

EXHIBIT "C"

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

ENCROACHMENT ON EASEMENT

STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS

COUNTY OF DALLAS

THIS AGREEMENT, made and entered into this ____ day of _____, 2018, by and between **FLEX-N-GATE TEXAS, LLC**, a Delaware limited liability company, who's address is 2400 Centennial Drive, Arlington, Texas 76011, hereinafter called the "**User**", and the City of Grand Prairie, Texas, who's address is 206 W. Church Street, Grand Prairie, Texas 75050, hereinafter called the "**City**".

WITNESSETH, that:

WHEREAS, the **City**, is the owner of a utility easement in Dallas County, Texas, which is recorded as Lot 1, Block D of the Bardin Road Addition, filed under instrument number 201600328446 of the Plat Records of Dallas County, Texas ("Easement"); and

WHEREAS, the **User** desires permission to construct, operate and maintain a scrap conveyor and scrap building ("Encroaching Facility") within the areas or boundaries of the Easement ("Easement Area"); and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the **City** and **User** do hereby agree as follows:

1. **Location of Encroaching Facility.** The **User** may locate the Encroaching Facility in the Easement Area, but only as described and shown on the attached drawing marked **Exhibit "A"** and incorporated herein, the **User** may not relocate the Encroaching Facility within the Easement Area without the consent and approval of the **City**, which consent and approval shall be at the **City's** discretion.
2. **Restrictions on Use of Easement Area.** The **User** shall use only so much of the Easement Area as may be necessary to construct, maintain and repair the Encroaching Facility. The **User**, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations. At the conclusion of any construction, The **User** shall remove all debris and other materials from the Easement Area and restore the Easement Area to the same condition it was in prior to the commencement of the **User's** construction there on or in proximity thereto, except for the Encroaching Facility.

3. **Maintenance of Encroaching Facility.** The User, at the User's sole expense, shall maintain and operate the Encroaching Facility. The City will not be responsible for any costs of construction, reconstruction, operation, maintenance or removal of the User's Encroaching Facility.
4. **Risk and Liability.** The User assumes all risks and liability resulting or arising from or relating to the User's use, the existing condition or locations, or existing state of maintenance, repair or operations of the Easement Area. It is further agreed that the City shall not be liable for any damage to the Encroaching Facility as a result of the City's use or enjoyment of its Easement, including but not limited to damage resulting from failure of the City's facilities within the easement area. Any City property damaged or destroyed by the User or its agents, employees, invitees, contractors, or subcontractors shall be repaired or replaced by the City at the User's expense and payment is due upon the User's receipt of an invoice from the City.
 - 4 A. **Repair and replacement of City water main.** Both the scrap metal building and the scrap metal conveyor (Encroaching Facility) will encroach on the City's 24-foot utility and mutual access easement (See Exhibit "B"). It is proposed the conveyor will have a minimum of a 20-foot vertical clearance above pavement grade to the bottom of the scrap metal conveyor. The City has a 12-inch public water main in the utility easement. In the case where the City has to repair or replace the water main and damages in any way the encroaching facility, the User (Flex-N-Gate Texas, LLC), will hold the City harmless against any and all claims for damages, costs or expenses to persons or property that may arise out of, or be occasioned by or from the use of the license granted herein, and activities associated therewith.
5. **Indemnification.** The User, to the extent allowable by law, agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against any land and all claims, demands, caused of action, loss, damage, liabilities, costs, and expenses (including attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, for personal injury (including death), property damage or other harm for which recovery of damages is sought or suffered by any person or persons that may arise out of, or be occasioned by, the negligence, misconduct or omission of the User, its officers, agents, associates, employees, contractors, subcontractors, sub consultants, or any other person entering onto the Easement Area that may arise out of or be occasioned by the use of the Encroaching Facility, except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, or employees or separate contractors.
6. **Default and Termination.** It is understood and agreed that, in case of default by User or its agents in any of the terms and conditions herein stated and such default continues for a period of ten (10) days after the City notifies User of such default in writing, the City may at its election forthwith terminate this agreement and upon such termination all of Users' rights hereunder shall cease and come to an end. This agreement shall also terminate upon the abandonment of the Encroaching Facility.

This agreement shall extend to and be binding upon **User** and its heirs, successors and assigns, and future owners of the Easement Area, and is not to be interpreted as a waiver of any rights held by the **City** under its easement.

WITNESS the following signatures and seals:

Flex-N-Gate Texas, LLC, a Delaware limited liability company

BY: _____
Donald Cumming, General Manager

CITY OF GRAND PRAIRIE, TEXAS

ATTEST:

City Secretary

By: _____
Assistant City Manager

APPROVED AS TO FORM:

City Attorney

STATE OF TEXAS
COUNTY OF TARRANT

This instrument was acknowledged before me on the ____ of _____, 2018, by Donald Cumming, General Manager, the duly authorized officer of **Flex-N-Gate Texas, LLC**, a Delaware limited liability company on behalf of said company.

Notary Public in and for the State of Texas

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the ____ of _____, 2018, by Bill Crolley, Assistant City Manager of the City of Grand Prairie, Texas, a municipal corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

Return to:
Dwayne E. Tyner
Senior R.O.W. Agent
City of Grand Prairie
P. O .Box 534045
Grand Prairie, TX 75053-4045