Charge.** If Lessee tenders the rent to the Department more than fifteen (15) days after the due date, Lessee shall pay an administrative late charge of five percent (5%) on the total rent due to the Department.

2.04 **Rent Adjustment.** *INTENTIONALLY REMOVED*

2.05 **Bond or Other Security.** **INTENTIONALLY REMOVED**

ARTICLE 3. IMPOSITIONS

3.01 **Impositions Defined.** The term "Impositions," means all taxes, charges for public utilities, license, franchise and permit fees, and any other charges by any public authority that are imposed during the lease Term upon the premises or upon the improvements situated on the premises. Nothing in this Article 3 shall be construed as approval or authorization for Lessee's transfer, assignment, sublease, or conveyance of its interest in this lease or in the premises or in any improvements situated on the premises.

3.02 **Lessee's Obligation for Impositions.** Lessee will pay all Impositions when due. Lessee shall promptly deliver evidence of payment upon request by the Department. Lessee may not defer the payment of any Imposition in a manner that would cause a lien to be placed upon the premises. The Department shall not be liable for any interruption or failure in the supplying of any utilities to the premises.

ARTICLE 4. CONSTRUCTION

4.01 **Permitted Construction.** (a) At its sole cost and risk, Lessee may construct a soccer field complex and associated improvements including buildings, lighting, and fencing (the "improvements") within the premises in compliance with plans and specifications provided for in Sections 4.02 and 4.03 of this lease.

(b) The improvements are to be designed and constructed to provide the Department access to inspect, maintain, and repair the premises.

(c) The Department shall have the right to approve all construction plans. Any significant revision to the approved design of the improvements shall be subject to prior written approval of the District Engineer. (The term "District Engineer," is defined in Section 13.07 of this lease). The Department's review of the plans, approval of construction, or approval of modifications or revisions to the plans, shall be completed 45 days from submittal by Lessee. The Department's review of the plans, approval of construction, or approval of modifications or revisions to the plans, shall under no circumstances constitute a representation by the Department as to the quality or safety of the design, or as to the compliance of the design to any applicable laws, statutes, rules and ordinances.

(d) All improvements which are located within the premises at any time during the term of this lease shall become the property of the Department upon expiration or termination of this lease.

4.02 **Preliminary Plans.** Lessee, prior to the Department's execution of this lease, shall provide the Department with preliminary plans for Lessee's proposed use of the premises. The preliminary plans shall include maps, and sketches depicting the improvements and Lessee's proposed use of the premises. The preliminary plans must set out the relation of the proposed use of the premises to the adjacent "Highway Facility," as that term is defined in Section 13.08 of this lease.

4.03 **Traffic Control Plans.** Lessee, prior to the Department's execution of this lease, shall provide the Department with a full set of traffic control plans for the Department's approval. The lessee may not begin construction work until it has received the Department's written approval of the traffic control plans. The plans, which may include plan sheets, general notes, specifications, and quantities, must fully detail the regulation of traffic on the adjacent Highway Facility during the lease Term. The plans must

specify how traffic will be regulated before, during, and after any planned construction on the premises. The plans must conform to the safety and design standards set out in the current version of the Texas Manual on Uniform Traffic Control Devices and may not be amended without the Department's written consent.

**4.04 Construction Plans.** (a) Lessee shall furnish to the District Engineer two sets of complete plans, details and specifications for the construction of the improvements. Lessee may not begin construction without the Department's written approval of the plans and specifications. The plans and specifications must substantially reflect the design set out in the preliminary plans required under Section 4.02 of this lease. The construction plans must be prepared by a professional architect or engineer registered in Texas, and must bear prominently the architect or engineer's signature in accordance with applicable architectural and engineering board rules. (b) The improvements shall be designed and constructed to comply with any and all applicable building codes, ordinances and other laws, rules and regulations, including, but not limited to, the Americans with Disabilities Act (ADA), (Public Law 101-336, July 26, 1990, as amended) and the Elimination of Architectural Barriers Act (TABAA), (Chapter 469, Texas Government Code, as amended).

**4.05 Construction Standards.** The improvements, and any repairs to the improvements, shall be constructed in accordance with the following standards:

- (a) Lessee's selection of a general contractor shall be subject to the Department's written approval;
- (b) All construction work shall be performed in a good, workmanlike manner in accordance with good industry practice for the type of work in question;
- (c) Lessee must obtain all required governmental licenses, permits and authorizations prior to beginning construction and shall provide copies of same to the Department upon request;
- (d) Lessee must maintain insurance coverage in the amounts set forth in Article 9 of this lease during all construction;
- (e) After commencement of construction, Lessee shall prosecute the construction with due diligence; and
- (f) **INTENTIONALLY REMOVED**

**4.06 Temporary Use of the Department's Property.** If Lessee requires use of the Department's right of way for access, staging, or storage, Lessee shall submit a written request to the Department for the Department's written authorization of the requested use. Lessee shall submit the request not less than 30 days before the use of Department's right of way is necessary. The request must include a complete set of traffic control plans, as described in this Article 4 of the lease. The approval or denial of Lessee's temporary use of Department's property shall be at the sole discretion of the District Engineer. Lessee's temporary use of Department's property shall not give Lessee any right or interest in Department property.

**4.07 As-Built Plans.** Lessee shall provide the Department a complete set of reproducible "As- Built" plans no later than 90 days after the completion of construction. The plans must be prepared by a professional architect or engineer registered in Texas, and must bear prominently the architect or engineer's signature in accordance with applicable architectural and engineering board rules.

**4.08 Hold Harmless.** Lessee shall indemnify, protect, and hold harmless the State from and against all claims and liabilities arising by virtue of or relating to inspection, construction, maintenance, or



repair of the premises or of the improvements situated on the premises (including repairs, restoration, and rebuilding).

## ARTICLE 5. USE OF THE PREMISES

**5.01 Permitted Use.** Subject to the terms and provisions this lease, Lessee shall continuously use and occupy the premises solely for the purpose of constructing and operating a soccer field complex with concessions and associated improvements including portable buildings, lightings and fencing. Any proposed change in the use is subject to the Department's written approval. Lessee's use of the premises shall not interfere with highway use.

**5.02 Maintenance Requirements.** Lessee shall maintain the improvements and the premises at its sole expense. Lessee shall keep the improvements and premises in good condition, both as to safety and appearance. Lessee shall deliver up the premises in good repair and condition, reasonable wear and tear excepted, at the expiration or termination of this lease.

**5.03 Removal of Improvements.** Lessee may not without Lessor's prior written approval remove or destroy any of the Improvements or equipment located within the Premises (collectively referred to in this Section as "Improvements"). Lessor may require Lessee, at Lessee's expense, to remove all or part of the Improvements, and if Lessee refuses to do so, Lessor may, but is not obligated to, (i) remove the Improvements at Lessee's expense and Lessee shall pay the cost thereof, including but not limited to the cost of labor, materials, equipment, plans and administration, within ten (10) days after notice of a statement of said costs from Lessor, or (ii) assume possession, control and ownership of the Premises and the Improvements. In the event Lessor requires Lessee to remove all or part of the Improvements, Lessor will provide Lessee with six (6) months written notice prior to the expiration date of this Lease; provided, however, that the provision of (6) months written notice to Lessee shall not apply in the event of default or abandonment by Lessee.

If Lessor requires Lessee to remove all or part of the Improvements, Lessee must remove them within the time provided in Lessor's notice to Lessee and must restore the Premises as nearly as practicable to the same condition that existed before Lessee entered thereon, except as otherwise approved in writing by Lessor.

If Lessor requires Lessee to remove all or part of the Improvements or if Lessee requests to remove all or part of the Improvements, Lessee must submit plans for such action to the District Engineer. Such plans are subject to the written approval of Lessor prior to the commencement of such removal.

In the event Lessee fails or refuses to remove all or a part of the Improvements as required by Lessor, Lessee understands and agrees that it will be necessary for Lessor to enter upon Lessee's property, if any, to which these Improvements are situated for the purpose of demolishing and/or removing the Improvements. **LESSEE HEREBY AUTHORIZES THE LESSOR, ITS EMPLOYEES, AGENTS, CONTRACTORS OR ASSIGNS TO ENTER UPON LESSEE'S PROPERTY, IF ANY, FOR THE PURPOSE OF DEMOLISHING AND/OR REMOVING SAID IMPROVEMENTS AND, EXCEPT FOR DAMAGES AND CLAIMS CAUSED BY LESSOR'S SOLE NEGLIGENCE, EXPRESSLY WAIVES ALL DAMAGES OR CLAIMS THAT MAY RESULT FROM SUCH ENTRY, DEMOLITION AND/OR REMOVAL EVEN IF SUCH DAMAGES OR CLAIMS ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF LESSOR.**

**5.04 Security for Removal.** Simultaneously with the execution of this Lease, Lessee at its sole cost and expense shall deliver to Lessor a surety bond for the sum of \$250,000.00, issued by a company licensed by the Texas Department of Insurance and in a form acceptable to Lessor, naming the Texas Department of Transportation as Obligee. Said surety bond shall be for the purpose of guaranteeing performance of the obligations Lessee has hereunder to remove the Improvements, at Lessee's expense, upon expiration or sooner termination of this Lease. The surety bond shall be renewed by Lessee prior to each successive expiration thereof and a continuation certification shall be delivered to Lessor not less than ten (10) days prior to the expiration of the surety bond. The surety bond shall state that said bond will not be cancelled, materially changed or subject to non-renewal without thirty (30) days prior written notice to the Lessor. The sum of the surety bond is subject to review and escalation as reasonably deemed necessary by Lessor, to reflect the estimated costs of Lessee's obligations to remove the Improvements hereunder, once every two (2) years from the commencement date of this Lease until its expiration or sooner termination.

In the event the surety bond is canceled and Lessee does not provide Lessor with another surety bond acceptable to Lessor, Lessor may require Lessee, and Lessee hereby agrees and understands, to provide security for Lessee's obligations hereunder to remove the Improvements in a form acceptable to Lessor.

## ARTICLE 6. COMPLIANCE WITH LAWS

**6.01 Hazardous Materials.** "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by the federal government, the State of Texas, or by any local governmental agency, including, but not limited to:

(a) Any material or substance that is:

(1) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1317;

(2) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; or

(3) defined as a "hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

(b) petroleum;

(c) asbestos; or

(d) polychlorinated biphenyls (PCBs).

**6.02 Hazardous Materials Laws.** "Hazardous Materials Laws" means any federal, state, or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, or disposal of any Hazardous Materials, the contamination of the environment, or any removal of such contamination, including, without limitation, those statutes referred to in Section 6.01 of this lease.

**6.03 Compliance with Laws.** Lessee shall not undertake or suffer any activity to be conducted upon the premises that constitutes a nuisance, is immoral or obscene, or is a threat to the welfare of the general public. Lessee, at its own expense, shall comply, and will cause, its employees, agents, representatives, licensees, concessionaires, invitees, assignees, subtenants, and any individual or entity using or occupying the premises by, through or under Lessee, to comply with all applicable laws, statutes, rules, and ordinances, whether now existing or hereafter enacted or promulgated that apply to the construction, alteration, occupation, or use of the premises and improvements, including the

Americans with Disabilities Act (ADA), (Public Law 101-336, July 26, 1990, as amended), the Elimination of Architectural Barriers Act (TABAA), (Chapter 469, Texas Government Code, as amended), and Hazardous Materials Laws. Nothing in this Article 6 shall be construed as approval or authorization for Lessee's transfer, assignment or conveyance of its interest in this lease or in the premises or in the improvements.

**6.04 Cleanup Costs, Default, and Indemnification.** (a) Lessee shall be fully and completely liable to the State for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation, or sale of Hazardous Materials, in or about the premises. Lessee's obligations under this section of the lease shall survive the termination of this lease and shall be in effect for so long as Lessee may be liable under applicable laws.

(b) Lessee shall indemnify, defend, and save the State harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon the State (as well as the State's attorney fees and costs) as a result of Lessee's use, disposal, transportation, generation, or sale of Hazardous Materials.

(c) If Lessee fails to comply with any of the provisions of this Article 6 of this lease, the State, in addition to the rights and remedies set forth elsewhere in this lease, shall be entitled to:

- (1) terminate this lease immediately; and
- (2) recover any and all damages associated with Lessee's non-compliance, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, and any and all damages and claims asserted by third parties and the State's attorney fees and costs.

## ARTICLE 7. INSPECTION

**7.01 Inspection.** The Department and its authorized representatives may enter the premises at any time to inspect, maintain, or reconstruct highway facilities as necessary, and to determine compliance with the terms and conditions of this lease. The Department's inspection of the premises shall not constitute a representation as to the quality or safety of the design or construction of the premises. Lessee, subject to the Department's reasonable review and approval, shall determine whether the maintenance or reconstruction activities will impact its business, and have the right to abate the rent and extend the lease for the period of maintenance or reconstruction and restoration of the premises

## ARTICLE 8. LIENS AND FINANCING

**8.01 Allowable Mortgages and Security Interests.** Lessee may mortgage or otherwise pledge or grant a security interest in its leasehold interest to secure financing for the acquisition of the leasehold and for the construction and operation of an improvement permitted under this lease, subject to the terms and conditions contained in this lease.

**8.02 Prohibited Mortgages and Liens.** Notwithstanding the provisions of Section 8.01 of this lease, Lessee shall keep the lease and any improvements on the premises free from all liens. Lessee shall furnish to the Department within five days of receipt by Lessee copies of any and all notices and correspondence directed to Lessee by any person or entity alleging the right to file a lien, or notifying Lessee of the filing of any lien against the fee of the premises. If a lien is filed against the fee or against the improvements, Lessee shall immediately discharge the lien by payment, bonding or otherwise.

**8.03 No Liens Upon Expiration or Termination.** Lessee and its successors shall deliver the premises and the improvements to the Department free and clear of any debt or encumbrances at the expiration or termination of this lease.

**8.04 Department's Lien.** If Lessee defaults under this lease, the State has a lien on all goods, chattels, or personal property of any description belonging to Lessee that are placed in, or become part of, the premises, as security for rent due and to become due for the remainder of the current lease term. This lien is not in lieu of, nor in any way affects, the statutory landlord's lien, but is in addition to it, and Lessee grants to the State a security interest in all personal property placed in or on the premises for purposes of this contractual lien.

## ARTICLE 9. INDEMNITY AND INSURANCE

**9.01 Indemnity.** Lessee shall indemnify and save harmless the State from any and all liability, damage, expense, cause of action, suits, claims, or judgments by any reason whatsoever caused by, or arising out of, the use, occupation, and control of the premises by Lessee, its employees, agents, representatives, licensees, concessionaires, invitees, assignees, subtenants, and by any individual or entity using or occupying the premises by, through or under Lessee. Nothing in this Article 9 shall be construed as authorization of approval of Lessee's transfer, assignment or conveyance of its interest in the lease, the premises or in any improvements situated on the premises.

**9.02 Liability Insurance.** (a) At all times during the lease Term, Lessee, at its sole cost and expense, shall, carry commercial general liability insurance coverage with limits of at least \$1,000,000 for each occurrence and \$2,000,000 general aggregate. The policy shall insure against bodily injury, death and property damage and shall include:

- (1) coverage for premises and operations;
- (2) coverage for the Department's concurring negligence; and
- (3) contractual liability coverage insuring the obligations of Lessee under the terms of

this lease, including but not limited to the indemnity obligations herein.

(b) The limits of policies required by this section of the lease are subject to review and escalation as deemed necessary by the Department once every two years from the Commencement Date of this lease until its expiration or sooner termination.

**9.03 Liquor Liability Insurance.** If Lessee is engaged in any way in the sale of alcoholic beverages, either for consumption of alcoholic beverages on the Premises or off the Premises, Lessee will also maintain liquor liability insurance with the limits of not less than Five Hundred Thousand Dollars (\$500,000.00) each common cause and One Million Dollars (\$1,000,000.00) aggregate.

**9.04 Contractor's Insurance.** Lessee shall require its contractors to carry at all times while engaged in the construction, alteration, repair, reconstruction or maintenance of the improvements during the lease Term, the following minimum insurance with companies authorized to do business in the State of Texas, naming the Department, as an additional insured, against claims of injuries to persons or damages to property, as a result of, or arising out of such construction, alteration, repair, reconstruction or maintenance of the improvements by Lessee's contractors:

(a) Worker's compensation as required by Texas law with the policy endorsed, where reasonably available, to provide a waiver of subrogation as to Lessee and the Department, and employer's liability insurance of at least \$1,000,000 (or the statutorily required minimum if higher) for each accident.

(b) Commercial general liability insurance with limits of at least \$1,000,000 each occurrence and at least \$2,000,000 general aggregate, which policy shall insure against bodily injury, death and property damage and shall include (i) coverage for premises and operations; and (ii) contractual liability coverage.

(c) Comprehensive automobile liability insurance, covering owned, hired and non-owned vehicles, with minimum limits of \$500,000 combined single limit, such insurance to include coverage for loading and unloading hazards.

**9.05 Insurance Certificates and Endorsements.** (a) All liability insurance policies required under this lease shall be with companies licensed by the Texas Department of Insurance and shall:

- (1) be endorsed to include the Department as an additional insured;
- (2) contain cross-liability and severability of interest endorsements;
- (3) state that this insurance is primary insurance as regards other insurance carried by any

Lessee; and

- (4) include waiver of subrogation endorsements in a form acceptable to the Department.

(b) Lessee shall also include waiver of subrogation endorsements in favor of the Department on any insurance coverages Lessee may carry in addition to that required herein for the premises or activities conducted thereon, including but not limited to workers compensation insurance.

(c) Lessee shall furnish the Department with certificates of all coverage required herein and with copies of the required endorsements prior to the commencement of this lease, and annually thereafter for each renewal policy not less than 30 days prior to the expiration of said policies. Certificates of insurance shall specify the additional insured status mentioned above as well as the waiver of subrogation and shall contain any other endorsements required herein.

(d) Lessee shall provide to the Department a certified copy of any and all insurance policies required in this lease upon request of the Department. Lessee's obligation to carry and pay for the insurance required under this lease will continue beyond the term of this lease in the event Lessee remains in possession of the premises for any reason, or in the event Lessee is obligated to remove the improvements, in which case, Lessee will continue to carry such insurance so long as Lessee remains in possession or until the Department deems such removal to be complete.

(e) If Lessee fails to have a certificate of any required policy of insurance on deposit with the Department at any time during the lease Term or subsequent thereto in the event of any continued possession of the premises, or in the event the certificate fails to comply with the insurance company quality or coverage requirements hereof, such failure may be treated by the Department as a default by Lessee.

## ARTICLE 10. TRANSFERS OF INTEREST

**10.01 Transfers of Interest.** Lessee shall not transfer, assign, sublease, or convey the lease, improvements, or the premises to another person or entity without the prior written approval of the Director of the Department's Right of Way Division or his designee. The Department shall not be obligated to consent to any proposed transfer, assignment, or conveyance by Lessee. If Lessee transfers, assigns, or conveys its rights or interests in the lease or in the premises or in any improvements situated on the premises without the Department's written consent, the Department may, at its option declare this lease terminated. If the Department consents in writing to the transfer, assignment, or conveyance of Lessee's rights or interests in the lease or in this premises or in any improvements situated on the premises, the assignee or subtenant must assume all of Lessee's obligations under this lease, and Lessee will remain liable for every obligation under this lease as well.

**10.02 Collection of Rent from Assignee.** The Department, at its option, may collect rent from Lessee's assignee, subtenant, mortgagee, pledgee or party to whom the leasehold interest was hypothecated, and apply the net amount collected to the rent payable under this lease. The Department shall not waive any of its rights under this lease or release Lessee from any of its obligations by collecting or applying rents collected.

**10.03 Effect of Expiration or Termination of Lease.** The expiration or termination of this lease automatically and without further action cancels all transfers, assignments, conveyances, and subleases of this lease.

**10.04 Transfer by the Department.** If the Department sells or transfers the premises or the leasehold estate or any part thereof and as part of such transaction assigns its interest as the Department in and to this lease, then from and after the effective date of the transfer, the Department will have no further liability under this lease to Lessee.

## ARTICLE 11. DEFAULT AND REMEDIES

**11.01 Breach and Default.** Lessee shall be in breach of this lease if Lessee fails to pay any installment of rent or other amount due and payable when due; fails to comply with its obligations pertaining to the construction, use, and maintenance of the premises; abandons the premises; fails to maintain insurance in the amounts and types required by this lease; fails to follow any federal, state, and local law that applies to Lessee's use of the premises; or fails to perform or comply with any of the other conditions expressed in this lease. Whether the Lessee is in breach, as defined herein, shall be determined by the Department in its sole discretion. Lessee shall be in default if Lessee fails to remedy any breach of this lease within thirty days after receiving notice from the Department. Whether the Lessee is in default shall be determined by the Department in its sole discretion.

**11.02 Cumulative Remedies.** If the Department determines that Lessee is in default, the Department, at its option, may exercise any and all remedies available to the State under law. All of the State's rights and remedies shall be cumulative and not exclusive, and shall include without limitation the following:

(a) The Department may terminate this Lease on thirty days' written notice to Lessee; this lease shall terminate on the date specified therein and Lessee shall quit and surrender the premises by said date.

(b) If the lease is terminated and the Department determines it is necessary to request the removal of the improvements, the removal shall be accomplished by Lessee in a manner prescribed by the District Engineer. If the Department requires Lessee to remove all or part of the improvements:

(1) Lessee, at its own expense, shall prepare and submit plans to the District Engineer for removal of the improvements and shall not commence removal without prior written approval from the District Engineer.

(2) Lessee must remove the improvements at its own expense within the time provided in the Department's notice of termination to Lessee and must restore the premises as nearly as practicable to the same condition that existed before Lessee entered thereon, except as otherwise approved in writing by the Department.

(3) If Lessee fails or refuses to remove all or a part of the improvements as required by the Department, the Department may, but is not obligated to, assume possession, control and ownership of the premises and the improvements.

(4) If Lessee fails or refuses to remove all or a part of the improvements as required by the Department, the Department may, but is not obligated to, enter upon the premises for the purpose of

demolishing and removing the improvements. Lessee shall pay the Department's costs for such demolition and removal, including, but not limited to, costs for labor, materials, equipment, plans and administration, within 30 days after notice of a statement of said costs from the Department.

(5) Lessee shall indemnify, protect, and hold harmless the State from and against all claims and liabilities arising by virtue of or relating to the State's entry onto the premises and demolition and removal of all or a part of the improvements.

**11.03 Lessee Remains Liable.** Termination of this lease will not relieve Lessee from the payment of any sum or sums then due and payable to the Department hereunder for any claim for damages accruing against Lessee. All money due under the terms of this lease will bear interest at the rate of ten percent (10%) per annum from the date when due until actually paid.

## ARTICLE 12. GENERAL PROVISIONS

**12.01 Acceptance "As-Is" and Waiver of Warranty.** Lessee has fully inspected the premises and is leasing the premises "as is," with all faults and defects. The Department disclaims any warranty of suitability that may otherwise have arisen by operation of law. The Department does not warrant that there are no latent defects in the premises that are vital to Lessee using the premises for its intended purpose and that the premises will remain in a suitable condition. Lessee leases the property "as is," whether suitable or not, and waives the implied warranty of suitability.

**12.02 Casualty.** Lessee shall immediately notify the Department of substantial destruction or damage to the premises. In no event shall the Department be responsible or liable for any damage or loss of property of Lessee. If the improvements are destroyed, either in whole or in substantial part, by fire or other casualty, Lessee shall, within 60 days of such occurrence, notify the Department of Lessee's election to either (i) terminate this lease, such termination to be effective as of the date of such notice of termination, or (ii) reconstruct the improvements in compliance with plans and specifications which have been reviewed and approved in writing by the Department. If Lessee shall fail to notify the Department of its election within the time above provided, then Lessee shall be deemed to have elected to terminate this lease. If this lease is terminated under this section, Lessee shall remove the improvements in accordance with the procedure set out in Section 11.02(b) of this lease.

**12.03 Force Majeure.** If the curing of any default (other than failure to pay any sums due, including, but not limited to, insurance premiums or Impositions) or the performance of any other covenant, agreement, obligation or undertaking herein contained is delayed (after the party obligated or permitted under the terms hereof to do or perform the same has made a good-faith effort to avoid delay) by reason of war, government regulations or government interferences (not including the right of the Department to exercise the Department's rights hereunder), fire or other casualty or any circumstances reasonably beyond such party's control regardless of whether any such circumstance is similar to any of those enumerated or not, each party will be excused from doing or performing the same during such period of delay.

**12.04 Waiver.** No waiver by the Department of any default or breach of any term, condition or covenant of this lease may be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

**12.05 Exhibits.** All exhibits referred to herein are to be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.

**12.06 Successors.** The terms, conditions and covenants contained in this lease shall apply to, and inure to the benefit of Lessee's successors in interest and legal representatives except as otherwise herein expressly provided. No rights however shall inure to the benefit of any assignee of Lessee unless the assignment to such assignee has been approved by the Department in writing as provided in Article 10 of this lease.

**12.07 Department's Expenses.** Lessee shall forfeit the security deposit made for this lease, and any bonds issued to secure Lessee's compliance with this lease, and it shall pay the Department's litigation costs and any other expense incurred by the Department in any of the department's efforts to enforce its rights under this lease.

**12.08 Holdover.** If Lessee holds over and continues in possession of the premises after expiration of the term of this lease, Lessee will be deemed to be occupying the premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this lease, except that as liquidated damages by reason of such holding over, the amounts payable by Lessee under this lease shall be increased such that the annual rental shall equal one hundred twenty-five percent (125%) of the rent paid to the Department for the year immediately preceding the expiration date of this lease and Lessee shall continue to pay all Impositions as required by this lease. The above-described tenancy from month-to-month may be terminated by either party upon 30 days written notice to the other. Any rental due after such notice has been given is to be calculated on a *pro rata* basis. If upon notice of termination by the Department, Lessee tenders rental in excess of the amount due and payable and the Department accepts such payment, the acceptance of such payment will not operate as a waiver by the Department of the notice of termination unless such waiver is in writing and signed by the Department.

**12.09 Relationship Between the Department and Lessee.** The relationship between the Department and Lessee is and shall at all times remain solely that of landlord and tenant and will not be deemed an agency, partnership or joint venture.

**12.10 Non-Discrimination.** Lessee, for itself, its successors, and its assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, religion, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap will be excluded from participation in, be denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the facility now or hereafter on the premises, that in connection with the construction of any improvements on the premises and the furnishing of services thereon, no such discrimination will be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, and that such discrimination will not be practiced against the public in their access to and use of the facility and services provided for public accommodation constructed or operated on the premises. Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. The breach of any of the above nondiscrimination covenants will be an act of default entitling the Department to terminate this lease in accordance with the procedures set forth herein.

**12.11 Audit Provision.** In accordance with Section 2262.003, Texas Government Code, the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under



this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds.

**12.12 Flammable, Explosive or Hazardous Materials.** Notwithstanding anything herein to the contrary, no part of the premises will be used for the manufacture or storage of flammable, explosive or hazardous materials or for any occupation which would be deemed by the Department to be hazardous to the traveling public.

**12.13 Public Utility and Common Carrier Rights.** Lessee shall not interfere with the rights of any public utility company or other common carrier to locate, operate and maintain their facilities within the Department's highway right of way. Lessee's use of the premises and the improvements under this lease is subject to the statutory right of public utilities and common carriers, if applicable, and that such use by Lessee and the relocation or removal of the improvements subject to this lease shall be accomplished at Lessee's sole expense at the Department's request if required to accommodate the location, operation or maintenance of facilities pursuant to those statutory rights.

**12.14 Assumption of Risk.** Lessee assumes all risks of losses resulting from the lease.

**12.15 Repairs Needed for the Safety of the Traveling Public.** If the Department determines that there is a condition or omission caused by the improvements is a hazard to the safe operation of a Highway Facility, the Department shall give Lessee written notice of the condition or omission and shall specify a reasonable time in which curative action shall be completed. If Lessee fails to cure the hazardous condition or omission as required in the written notice, the Department may enter the premises and perform the necessary repairs at Lessee's sole liability, except that no notice is required in case of emergency. Lessee shall pay all costs for repairs to the improvements. Payment shall be made no later than 30 days after Lessee receives a statement of the Department's repair costs. Lessee shall indemnify, protect, and hold harmless the State from and against all claims and liabilities arising by virtue of or relating to construction, maintenance or repair of the premises or of the improvements situated on the premises.

## ARTICLE 13. MISCELLANEOUS

**13.01 Notices.** (a) Any notice provided for or permitted to be given under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) three calendar days after it is deposited with the United the States Postal Service, postage prepaid, registered or certified mail, return receipt requested, and addressed to the intended recipient at the address or addresses designated below. Notice may also be given by:

- (1) personal or courier delivery to the party to be notified;
  - (2) facsimile transmission; or
  - (3) other commercially reasonable means, and will be effective when actually received.
- (b) If to Lessee: West Fields LLC  
1212 Regents Park Court  
Desoto, Texas 75115  
Attn: Roddrick West  
214.558.9395 or [Roddrickwest@gmail.com](mailto:Roddrickwest@gmail.com)
- (c) If to the Department: Texas Department of Transportation

Attn: RES-Leasing  
118 E Riverside Drive  
Austin, Texas 78704

(d) The parties may change their respective notice addresses to any other location within the United the States by giving a notice of the change in accordance with this Section.

**13.02 Governing Law.** This lease is to be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas, unless otherwise provided herein.

**13.03 Severability.** In case any one or more of the provisions contained in this lease are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this lease will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**13.04 Amendments.** The amendment, modification or alteration of the terms hereof will not be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

**13.05 Headings.** The article and section captions contained in this lease are for convenience only and do not in any way limit or amplify any term or provision hereof.

**13.06 The Department.** Unless specifically stated otherwise herein, the term "the Department" as used herein includes the Department, its successors and assigns, and its authorized agents, representatives, employees and/or contractors.

**13.07 District Engineer.** Any reference in this lease to the District Engineer means the District Engineer, Texas Department of Transportation, 4777 EAST HIGHWAY 80, MESQUITE, TX 75150, Texas, and his or her delegate. When written approval of the Department is necessary under this lease said approval is to be obtained from the District Engineer except as otherwise provided herein or by law.

**13.08 Highway Facility.** "Highway Facility" means any present or future physical roadway improvements within existing or future right of way, including, but not limited to, bridges, embankments, drainage areas, traffic signals, signs and roadway surfaces and subsurfaces as well as structures and facilities not physically located within the highway right of way that are used in the construction, maintenance or operation of a highway, including, but not limited to warehouses, storage areas, maintenance sites, roadside parks, administration buildings and parking lots, except for improvements constructed or placed on the premises by Lessee.

**13.09 Memorandum of Lease.** At the Department's request, Lessee will execute a memorandum of this lease in recordable form setting forth such provisions of this lease as the Department deems desirable and the Department may record such memorandum in the Real Property Records of the Office of the County Clerk, Dallas County, Texas.

**13.10 No Option.** The Department's submission of this lease to Lessee for inspection and execution does not constitute a reservation of or option for the premises. This lease shall become effective against any party only upon execution of all parties and delivery of a fully executed counterpart by the Department to Lessee.

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

**LESSEE**

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

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

Date: \_\_\_\_\_

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

Gus Cannon  
Right of Way Division Director

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

Date: \_\_\_\_\_

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

**EXHIBIT "A"**  
**LEASE PROPERTY**

**BEING** a 3.4615 acre (150,781 square feet) tract of land located in the John Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas, said 3.4557 acre tract of land being a portion of that same land owned and operated by the State of Texas for right-of-way of Interstate Highway Spur 345 (also known as Julius Schepps Freeway) per the Texas Department of Transportation right-of-way plans dated June of 1967, said 3.4557 acre tract of land being more particularly described by metes and bounds as follows:

**BEGINNING** at the East property corner of a called 0.154 acre tract of land identified as "Tract 1" and being conveyed to B&G Warehouse Services, Inc. by deed thereof recorded in Instrument Number (Ins. No.) 20080326297, Official Public Records, Dallas County, Texas (O.P.R.D.C.T.), said corner being the intersection of the southwest right-of-way line of said Spur 345 and the northwest right-of-way line of Eureka Place, being a 70 feet wide public right-of-way;

1) **THENCE** North  $64^{\circ}51'50''$  West, departing the said northwest right-of-way line of Eureka Place and along the northeast property line of the said 0.154 acre tract, same being the said southwest right-of-way line of Spur 345, 117.22 feet to the east edge of the east concrete sidewalk along South Good Latimer Expressway;

2) **THENCE**, over and across said Spur 345, along the said east edge of sidewalk the following courses and distances:

North  $02^{\circ}36'54''$  East, 58.90 feet to the beginning of a curve to the right having a radius of 91.00 feet;

Along the said curve to the right an arc length of 59.31 feet and across a chord which bears North  $21^{\circ}17'14''$  East, a chord length of 58.27 feet;

North  $39^{\circ}57'34''$  East, 61.58 feet to the south edge of the south concrete sidewalk along Canton Street;

3) **THENCE**, departing the said east edge of sidewalk, continuing over and across said Spur 345 and along the said south edge of sidewalk the following courses and distances:

North  $79^{\circ}22'03''$  East, 97.85 feet;

North  $77^{\circ}36'38''$  East, 113.27 feet;

4) **THENCE**, departing the said south edge of sidewalk, continuing over and across said Spur 345 the following courses and distances:

North  $52^{\circ}01'11''$  East, 24.93 feet;

South  $80^{\circ}56'25''$  East, 28.31 feet to the said south edge of sidewalk of Canton Street;

5) **THENCE**, continuing over and across said Spur 345 and along the said south edge of sidewalk the following courses and distances:

North  $76^{\circ}48'43''$  East, 80.69 feet;

North  $68^{\circ}34'29''$  East 27.01 feet to a point that is 5 feet southwest from the southwest back of curb of Henry Street;

6) **THENCE**, departing the said south edge of sidewalk, continuing over and across said Spur 345 and along lines and an arc that are generally 5 feet southwest of the said southwest back of curb of Henry Street the following courses and distances:

South  $13^{\circ}49'05''$  East, 130.62 feet to the beginning of a curve to the left having a radius of 60.00 feet;

Along the said curve to the left an arc length of 43.21 feet and across a chord which bears South  $34^{\circ}26'52''$  East, a chord distance of 42.28 feet;

**EXHIBIT "A"**  
**LEASE PROPERTY**

South 55°04'40" East 152.46 feet to the beginning of a curve to the right having a radius of 19.00 feet;

Along the said curve to the right an arc length of 23.64 feet and across a chord which bears South 15°27'06" East, a chord distance of 22.14 feet to the north edge of the north concrete sidewalk along Taylor Street;


- 7) **THENCE**, South 53°14'28" West, departing said Henry Street, continuing over and across said Spur 345 and along the said north edge of sidewalk along Taylor Street, 284.94 feet to the said southwest right-of-way line of Spur 345;
- 8) **THENCE**, North 51°13'01" West, departing the said north edge of sidewalk and along the said southwest right-of-way line, at 10.88 feet passing the east property corner of a called 0.557 acre tract of land conveyed to 510 S. Good Latimer, LLC by deed thereof recorded in Volume 2002152, Page 1291, O.P.R.D.C.T., said corner being on the northwest right of way line of said Taylor Street, being an 80 feet wide public right-of-way, continuing along the northeast property line of the said 0.557 acre tract, same being the said southwest right-of-way line of Spur 345, in all a total distance of 94.51 feet to a north property corner of the said 0.557 acre tract;
- 9) **THENCE**, North 65°42'38" West, continuing along the said northeast property line and said southwest right-of-way line, at 16.32 feet passing the most northerly property corner of the said 0.557 acre tract, same being the East property corner of a called 0.509 acre tract identified as "Tract 2" and being conveyed to B&G Warehouse Services, Inc. by deed thereof recorded in Ins. No. 20080326297, O.P.R.D.C.T., continuing along the northeast property line of the said 0.509 acre tract and along the said southwest right-of-way line, in all a total distance of 137.90 feet to the north property corner of the said 0.509 acre tract, same being the intersection of the said southwest right-of-way line of Spur 345 and the southeast right-of-way line of said Eureka Place;
- 10) **THENCE**, North 65°42'38" West, continuing along the said southwest right-of-way line of Spur 345, over and across the said right-of-way of Eureka Place, 80.91 feet to the **POINT OF BEGINNING**.

The hereinabove described tract of land contains a computed area of **3.4615 acres (150,781 square feet)** of land, more or less.

The bearings and distances shown hereon are based on a local coordinate system based on NAD83(1983), Texas North Central Zone 4202, scaled from grid to surface at N: 6971500.57231, E: 2495616.515690, using a combined scale factor of 1.0001408384, derived from gps RTK observations using the North Central Texas VRS Network (maintained by Western Data Systems).

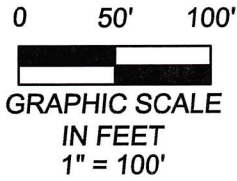
Note: Reference TXDOT right-of-way map of Interstate Highway Spur 345 from: I.H. 20 in Dallas, north to: Spur 66 Acct. No. 9018-13-1.

I, Eric S. Spooner, a Registered Professional Land Surveyor in the State of Texas, hereby certify that the land description and plat represent an actual survey made on the ground under my supervision.

  
Eric S. Spooner, R.P.L.S.                      Date 9-17-18

Texas Registration No. 5922  
T.B.P.L.S. Firm No. 10054900  
Spooner & Associates, Inc.  
309 Byers Street, Suite 100  
Euless, Texas 76039  
(817) 685-8448





S. GOOD LATIMER EXPY  
(VARIABLE WIDTH R.O.W.)

CANTON ST.  
(VARIABLE WIDTH R.O.W.)

CALLED: 1.14 ACRES  
WESTDALE ADAM  
HATS, LTD.  
"TRACT 1"  
VOL. 97203, PG. 1814  
O.P.R.D.C.T.

CALLLED: 0.154 ACRES  
B&G WAREHOUSE  
SERVICES, INC.  
"TRACT 1" IN  
D.C.C.I. NO. 20080326297  
O.P.R.D.C.T.

P.O.B.

EUREKA  
PLACE  
(70' PUBLIC R.O.W.)

CALLLED: 0.509 ACRES  
B&G WAREHOUSE  
SERVICES, INC.  
"TRACT 2" IN  
D.C.C.I. NO. 20080326297  
O.P.R.D.C.T.

CALLLED: 0.557  
ACRES  
510 S. GOOD  
LATIMER, LLC  
VOL. 2002152,  
PG. 1291  
O.P.R.D.C.T.

JOHN GRIGSBY SURVEY  
ABSTRACT NO. 495

LINE TABLE

NO.	DIRECTION	DIST.
L1	N64°51'50"W	117.22'
L2	N02°36'54"E	58.90'
L3	N39°57'34"E	61.58'
L4	N79°22'03"E	97.85'
L5	N77°36'38"E	113.27'
L6	N52°01'11"E	24.93'
L7	S80°56'25"E	28.31'
L8	N76°48'43"E	80.69'
L9	N68°34'29"E	27.01'
L10	S13°49'05"E	130.62'

LINE TABLE

NO.	DIRECTION	DIST.
L11	S55°04'40"E	152.46'
L12	S53°14'28"W	284.94'
L13	N51°13'01"W	94.51'
L14	N65°42'38"W	137.90'
L15	N65°42'38"W	80.91'

CURVE TABLE

NO.	RADIUS	LENGTH	CH. DIRECTION	CH. LENGTH
C1	91.00'	59.31'	N21°17'14"E	58.27'
C2	60.00'	43.21'	S34°26'52"E	42.28'
C3	19.00'	23.64'	S15°27'06"E	22.14'

LEGEND

PROPERTY LINES - - - - -  
P.O.B. = POINT OF BEGINNING

A PLAT OF A SURVEY  
FOR LEASE PROPERTY  
A 150,781 SQ. FT (3.4615 AC.)  
TRACT OF LAND IN THE  
JOHN GRIGSBY SURVEY  
ABSTRACT NO. 495  
CITY OF DALLAS  
DALLAS COUNTY TEXAS  
SEPTEMBER 17, 2018

THE BEARINGS AND DISTANCES SHOWN HEREON ARE BASED ON A LOCAL COORDINATE SYSTEM BASED ON NAD83(1983), TEXAS NORTH CENTRAL ZONE 4202, SCALED FROM GRID TO SURFACE AT N: 6971500.57231, E: 2495616.515690, USING A COMBINED SCALE FACTOR OF 1.0001408384, DERIVED FROM GPS RTK OBSERVATIONS USING THE NORTH CENTRAL TEXAS VRS NETWORK (MAINTAINED BY WESTERN DATA SYSTEMS)

SURVEYED ON THE GROUND JUNE, 2018

NOTE: REFERENCE TXDOT RIGHT-OF-WAY MAP OF INTERSTATE HIGHWAY SPUR 345 FROM: I.H. 20 IN DALLAS, NORTH TO: SPUR 66 ACCT. NO. 9018-13-1.



**SPOONER & ASSOCIATES**  
REGISTERED PROFESSIONAL LAND SURVEYORS  
OVER 25 YEARS OF SERVICE

309 BYERS STREET, SUITE 100, EULESS, TEXAS 76039  
(817) 685-8448 WWW.SPOONERSURVEYORS.COM  
TBPLS FIRM NO. 10054900

S&A JOB NO.: 18-055



*[Signature]*

9-17-18

ERIC S. SPOONER, R.P.L.S. No. 5922  
SPOONER & ASSOCIATES, INC.  
TBPLS FIRM NO. 10054900

DATE

EXHIBIT "B"  
RENT SCHEDULE

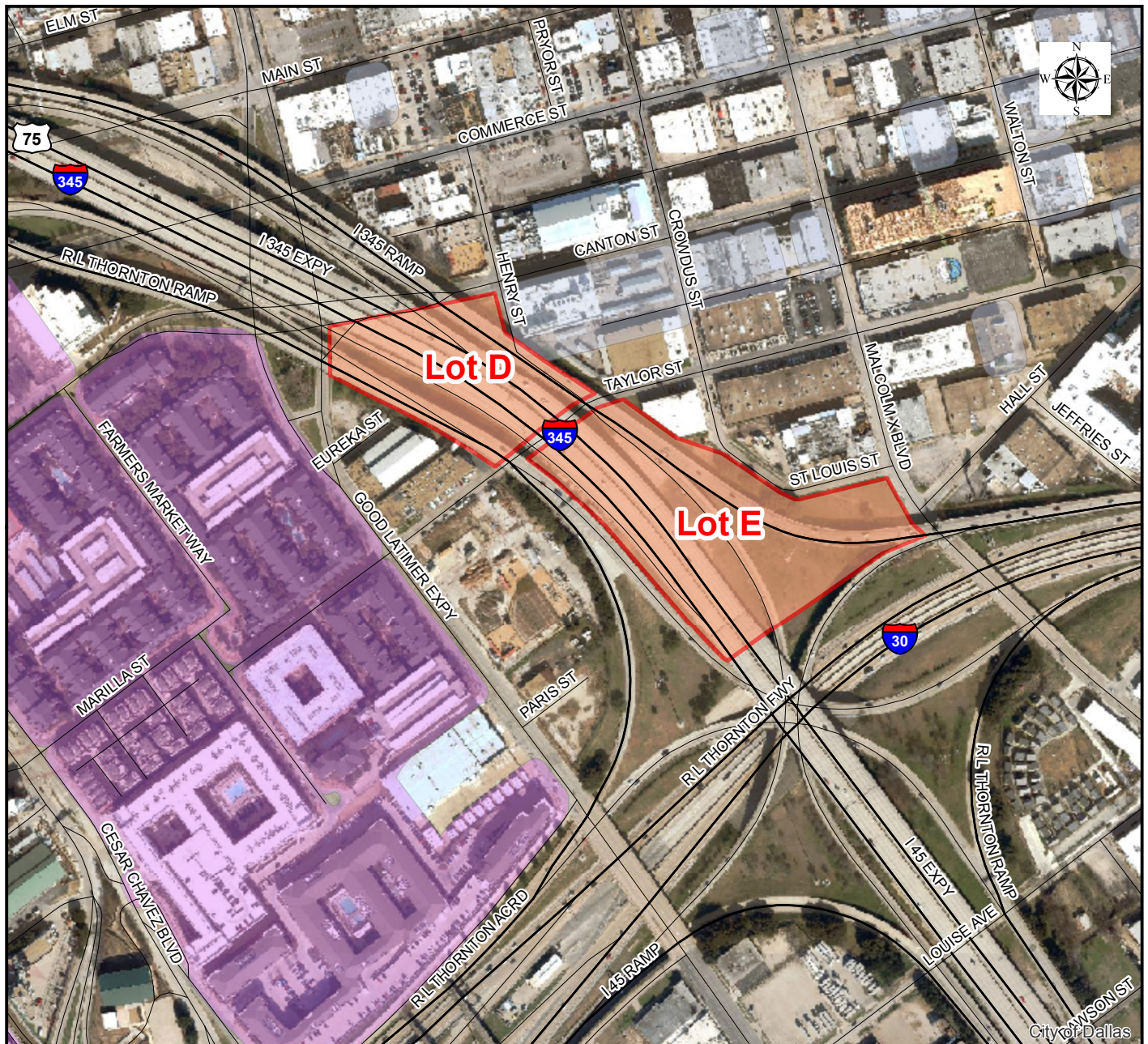
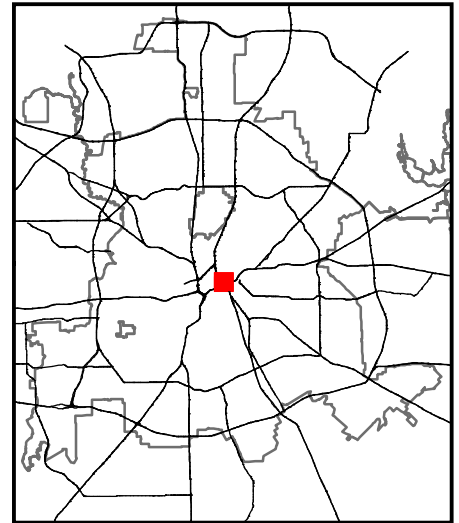
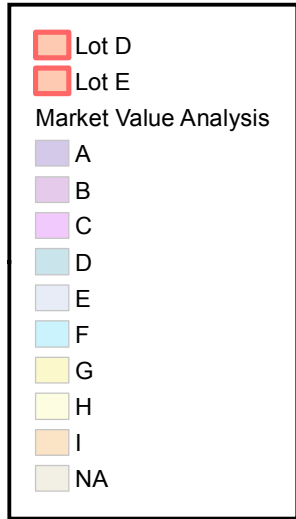
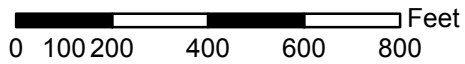
Year	Annual Consideration	Payable Before
1	\$X	11/15/2018
2	\$X	11/15/2019
3	\$X	11/15/2020
4	\$X	11/15/2021
5	\$X	11/15/2022
6	\$X	11/15/2023
7	\$X	11/15/2024
8	\$X	11/15/2025
9	\$X	11/15/2026
10	\$X	11/15/2027
11	\$X	11/15/2028
12	\$X	11/15/2029
13	\$X	11/15/2030
14	\$X	11/15/2031
15	\$X	11/15/2032
16	\$X	11/15/2033
17	\$X	11/15/2034
18	\$X	11/15/2035
19	\$X	11/15/2036
20	\$X	11/15/2037
21	\$X	11/15/2038
22	\$X	11/15/2039
23	\$X	11/15/2040
24	\$X	11/15/2041
25	\$X	11/15/2042
<b>Total Consideration</b>	<b>\$X</b>	

# IH 345 TxDOT Multiple Use Agreement

## Lot D and Lot E

Council District 2  
Mapsco 45-M, 45-R

1:4,800



Note: Shaded area represents the usable areas of the lots  
Details are subject to final design.

Map by Transportation GIS, May 2020



# Memorandum



CITY OF DALLAS

DATE June 7, 2019

TO Honorable Members of the Mobility Solutions Infrastructure and Sustainability Committee

SUBJECT **TxDOT Multiple Use Agreement Amendment**

On February 25, 2019, the Mobility Solutions, Infrastructure and Sustainability (MSIS) Committee was briefed on a possible amendment to the Multiple Use Agreement (MUA) between TxDOT and the City of Dallas. This agreement constitutes permitting the construction, maintenance and operation of a combination of parking lots and public parks within the highway right-of-way of IH-45 and IH-345 between Martin Luther King Jr. Boulevard and Good Latimer Expressway.

TxDOT requested to remove the land surrounded by Taylor Street, Canton Street, Henry Street, and Good Latimer Expressway from the MUA to allow for a private use. This request created community and business concerns regarding pedestrian safety, walkability, limited parking and traffic flow. Additionally, during the MSIS Committee briefing, two Councilmembers expressed concerns about the air quality at the site.

To address the pedestrian safety, walkability and parking issues, Department of Transportation staff added 185 Light Emitting Diode (LED) lights to the area to increase walkability and address safety concerns and is also in the process of adding a total of 250 LED streetlights to improve safety around the neighborhood.

Staff is also proposing to utilize the vacant land known as Lot E to build a parking lot address community and business concerns. Lot E is connected to Henry Street, Taylor Street, and Canton Street and is currently being used as a TxDOT storage area for salt, sand, poles, etc. Staff plans for the construction to be complete within the next two years.

Staff also completed a traffic study based on the community's concerns and is currently piloting a rideshare program to improve traffic flow for the community as one of the enhancements. Staff will continue to work with the community to further enhance traffic flow throughout the area.

To address the air quality concerns, City staff from the Department of Transportation and the Office of Environmental Quality and Sustainability contacted the Environmental Protection Agency (EPA) to obtain a recent Air Quality Report of the Dallas area from their nearest test site. According to the EPA, the proposed land under the highway is

DATE June 7, 2019  
SUBJECT **TxDOT Multiple Use Agreement Amendment**

expected to meet all national standards to protect human health and welfare according to the applicable National Ambient Air Quality Standards.

Staff continues to work on the logistic and legal aspects of the MUA amendment and has engaged the City Attorney's Office to ensure no future agreement terms will be violated for either party. Staff will continue to work with TxDOT and their legal team for final resolution to the MUA amendment, which will come before the City Council for their approval in the near future.

Please contact me if you have any questions or concerns.



**Majed A. Al-Ghafry, P.E.**  
**Assistant City Manager**

c: T.C. Broadnax, City Manager  
Chris Caso, City Attorney (Interim)  
Billerae Johnson, City Secretary  
Preston Robinson, Administrative Judge  
Kimberly Bizer Tolbert, Chief of Staff to the City Manager  
Jon Fortune, Assistant City Manager

Joey Zapata, Assistant City Manager  
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer  
Michael Mendoza, Chief of Economic Development and Neighborhood Services  
M. Elizabeth Reich, Chief Financial Officer  
Laila Aleqresh, Chief Innovation Officer  
Directors and Assistant Directors