

GROUND LEASE

between

VICTORIA COUNTY NAVIGATION DISTRICT

and

ASPHALT INC., LLC

_____, **2021**

TABLE OF CONTENTS

**ARTICLE 1
DEFINITIONS**

1.01 Definitions.....1

**ARTICLE 2
PREMISES; EASEMENTS**

2.01 Premises1
2.02 Easements1

**ARTICLE 3
TERM**

3.01 Term.....2

**ARTICLE 4
RENT**

4.01 Base Rent2
4.02 Tonnage Rent3
4.03 Additional Rent.....3
4.04 Commodities Reporting.....4
4.05 No Abatement3

**ARTICLE 5
IMPOSITIONS; UTILITIES; NET LEASE**

5.01 Impositions Defined.....4
5.02 Tenant’s Obligation4
5.03 Tax Contest.....5
5.04 Evidence Concerning Impositions5
5.05 Rendition.....5
5.06 Utilities.....6
5.07 Net Lease6
5.08 Right to Perform Tenant’s Obligation as to Impositions6

**ARTICLE 6
CONDITION OF DEMISED PREMISES; IMPROVEMENTS**

6.01 Condition of Premises.....6
6.02 Construction of Improvements6
6.03 Alterations; Demolition7
6.04 Construction Standards and Liens7
6.05 Ownership of Improvements.....9
6.06 Mutual Cooperation10

**ARTICLE 7
USE, CONTINUOUS OPERATIONS, MAINTENANCE, AND REPAIRS**

7.01 Use10
7.02 Maintenance and Repairs10

ARTICLE 8
INSURANCE AND INDEMNITY

8.01	Building Insurance	10
8.02	Liability Insurance	11
8.03	Policies	11
8.04	Tenant's Indemnity	12
8.05	Subrogation	13

ARTICLE 9
CASUALTY LOSS

9.01	Tenant's Obligation to Restore	13
9.02	Deposit of Funds Where Improvements Are To Be Restored	14
9.03	Notice of Damage	15

ARTICLE 10
CONDEMNATION

10.01	Total Taking.....	15
10.02	Partial Taking.....	16
10.03	Award on Partial Taking.....	16
10.04	Temporary Taking	17
10.05	Voluntary Dedication.....	18
10.06	Notice of Taking, Cooperation	17

ARTICLE 11
ASSIGNMENT AND SUBLETTING

11.01	Tenant's Right to Assign	17
11.02	Assignment by Landlord.....	18

ARTICLE 12
TENANT FINANCING

12.01	Tenant's Right to Encumber.....	20
12.02	Landlord Protective Provisions.....	21
12.03	Mortgagee Protective Provisions	22

ARTICLE 13
WARRANTY OF PEACEFUL POSSESSION

13.01	Warranty of Peaceful Possession.....	22
-------	--------------------------------------	----

ARTICLE 14
EVENT OF DEFAULT AND REMEDIES

14.01	Event of Default.....	22
14.02	Remedies.....	23
14.03	Landlord's Default	24
14.04	Time is of the Essence	24

ARTICLE 15
MISCELLANEOUS

15.01	Notices	25
15.02	Performance of Other Party’s Obligations.....	25
15.03	Arbitration.....	26
15.04	Modification and Non-Waiver	27
15.05	Governing Law	27
15.06	Number and Gender	27
15.07	Estoppel Certificate.....	27
15.08	Severability	27
15.09	Attorney Fees.....	27
15.10	Surrender of Premises; Holding Over.....	28
15.11	Relation of Parties.....	28
15.12	Force Majeure	28
15.13	Non-Merger.....	29
15.14	Entireties	29
15.15	Limitation on Landlord’s Liability	29
15.16	Recordation	29
15.17	Successors and Assigns.....	29
15.18	Inspection.....	29
15.19	No Third Parties Benefited	28
15.20	Survival.....	30
15.21	Use of Landlord’s Name.....	30
15.22	Interest.....	30
15.23	Limit on Damages	33
15.24	Broker	33

ARTICLE 16
HAZARDOUS SUBSTANCES

16.01	No Use of Hazardous Substances	31
16.02	Remediation of Hazardous Substances.....	31
16.03	Disposal of Hazardous Substances	35
16.04	Notice of Hazardous Substance Matters.....	32

Schedules:

Schedule 1.01 – Definitions; Terminology

Exhibits:

Exhibit A – Metes & Bounds Description of Demised Premises

Exhibit B – _____

Exhibit C – Easements for Benefit of Demised Premises

Exhibit D – Description of Approved Plans

GROUND LEASE

THIS GROUND LEASE (this "Lease") is made and entered into effective as of _____, 2021 (the "Effective Date") by and between the Victoria County Navigation District, a navigation district formed under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas, and Asphalt Inc., LLC, a Texas limited liability company ("Tenant").

RECITALS

A. Landlord owns real property in Victoria County, Texas, commonly known as the Port of Victoria North Industrial Park (also the "Land"), which encompasses the tract of land described in Exhibit A hereto (the "Demised Premises").

B. Tenant wishes to lease the Demised Premises and utilize the associated Easements (defined herein) for the Term and to construct on the Demised Premises a facility for the transportation, storage and distribution of liquid asphalt and other such commodities (such facility, together with other improvements from time to time located on the Demised Premises, being herein called the "Demised Premises Improvements"), and to construct within the Easements certain infrastructure improvements to include a rail track from Landlord's existing rail spur to the Demised Premises, and appropriate infrastructure to convey commodities from Landlord's Liquid Dock No. 2, to the Demised Premises (such improvements, together with other improvements from time to time located within the Easements, being herein called the "Easement Improvements").

AGREEMENTS

NOW, THEREFORE, for and in consideration of the agreements set forth herein, Landlord and Tenant (collectively, the "Parties" and individually, a "Party") hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

1.01 Definitions. Each capitalized term used in this Lease shall have the meaning set forth or referred to in Schedule 1.01 hereto. In addition, Schedule 1.01 sets forth certain rules for the interpretation of this Lease.

ARTICLE 2 **PREMISES; EASEMENTS**

2.01 Premises. Landlord hereby does lease, let and demise unto Tenant, and Tenant hereby does lease and rent from Landlord, upon and subject to the provisions of this Lease, the Demised Premises.

2.02 Easements. Tenant shall have the right to use and enjoy all of the easements established for the benefit of the Demised Premises granted in Exhibit C attached hereto (the

“Easements”), subject to the provisions of this Lease. Tenant may, at its sole cost and expense, construct and install the Easement Improvements within the Easements, subject to the terms of this Lease. Tenant shall maintain, repair, replace, and remove the Easement Improvements in accordance with the terms of this Lease. Tenant shall have the same obligations with respect to the Easements and the Easement Improvements as it has under the Lease with respect to the Demised Premises and the Demised Premises Improvements.

ARTICLE 3 **TERM**

3.01 Term. The term of this Lease (the “Term”) shall commence on the Effective Date and shall end on the last day of the calendar month which is ten (10) years after the last day of the Commencement Month. The term “Lease Year” shall mean each period of twelve (12) calendar months commencing on the first day of the calendar month following the Commencement Month, except that the first Lease Year shall include the period of time between the Effective Date and the end of the Commencement Month. Tenant shall have the option to extend the Term for four (4) additional successive ten (10) year periods. Tenant may exercise this option only by delivering to Landlord written notification of its intent to extend the Lease for the additional term. Said notice must be received by Landlord no later than six (6) months prior to the expiration of the then-existing term.

ARTICLE 4 **RENT**

4.01 Base Rent. Commencing on the Effective Date, Tenant shall pay to Landlord annual base rent (“Base Rent”) of One Hundred Eight Thousand and No/100 Dollars (\$108,000.00), being Seven Thousand Two Hundred and No/100 Dollars (\$7,200.00) per acre per Lease Year. Base Rent shall be adjusted pursuant to Section 4.01(b). Base Rent shall be paid in equal monthly installments in advance on the first day of each calendar month; provided, however, that Base Rent, prorated for the balance of the Commencement Month, shall be paid along with the Base Rent for the first calendar month following the Commencement Month.

(b) Commencing on the first Adjustment Date, and on each Adjustment Date thereafter, Base Rent will increase, on a cumulative basis, at the rate the greater of (i) 20% over the Base Rent during the previous ten-Lease Year period or (ii) increases in the Index from the first day of the previous ten-Lease Year period.

The term “Adjustment Date” means the first day of the first calendar month following the ten-year anniversary of the Effective Date of this Lease, and (ii) in the case of each subsequent adjustment in Base Rent, the first day of each succeeding ten-year anniversary of the first Adjustment Date.

(c) The term “Index” means the “Producers Price Index” published by the Bureau of Labor Statistics of the United States Department of Labor (“BLS”), or any successor agency, or any renamed local index covering the Victoria County area, or any other measure

thereafter employed by said BLS or successor agency in lieu of such Index that represents a weighted index of prices measured at the wholesale, or producer level.

(d) In the event that the Index is not available as of any Adjustment Date, the Base Rent shall be increased by twenty percent (20%) over the Base Rent in effect for the previous ten year-Lease Year period. When the Index is available, any further adjustment, if applicable, shall be made retroactive to the applicable Adjustment Date, with Tenant making any additional payments of Base Rent, if applicable, no later than thirty (30) days after such Index is available.

4.02 Tonnage Rent. In addition to Base Rent, Tenant will pay, at the rates established in Landlord's Tariff posted from time to time, the charge per ton of liquid asphalt or other commodity transported through the Demised Premises, but in no event, during any twelve (12) month period starting on the commencement of commercial operations of Tenant's facility, less than Twenty Thousand and No/100 Dollars (\$20,000.00) annually. The current tariff rate is Forty (40) cents per ton. The additional amount so determined is herein called the "Tonnage Rent". Such charges shall be invoiced monthly and shall be due and payable within thirty (30) days after being invoiced. If the Tonnage Rent is less than Twenty Thousand and No/100 Dollars (\$20,000.00) for a twelve-month period, Landlord shall invoice Tenant for the deficiency at the end of such twelve-month period. Landlord's commodity Tariff rate shall not increase by more than twenty percent (20%) over the course of a ten-year term.

4.03 Additional Rent. All amounts required to be paid by Tenant under the terms of this Lease other than Base Rent, and Tonnage Rent are herein from time to time collectively referred to as "Additional Rent". Additional Rent shall include amounts owed by Tenant to Landlord pursuant to any ancillary agreement between Landlord and Tenant related to Tenant's operations at the Port of Victoria, including, without limitation, any Rail Permit or Liquid Cargo Dock Operating Permit. Base Rent, Tonnage Rent and Additional Rent are herein collectively referred to as "Rent".

4.04 Commodities Reporting. Tenant shall implement and maintain appropriate appliances, equipment and procedures to determine the quantity of the property, products and commodities moved over, through, or across the Demised Premises and Easements, and on the 10th day of each calendar month, shall furnish to Landlord a written report detailing such movements of all property, products, and commodities including the kind and quantity thereof, during the preceding calendar month. Landlord and its designated representatives, employees, agents and assigns shall have access at all reasonable times for inspection of all such appliances and equipment used in determining the quantities and character of such property, products and commodities. Tenant shall keep and maintain records of each truck, barge, rail car or other vessel loaded or unloaded on or utilizing the Demised Premises and Easements and shall furnish Landlord with a written report of such monthly use on the 10th day of each succeeding calendar month.

4.05 No Abatement. Except to the extent provided in Article 10, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder to pay Rent, or entitle Tenant to any abatement, diminution, reduction, offset or suspension of Rent whatsoever; and Tenant

waives any rights now or hereafter conferred upon it by statute or other Applicable Law, to any abatement, diminution, reduction, offset or suspension of Rent because of any event, happening, occurrence or situation whatsoever.

ARTICLE 5
IMPOSITIONS; UTILITIES; NET LEASE

5.01 Impositions Defined. The term “Impositions” shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees, and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed by any public authority upon or accrued or become a lien on (i) the “Premises” (as defined herein) or any part thereof; (ii) the rent and income received by or for the account of Tenant from any sublessees or for any use or occupancy of the Premises; (iii) such franchises, licenses, and permits as may be pertinent to the use of the Premises; or (iv) any documents to which the Tenant is a party creating or transferring an interest or estate in the Premises or any parking rights or appurtenances to the Premises. Impositions shall not include any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Landlord; any franchise tax imposed upon any owner of the fee of the Demised Premises; or any income, profits, or revenue tax, assessment, or charge imposed upon the rent or other benefit received by Landlord under this Lease by any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority (each a “Governmental Authority” and collectively, “Governmental Authorities”). However, if at any time during the Term the present method of taxation shall be so changed that the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and improvements thereon shall be discontinued and in whole or partial substitution therefor, taxes of the type described in the immediately preceding sentence or taxes, assessments, levies, impositions, or charges shall be levied, assessed, and/or imposed wholly or partially as a capital levy or otherwise on the rents received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes, assessments, levies, impositions, or charges, to the extent so levied, assessed, or imposed, shall be deemed to be included within the term Impositions.

5.02 Tenant’s Obligation. During the Term, Tenant will pay as and when the same shall become due all Impositions directly to the Governmental Authority or other person entitled to receive payment thereof and provide Landlord with reasonable evidence that such Impositions have been paid in a timely manner. Impositions that are payable by Tenant for the tax year in which the Term commences as well as during the tax year in which the Term ends shall be apportioned so that Tenant shall pay its proportionate share of the Impositions for such periods of time. Where any Imposition that Tenant is obligated to pay may be paid pursuant to Applicable Law in installments, Tenant may pay such Imposition in installments as and when such installments become due. Tenant shall, if so requested, deliver to Landlord evidence of due payment of all Impositions Tenant is obligated to pay hereunder, concurrently with the making of such payment. If the Premises is not separately assessed, Tenant shall pay a share of the Impositions properly allocable to the Premises, as reasonably determined by Landlord; provided, however, that (i) Tenant may have the Demised Premises separately assessed for purposes of ad valorem property taxes and Landlord will reasonably cooperate with Tenant to achieve the

same, and (ii) Landlord agrees to pay, prior to delinquency, any outstanding ad valorem property taxes for the Demised Premises. Upon receipt of any ad valorem tax statements for the property that includes the Demised Premises, Landlord shall deliver to Tenant copies of such statements and an invoice setting forth Landlord's calculation of the portion of the 2020 ad valorem taxes properly allocable to the Demised Premises. Tenant shall pay the portion of the 2020 ad valorem taxes properly allocable to the Demised Premises within thirty (30) days after Tenant's receipt of such statement.

5.03 Tax Contest. Tenant may, at its sole cost and expense, contest the validity or amount of any Imposition for which it is responsible, in which event the payment thereof may be deferred to the extent permitted by Applicable Law, during the pendency of such contest, if diligently prosecuted. Fifteen (15) days prior to the date any contested Imposition shall become delinquent, Tenant shall deposit with Landlord or, at the election of Tenant, such bank or trust company having its principal place of business in Victoria, Texas, selected by Tenant and reasonably satisfactory to Landlord (the "Imposition Trustee"), an amount sufficient to pay such contested item, together with any interest and penalties thereon and the estimated fees and expenses of any Imposition Trustee, which amount shall be applied to the payment of such items when the amount thereof shall be finally determined. In lieu of such cash deposit, Tenant may deliver to Landlord a surety company bond in form and substance, and issued by a company, satisfactory to Landlord, or other security reasonably satisfactory to Landlord. Nothing herein contained, however, shall be construed to allow any Imposition to remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or seized by any Governmental Authority for the nonpayment of the same. If at any time, in the judgment of Landlord reasonably exercised, it shall become necessary to do so, Landlord may, after written notice to Tenant, under protest if so requested by Tenant, direct the application of the amounts so deposited or so much thereof as may be required to prevent a sale or seizure of the Premises or foreclosure of any lien created thereon by such item. If the amount deposited exceeds the amount of such payment, the excess shall be paid to Tenant, or, in case there should be any deficiency, the amount of such deficiency shall be promptly paid on demand by Tenant to Landlord (provided Landlord has advanced such amount), and, if not so paid, such amount shall be a debt of Tenant to Landlord, together with interest thereon at the Interest Rate from the date advanced until paid. Tenant shall promptly furnish Landlord with copies of all proceedings and documents with regard to the contest of any Imposition, and Landlord shall have the right, at its expense, to participate therein.

5.04 Evidence Concerning Impositions. The certificate, advice, bill, or statement issued or given by the appropriate officials authorized by Applicable Law to issue the same or to receive payment of any Imposition of the existence, nonpayment, or amount of such Imposition shall be prima facie evidence for all purposes of the existence, nonpayment, or amount of such Imposition.

5.05 Rendition. For each tax year commencing after the Effective Date, Tenant shall render the Premises for each Governmental Authority imposing Impositions thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Premises for any year for the purpose of reducing ad valorem taxes thereon, and in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided that

Landlord shall not be required to incur any expense in connection therewith without its prior consent.

5.06 Utilities. Tenant shall be responsible for any and all costs associated with the installation or extension of Utilities to the Premises which are necessary for Tenant's operations on the Premises, subject to prior approval by Landlord. Tenant shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone, cable, internet service and other communication services, and all other utilities and similar services rendered or supplied to the Premises, and all water fees, water rents, sewer/septic service charges, or other similar charges levied or charged against, or in connection with, the Premises. Tenant shall not, for any purpose, drill or have drilled a water well on the Premises.

5.07 Net Lease. Except as expressly provided in this Lease, Landlord shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, maintenance, operation, or repair of the Premises. It is expressly understood and agreed that this is a completely net lease intended to assure Landlord the rentals herein reserved on an absolute net basis.

5.08 Right to Perform Tenant's Obligation as to Impositions. If Tenant fails to timely pay any Imposition for which it is responsible hereunder, or fails to timely notify Landlord of its intention to contest the same, or fails to pay contested Impositions as provided in Section 5.03, Landlord may, at its election (but without obligation), pay such Imposition with any interest and penalties due thereon, and the amount so paid shall be reimbursed by Tenant on demand together with interest thereon at the Interest Rate from the date of such payment until repaid.

ARTICLE 6

CONDITION OF DEMISED PREMISES; IMPROVEMENTS

6.01 Condition of Premises. Tenant acknowledges that it is leasing the Demised Premises and any improvements located thereon, and accepting the Easement Areas "**AS IS, WHERE IS, WITH ALL FAULTS**" and that Landlord makes no representations or warranties of any nature, express or implied, concerning the Demised Premises, the Easement Areas, or any improvements thereon, including any representation or warranty concerning (i) the physical condition of the Demised Premises or Easement Areas or any such improvements, (ii) the suitability of the Demised Premises or Easement Areas or any improvements thereon for Tenant's intended use, (iii) the environmental condition of the Demised Premises or Easement Areas and any such improvements or (iv) compliance of the Demised Premises or Easement Areas or any such improvements with any Applicable Laws. Tenant has had adequate opportunity to inspect, conduct tests and other due diligence and otherwise evaluate the Demised Premises and Easement Areas.

6.02 Construction of Improvements. Tenant shall, subject to the subsequent provisions of this Article 6, construct all "Improvements" in accordance with the terms of this Lease. As used herein, the term "Improvements" shall mean all Demised Premises Improvements and Easement Improvements. Tenant's construction of a rail track within the

Easement for Landlord's Rail Spur to the Demised Premises shall include all required signalization and a sixty (60) foot road crossing across the roadway used to access Landlord's North General Dock, and other properties adjacent to the Land. Tenant shall be responsible for the expense and cost of designing and installing any rail switch and related equipment required from Landlord's Rail Spur to accommodate the rail track to the Demised Premises (the "Rail Switch"). Landlord will maintain the Rail Switch in accordance with its maintenance program for its existing Rail Spur. It is agreed that Landlord's rail switching operator will be allowed short-term use of the rail track within the Easement Area for operational convenience and will utilize same in such a manner as not to unreasonably interfere with Tenant's operations on the Premises.

6.03 Alterations; Demolition. At any time and from time to time during the Term, Tenant may perform such construction, alteration, renovation, repair, refurbishment, and other work with regard to the Improvements as Tenant may elect, provided that the same is done in accordance with the Construction Standards herein, and is approved by Landlord.

(b) The Improvements shall not be demolished or removed without the prior written consent of Landlord, which consent may be withheld, delayed or conditioned in Landlord's sole discretion. Except as otherwise provided in Section 6.05, Tenant shall have no obligation to demolish or remove the Improvements; provided, however, if this Lease is terminated pursuant to Article 9 or Article 10, at Landlord's option the Improvements shall be demolished and removed from the Premises and the Premises shall be put in a good, clean and safe order and condition at Tenant's sole cost and expense.

6.04 Construction Standards and Liens. The Improvements shall be constructed, and any and all alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "Construction Standards" (herein so referenced):

(i) With respect to any material construction, installation, alteration, renovation, repair, refurbishment and other work with regard to the Improvements, Landlord shall have approved the site plan, drainage plans, construction plans and specifications, and construction materials to be utilized.

(ii) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question, and if the cost of such work exceeds \$100,000.00, then also utilizing a general contractor (and if Tenant elects to use one, the project manager) and principal design engineers approved by Landlord (such approval not to be unreasonably withheld);

(iii) All such construction or work shall be done in material compliance with all Applicable Laws;

(iv) No such construction or work shall be commenced until Tenant shall have obtained all licenses, permits, and authorizations required of all Governmental Authorities having jurisdiction, including Landlord;

(v) No such construction or work shall be commenced until Tenant shall have obtained, and Tenant shall maintain in force and effect, the insurance coverage required in Article 8 with respect to the type of construction or work in question;

(vi) No such construction or work shall be commenced until Tenant shall have provided Landlord with such performance bonds and payment bonds (if the cost of such work exceeds \$100,000.00) as Landlord shall reasonably request;

(vii) After commencement, such construction or work shall be prosecuted with due diligence to its completion, subject to extension due to delays caused by Force Majeure; and

(viii) After completion of initial construction or substantial alteration of the Improvements, Tenant shall provide Landlord with a complete set of as-built drawings.

(b) Tenant shall have no right, authority, or power to bind Landlord or any interest of Landlord in the Demised Premises, the Land (including any Easement Area), or any improvements located on the Land for any claim for labor or for material or for any other charge or expense incurred in construction of the Improvements or performing any alteration, renovation, repair, restoration, refurbishment, or other work with regard thereto, nor to render Landlord's interest in the Demised Premises, the Land (including any Easement Area) or any improvements located on the Land liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Tenant shall in no way be considered to be the agent of Landlord with respect to, or general contractor for, the construction, erection, or operation of any such Improvements, alterations, renovations, repairs, restorations, refurbishments or other work. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Demised Premises or the Land (including any Easement Area) shall be filed, Tenant shall promptly pay and release or bond such liens to Landlord's reasonable satisfaction or otherwise obtain the release or discharge thereof. If Tenant fails to promptly pay and release or bond such lien to Landlord's reasonable satisfaction, Landlord shall have the right, but not the obligation, to pay, release or obtain a bond to protect against such liens and claims following written notice to Tenant, and Tenant shall reimburse Landlord on demand for any such amounts paid together with interest thereon from the date of such payment until paid.

(c) Landlord, as well as its agents, employees, Commissioners, architects, engineers and Affiliates, if any, shall not be liable to Tenant or any other Person for any loss, claim or demand asserted on account of Landlord's exercise of its rights and duties hereunder, or any failure or defect in such exercise. No approval of designs, plans, specifications or other matters shall ever be construed as representing or implying that such designs, plans, specifications or other matters will, if followed, result in a properly designed building or other improvements. Such approvals shall in no event be construed as representing or guaranteeing that any improvements will be built in a workmanlike manner, nor shall such approvals relieve Tenant of its obligation to construct the improvements in a workmanlike manner as provided in this Article 6.

6.05 Ownership of Improvements. During the Term all Improvements, shall be solely the property of Tenant, but upon expiration or termination of the Term, the Improvements, including, but not limited to, any buildings, structures, and rail infrastructure shall be the property of Landlord, free and clear of all claims of Tenant or any third party. Any personal property of Tenant located on the Premises as a part of the Improvements shall be the property of Tenant and upon expiration or termination of the Term, the Tenant shall remove such items at its own expense. All such personal property of Tenant that remains on the Premises after the deadline for removal shall be deemed abandoned and, at Landlord's election, may be retained by Landlord as Landlord's property, disposed of by Landlord, without accountability, in such manner as Landlord deems fit (including having such property stored at the risk and expense of Tenant), or required by Landlord's written notice to Tenant to be removed by Tenant. No later than the expiration or, if Tenant has paid the Rent in advance for, and maintains all required insurance during, such thirty (30) day period, no later than thirty (30) days after the earlier termination, of the Term, Tenant shall have the right to remove portable storage and processing equipment and any or all personal property located on the Premises provided that (i) all resulting damage or injuries to the Premises are completely remedied at the expense of the Tenant and (ii) Tenant complies with Landlord's reasonable requirements respecting any required restoration. If Tenant commences the removal process within such thirty (30) day period, and continues with reasonable diligence, then it shall be granted an additional period of time to finish the removal. In addition, upon expiration or termination of the Lease, within ninety (90) days after written notice from Landlord, such notice to be sent on or before the date the Lease expires or is terminated, requiring that Tenant do so, Tenant shall demolish and remove all the Improvements and shall cause the Premises to be returned to grade level and placed in a good, clean and safe order and condition. All demolition and removal work shall be at Tenant's sole cost and expense.

6.06 Mutual Cooperation.

(a) Landlord, as owner of the Demised Premises and the Land (including any Easement Area), shall reasonably cooperate with and assist Tenant in Tenant's efforts to file for and obtain all building permits, certificates of occupancy, easements, licenses, variances, permissions and consents necessary to construct, operate and maintain the Premises so long as Landlord is not required to incur any obligations or liabilities other than minor incidental expenses or impose any restrictions conditions or other encumbrances on the Land.

(b) Landlord shall not unreasonably delay or prohibit Tenant from commencing and thereafter continuously pursuing construction of the Improvements in accordance with this Lease but this sentence does not require Landlord to refrain from exercising any of Landlord's rights under this Lease.

(c) Landlord shall have the right to require periodic meetings with representatives of Tenant present (in person or by phone) to discuss issues relating to the progress of construction of the Improvements, including the coordination of construction of such improvements. If Landlord requests, representatives of the general contractor(s) and architects for the Improvements shall be present. Such meetings shall occur no less frequently than monthly and no more frequently than weekly.

ARTICLE 7
USE, CONTINUOUS OPERATIONS, MAINTENANCE, AND REPAIRS

7.01 Use.

(a) Subject to the terms and provisions hereof, Tenant shall have the right to use and enjoy the Premises for the transportation storage, and distribution of liquid asphalt and related commodities, and for no other uses.

(b) Tenant shall not use or occupy the Premises, permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by Tenant hereunder, (iii) constitute a public or private nuisance, (iv) be unreasonably disruptive to the Land or the improvements located thereon, or (v) violate any Applicable Law.

(c) Upon execution of this Lease, and no later than six (6) months thereafter, Tenant shall use commercially reasonable efforts to commence and continue commercial operation on the Demised Premises, subject to Force Majeure and periodic shut downs to the extent required for maintenance, repairs and restoration.

7.02 Maintenance and Repairs.

(a) Tenant shall take good care of the Premises, make all repairs thereto, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in first-class order, repair, and condition at all times and in compliance with all Applicable Laws. Tenant will not do, permit, or suffer any waste, damages, disfigurement, or injury to or upon the Premises or any part thereof. However, the foregoing provisions of this Section 7.02 shall not prohibit Tenant from undertaking the initial construction of the Improvements or any subsequent repairs, remodeling, renovation, or reconstruction (whether resulting from casualty, condemnation, or otherwise) in accordance with the terms of this Lease.

(b) Landlord shall have no obligation to maintain or repair the Premises.

ARTICLE 8
INSURANCE AND INDEMNITY

8.01 Insurance. Tenant will, at its cost and expense, keep and maintain in force the following policies of insurance:

(a) Insurance on the Improvements against loss or damage by fire and against loss or damage by any other risk now and from time to time insured against by “special form” (formerly “all risk”) property insurance, and in builder’s risk completed value form during construction (including malicious mischief and vandalism), in amounts sufficient to provide coverage for the full insurable value of the Improvements; the policy for such insurance shall have a replacement cost endorsement or similar provision. “Full insurable value” shall mean actual replacement value (exclusive of cost of excavation, foundations, and footings below the

surface of the ground or below the lowest basement level), and such full insurable value shall be confirmed from time to time at the request of Landlord by one of the insurers.

(b) Boiler and pressure apparatus insurance to the limit of not less than \$10,000,000.00 with respect to any one accident, such limit to be increased if requested by Landlord by an amount which may be reasonable at the time. If the Demised Premises Improvements shall be without a boiler plant, no such boiler insurance will be required.

(c) Worker's compensation and employer's liability coverage insurance as to Tenant's employees involved in the construction, operation, or maintenance of the Premises in compliance with Applicable Law.

(d) Such other insurance against other insurable hazards which at the time are commonly insured against in the case of improvements similarly situated, due regard being given to the height and type of the Improvements, their construction, location, use, and occupancy.

8.02 Liability Insurance. Tenant will, at its cost and expense, keep and maintain in force commercial general liability insurance for bodily injury, death and property loss and damage (including coverages for product liability, contractual liability and personal injury liability) covering Tenant for claims, lawsuits or damages arising out of its performance under this Agreement, and any negligent or otherwise wrongful acts or omissions by Tenant or any employee or agent of Tenant, with a combined single limit of not less than \$1,000,000.00 with such limit to be increased if requested by Landlord (but no more frequently than once every three (3) years) by an amount which may be commercially reasonable at the time, taking into account the size and type of the Improvements, their construction, location, use and occupancy. Tenant shall require that: (i) Approved Contractor and any other general contractor for initial construction, tenant improvement work, casualty restoration work or any significant alterations provide completed operations coverage in its commercial general liability policy, and (ii) such insurance name Tenant and Landlord as additional insureds and be written on an occurrence, rather than a claims made, basis.

(b) In addition, throughout the Term and for a period of five (5) years after the expiration or termination of this Lease, Tenant shall maintain in effect environmental liability insurance for the benefit of Landlord and Tenant in an amount no less than \$10,000,000.00 with a deductible no higher than \$250,000.00. Provided, however, that Tenant shall not be required to maintain such environmental liability insurance after the expiration or termination of the Lease if: (a) Prior to beginning commercial operations on the Premises, Tenant conducts an Environmental Site Assessment ("ESA"); and (b) within sixty (60) days of the expiration or termination of the Lease Tenant conducts an ESA and remedies any deficiencies that were not present on the initial ESA and that were caused by Tenant's use of the Premises.

8.03 Policies. All insurance maintained in accordance with the provisions of this Article 8 shall be issued by companies reasonably satisfactory to Landlord and the Permitted Mortgagee, if any (hereinafter defined). All property policies shall be carried in the name of both Landlord and Tenant, as their respective interests may appear, and shall contain a mortgagee clause acceptable to the Permitted Mortgagee. All property policies shall expressly provide that any loss thereunder may be adjusted with Tenant and Landlord, but shall be payable

to Landlord, who shall agree to receive and disburse all proceeds as set forth in Section 9.02. All liability insurance policies shall name Landlord and the Permitted Mortgagee as an additional insured and shall include contractual liability endorsements. All such policies of insurance may be provided on either an occurrence or claims-made basis. If such coverage is provided on a claims made basis, such insurance shall continue throughout the term of the Agreement, and upon the termination of this Agreement, or the expiration or cancellation of the insurance, Tenant shall purchase or arrange for the purchase of either an unlimited reporting endorsement (“Tail” coverage), or “Prior Acts” coverage from the subsequent insurer, with a retroactive date on or prior to the effective date of this Agreement and for a period of not less than five (5) years following the termination or expiration of this Agreement. No cancellation, non-renewal or material modification will occur without thirty (30) days’ prior written notice by the insurer to Landlord, Tenant and the Permitted Mortgagee. Tenant shall furnish Landlord and the Permitted Mortgagee with such evidence of insurance, including duplicate originals or copies certified as being true and correct of all insurance policies, or certificates of insurance reasonably satisfactory to Landlord and the Permitted Mortgagee, with new certificates of insurance or other evidence of insurance to be delivered no later than thirty (30) days prior to the expiration of the current policies. If Tenant fails to maintain any insurance required to be maintained by Tenant pursuant to this Lease, Landlord may, at its election (without obligation), procure such insurance as may be necessary to comply with these requirements, and Tenant shall reimburse Landlord, on demand, with interest thereon at the Interest Rate from the date of expenditure until fully reimbursed. Any and all property insurance policies required to be maintained pursuant to this Agreement shall, if they do not automatically permit the waivers of subrogation contained herein, be endorsed to reflect the waivers of subrogation provided for herein.

8.04 Tenant’s Indemnity. Tenant shall defend, indemnify and hold harmless Landlord and its affiliates, officers, directors, employees, commissioners, managers and agents (the “Indemnified Parties”) from and against, and Tenant shall be responsible for, any and all liabilities (including strict liability), actions, demands, penalties, fines, losses, costs and expenses (including reasonable attorneys’ and experts’ fees and expenses), suits, costs of any settlement or judgment, and claim of any and every kind whatsoever, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (all of which are hereinafter collectively called “Claims”), which may now or in the future be brought or instituted or asserted on account of or growing out of or arising from (i) any failure on the part of Tenant and its affiliates, partners, members, shareholders or other equity owners, officers, directors, employees, managers or agents, or licensees (the “Tenant Parties”) to comply with the provisions of this Lease, or to comply with the provisions of Applicable Law applicable to the Tenant Parties or the Premises, (ii) any and all injuries or damages, including death, to persons or properties relating to the condition, use or occupancy of the Premises, including the construction, alteration, repair or maintenance of any improvements, or the presence on or release or discharge from the Premises of any Hazardous Substances (except to the extent that Landlord has been proven to have caused such presence, release or discharge), or (iii) Landlord’s approval of any designs, site plans, plans, specifications or other matters, **NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY (WITHOUT REGARD TO FAULT) OF ANY OF THE INDEMNIFIED PARTIES** except, in the case of each Indemnified Party, to the extent that the Claims (i) are proven to have resulted from the

gross negligence or willful misconduct of such Indemnified Party; or (ii) qualify as an exception to sovereign immunity under applicable provisions of the Texas Tort Claims Act or any other Texas or federal laws. Maintenance of the insurance referred to in this Article 8 shall not affect Tenant's obligations under this Section 8.04. Without relieving Tenant of its obligations under this Section 8.04, the Indemnified Parties, at their election, may defend or participate in the defense of any Claims with attorneys and representatives of their own choosing. Tenant shall be relieved of its obligation of indemnity to the extent, and only to the extent, of the amount actually recovered from one or more insurance carriers and either paid to Landlord or paid for Landlord's benefit in reduction of any Claims, but nothing contained herein shall entitle Tenant to delay performing its indemnification obligations, or require any Indemnified Party to delay enforcing its indemnification rights, until one or more insurance carriers make such payments to or for the benefit of the Indemnified Parties.

8.05 Subrogation. Landlord hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Tenant, its agents, partners or other equity owners, directors, officers and employees (each a "Tenant Release Party") for any loss or damage that may occur to the Improvements and to Landlord's interest in any other property located on the Premises or the Land, whether real, personal or mixed, and the Land, regardless of cause or origin, **INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY TENANT RELEASE PARTY**, to the extent such loss is covered in whole or in part by insurance. Tenant hereby waives (on behalf of itself and any Person holding through right of subrogation) any and all rights of recovery, claim, action or cause of action against Landlord, its agents, directors, commissioners, officers and employees (each a "Landlord Release Party") for any loss or damage that may occur to the Improvements and to all property of Tenant located on the Premises or the Land, whether real, personal or mixed, and the Premises, regardless of cause or origin, **INCLUDING THE NEGLIGENCE OR OTHER MISCONDUCT OF ANY LANDLORD RELEASE PARTY**, to the extent such loss is covered (or is required under this Lease to be covered) in whole or in part by insurance. Nothing contained in this Section 8.05 is intended or shall be construed to create any liability that would not otherwise exist in the absence of this Section 8.05.

ARTICLE 9 **CASUALTY LOSS**

9.01 Tenant's Obligation to Restore. Should the Improvements be wholly or partially damaged or destroyed by fire or other casualty, Tenant shall:

(i) promptly, but in no event later than two (2) Business Days after the occurrence of such destruction, commence and thereafter diligently pursue all steps necessary to secure the Improvements and otherwise make the Improvements safe so as not to result in risk of injury to Persons or damage to other property on the Land, including constructing a fence around the Demised Premises Improvements (if necessary for security or safety). The work described in this Section 9.01(a)(i) is herein called the "Immediate Work".

(ii) so long as (A) no Event of Default exists, (B) no less than three (3) years remains in the then-current Term, and (C) it is feasible to restore the Improvements Tenant shall promptly, but in no event later than thirty (30) days after the occurrence of such damage or destruction, commence and thereafter diligently pursue the repair, replacement, restoration and reconstruction (collectively, the “Restoration Work”) of the Improvements to substantially the form in which the Improvements existed prior to such casualty, with at least as good workmanship and quality as the improvements being repaired, replaced, restored or reconstructed, all in compliance with the provisions of this Article 9 and Section 6.04 and Tenant shall be entitled to use any applicable insurance proceeds for such purpose. The Parties recognize that, depending on the extent of damage or destruction, Restoration Work may require assessing the structural soundness or other condition of the Improvements, preparing plans and specifications, obtaining necessary building permits, negotiating construction contracts, obtaining surety bonds and insurance and obtaining any required approvals from Landlord and the Permitted Mortgagee, if any. All such activities, if diligently pursued, shall be considered part of Restoration Work.

(iii) If (A) an Event of Default exists, (B) less than three (3) years remains in the Term, or (C) it is not feasible to restore the Improvements, Tenant shall not be obligated to restore, rebuild or replace the Improvements and this Lease shall terminate as though the date of such destruction was the date of expiration of the Term. In such event, all insurance proceeds shall first be applied to the discharge of the Permitted Mortgagee, if any, and any proceed in excess of the amount necessary to discharge the Permitted Mortgagee shall be applied (i) first to pay the cost of demolishing the Improvements and leveling, cleaning and otherwise putting the Demised Premises and any Easement Area in a good, clean and safe order and condition, as provided in Section 6.03, and (ii) any remaining insurance proceeds shall be distributed (A) first to Tenant in an amount equal to the value of Tenant’s remaining leasehold interest in the Demised Premises (assuming that this Lease would have expired at the end of the then-current Term) and (B) the balance to Landlord.

9.02 Deposit of Funds Where Improvements Are To Be Restored. In the event of destruction or damage by casualty where Tenant is obligated or determines to repair, replace, restore or reconstruct the Improvements, all property damage insurance proceeds shall be deposited with the holder of the Permitted Mortgage; if there is no Permitted Mortgage, such proceeds shall be deposited into an escrow account jointly owned by Landlord and Tenant for disbursement in accordance with this Section 9.02. Any disbursement of funds from said joint escrow account shall require the authorization of both Landlord and Tenant. Such proceeds shall be received, held, and paid out for restoration of casualty damages as follows:

(a) The insurance proceeds will be disbursed to Tenant after delivery of evidence reasonably satisfactory to the Permitted Mortgagee, or if there is no Permitted Mortgagee, to Landlord that (i) such repairs, restoration, or rebuilding have been completed and effected in compliance with the Construction Standards, and (ii) no mechanic’s and materialman’s liens against the Premises have been filed, or all such liens have been paid or bonded around to the satisfaction of Landlord. At the option of Tenant, provided that no Event of Default has occurred and is then continuing, such proceeds shall be advanced in reasonable

installments. Each such installment (except the final installment) shall be advanced in an amount equal to the cost of the construction work completed since the last prior advance (or since commencement of work as to the first advance) less statutorily required retainage in respect of mechanic's and materialman's liens. The amount of each installment requested shall be certified as being due and owing by Tenant and Tenant's architect in charge, and each request shall include all bills for labor and materials for which reimbursement is requested and reasonably satisfactory evidence that no lien affidavit has been placed against the Premises for any labor or material furnished for such work. The final disbursement, which shall be in an amount equal to the balance of the insurance proceeds, shall be made upon receipt of (A) an architect or engineer's certificate of substantial completion as to the work from Tenant's architect or engineer, and (B) reasonably satisfactory evidence that all bills incurred in connection with the work have been paid, and (C) executed final releases of mechanic's liens by the general contractor and any major subcontractors and suppliers.

(b) After completion of such repairs, replacement, restoration, or rebuilding, any insurance proceeds in excess of the cost of such repairs, replacement, restoration, or rebuilding shall, if required by any Permitted Mortgagee, be applied to payment of its Permitted Mortgage, otherwise any such proceeds shall be paid to Tenant.

(c) If the cost of any such repairs, replacement, restoration or rebuilding be estimated by Tenant's architect or engineer (or any independent supervising architect or engineer retained by Landlord or the Permitted Mortgagee) to be in excess of the insurance proceeds, Tenant will, upon request of Landlord or the Permitted Mortgagee, give satisfactory assurance that the funds required to meet such deficiency will be available to Tenant for such purpose, which assurance may include the deposit of the amount of such deficiency in accordance with this Section 9.02.

9.03 Notice of Damage. Tenant shall immediately notify Landlord and any Permitted Mortgagee of any destruction or material damage to the Premises.

ARTICLE 10 **CONDEMNATION**

10.01 Total Taking. Should the entire Premises be taken (which term, as used in this Article 10, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, then (a) this Lease shall terminate as of the date of taking possession by the condemning authority, (b) Rent shall be apportioned and paid to such date of termination, and (c) the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (ii) second, the balance of the award shall be equitably apportioned between Landlord and Tenant based on the then respective fair market values of Landlord's Interest (appraised by reference to all relevant factors including the income stream derivable by Landlord under this Lease and the then present value of Landlord's reversionary interest in the entire Premises after expiration of the originally stated Term), and Tenant's Leasehold Estate (appraised by reference to all relevant factors, including the income stream derivable by Tenant from the Premises for the remainder of the originally stated Term), with any award to Tenant

payable to Tenant's Permitted Mortgagees as their interests may appear. However, if Tenant's portion of the condemnation award is insufficient to repay the Permitted Mortgage, then Landlord's portion of such award shall be reduced by the amount which, when taken together with Tenant's portion, is sufficient to repay the Permitted Mortgage; but in no event shall Landlord be denied the portion of the condemnation award attributable to the fair market value of the Premises (expressly excluding the Improvements) determined as if this lease were not in effect. If Landlord and Tenant are unable to agree on the respective fair market values of their interests in the Premises, then the matter shall be submitted to arbitration as provided in Section 15.03. After the determination and distribution of the condemnation award as herein provided, this Lease shall terminate.

10.02 Partial Taking. If a portion of the Premises is taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall continue in effect as to the remainder of the Premises unless, in Tenant's reasonable judgment, so much of the Premises is so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 10.01. In the event of a partial taking where this Lease is not terminated, the Base Rent payable during the remainder of the Term after taking of possession by the condemning authority shall be reduced on a just and proportionate basis having due regard to the relative value and acreage of the portion of the Premises thus taken as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Premises shall have been impaired or interfered with by reason of such partial taking. If Landlord and Tenant are unable to agree as to a just reduction in Base Rent, the matter shall be submitted to arbitration as provided in Section 15.03. In the event of a partial taking where this Lease is not terminated, Tenant shall proceed promptly to restore the remaining portion of the Premises to an integral unit resembling, so far as practicable in Tenant's sole opinion, the Premises prior to such taking, in the same manner provided in Article 9 for restoration following a casualty, with the provisions relating to Tenant's right to use insurance proceeds for Immediate Work and Restoration Work to apply likewise to Tenant's right to use condemnation awards for such purposes.

10.03 Award on Partial Taking. In the event of a partial taking where this Lease is not terminated, and as a result thereof Tenant will need to restore, repair, or refurbish the remainder of the Premises in order to put them in a useable condition, then (a) the award shall first be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Premises taken, (b) the portion allocable to Landlord shall be paid to Landlord, and (c) the portion of the award payable to Tenant shall be deposited and disbursed for payment of such restoration, repair and refurbishment work in accordance with the provisions of Section 9.02. If a portion of the Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 10.01, considering the respective interests of Landlord and Tenant in the portion of the Premises taken.

10.04 Temporary Taking. If the whole or any portion of the Premises shall be taken for temporary use or occupancy, the Term shall not be reduced or affected and Tenant shall continue to pay the Rent in full. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. In the event of any temporary taking, Tenant shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy extends beyond the expiration of the Term, in which case such award, after payment to Landlord therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between Landlord and Tenant as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. If the portion of the award payable to Tenant is made in a lump sum or is payable to Tenant other than in equal monthly installments, Landlord shall have the right to collect such portion thereof as shall be sufficient to meet (a) the payments due to Landlord from Tenant under the terms of this Lease during the period of such temporary use or occupancy (and the amounts so collected shall be credited to Tenant's obligations hereunder), and (b) the estimated cost of restoration of the Premises, if such taking is for a period not extending beyond the expiration of the Term, which amount shall be made available to Tenant when and if, during the Term, Tenant shall obtain possession and shall proceed to restore the Premises as nearly as may be reasonably possible to the condition existing immediately prior to such taking. To the extent the portion of the award is applicable to subpart (b) of the immediately preceding sentence, such portion of the award shall be disbursed for payment of such repair, restoration and refurbishment in accordance with the provisions of Section 9.02.

10.05 Voluntary Dedication. Tenant shall have no right to voluntarily devote or dedicate any portion of the Premises to public use without Landlord's prior written consent.

10.06 Notice of Taking, Cooperation. Tenant shall immediately notify Landlord and any Permitted Mortgagee of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to Premises. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

ARTICLE 11

ASSIGNMENT AND SUBLETTING

11.01 Tenant's Right to Assign. Except as permitted in Sections 12.01, Tenant shall not sell, assign, sublease, or otherwise transfer (each being herein referred to as a "Transfer"), or mortgage, pledge or otherwise encumber (each being herein referred to as an "Encumbrance" or to "Encumber"), whether voluntarily, involuntarily or by operation of law, its Leasehold Estate, or any portion thereof, without Landlord's prior written consent, which consent shall be based on the financial condition and experience of the Transferee (or its operator) in operating similar facilities. Such consent shall not be unreasonably withheld.

(b) The term "Transfer" shall also include the occurrence of any of the following to the extent that it has the cumulative effect, together with all previous such events or

transactions, of transferring all or a majority of the economic benefits of ownership of the Leasehold Estate from the Persons who own, directly or indirectly, the majority of the economic benefits of ownership of the Leasehold Estate on the Effective Date: (i) the merger, reorganization, share exchange, recapitalization, restructuring or consolidation of Tenant or any Person Controlling Tenant or any Person that owns a direct or indirect equity ownership interest in Tenant; (ii) the Transfer of the majority of the direct or indirect equity ownership interests in Tenant or any Person Controlling Tenant or any Direct or Indirect Owner; or (iii) any Transfer of any property interest, real or personal, tangible or intangible.

(c) The provisions of this Section 11.01 shall not apply to a foreclosure by the Permitted Mortgagee or a conveyance to the Permitted Mortgagee (or its Affiliate) in lieu of foreclosure, but the provisions of this Section 11.01 shall apply to a subsequent Transfer by the Permitted Mortgagee or its Affiliate to the purchaser at such foreclosure sale.

(d) No Transfer or Encumbrance, regardless of whether Landlord has consented to such Transfer or Encumbrance, shall release Tenant (or any previous Transferee) from liability for the performance of all of Tenant's obligations under this Lease; however, so long as no Event of Default then remains uncured, upon a Transfer permitted under this Lease the Transferor shall be released from liability for performance of all of Tenant's obligations under this Lease accruing after the date of such Transfer, and the Transferee shall be deemed to have assumed all of Tenant's obligations under this Lease.

(e) Prior to making any Transfer for which Landlord's consent is required, Tenant shall provide to Landlord the following: (i) the name of the proposed Transferee and all direct or indirect owners of equity ownership interest in the Transferee; (ii) financial information regarding the proposed Transferee and the Persons Controlling the Transferee, including balance sheets, income statements and the like; and (iii) such other information as Landlord shall reasonably request to determine the financial viability and business reputation and operational experience of the proposed Transferee.

(f) For any transfer of any direct or indirect equity ownership in Tenant that does not require Landlord's consent, Tenant shall give notice to Landlord identifying the Transferor, the Transferee and the interest transferred no later than ten (10) business days after such transfer has occurred.

11.02 Assignment by Landlord. Landlord may, without Tenant's consent, Transfer or Encumber all or any part of its Landlord's Interest, including its interest in this Lease, and Tenant shall attorn to any transferee of Landlord's Interest provided such Transferee shall be bound by this Lease and shall enter into a non-disturbance and attornment agreement with Tenant. As used in this Lease, "Landlord" shall mean only the fee owner of the Premises at the time in question, and in the event of any Transfer of title to the Premises, the Transferor shall automatically be released from all of the obligations of the Landlord under this Lease accruing from and after the date of such Transfer, and all of such obligations accrued prior to the date that such Transferor became the Landlord, provided that the Transferee shall assume and be responsible for all obligations of "Landlord", including those accruing prior to the Transfer of Landlord's Interest, during the time that such Transferee is the Landlord hereunder. The covenants and obligations of Landlord contained in this Lease shall be binding on Landlord, its

successors and assigns, only during and in respect to their respective successive periods of ownership, except to the extent provided in this Section 11.02.

ARTICLE 12
TENANT'S FINANCING

12.01 Tenant's Right to Encumber. Provided that no Event of Default has occurred and is then continuing, Tenant shall have the right, from time to time, to mortgage the Leasehold Estate with a deed of trust, mortgage or other lien instruments to secure borrowings of Tenant, subject to the provisions of this Article 12. Any such mortgage, deed of trust and/or other lien instruments and the indebtedness secured thereby are herein collectively referred to as a "Permitted Mortgage" and the holder or other beneficiary thereof is herein referred to as the "Permitted Mortgagee". In the event there is more than one Permitted Mortgage at one time, then all of the provisions of this Lease providing any rights or protections for the Permitted Mortgagee (including the provisions of Section 12.03) shall be solely for the benefit of and enforceable by the Permitted Mortgagee with respect to the Permitted Mortgage having first lien priority (as determined by Landlord in good faith by review of such title information as Landlord, in its sole discretion, deems appropriate). The Permitted Mortgage shall not encumber or affect in any way the Landlord's Interest.

(b) Tenant's right to grant a Permitted Mortgage is subject to the following additional conditions:

(i) No later than thirty (30) days after the execution and delivery of a Permitted Mortgage, Tenant shall have delivered to Landlord a written notice stating the existence of the Permitted Mortgage and the name and address of the Permitted Mortgagee for purposes of notice.

(ii) The Permitted Mortgagee shall be a bank, savings association, insurance company, pension fund or other institutional lender which, typically provides investment funding for similar type projects ("Institutional Lender"). Tenant will provide landlord with information specifying the funding sources for landlord to approve such sources, such approval not to be unreasonably withheld. If the Permitted Mortgage has been originated by an Institutional Lender, the Permitted Mortgage may be securitized in a bona fide securitization transaction regardless of whether the holders of indirect beneficial interests in the Permitted Mortgage would constitute Institutional Lenders, so long as the servicing agent for the Permitted Mortgage is a bona fide servicing agent.

(iii) The Permitted Mortgage or a recorded ancillary document (collectively, the "Mortgage Documents") must permit Tenant to use insurance proceeds and condemnation awards for Restoration Work as provided in this Lease, with such additional reasonable procedures for disbursement as the Permitted Mortgagee shall require; provided, however, that the Mortgage Documents need not permit Tenant to use insurance proceeds and condemnation awards for Restoration Work (other than the Immediate Work) if Tenant is in default under the Mortgage Documents.

(iv) The Permitted Mortgage must contain the Landlord protective provisions described in Section 12.02.

12.02 Landlord Protective Provisions. The Permitted Mortgage shall expressly provide for the following rights, which rights are solely for the benefit of and enforceable by Landlord and are not for the benefit of, and may not be enforced by, Tenant:

(a) The Permitted Mortgagee shall not accelerate maturity of the Permitted Mortgage or foreclose any lien securing payment thereof until a notice specifying the default under the Permitted Mortgage giving rise to such right of acceleration or foreclosure (a “Mortgage Default”) has been received by Landlord and Landlord has failed to cure the Mortgage Default within twenty (20) days after Landlord’s receipt of such notice of default; provided, however, that if notice of default has been given at least two (2) times during any calendar year for failure to pay a regular installment of interest, or principal and interest, on the Permitted Mortgage, then no such notice of default shall be required for any subsequent defaults of the same type during the balance of the applicable calendar year. Any payments made and other things done by Landlord to cure the Mortgage Default shall be fully effective to prevent acceleration of maturity or foreclosure as if done by Tenant. Any amount expended by Landlord in curing or attempting to cure such Mortgage Default shall be paid by Tenant to Landlord upon demand, together with interest thereon at the Interest Rate from the date of each such expenditure until the date paid in full. Landlord has the option, but not the obligation, to cure any such Mortgage Default, and after commencing the cure of any such Mortgage Default may cease further actions to so cure.

(b) The Permitted Mortgagee shall not foreclose the Permitted Mortgage or accept a deed in lieu of foreclosure unless notice of such foreclosure or deed in lieu of foreclosure has been given to Landlord no less than thirty (30) days in advance of such event.

12.03 Mortgagee Protective Provisions. If Tenant encumbers the Leasehold Estate with a Permitted Mortgage in compliance with this Article 12, for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) There shall be no cancellation, termination (other than termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) or material modification of this Lease without the prior written consent of the Permitted Mortgagee. Landlord shall not accept any surrender of this Lease (other than in connection with a termination in accordance with this Lease, including this Section 12.03, following the occurrence of an Event of Default) without the prior written consent of the Permitted Mortgagee. The Permitted Mortgagee will not be bound by any such cancellation, surrender or material modifications made without its consent, other than a termination of this Lease or of Tenant’s right to possession following the occurrence of an Event of Default so long as Landlord has complied with the provisions of this Section 12.03.

(b) If an Event of Default should occur hereunder:

(i) Landlord will deliver to the Permitted Mortgagee a copy of each notice of Tenant’s default under this Lease if Landlord intends that such default is to serve as the basis for an Event of Default. Landlord shall not terminate this Lease or Tenant’s right to

possession hereunder until a notice specifying the Event of Default has been received by the Permitted Mortgagee and the Permitted Mortgagee has failed to cure the Event of Default within the time periods herein provided. Any payments made and other things done by the Permitted Mortgagee to cure the Event of Default shall be fully effective to prevent termination of this Lease or termination of Tenant's right to possession as if done by Tenant. The time period for cure is twenty (20) days after the Permitted Mortgagee's receipt of notice of the Event of Default; provided, however, that if a non-monetary Event of Default can be cured but by its nature cannot be cured within such twenty (20) day time period, and if the Permitted Mortgagee has commenced curing such Event of Default within such time period and thereafter diligently pursues such cure to completion, such twenty (20) day cure period shall be extended for the period of time necessary for the Permitted Mortgagee to cure such Event of Default; provided further, that (A) the time period for curing the failure to commence and thereafter diligently pursue the Immediate Work (by commencing and thereafter diligently pursuing such work) shall be ten (10) days after Permitted Mortgagee's receipt of notice of such failure, and (B) the Permitted Mortgagee shall not have any right to cure Tenant's failure to perform the balance of the Restoration Work if the Permitted Mortgagee has elected to apply the insurance proceeds to discharge the Permitted Mortgage rather than permitting Tenant to use the insurance proceeds for such Restoration Work. The Permitted Mortgagee has the option, but not the obligation, to cure any such Event of Default, and after commencing the cure of any such Event of Default may cease further actions to so cure.

(ii) If the Event of Default is a non-monetary default that the Permitted Mortgagee cannot reasonably cure without being in possession of the Premises, then for so long as the Permitted Mortgagee is diligently and with continuity attempting to secure possession of the Premises (whether by foreclosure or otherwise, but subject to the provisions of this Article 12), provided the Permitted Mortgagee cures any monetary default as well as any other defaults that are reasonably susceptible of then being cured by the Permitted Mortgagee, Landlord shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Premises in order to cure such Event of Default, and during such time Landlord shall not terminate this Lease or Tenant's right to possession of the Premises.

(c) If the Lease is terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to Landlord not later than twenty (20) days after receipt from Landlord of written notice of such termination (which notice Landlord agrees to give) to elect to receive, in its own name or in the name of its Affiliate (which shall have an amount of equity capital no less than that of Tenant on the Effective Date), a new lease of the Premises for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and Landlord agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Event of Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder. Upon the execution of such new lease, Landlord and the new tenant named therein shall prorate income and expenses relating to the Demised Premises Improvements effective as of the date of termination of this Lease as if the tenant named in the new Lease had succeeded to the interest of Tenant under this Lease as of the effective date of such termination; provided, however, that Landlord shall not be obligated to account to the tenant named in the new lease for any income or revenue from the

Improvements not actually delivered to Landlord in connection with such termination. In addition to the new lease, Landlord shall execute and deliver to the tenant named therein such deeds, bills of sale, assignments and other instruments as may be necessary to convey, assign and otherwise transfer to the tenant under the new lease, AS IS, without warranty of title or any other warranty or representation of any type, but with confirmation of no prior conveyance or assignment by Landlord, all of Landlord's right, title and interest in and to the Improvements that may have reverted to Landlord on account of the termination of this Lease, including without limitation any subleases.

(d) No Permitted Mortgagee shall be or become liable to Landlord as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Tenant under this Lease or shall actually take possession of the Premises, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.

(e) Nothing contained in this Section 12.03 shall prevent Landlord's pursuing monetary damages or injunctive relief relating to Tenant's default.

The provisions of this Section 12.03 are solely for the benefit of and enforceable by the Permitted Mortgagee and are not for the benefit of, and may not be enforced by, Tenant.

ARTICLE 13 **WARRANTY OF PEACEFUL POSSESSION**

13.01 Warranty of Peaceful Possession. Landlord covenants that Tenant, prior to the occurrence of an Event of Default, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease, any matter of record in Victoria County, Texas and Applicable Law. Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Premises against the claims of any and all Persons whomsoever lawfully claim the same, or any part thereof, by, through or under Landlord or any matter of record in Victoria County, Texas and any matters that a proper survey would reveal, but not otherwise, subject only to provisions of this Lease and Applicable Law.

ARTICLE 14 **EVENT OF DEFAULT AND REMEDIES**

14.01 Event of Default. Each of the following shall be deemed an "Event of Default" by Tenant hereunder and a material breach of this Lease:

(a) Whenever Tenant shall fail to pay any installment of Rent or any other sum payable by Tenant to Landlord, or any assignee, subcontractor or agent of Landlord, under this Lease or other agreement directly related to Tenant's operations at the Port of Victoria, on the date upon which the same is due to be paid, and such default shall continue for thirty (30) days after Tenant shall have been given a written notice specifying such default; provided, that after two (2) notices of default have been given in any calendar year with respect to Tenant's failure to pay any installment of Base Rent, any subsequent failure to pay any installment of

Base Rent during the balance of such calendar year shall constitute an Event of Default without any requirement of notice of such failure being given to Tenant;

(b) Whenever Tenant shall fail to promptly commence and thereafter diligently pursue performance of the Immediate Work and Tenant shall fail to remedy the same (by commencing and thereafter diligently pursuing such work) within fifteen (15) days after Tenant shall have been given a written notice specifying such default;

(c) Whenever Tenant shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this Lease that are to be kept, performed or observed by Tenant (including the covenants, agreements, terms or provisions contained herein that are to be kept or performed by the owner or lessee of the Premises) other than with respect to payment of Rent or other liquidated sums of money and as provided in Section 14.01(b) above, and Tenant shall fail to remedy the same within thirty (30) days after Tenant shall have been given a written notice specifying such default; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Tenant has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Tenant to cure such default;

(d) Whenever an involuntary petition shall be filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or whenever a receiver of Tenant, or of all or substantially all of the property of Tenant, shall be appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event; or

(e) Whenever Tenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or seek relief under any other law for the benefit of debtors.

14.02 Remedies. If an Event of Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Section 12.03, Landlord may at any time thereafter prior to the curing thereof and without waiving any other remedies hereunder or available to Landlord at law or in equity (Landlord's remedies being cumulative), do any one or more of the following:

(a) Landlord may terminate this Lease by giving Tenant written notice thereof, in which event this Lease and the Leasehold Estate and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice; and Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. In the event of such termination, Tenant shall be liable to Landlord for all Rent accrued to the date of termination and damages in an amount equal to (i) the discounted present value of the amount by which the Rent reserved hereunder for the remainder of the stated Term exceeds the then net fair market rental value of the Premises for such period of time, plus (ii) all expenses

incurred by Landlord in enforcing its rights hereunder, including but not limited to reasonable attorneys' fees, court costs, and other such expenses.

(b) Landlord may terminate Tenant's right to possession of the Premises and enjoyment of the rents, issues, and profits therefrom without terminating this Lease or the Leasehold Estate, and reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing, and operating the Premises). If the net rental so received by Landlord is less than the amount necessary to satisfy all of Tenant's obligations under this Lease, Tenant shall pay to Landlord on demand the amount of such deficiency together with interest at the Interest Rate, and Landlord may bring suit from time to time to collect such deficiency. If the net rental so received by Landlord exceeds the amounts necessary to satisfy all of Tenant's obligations under this Lease, nevertheless Landlord shall retain such excess. In no event shall Landlord be liable for failure to so lease, manage, or operate the Premises or collect the rentals due under any subleases and any such failure shall not reduce Tenant's liability hereunder. If Landlord elects to proceed under this Section 14.02(b), Landlord may at any time thereafter elect to terminate this Lease as provided in Section 14.02(a).

14.03 Landlord's Default. If (a) Landlord fails to make any payment of money required to be paid by Landlord to Tenant or any third party under this Lease on the date upon which the same is due to be paid, and such default shall continue for thirty (30) days after Landlord shall have been given a written notice specifying such default; or (b) Landlord fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept, performed or observed by Landlord (other than payment of money) and Landlord shall fail to remedy the same within thirty (30) days after Landlord shall have been given a written notice specifying the same; provided, however, that if a non-monetary default can be cured but by its nature cannot be cured within such thirty (30) day time period, and if Landlord has commenced curing such default within such time period and thereafter diligently pursues such cure to completion, such thirty (30) day cure period shall be extended for the period of time necessary for Landlord to cure such default; then in such event Tenant may enforce the performance of this Lease and collect damages by any method provided by law or equity except as otherwise expressly provided herein; provided, however, that Tenant shall not take any action to enforce the performance of this Lease and collect damages until thirty (30) days thereafter has passed with such default remaining uncured (plus such additional time period as provided in clause (b) above with respect to cure by Landlord). Notwithstanding the foregoing provisions of this Section 14.03, Tenant shall have no right to terminate this Lease, except as otherwise provided herein. Unless specifically stated to the contrary, no clause or provision contained in this Lease is meant to be, or shall be construed or interpreted to be a waiver of any immunity rights Landlord may possess under the laws of the State of Texas by virtue of its existence as a governmental entity.

14.04 Time is of the Essence. Whenever in this Lease a date, time period or other similar requirement or limitation is provided, time is of the essence.

ARTICLE 15
MISCELLANEOUS

15.01 Notices. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 15.01; or (b) delivering the same to the party to be notified in person or through a reliable courier service. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

Landlord: Victoria County Navigation District
1934 FM 1492
Victoria, Texas 77905
Attn: Executive Director

With copies to: The Law Office of Duane G. Crocker, P.C.
121 S. Main St., Ste. 300
P.O. Box 2661
Victoria, Texas 77902

Tenant: Asphalt, Inc., LLC
11675 Jollyville Rd., Ste. 150
Austin, TX 78759
Attn: Josh Condon

With copies to:

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving ten (10) days advance notice to such effect in accordance with the provisions of this Section 15.01.

15.02 Performance of Other Party's Obligations. If either Party fails to perform or observe any of its covenants, agreements, or obligations hereunder for a period of thirty (30) days after notice of such failure is given by the other Party, then the other Party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements, or obligations which are asserted to have not been performed or observed at the expense of the failing Party and to recover from the failing Party all reasonable costs and expenses incurred in connection with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Notwithstanding the foregoing, if either Party determines, in its reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of \$50,000.00, exists due to the other Party's failure to observe or perform its covenants, agreements, and obligations hereunder, then such Party may immediately perform or observe the covenants, agreements and obligations which give rise to such emergency at the expense of the

failing Party and recover from the failing Party all costs and expenses incurred in connection with attempting to do so, together with interest thereon at the Interest Rate from the date expended until repaid. Any performance or observance by a Party pursuant to this Section 15.02 shall not constitute a waiver of the other Party's failure to perform or observe. In performing its self-help rights, the applicable Party shall perform in a commercially reasonable manner.

15.03 Arbitration.

(a) This section shall only apply where express provision is made in this Lease for settlement of a dispute or determination of a matter by arbitration.

(b) If either Party wishes to settle a dispute or determine a matter by arbitration, such matter shall be resolved by binding arbitration in accordance with the provisions of this Section 15.03, and shall be self-administered in accordance with the American Arbitration Association pursuant to its rules of commercial arbitration. Any claimed default based upon such dispute shall be deemed suspended until the dispute is resolved, provided that the Party claimed to be in default is proceeding diligently with the arbitration; provided, however, nothing contained in this Section 15.03 shall suspend the obligation of Tenant to pay Rent hereunder.

(c) Landlord and Tenant may agree on an arbitrator, and in such event, such arbitrator's decision shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction. If Landlord and Tenant are unable to agree on an arbitrator, Landlord and Tenant shall each appoint an arbitrator, and such two arbitrators shall select, within fifteen (15) days after the appointment of such second arbitrator, a third arbitrator. The decision of a majority of the three arbitrators shall be final and binding on Landlord and Tenant and shall be specifically enforceable in any court having jurisdiction.

(d) If (i) either Landlord or Tenant fails to appoint an arbitrator within ten (10) days after receiving notice from the other Party that such other Party has appointed an arbitrator, or (ii) the first two arbitrators fail to appoint a third arbitrator within the aforesaid fifteen (15) day period, or (iii) any Person appointed as an arbitrator by or on behalf of either Landlord or Tenant shall die, fail to act, resign or become disqualified and the Party by or on behalf of whom such arbitrator was appointed shall fail to appoint a substitute arbitrator within ten (10) days after being requested to do so by the other Party, the arbitrator in question will be appointed by the District Courts of Victoria County Texas subject to the rules of such courts regarding recusal of judges. Each Party shall bear and pay the cost of the arbitrator appointed by (or for) it, and the cost of the third arbitrator shall be borne and paid equally by Landlord and Tenant. If the presiding judge of the applicable court does not appoint the third arbitrator within forty-five (45) days, then such arbitrator shall be appointed within fifteen (15) days thereafter in accordance with the rules of the American Arbitration Association, but subject to the requirements herein for the appointment of arbitrators.

(e) All arbitration proceedings shall be held in Victoria, Victoria County Texas. If a hearing is scheduled, Landlord and Tenant shall be given reasonable advance notice of the time and place of any arbitration hearing and both shall have the right to be present, heard and represented by counsel. The arbitrators shall not have the right to add to or subtract from or

otherwise change the terms and provisions of this Lease, and their determination shall be consistent and in accordance with the terms and provisions of this Lease.

15.04 Modification and Non-Waiver. No variations, modifications, or changes herein or hereof shall be binding upon any Party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either Party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by Landlord of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any Party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving Party.

15.05 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Texas.

15.06 Number and Gender. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate.

15.07 Estoppel Certificate. Landlord and Tenant shall execute and deliver to each other, promptly upon any request therefor by the other Party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting Party and stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults hereunder known to the Party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with to the knowledge of the Party executing the certificate; and
- (e) such other matters as may be reasonably requested.

15.08 Severability. If any provision of this Lease or the application thereof to any Person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15.09 Attorney Fees. If litigation is ever instituted by either Party to enforce, or to seek damages for the breach of, any provision hereof, the prevailing Party therein shall be promptly reimbursed by the other Party for all attorneys' fees reasonably incurred by the prevailing Party in connection with such litigation. Any provision in this agreement allowing for the award and/or recovery of attorney's fees is intended to expressly authorize an award of reasonable and

necessary attorneys' fees, to be binding upon Landlord and Tenant, and to meet the requirements of § 271.159 of the Texas Local Government Code.

15.10 Surrender of Premises; Holding Over. Upon termination or expiration of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Premises, except as otherwise specifically provided in Section 9.01, in good order, repair, and condition. Subject to the terms of this Lease, upon such termination or expiration Landlord may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by force, summary proceedings, ejectment, or otherwise, and may dispossess and remove Tenant from the Premises and may have, hold, and enjoy the Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. If Tenant does not surrender possession of the Premises at the end of the Term, such action shall not extend the Term, Tenant shall be a tenant at sufferance, and during such time of occupancy Tenant shall pay to Landlord, as damages, an amount equal to twice the amount of Rent that was being paid immediately prior to the end of the Term. Landlord shall not be deemed to have accepted a surrender of the Premises by Tenant, or to have extended the Term, other than by execution of a written agreement specifically so stating.

15.11 Relation of Parties. It is the intention of Landlord and Tenant to hereby create the relationship of landlord and tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render either Party hereto liable for any obligation of the other.

15.12 Force Majeure. As used herein, “Force Majeure” shall mean, with respect to the applicable Force Majeure Party, the occurrence of any of the following: (i) strikes, lockouts or picketing (legal or illegal); (ii) a temporary taking as provided in Section 10.04; (iii) riot, civil commotion, insurrection and war; (iv) fire or other casualty, accidents, acts of God or public enemy, epidemics, pandemics; (v) natural disaster directly impacting the Land and/or Demised Premises; (vi) application of any Applicable Law to the extent that such application was not reasonably foreseeable by the Party claiming the right to an extension of time as a result of an event of Force Majeure (the “Force Majeure Party”); or (vii) any other event which prevents or delays the performance by the Force Majeure Party of any of its obligations imposed upon it hereunder and the prevention or cessation of which event is beyond the reasonable control of the Force Majeure Party. However, in no event shall any of the following be deemed to constitute Force Majeure: (A) failure to obtain financing for, failure to refinance, or cessation of disbursements under financing for, the purchase, construction, demolition, repair or ownership of the Demised Premises Improvements; (B) law suits among parties comprising Tenant; (C) inability to pay when due monetary sums; or (D) the acts or omissions of the contractor, subcontractors or suppliers of the Force Majeure Party or any other Person acting by, through or under the Force Majeure Party.

(b) If a Force Majeure Party shall be delayed, hindered or prevented from performance of any of its obligations hereunder (other than to pay Rent or other monetary sum) by reason of Force Majeure, the time for performance of such obligation shall be extended on a day-for-day basis for each day of actual delay, provided that the following requirements are complied with by the Force Majeure Party: (y) the Force Majeure Party shall give prompt written notice of such occurrence to the other Party, and (z) the Force Majeure Party shall diligently attempt to remove, resolve or otherwise eliminate such event, and minimize the cost

and time delay associated with such event, keep the other Party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, neither Party shall be relieved by any event of Force Majeure from its obligation to pay Rent or other monetary sum hereunder.

15.13 Non-Merger. Notwithstanding the fact that fee title to the Demised Premises and to the Leasehold Estate may, at any time, be held by the same Person, there shall be no merger of the Leasehold Estate and fee estate unless the respective owners thereof execute and file for record in the Office of the County Clerk of Victoria County, Texas a document expressly providing for the merger of such estates.

15.14 Entireties. This Lease constitutes the entire agreement of the Parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. However, any other agreements entered into between Landlord and Tenant of even date herewith are not merged herein and shall remain in effect.

15.15 Limitation on Landlord's Liability. Notwithstanding anything to the contrary contained herein, (i) Landlord's liability for failure to perform any of its obligations hereunder or otherwise relating to the Premises is hereby expressly limited to Landlord's interest in and to the Premises, and (ii) should Landlord fail to pay any sum required to be paid by Landlord hereunder, or fail to perform any obligation required to be performed by Landlord hereunder, any judicial proceedings brought by Tenant against Landlord shall be limited to proceeding against Landlord's rights and interest in and to the Premises, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties (including the Land and any improvements thereon), or funds of Landlord, other than against Landlord's interest in and to the Premises. No provision contained in this Agreement shall be interpreted in any manner as a waiver of any rights or protections against suit and/or liability, including, without limitation, any sovereign immunity protection which Landlord may possess or enjoy by virtue of its status and existence as a governmental entity in the State of Texas.

15.16 Recordation. Landlord and Tenant will, at the request of either Party, promptly execute an instrument in recordable form constituting a memorandum of this Lease, which shall be filed for record in the Office of the County Clerk of Victoria County, Texas, solely to give record notice of the existence of this Lease. No such memorandum shall in any way vary, modify or supersede this Lease. Except in connection with actual litigation between the Parties, this Lease shall not be filed for record.

15.17 Successors and Assigns. This Lease shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to Tenant's rights to Transfer, sublet, or Encumber, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Whenever a reference is made herein to either Party, such reference shall include the party's permitted successors and assigns.

15.18 Inspection. Landlord shall have the right, but not the obligation, to enter upon the Premises at all reasonable times to inspect same. For purposes of this Section 15.18, except in the case of an Emergency, "reasonable times" means during normal business hours. Except in the case of an Emergency, Landlord shall not unreasonably disturb any Person in possession in

connection with such inspections. No consent of Tenant shall be required for any visual inspection. Tenant shall not unreasonably withhold, delay or condition Landlord's right to make any inspection that is more than a visual inspection (*e.g.*, invasive testing). If Landlord reasonably believes that a violation of Article 16 or of any Environmental Law has occurred, or if Landlord has received a notice from a Governmental Authority alleging any violation of any Environmental Law, Landlord shall have the right to make such inspections as Landlord shall reasonably require. Any such inspection, and the repair of any damage to the Demised Premises Improvements caused by any such inspection, shall be at Landlord's cost and expense unless a violation of Article 16 or of any Environmental Law has occurred, in which event Tenant shall be responsible for such cost and expense.

15.19 No Third Parties Benefited. Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, opportunities to extend the Term, and any right to execute a new lease (if applicable), and certain other enumerated rights granted to the Permitted Mortgagee, the terms and provisions of this Lease are for the sole benefit of, and may be enforced only by, Landlord and Tenant, and no other Persons whatsoever (including any direct or indirect equity owner in Tenant) is intended to benefit herefrom or shall have any right to enforce this Lease.

15.20 Survival. Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease, including indemnification obligations relating to events or conditions that occur or exist prior to such expiration or termination, shall survive the expiration or termination of this Lease.

15.21 Use of Landlord's Name. Tenant shall not use Landlord's name in any advertising or promotional material relating to the Premises without Landlord's prior written consent, but Tenant may make reference to this Lease and to Landlord in legally operative documents, as Tenant shall deem reasonably necessary.

15.22 Interest. If any Rent or other amount required to be paid by one Party to the other Party pursuant to this Lease is not paid when due, such amount shall bear interest at the Interest Rate from the date due until the date paid in full.

15.23 Limit on Damages. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 15.23, NOTWITHSTANDING ANYTHING IN THIS LEASE OR UNDER LAW OR EQUITY TO THE CONTRARY, EXCEPT FOR INTEREST CHARGEABLE HEREUNDER NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST REVENUES OR PROFITS ARISING OUT OF THIS LEASE OR RELATING TO THE PREMISES, INCLUDING THE NEGLIGENCE OF THE PARTY AGAINST WHOM THE CLAIM WOULD BE MADE.

15.24 Broker. Landlord and Tenant represent and warrant each to the other that such Party has not dealt with any broker in connection with this Lease and that, insofar as such Party knows, no broker negotiated this Lease or is entitled to any commission in connection herewith. Landlord and Tenant each agree to indemnify the other Party for any losses, costs or damages (including reasonable attorneys' fees) incurred by the other Party as a consequence of the breach or falsity of the representations and warranties of such Party under this Section 15.24.

ARTICLE 16 **HAZARDOUS SUBSTANCES**

16.01 Use of Hazardous Substances. Except as expressly authorized under the definition of "Hazardous Substances," Tenant shall not cause or permit any Hazardous Substance to exist or otherwise be brought, kept or used in or about the Premises or the Land or any improvements thereon by Tenant, its agents, employees, contractors or invitees (collectively, the "Tenant Representatives"), and neither Tenant nor any of the Tenant Representatives shall use, generate, produce, store, Release or otherwise cause or permit the occurrence or continued existence of any Hazardous Substances in, on, under or about the Premises or to be transported to or from the Premises, except in strict compliance with applicable Environmental Laws. Tenant and Tenant Representatives shall, at their own expense, procure, maintain in effect, and comply with all conditions of all permits, licenses, registrations, exemptions, and other governmental and regulatory approvals required under Environmental Laws for any Hazardous Substances in, on, under, to or from or about the Premises, including the discharge of appropriately treated and approved wastes into or through any sanitary sewer serving the Premises.

16.02 Remediation of Hazardous Substances. (a) As between Landlord and Tenant and specifically excluding any Hazardous Substances exposure or contamination to the extent proven to have been caused by Landlord, if any actual or suspected exposure to, or contamination arising from, Hazardous Substances occurs at any time, or if Tenant or any Tenant Representative causes, whether by action or failure to act, any exposure or contamination of the Land or any improvements thereon from Hazardous Substances ("Tenant Responsible Contamination"), Tenant and/or Tenant Representatives, at their sole cost and expense, shall promptly and diligently remove and, as applicable, remediate such Hazardous Substances from, at, or under the Premises or the Land or improvements thereon, or the groundwater underlying the Premises or the Land, in strict compliance with applicable Environmental Laws and in accordance with then prevailing industry standards. Tenant shall, at its sole cost and expense, develop, implement, and document in writing regular monitoring of the Premises for the possible presence or Release of, or exposure to, any Tenant Responsible Contamination. In the event any actual or suspected Tenant Responsible Contamination is identified Tenant shall: (i) promptly (but no later than three (3) business days of such identification) notify Landlord of such actual or suspected contamination and the location thereof; and (ii) arrange no later than five (5) business days of such identification for a third party, independent inspection of the Premises by a well-qualified (and, as necessary, licensed) environmental consultant to confirm whether the Tenant Responsible Contamination exists, which inspection will be performed at Tenant's sole cost and expense no sooner than five (5) days but no later than ten (10) days after Tenant notifies Landlord in writing of such planned inspection. Neither Tenant nor any Tenant Representative shall take any required remedial action in response to any Tenant Responsible Contamination in or about the Premises or the Land or improvements thereon, or enter into any settlement

agreement, consent, decree or other compromise in respect to any claims relating to any Tenant Responsible Contamination, without first notifying Landlord at least five (5) days in advance of Tenant's intention to do so and affording Landlord the opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

(a) If Tenant does not promptly and diligently take all steps to prepare any remediation plan required for any Tenant Responsible Contamination, obtain all necessary approvals for such remediation plan, and thereafter commence and perform the required remediation within thirty (30) days after Landlord has approved Tenant's remediation plan and all other required approvals and consents have been obtained (subject to extension due to delays caused by Force Majeure and delays outside of Tenant's control), and thereafter continue to diligently prosecute such remediation to completion in accordance with the approved remediation plan, Landlord, at its option (but without any obligation to do so), may cause such remediation to be accomplished, and Tenant shall reimburse Landlord immediately upon demand for all amounts paid by Landlord, together with interest on such amounts at the Interest Rate from the date incurred until the date paid in full.

(b) Tenant shall promptly deliver to Landlord copies of all hazardous waste manifests, and otherwise deliver such information and supporting documentation to Landlord as Landlord may reasonably require, to evidence the proper management, transport and disposal of all Hazardous Substances removed from the Premises, the Land or any improvements thereon as part of Tenant's remediation of any Tenant Responsible Contamination.

(c) Any cleanup, removal or other remediation of Tenant Responsible Contamination must be completed in its entirety at or before the expiration or termination of this Lease.

16.03 Disposal of Hazardous Substances. Tenant shall cause all Hazardous Substances removed from the Premises or the Land as part of the required remediation of any Tenant Responsible Contamination to be removed, contained, and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such Hazardous Substances.

16.04 Notice of Hazardous Substance Matters. Each Party (herein the "Notifying Party") shall immediately notify the other Party ("Recipient") in writing of (a) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Premises pursuant to any Environmental Law; (b) any claim made or threatened by any Person against the Notifying Party or the Premises relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances resulting from operations or activities on or about the Premises; and (c) any report made to any Governmental Authority arising out of or in connection with any Hazardous Substances in, on, under, Released, or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith, all on receipt by the Notifying Party of actual knowledge of any of the foregoing matters. The Notifying Party shall deliver to the Recipient as promptly as possible, and in any event within ten (10) days after the Notifying Party first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof.

[Signature Page Follows]

EXECUTED as of the date and year first above written.

LANDLORD:

**VICTORIA
DISTRICT**

COUNTY

NAVIGATION

By: _____
Name: Robby Burdge
Its: Chairman

TENANT:

ASPHALT, INC., LLC

By: _____
Name: _____
Title: _____

SCHEDULE 1.01

DEFINITIONS; TERMINOLOGY

1.01 Definitions. As used in the Lease, each of the following terms shall have the following meaning:

“Additional Rent” has the meaning set forth in Section 4.03.

“Adjustment Date” has the meaning set forth in Section 4.01(c).

“Affiliate” means, when used with reference to a specified Person, any Person who directly or indirectly Controls, is Controlled by or is under common Control with the specified Person. “Affiliate” shall also include (i) any Person which owns, directly or indirectly (including through one or more intermediaries), fifty percent (50%) or more of any class of voting security or equity interests of such specified Person, (ii) any Subsidiary of such specified Person and (iii) any Subsidiary of a Person defined in clause (i). Notwithstanding the foregoing however, the officers, directors, trustees and individuals in similar capacities with respect to any Person shall not be considered “Affiliates” of such Person merely on account of such Person’s status as an officer, director, trustee or other similar position or capacity; and further, a stockholder shall not be considered an “Affiliate” merely on account of its status as a stockholder.

“Applicable Law” means, collectively, all applicable federal, state and local statutes, ordinances, codes, rules, regulations and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority having jurisdiction over any of the Parties or the Premises. Applicable Law includes Environmental Laws.

“Approved Plans” means the plans and specifications described in Exhibit D attached hereto, as the same may be amended from time to time with Landlord’s consent, which consent shall not be unreasonably withheld, delayed or conditioned, except as otherwise provided herein.

“BLS” has the meaning set forth in Section 4.01(c).

“Base Month” has the meaning set forth in Section 4.01(c).

“Base Rent” has the meaning set forth in Section 4.01.

“Business Days” shall mean any day other than Saturday, Sunday and other days on which banks in Victoria, Texas are customarily closed for business.

“Claims” has the meaning set forth in Section 8.04.

“Commencement Month” means the calendar month in which the Effective Date occurs.

“Comparison Month” has the meaning set forth in Section 4.01(c).

“Construction Standards” has the meaning set forth in Section 6.04(a).

“Control” (including the correlates of “Controlled” and “Controlling”) means the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise.

“Demised Premises” has the meaning set forth in the Recitals.

“Demised Premises Improvements” has the meaning set forth in the Recitals.

“Direct or Indirect Equity Owner” means each Person that owns a direct or indirect equity ownership interest in Tenant.

“Easement Areas” has the meaning set forth in Exhibit C.

“Easement Facilities” has the meaning set forth in Section 2.02.

“Easements” has the meaning set forth in Section 2.02.

“Easement Improvements” has the meaning set forth in the Recitals.

“Effective Date” has the meaning set forth in the Preamble.

“Encumbrance” or “Encumber” has the meaning set forth in Section 11.01(a).

“Environmental Laws” means all laws, statutes, codes, ordinances, orders, interpretations, rules and regulations of any Governmental Authority applicable to Landlord, Tenant or the Premises relating to human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 *et seq.* (“RCRA”); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC Section 9601 *et seq.* (“CERCLA”), the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*, the Federal Hazardous Materials Transportation Law, 49 U.S.C. Section 5101 *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*, the Texas Solid Waste Disposal Act, Chapter 361 of the Texas Health & Safety Code, all as now or hereafter amended, as well as all regulations promulgated thereunder and any common law or any other rule of law of any Governmental Authority applicable to Landlord, Tenant or the Premises and relating to human health or the environment.

“Event of Default” has the meaning set forth in Section 14.01.

“Force Majeure” has the meaning set forth in Section 15.12(a).

“Force Majeure Party” has the meaning set forth in Section 15.12(a).

“Full insurable value” has the meaning set forth in Section 8.01(a).

“Governmental Authorities” has the meaning set forth in Section 5.01.

“Governmental Authority” has the meaning set forth in Section 5.01.

“Hazardous Substances” means any of the following: (i) any “hazardous waste,” “solid waste,” “hazardous material,” “hazardous substance,” “toxic substance,” “pollutant,” or “contaminant” as those or similar terms are defined or regulated under any Environmental Laws; (ii) any mold, mildew, fungus, or other potentially dangerous organisms (“Mold”); (iii) asbestos (whether or not friable) and asbestos-containing materials; (iv) any volatile organic compounds, including oil and petroleum products; (v) any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to health, safety or welfare of any person or to the environment, including any polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; (vi) radon gas; (vii) any other substance the presence of which on the Premises is prohibited by any Environmental Laws; and (viii) any other substance which by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal. However, for the purposes of the covenants, but not the indemnification obligations, set forth in this Lease, the term “Hazardous Substances” shall not include small quantities of materials, chemicals or substances normally used in connection with the use, management, operation, or ownership of a facility similar to Tenant’s provided that such materials, chemicals or substances are generated, produced, stored, handled, used transported and disposed in a safe and prudent manner in strict compliance with all Environmental Laws.

“Immediate Work” has the meaning set forth in Section 9.01(a)(i).

“Imposition Trustee” has the meaning set forth in Section 5.03.

“Impositions” has the meaning set forth in Section 5.01.

“Improvements” shall mean all Demised Premises Improvements and Easement Improvements.

“Indemnified Parties” has the meaning set forth in Section 8.04.

“Index” has the meaning set forth in Section 4.01(c).

“Interest Rate” means an annual rate of interest equal to the lesser of (i) five percent (5%) above the “Prime Rate” as announced from time to time by *The Wall Street Journal*, or if such publication ceases to exist or report a “Prime Rate”, five percent (5%) per annum above the prime rate or reference rate announced from time to time by JPMorgan Chase Bank, N.A. (or any successor thereto) or such other major national banking institution selected by Landlord, or (ii) the maximum contract rate of interest then permitted by Applicable Law.

“Land” has the meaning set forth in the Recitals.

“Landlord” has the meaning set forth in the Preamble and Section 11.02.

“Landlord Release Party” has the meaning set forth in Section 8.05.

“Landlord’s Interest” means Landlord’s fee title to the Demised Premises, Landlord’s reversionary interest in the Demised Premises and Demised Premises Improvements, Landlord’s right to receive payment of Rent and Landlord’s other rights under this Lease.

“Landlord’s Tariffs” means the tariffs established and published from time to time by Landlord for the use of Landlord’s port facilities.

“Lease” has the meaning set forth in the Preamble.

“Lease Year” has the meaning set forth in Section 3.01.

“Leasehold Estate” means the leasehold estate and Tenant’s other rights created by this Lease, including Tenant’s ownership interest in the Demised Premises Improvements during the Term.

“Notifying Party” has the meaning set forth in Section 16.04.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Permitted Mortgagee” has the meaning set forth in Section 12.01(a).

“Permitted Mortgage” has the meaning set forth in Section 12.01(a).

“Person” means any individual, corporation, partnership, limited liability company or other entity of any kind.

“Premises” means the Demised Premises, any Easements, Easements Areas, Demised Premises Improvements, and any Easement Improvements.

“Recipient” has the meaning set forth in Section 16.04.

“Release” means any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing.

“Rent” has the meaning set forth in Section 4.03.

“Restoration Work” has the meaning set forth in Section 9.01(a).

“Schedules” has the meaning set forth in Section 1.02 of Schedule 1.01.

“Subsidiary” means, with respect to any Person, any corporation or other entity of which more than fifty percent (50%) of (i) the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) or (ii) other equity interest comparable to that

described in the preceding clause (i) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries, or by one of more other Subsidiaries.

“Substantially Completed” means, with respect to the Demised Premises Improvements, the design engineer, the General Contractor and Tenant certify to Landlord that (i) the Demised Premises Improvements have been substantially completed; (ii) Tenant has received all permits and approvals from all applicable Governmental Authorities to occupy and operate the Demised Premises Improvements; and (iii) the Demised Premises Improvements have commenced commercial operations.

“Tenant” has the meaning set forth in the Preamble. Upon an assignment of this Lease permitted in accordance with the terms of this Lease, the assignee (“Transferee”) will thereupon succeed to the rights and obligations of, and become, the “Tenant” for purposes of this Lease.

“Tenant Parties” has the meaning set forth in Section 8.04.

“Tenant Release Party” has the meaning set forth in Section 8.05.

“Tenant Representatives” has the meaning set forth in Section 16.01.

“Tenant Responsible Contamination” has the meaning set forth in Section 16.02.

“Term” has the meaning set forth in Section 3.01.

“Tonnage Rent” has the meaning set forth in Section 4.02.

“Transfer” has the meaning set forth in Sections 11.01(a) and 11.01(b).

“Transferee” has the meaning set forth in the definition of “Tenant”.

“Transferor” means the Person making the Transfer.

1.02 Terminology. The terms defined in this Schedule 1.01 shall apply throughout the Lease. All references in the Lease to “Section” or “Article” shall refer to the section or article of the Lease in which such reference appears, unless otherwise expressly stated. All references to “Schedules” shall mean the schedules attached to the Lease. All references to “Exhibits” shall mean the exhibits attached to the Lease. All such Schedules and Exhibits are incorporate in the Lease by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to the entire Lease. As used in this Lease, the term “including” shall mean “including but not limited to.” The headings of Articles and Sections in and Exhibits to the Lease shall be for convenience only and shall not affect the interpretation hereof. If Landlord or Tenant ceases to be a partnership, all references herein to Landlord’s or Tenant’s partners shall thereafter be deemed to be references to Landlord’s or Tenant’s other equity owners.

1.03 Interpretation. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. Reference to any agreement means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof. This Lease was negotiated between Landlord and Tenant with the benefit

of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.

EXHIBIT A

**METES & BOUNDS DESCRIPTION
OF DEMISED PREMISES**

[TO BE ADDED]

EXHIBIT B
SITE PLAN
[TO BE ADDED]

EXHIBIT C

EASEMENTS FOR BENEFIT OF DEMISED PREMISES

[Description to be added]

The area described in Exhibit C is herein called the "Easement Area".

EXHIBIT D

DESCRIPTION OF APPROVED PLANS

[Description to be Added]

OPTION AGREEMENT

This Option Agreement (this “Agreement”) is entered into effective as of July 1, 2020 (the “Effective Date”), by and between the Victoria County Navigation District, a navigation district formed under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas, (“Owner”), and Asphalt Inc., LLC, a Texas limited liability company (“Tenant”).

RECITALS

A. Owner owns the Port of Victoria North Industrial Park located in Victoria County, Texas (the “Land”), which includes the tract of land described in Exhibit A hereto (the “Demised Premises”).

B. Tenant desires to enter into a long-term lease with Owner (the “Lease”), substantially in the form attached hereto as Exhibit C, pursuant to which Owner would lease the Demised Premises to Tenant and grant access to any easement area described in the attached Lease for a period not to exceed thirty (30) years, for the purposes of developing, constructing and operating a facility for the transportation, storage and distribution of liquid asphalt and other similar commodities. Tenant intends to construct improvements on the Demised Premises (the “Demised Premises Improvements”) and within the easements area(s) identified in the Lease (the “Easement Improvements”). The Demised Premises Improvements and the Easement Improvements may be referred to collectively herein as the “Improvements”.

NOW, THEREFORE, for and in consideration of the agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Tenant (collectively, the “Parties” and individually, a “Party”) hereby agree as follows:

ARTICLE 1 TENANT OPTION TO ENTER INTO GROUND LEASE

Tenant has the right and option to enter into the Lease with Owner and to consummate the transactions contemplated by this Agreement subject to satisfaction of each of the following conditions precedent on or prior to the applicable milestone date:

(a) By January 15, 2021, Tenant, at Tenant’s expense, shall submit to Owner, for Owner’s approval, the following items relating to the Improvements: (i) an estimate of the schedule, in reasonable detail, for the completion of the Improvements (the “Project Schedule”) and (ii) the preliminary plans for the Improvements (the “Improvements Plans”).

(b) By January 15, 2021, Tenant shall have applied for and used reasonable efforts to obtain all permits and approvals necessary or appropriate for the development, construction and, to the extent available prior to the completion of construction, operation of the Improvements. All permits and approvals described above or otherwise necessary or appropriate for the construction of the Improvements are hereinafter referred to collectively as the “Approvals.”

(c) By January 15, 2021, Tenant shall have obtained Owner’s approval, which shall not be unreasonably withheld, of the Approval Items (defined below).

(d) By January 15, 2021, Tenant shall have fully negotiated and be ready to execute a construction contract with a general contractor and obtain payment and performance bonds, with a general contractor and surety bonds approved by Owner.

(e) By January 15, 2021 Tenant shall have obtained the appropriate insurance required pursuant to Article 8 of the Lease.

If any of the conditions set forth in this Article 1 have not been satisfied or waived by Owner in writing by the applicable milestone date, all of Tenant's rights under this Agreement shall expire without any further notice from Owner. Tenant may elect to terminate this Agreement by giving Owner written notice thereof, in which case Tenant and Owner shall be released from all obligations and liabilities under this Agreement, except for those obligations and liabilities that expressly survive termination of this Agreement. Tenant hereby agrees that no cause of action for damages shall be brought or maintained against Owner for the failure of such conditions to be satisfied.

ARTICLE 2 TENANT RIGHT TO INSPECT; INSURANCE

2.01 **Right to Inspect.** Tenant shall have the right, from the Effective Date through the earlier to occur of the execution of the Lease (the "Inspection Period") or the date of termination of this Agreement, to evaluate the potential for development of the Demised Premises for the uses permitted in the Lease. Owner shall afford Tenant and its employees, agents, contractors and consultants the continuing right through the Inspection Period or earlier termination of this Agreement to enter on and inspect the Demised Premises to conduct such investigations, inspections, surveys, studies, assessments, appraisals, measurements and other evaluations (collectively, "Testing") of the Demised Premises and/or any proposed easement area as Tenant deems appropriate. No physical or invasive Testing, including without limitation environmental testing (other than a Phase I) shall be permitted without Owner's prior written consent. Owner's consent for physical or invasive Testing or additional environmental Testing may be conditioned upon receipt of a detailed description of the proposed physical or invasive Testing and the time periods during which such Testing will be conducted, and a list of contractors who will be performing the physical or invasive Testing, and Owner's consent shall be based solely on such matters. Tenant shall keep the Demised Premises, any proposed easement area and any other property owned by Landlord free and clear of any and all liens or other Claims (defined below) resulting from such entry upon the Demises Premises and/or any proposed easement area. If this Agreement is terminated for any reason, Tenant shall restore the Demised Premises and any proposed easement area to the condition in which it existed prior to any Testing performed by or for Tenant pursuant to this Agreement. Tenant's restoration obligations in this Section shall survive the termination of this Agreement and the execution of the Lease. All such Testing and evaluations will be conducted at Tenant's sole cost and expense. Full and complete copies of all materials, information and documentation which is created, developed or received by Tenant, or any entity acting on its behalf, as a result of such Testing will be provided to Landlord no later than five (5) days after review or receipt by Tenant.

2.02 **Insurance.** Prior to conducting any Testing, Tenant will, at its cost and expense, keep and maintain in force commercial general liability insurance for bodily injury, death and

property loss and damage (including coverages for product liability, completed operations, contractual liability and personal injury liability) specifically applying to the provisions of this Agreement with a combined single limit of not less than \$1,000,000.00 covering Tenant for claims, lawsuits or damages arising out of its performance under this Agreement, and any negligent or otherwise wrongful acts or omissions by Tenant or any employee or agent of Tenant, with Owner listed as additional insured. Upon request, Tenant or Tenant's agent, shall provide Owner with a copy of all such policies and/or certificates of insurance satisfactory to Owner, evidencing the existence of all coverage required hereunder. Tenant shall require its insurance carriers or agents to notify Owner in the event of a change in the liability policies of Tenant. Tenant shall provide evidence of such insurance to Owner within five (5) business days after the Effective Date, but in any event prior to conducting any Testing. Owner may terminate this Agreement, by giving written notice to Tenant if such insurance is not provided to Owner within the time period provided in this Section 2.02.

ARTICLE 3 PLANS AND SPECIFICATIONS

Upon receipt of the Project Schedule and the Demised Premises Improvements Plans (collectively, the "Approval Items"), Owner shall have fifteen (15) business days to approve or disapprove the Approval Items. If Owner disapproves the Approval Items, then Owner will concurrently provide Tenant with written comments specifying the reason for the disapproval, as well as the changes required to achieve Owner's approval. Owner and Tenant shall thereafter work in good faith to try to resolve their differences regarding the Approval Items as soon as practicable. If the Parties are unable to agree on the Approval Items, either Party may terminate this Agreement by giving written notice to the other. Owner's failure to approve or disapprove the Approval Items within a given time period will be deemed an approval. Owner will not unreasonably withhold, delay, or condition its approval of the Approval Items. If Owner elects to engage an architect, engineer or other consultant to review such items, it will be at Owner's sole cost and expense. The Approval Items approved by Owner pursuant to this Article 3 are herein called the "Approved Improvements Plans and Schedule".

ARTICLE 4 INDEMNIFICATION

Tenant shall defend, indemnify and hold harmless Owner and its affiliates, officers, employees, commissioners and agents (the "Owner Indemnified Parties") from and against, and Tenant shall be responsible for, any and all liabilities (including strict liability), actions, demands, penalties, fines, losses, costs and expenses (including reasonable attorneys' and experts' fees and expenses), suits, liens, costs of any settlement or judgment, and claim of any and every kind whatsoever, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (collectively, "Claims"), which may now or in the future be brought or instituted or asserted on account of or growing out of or arising from any and all injuries or damages, including death, to persons or properties arising out of the Tenant, its members or equity owners, officers, directors or agents (the "Tenant Parties") or their contractors', consultants' or agents' inspections of and testing with respect to the Demised Premises and the

Easement Area, NOTWITHSTANDING THE NEGLIGENCE OR STRICT LIABILITY (WITHOUT REGARD TO FAULT) OF ANY OF THE OWNER INDEMNIFIED PARTIES except, in the case of each Owner Indemnified Party, to the extent that the Claims (i) are proven to have resulted from the gross negligence or willful misconduct of such Owner Indemnified Party; or (ii) qualify as an exception to sovereign immunity under applicable provisions of the Texas Tort Claims Act or any other Texas or federal laws. Without relieving Tenant of its obligations under this Article 5, the Owner Indemnified Parties, at their election, may defend or participate in the defense of any Claims with attorneys and representatives of their own choosing. Tenant shall be relieved of its obligation of indemnity to the extent, and only to the extent, of the amount actually recovered from one or more insurance carrier and either paid to the aggrieved Owner Indemnified Party or paid for the Owner Indemnified Party's benefit in reduction of any Claims, but nothing contained herein shall entitle Tenant to delay performing its indemnification obligations, or require any Owner Indemnified Party to delay enforcing its indemnification rights, until one or more insurance carriers make such payments to or for the benefit of the Owner Indemnified Parties.

ARTICLE 5 CLOSING

5.01 **Closing.** If the parties desire to enter into the Ground Lease and if either party has not terminated this Agreement, the closing (the "Closing") of the transactions contemplated by this Agreement shall occur on or before March 1, 2021 (the "Outside Closing Date"). The date on which the Closing is consummated is herein called the "Closing Date". Tenant shall designate the actual Closing Date in a notice delivered to Owner no later than ten (10) business days prior to such designated date. The Closing shall occur in the offices of the Owner (or such other location as may be agreed upon by Owner and Tenant) commencing at 10:00 a.m. Central time. At the Closing the following, which are mutually concurrent conditions, shall occur:

- (a) Owner, at its expense, shall deliver or cause to be delivered the following:

Two (2) counterparts of the Ground Lease executed by Owner;

one (1) counterpart of a Memorandum of Ground Lease, in the form to attached hereto as Exhibit D (the "Memorandum of Ground Lease"), executed and acknowledged by Owner; and

evidence reasonably satisfactory to Tenant that the person executing the Closing documents on behalf of Owner has full right, power, and authority to do so.

- (b) Tenant, at its expense, shall deliver or cause to be delivered the following:

two (2) counterparts of the Ground Lease executed by Tenant;

one (1) counterpart of the Memorandum of Ground Lease executed and acknowledged by Tenant;

evidence reasonably satisfactory to Owner that the persons executing and delivering the closing documents on behalf of Tenant has full right, power and authority to do so; and

performance and labor and material payment bonds reasonably acceptable to Owner as required under the Ground Lease, naming Owner as an additional obligee.

**ARTICLE 6
MISCELLANEOUS PROVISIONS**

6.01 **Notices.** Any notice provided for or permitted to be given hereunder must be in writing and may be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 6.01; or (b) delivering the same to the party to be notified in person or through a reliable courier service. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, as evidenced by the executed postal receipt or other receipt for delivery. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

Landlord: Victoria County Navigation District
1934 FM 1432
Victoria, Texas 77905
Attn: Executive Director

-with a copy to- The Law Office of Duane G. Crocker, PC
121 S. Main St., Ste. 300 (77901)
P.O. Box 2661
Victoria, Texas 77902

Tenant: Asphalt, Inc., LLC
Attn: _____

-with a copy to- Asphalt Inc., LLC
Attn: Josh Condon
11675 Jollyville Rd., Ste. 209
Austin, TX 78759

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving ten (10) days advance notice to such effect in accordance with the provisions of this Section 6.01.

6.02 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

6.03 **Entireties.** This Agreement and the exhibits hereto constitute the entire agreement of the Parties relative to the transactions contemplated herein. All prior agreements are superseded hereby.

6.04 **Non-Waiver.** No variations, modifications, or changes herein or hereof shall be binding upon any Party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either Party of any breach or default of any term, condition, or provision hereof shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any Party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving Party.

6.05 **Severability.** If any provision of this Agreement or the application thereof to any Person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

6.06 **No Third Party Beneficiaries.** Except as herein specifically and expressly provided, the terms and provisions of this Agreement are for the sole benefit of Owner and Tenant, and no other third party whatsoever is intended to benefit herefrom.

6.07 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

6.08 **Brokers.** Tenant and Owner represent and warrant each to the other that such Party has not dealt with any broker in connection with this Agreement and that, insofar as such Party knows, no broker negotiated this Agreement or is entitled to any commission in connection herewith. Tenant and Owner each agree to indemnify the other Party for any losses, costs or damages (including reasonable attorneys' fees) incurred by the other Party as a consequence of the breach or falsity of the representations and warranties of such Party under this Section.

6.09 **Successors and Assigns.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent may be granted or withheld in such other Party's sole discretion, but shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and the permitted successors and assigns of the Parties hereto.

6.10 **Attorneys' Fees.** If litigation is ever instituted by either Party to enforce, or to seek damages for the breach of, any provision hereof, the prevailing Party therein shall be promptly reimbursed by the other Party for all attorneys' fees reasonably incurred by the prevailing Party in connection with such litigation.

6.11 **Further Assurances.** In connection with this Agreement and the transactions contemplated by it, each Party shall execute and deliver any additional documents and instruments

and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

6.12 **Terminology and Interpretation.** All references in this Agreement to “Section” or “Article” shall refer to the section or article of the Agreement in which such reference appears, unless otherwise expressly stated. All references to “Exhibits” shall mean the exhibits attached to this Agreement. All such Exhibits are incorporated in this Agreement by this reference. All references to herein, hereof, hereto, hereunder or similar terms shall be deemed to refer to the entire Agreement. As used in this Agreement, the term “including” shall mean “including but not limited to.” The headings of Articles and Sections in and Exhibits to this Agreement shall be for convenience only and shall not affect the interpretation hereof. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. Reference to any agreement means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement was negotiated between Owner and Tenant with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against either Party shall not apply to any construction or interpretation hereof.

6.13 **Relation of Parties.** Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or to render either Party liable for any obligation of the other.

6.14 **Limitation on Owner’s Liability.** Notwithstanding anything to the contrary contained herein, (i) Owner’s liability for failure to perform any of its obligations hereunder or otherwise relating to the Demised Premises is hereby expressly limited to Owner’s interest in and to the Demised Premises, and (ii) should Owner fail to pay any sum required to be paid by Owner hereunder, or fail to perform any obligation required to be performed by Owner hereunder, any judicial proceedings brought by Tenant against Owner shall be limited to proceeding against Owner’s rights and interest in and to the Demised Premises, and no attachment, execution, or other writ or process shall be sought, issued, or levied upon any assets, properties (including the Demised Premises and any improvements thereon), or funds of Owner, other than against Owner’s interest in and to the Demised Premises. No provision contained in this Agreement shall be interpreted in any manner as a waiver of any rights or protections against suit and/or liability, including, without limitation, any sovereign immunity protection which Landlord may possess or enjoy by virtue of its status and existence as a governmental entity in the State of Texas.

6.15 **Limit on Damages.** **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR UNDER LAW OR EQUITY TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR ANY LOST REVENUES OR PROFITS ARISING OUT OF THIS AGREEMENT OR RELATING TO THE DEMISED PREMISES, INCLUDING THE NEGLIGENCE OF THE PARTY AGAINST WHOM THE CLAIM WOULD BE MADE.**

6.16 **Bearing Expenses.** In each instance in which this Agreement provides for either Party to pay the costs and expenses of any item or the satisfaction of any condition, the obligation of such Party to pay such costs and expenses shall survive the termination of this Agreement.

6.17 **Business Days**. As used herein, the term “business days” shall mean Monday through Friday of each calendar week excluding those days designated from time to time as holidays by the federal government of the United States.

6.18 **Time is of the Essence**. Time is of the essence in performing the Parties’ obligations under this Agreement.

[Signature page follows.]

EXECUTED as of the date and year first above written.

OWNER:

**VICTORIA COUNTY NAVIGATION
DISTRICT**

By: _____
Name: Robby Burdge
Its: Chairman

TENANT:

ASPHALT INC., LLC

By: _____
Name: _____
Its: _____

EXHIBIT A

**METES & BOUNDS DESCRIPTION
OF DEMISED PREMISES**

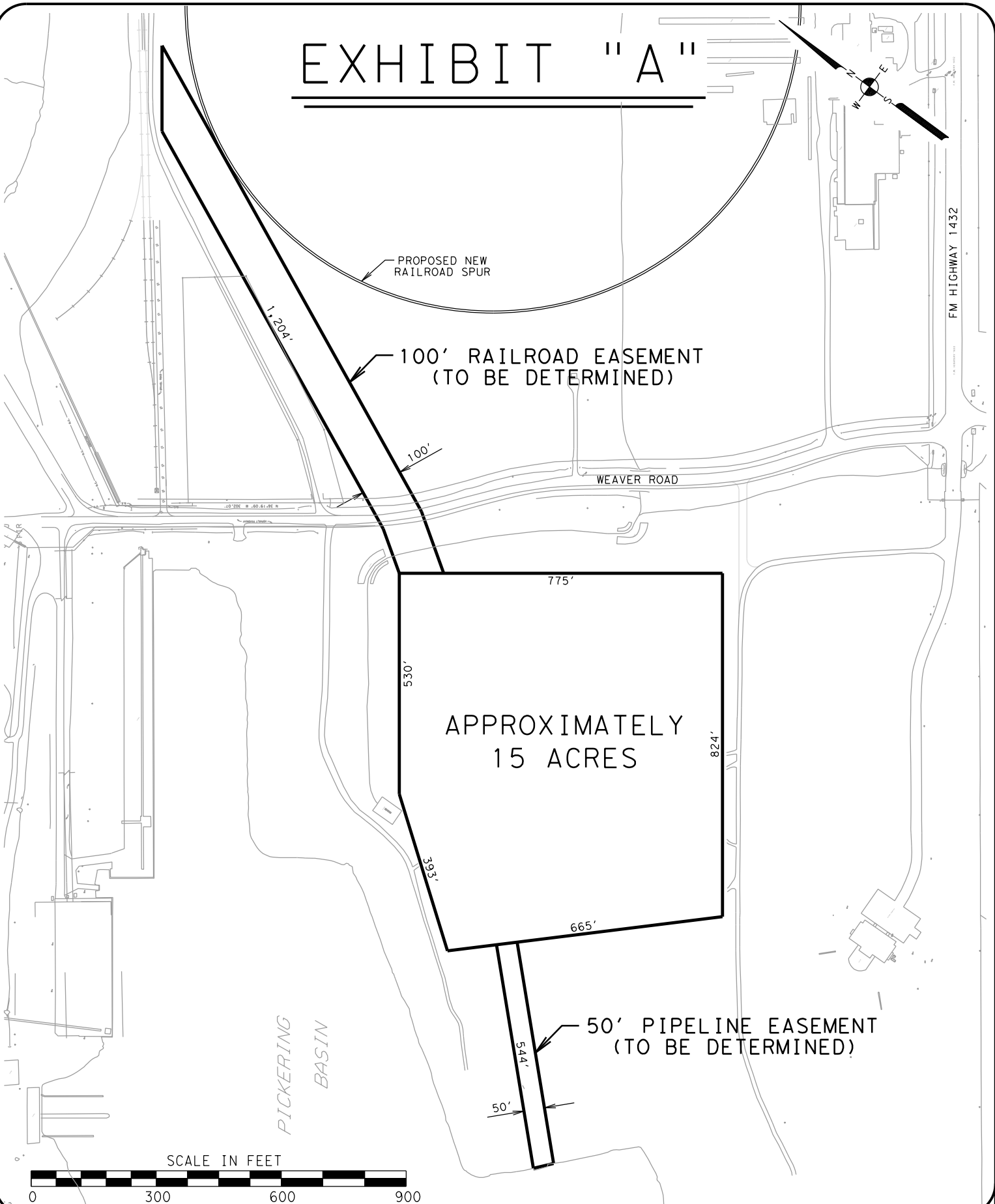
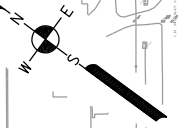
[TO BE ADDED]

EXHIBIT B
SITE PLAN
[TO BE ADDED]

EXHIBIT C
FORM OF GROUND LEASE
[TO BE ADDED]

EXHIBIT D
FORM OF MEMORANDUM OF GROUND LEASE
[TO BE ADDED]

EXHIBIT "A"



Civil Corp
ENGINEERS • SURVEYORS
4611 AIRLINE ROAD, SUITE 300, VICTORIA, TEXAS 77904
TEL: (361)570-7500 FAX: (361)570-7501
TBPE REGISTRATION #F-10283 TBPLS REGISTRATION #100576-00

DRAWN BY: W.P.H.	DATE: 06/26/2020
JOB NO.: EXHIBIT	SCALE: 1" = 300'
FLD. BK. NO.: NA	SHEET 1 OF 1