

TYLER COUNTY COMMISSIONERS COURT  
EMERGENCY MEETING  
April 24, 2002 ---- 2:00 p.m.

THE STATE OF TEXAS                      ON THIS THE 24<sup>th</sup> day of April, 2002 the  
Commissioners' Court in and for Tyler County, Texas convened in an Emergency  
Meeting at the Commissioners' Courtroom in Woodville, Texas, the following members  
of the Court present, to wit:

JEROME OWENS  
C.D. WOODROME  
RUSTY HUGHES  
JOE MARSHALL  
JACK WALSTON  
DEAN RIVERS

COUNTY JUDGE, Presiding  
COMMISSIONER, PCT. #1  
COMMISSIONER, PCT. #2  
COMMISSIONER, PCT. #3  
COMMISSIONER, PCT. #4  
DEPUTY COUNTY CLERK, EX OFFICIO

The following were absent: Commissioner Woodrome    thereby constituting a quorum.  
In addition to the above were: none

Commissioner Marshall introduced an agreement between the county and the Texas  
Department of Transportation to rebuild the runway at the **Tyler County Airport**. \$3202  
is needed for a better grade of slurry seal.

Commissioner Woodrome arrived at the meeting.

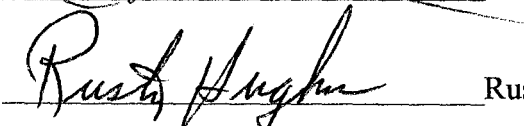
A motion was made by **Commissioner Marshall** to accept the **agreement** as presented;  
and, authorize Judge Owens to execute the agreement. **Commissioner Walston**  
seconded the motion. All voted yes and none no. SEE ATTACHED AGREEMENT.

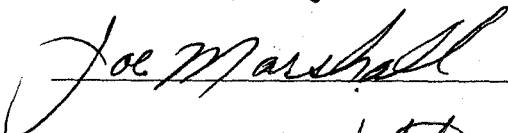
Commissioner Marshall motioned the meeting adjourned.


THERE BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED.

SIGNED:  Jerome Owens, County Judge

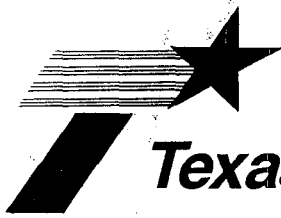
 C.D. Woodrome, Comm. Pct. #1

 Rusty Hughes, Comm. Pct. #2

 Joe Marshall, Comm. Pct. #3

 Jack Walston, Comm. Pct. #4

ATTEST:  Donece Gregory, County Clerk



# Texas Department of Transportation

AVIATION DIVISION

125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • 512/416-4500 • FAX 512/416-4510

April 19, 2002

The Honorable Jerome Owens  
County Judge, Tyler County  
100 West Bluff, Room 110  
Woodville, Texas 75979

TxDOT Project No.: AP WOODVILLE 1  
TxDOT CSJ No.: 0220WOODV  
Fund Source: 3502290006

Dear Judge Owens:

Enclosed are several documents that must be completed by Tyler County in order to initiate the construction phase of the airport development project for the Tyler County Airport. Please review the instructions in this transmittal letter for completing the documents and return the accepted documents not later than May 6, 2002. We are most pleased to provide any assistance possible to help complete this project in a timely manner.

Enclosed are two copies of the Airport Project Participation Agreement (APPA) between Tyler County, as airport sponsor, and TxDOT, Aviation Division, as your agent for this project. We request that you proceed as expeditiously as possible to execute the Agreement and complete the attached certifications. It will be necessary for your attorney to endorse your acceptance of the Agreement to assure that it has been accepted in accordance with local laws. Both copies of the Agreement and Certifications should have original signatures for acceptance. **A notice to proceed for the construction phase will not be issued until this agreement is fully executed and funds have been received.** Please return both copies of the fully signed and witnessed documents to: Texas Department of Transportation, Aviation Division, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701-2483.

The sponsor's share of the construction project costs is estimated to be \$30,202. Our records indicate we have received \$27,000. We are requesting the additional funds of \$3,202. Please remit payment to the address as follows not later than May 6, 2002 to: Texas Department of Transportation, Attn.: Diana Ruiz, P.O. Box 5020, Austin, Texas 78763.

If you have questions concerning the enclosed documents, please contact Allison Martin at 1-800-687-4568. The Texas Department of Transportation looks forward to working with you on this important project for your community.

Respectfully,

David S. Fulton  
Director

cc: Walter O. Crook, P.E.  
Diana Ruiz

**TEXAS DEPARTMENT OF TRANSPORTATION**  
**AIRPORT PROJECT PARTICIPATION AGREEMENT**

(State Assisted Airport Development Grant)

TxDOT Project No.: AP WOODVILLE 1  
TxDOT CSJ No.: 0220WOODV  
TxDOT Contract No. : 2XXAV065

**Part I - Identification of the Project**

TO: Tyler County, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Agreement is made between the Texas Department of Transportation, (hereinafter referred to as the "State"), on behalf of the State of Texas, and Tyler County, Texas, (hereinafter referred to as the "Sponsor"), under the authority granted and in compliance with the provisions of the V.T.C.A., Transportation Code, Title 3, Chapters 21-22, et seq. (Vernon and Vernon Supp.);

The project is described as follows: construction phase to rehabilitate and mark Runway 16-34; rehabilitate stub taxiway; rehabilitate and mark apron; install precision approach path indicator-2 Runway 16; replace rotating beacon and upgrade runway drainage structure at the Tyler County Airport.

**Part II - Offer of Financial Assistance**

1. The allowable costs of the project shall not include any costs determined by the State to be ineligible under the V.T.C.A. Transportation Code, Title 3, Chapters 21-22, et seq., (Vernon and Vernon Supp).
2. It is estimated that construction project costs will be approximately \$302,020.00 (Amount A). It is further estimated that approximately \$302,020.00 (Amount B) of the project costs will be eligible for financial assistance, and that financial assistance will be for ninety percent (90%) of the eligible project costs. Project costs eligible for financial assistance shall be determined by the State. It is estimated that the State's financial assistance share of eligible project costs will be approximately \$271,818.00 (Amount C) and the Sponsor's share of the project costs will be approximately \$30,202.00 (Amount D). Financial assistance is subject to the availability of state funds.

This grant should not be construed as block grant funds for the Sponsor, but as a grant for

funding of the scope items as listed on page one of this agreement. It is the intent of the Agent to provide funding to complete the approved work items of this grant and not to amend the scope of work to include items outside of the current determined needs of this project. Scope of work may be amended as necessary to fulfill the unforeseen needs of this specific development project within the spirit of the approved scope, subject to the availability of state and/or local funds.

3. It is mutually understood and agreed that if, during the life of the project, the State determines that the grant amount exceeds the expected needs of the sponsor by \$5,000 or five (5%) percent, whichever is greater, the grant amount can be unilaterally reduced by letter from the State advising of the budget change and a refund of the sponsor share of the reduction will be done. Conversely, if there is an overrun in the eligible project costs, the State may increase the grant to cover the amount of overrun not to exceed the statutory twenty-five (25%) percent limitation, and will advise the Sponsor by letter of the increase. Upon receipt of the letter, the maximum obligation of the State is adjusted to the amount specified and the Sponsor will remit their share of the increased grant amount.

Participation in additional state eligible costs may require approval by the Texas Transportation Commission. The State will not authorize expenditures in excess of the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

4. In the event that state funds are unavailable, this Agreement shall automatically be voided and become of no force and effect, except that unexpended or unencumbered moneys actually deposited by the Sponsor and held with the State for project purposes shall be returned to the Sponsor.
5. Sponsor's share of project costs (Amount D) shall be paid initially in cash when requested by the State. At project closeout, Sponsor will be reimbursed for any amounts that exceed Sponsor's share.
6. The Sponsor specifically agrees that it shall pay any project costs, which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount C) as stated in Paragraph II-2.
7. Sponsor, by executing this Agreement certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right, upon advance written request during reasonable and regular business hours, to audit any books and records of the Sponsor to verify the funds. In addition, the Sponsor shall disclose the source of all funds for the project and its ability to finance and operate the project.

Following the execution of this Agreement and upon written demand by the State, the

Sponsor's financial obligation (Amount D) shall be due and payable to the State. Should the Sponsor fail to pay the obligation, either in whole or in part, within 30 days of written demand, the State may exercise its rights under Paragraph V-5 and/or V-6. Likewise, should the State be unwilling or unable to pay its obligation in a timely manner, the failure to pay shall be a breach and the Sponsor may exercise any rights and remedies it has at law or equity.

The State shall reimburse the Sponsor, at the financial closure of the project, any excess funds provided by the Sponsor which exceed Sponsor's share (Amount D).

### **PART III - Sponsor Responsibilities**

1. In accepting the Agreement, the Sponsor guarantees that:
  - a. it will comply with the Attachment A, Certification of Airport Fund, attached and made a part of this Agreement; and
  - b. it will comply with the Attachment B, Certification of Project Fund, attached and made a part of this Agreement; and
  - c. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State of Texas in connection with the Agreement; and
  - d. the Airport or navigational facility which is the subject of this Agreement shall be controlled for a period of at least 20 years, and improvements made or acquired under this project shall be operated, repaired and maintained in a safe and serviceable manner for the useful life of the improvements, not to exceed 20 years; and
  - e. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without unjust discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Agreement; and
  - f. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
  - g. it shall not permit non-aeronautical use of airport facilities, unless noted on an approved Airport Layout Plan, without prior approval of the State; and

- h. it shall not enter into any agreement nor permit any aircraft to gain direct ground access to the sponsor's airport from private property adjacent to or in the immediate area of the airport. Further, Sponsor shall not allow aircraft direct ground access to private property. Sponsor shall be subject to this prohibition, commonly known as a "through-the-fence operation," unless an exception is granted in writing by the State due to extreme circumstances; and
- i. it will acquire all property interest identified as needed for the purposes of this project and comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State of Texas in the acquisition of such property interest; and that airport property identified within the scope of this project and Attorney's Certificate of Property Interests shall be pledged to airport use and shall not be removed from such use without prior written approval of the State; and
- j. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and
- k. all fees collected for the use of an airport or navigational facility constructed with funds provided under the program shall be reasonable and nondiscriminatory. The proceeds of such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility. Sponsor shall not be required to pledge income received from the mineral estate to airport use unless state and/or federal funds were used to acquire the mineral estate of airport lands or any interest therein; and
- l. an Airport Fund shall be established by resolution, order or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or any other revenue fund of the Sponsor for any purposes other than operation of the airport. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent approval of a grant or loan, Sponsor has complied with the requirements of this subparagraph; and
- m. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and
- l. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce

zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. §§ 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to such subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State; and

- m. it will provide upon request to the State, and the engineering or planning consultant, copies of any maps, plans, or reports of the project site, applicable to or affecting the above project; and
  - n. after reasonable notice, it will permit the State and any consultants and contractors associated with this project, access to the project site, and will obtain permission for the State, consultants and contractors associated with this project, to enter private property for purposes necessary to this project.
  - o. all development of an airport constructed with program funds shall be consistent with the Airport Layout Plan approved by the State and maintained by the Sponsor. A reproducible copy of such plan, and all subsequent modifications thereto, shall be filed with the State for approval; and
2. The Sponsor certifies to the State that it will have acquired clear title in fee simple to all property upon which construction work is to be performed, or have acquired a leasehold on such property for a term of not less than 20 years, prior to the advertisement for bids for such construction or procurement of facilities that are part of the above project, and within the timeframe of the project, a sufficient interest (easement or otherwise) in any other property interest which may be part of the project.
3. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting said claim or liabilities which might be imposed on the State as the result of such activities by the Sponsor, the Sponsor's agents or employees.
4. The Sponsor and not the State shall, for all purposes, be the "Sponsor" of the project. Sponsor agrees to assume responsibility for operation of the facility in compliance with all applicable state and federal requirements including any statutes, rules, regulations, assurances, procedures or any other directives before, during and after the completion of this project.

5. The Sponsor shall have on file with the State a current and approved Attorney's Certificate of Airport Property Interests and Exhibit A property map.
6. The Sponsor by execution of this grant certifies that it has implemented, or will implement during this project, an effective airport pavement maintenance-management program and it assures that it will use such program during the period of this Agreement. It will provide upon written request such reports on pavement condition and pavement management programs as the State determines may be useful. Failure to comply with this condition may make the Sponsor ineligible for future grants.
7. The Sponsor's acceptance of this Offer and ratification and adoption of the Agreement shall be evidenced by execution of this Agreement by the Sponsor. The Agreement shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport. The Agreement shall become effective upon execution of the Agreement by the State and shall remain in full force and effect for a period of at least 20 years.

#### **PART IV - Nomination of the Agent**

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.
2. The State agrees to assume the responsibility to assure that all aspects of the grant are done in compliance with all applicable state and federal requirements including any statutes, rules, regulations, assurances, procedures or any other directives, except as otherwise specifically provided.
3. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:

##### **Receiving/Disbursing Agent:**

- a. accept, receive, and deposit with the State Treasury any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;
- b. pay to the Sponsor, from granted funds, the portion of any approved reasonable and eligible project costs incurred by the Sponsor that are in excess of the Sponsor's share.

##### **Paying Agent:**

- c. receive, review, approve and pay invoices and payment requests for services and



materials supplied in accordance with State approved contracts;

- d. receive, review and approve reimbursement requests for reasonable and eligible property acquisition costs incurred by the Sponsor, provided the required documentation is supplied.

**Contracting Agent:**

- e. advertise for professional engineering and/or planning services for, but not limited to, the preparation of planning studies, applications, plans and specifications for the above project and for the management of the construction of the above project; certify consultant selection procedures; provide notification of contract award for professional services; and execute, on behalf of the Sponsor, a professional services agreement as related to this project;
- f. administer Disadvantage Business Enterprises (DBE) and/or Historically Underutilized Business (HUB) Programs in accordance with state regulations.

**Contract Management Agent:**

- g. exercise such supervision and direction of the project work as the State reasonably finds appropriate. Where there is an irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor, any engineer, planner, contractor, or materialman, the State shall issue a written order, which shall prevail and be controlling;
- h. coordinate review and approval of project plans, specifications and construction; coordinate and conduct progress and final inspections.

**Construction Agent:**

- i. authorize the advertisement, receipt and opening of bids for construction of the above project; award contracts for construction of the above project and acquisition of materials related to it; and execute, on behalf of the Sponsor, construction contracts as related to this project;
- j. participate in pre-bid and pre-construction conferences; and issue orders as it deems appropriate regarding construction progress, including but not limited to Notices to Proceed, Stop Work Orders, and Change Orders;
- k. review, approve and maintain record drawings, when appropriate.

**PART V - Recitals**

1. The State and Sponsor shall obtain an audit as required by State regulations.
2. The Sponsor, and not the State, shall be the contractual party to all construction and professional service contracts entered into for the accomplishment of this project. The

power of attorney, as granted by the Sponsor to the State in Part IV - Nomination of Agent, is a limited power to perform acts in connection with airport improvements as specified in or necessitated by this Agreement.

3. The Sponsor agrees to pursue and enforce contract items, which are required by federal and/or state regulations, laws and orders to insure satisfactory performance of contract vendors. Such items include, but are not limited to, bid bonds, payment bonds, and performance bonds. Pursuit and enforcement of contract items may require litigation and other remedies of law.
4. This Agreement is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party. The State shall not be a party to any other contract or commitment, which the Sponsor may enter into or assume, or have entered into or have assumed, in regard to the above project.
5. If the Sponsor fails to comply with the conditions of the grant, the State may, by written notice to the Sponsor, suspend the grant in whole or in part. The notice of suspension shall contain the following:
  - a. The reasons for the suspension and the corrective action necessary to lift the suspension;
  - b. A date by which the corrective action must be taken;
  - c. Notification that consideration will be given to terminating the grant after the corrective action date.

In the case of suspension or termination, the Sponsor may request the State to reconsider the suspension or termination. Such request for reconsideration shall be made within 45 days after receipt of the notice of suspension or termination.

6. This Agreement is subject to the applicable provisions of the V.T.C.A. Transportation Code, Title 3, Chapters 21-22, et seq., (Vernon and Vernon Supp.), and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. §§ 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Agreement or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
  - a. Of primary importance to the State is compliance with the terms and conditions of this Agreement. If, however, after all reasonable attempts to require compliance have failed, the State finds that Sponsor is unwilling and/or unable to comply with any of the terms and conditions of this Agreement, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to the Agreement, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to the Agreement,

provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Agreement null and void, or (5) any other remedy available at law or in equity.

b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Agreement, or for enforcement of any of the provisions of this Agreement, is specifically set by Agreement of the parties in Travis County, Texas.

7. The State reserves the right to amend or withdraw this Agreement at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.

8. This Agreement constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.

9. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including §§ 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.

**Part VI - Acceptance of the Sponsor**

Tyler County, Texas, does ratify and adopt all statements, representations, warranties, covenants and agreements constituting the described project and incorporated materials referred to in the Agreement, and does accept the Offer, and agrees to all of the terms and conditions of the Agreement.

Executed this 24<sup>th</sup> day of April, 2002.

Tyler County, Texas  
Sponsor

Joe Marshall  
Witness Signature  
Commissioner #3  
Witness Title

James Owen  
Signature  
County Judge  
Title

**Certificate of Attorney**

I, JOE R. SMITH, acting as attorney for TYLER COUNTY, Texas, do certify that I have fully examined the Agreement and the proceedings taken by the Sponsor, and find that the manner of acceptance and execution, of the Agreement by the Sponsor, is in accordance with the laws of the State of Texas.

Dated at WOODVILLE, Texas, this 24<sup>th</sup> day of April, 2002.

Joe Marshall  
Witness Signature  
Commissioner #3  
Witness Title

J.R. Smith  
Attorney's Signature

**Part VII - Execution by the State**

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

**STATE OF TEXAS  
TEXAS DEPARTMENT OF TRANSPORTATION**

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

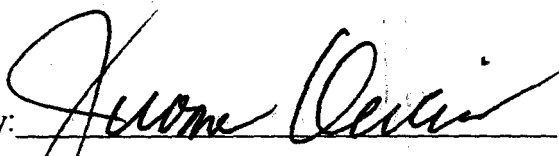
Date: \_\_\_\_\_

ATTACHMENT A

**CERTIFICATION OF AIRPORT FUND**

The Sponsor does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. Such fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

Tyler County, Texas  
(Sponsor)

By:   
Title: County Judge  
Date: 04-24-02

ATTACHMENT B

CERTIFICATION OF PROJECT FUNDS

TxDOT CSJ No.: 0220WOODV

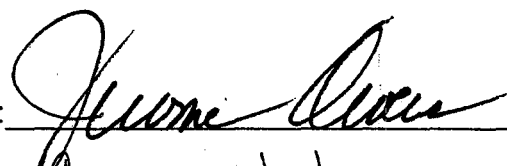
The Sponsor does certify that sufficient funds to meet the Sponsor's share of project costs as identified in the Airport Project Participation Agreement for said project will be available in accordance with the schedule shown below:

SPONSOR FUNDS

<u>Source</u>	<u>Amount</u>	<u>Date Available</u>
<u>TYLER COUNTY</u>	<u>\$3,202.00</u>	<u>04-24-02</u>

The Sponsor, has caused this to be duly executed in its name, this 24<sup>th</sup> day of April, 2002.

Tyler County, Texas  
(Sponsor)

By:   
Title: County Judge