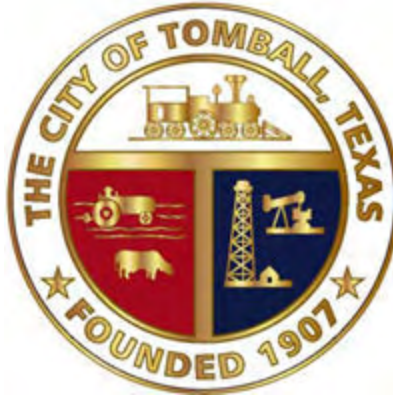


**NOTICE OF REGULAR CITY COUNCIL MEETING  
CITY OF TOMBALL, TEXAS**



**MONDAY, APRIL 16, 2012**

**6:00 P.M.**

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, April 16, 2012 at 6:00 P.M., City Hall, 401 Market Street Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Invocation

- Led by Pastor Arthur Purvis, Christ Fellowship Church

3.0 Pledges to U.S. and Texas Flags

- Led by Members of the Tomball High School Student Council

4.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*

5.0 Presentations:

- Proclamation - May 5-13, 2012 is “***National Travel and Tourism Week - Tomball, Texas***”

6.0 Reports and Announcements

- April 21, 2012 – ***Art Walk Tomball!*** – 11:00 a.m.-6:00 p.m.
- April 23-28, 2012 – Annual ***Tomball Clean-up Week*** – 8:00 a.m.-4:30 p.m. daily
- April 24, 2012 – ***City of Tomball Volunteer Fire Fighters and Fire Corps, Reserve Police Officers & Volunteers in Policing Appreciation Banquet*** – 6:00 p.m.-8:00 p.m. at the Community Center
- April 28, 2012 – Annual ***Tomball Clean-up Recycling Day – E-Waste and Drug Take-Back Program – Tuesday Morning/Old Kroger Center Parking Lot***, 9:00 a.m.-1:00 p.m.
- ***April 30-May 8, 2012 - Early Voting*** for May 12, 2012 General Election and ESD #8 Directors and Tax Election – April 30 through May 8, 2012 at City Hall (Monday, Wednesday, and Thursday – 7:45 a.m.-5:00 p.m.) (Tuesday – 7:45 a.m.-7:45 p.m.) and (Friday – 7:45 a.m.-4:00 p.m.)
- May 5-6, 2012 – ***Rails and Tails Mudbug Festival at the Depot*** – 11:00 a.m.-6:00 p.m.
- ***May 8, 2012 – Mayor’s Coffee – Sol de Luna*** – 207 Commerce, 5:00 p.m.
- May 26 – ***Memorial Day Weekend Chili Challenge at the Depot*** – 11:00 a.m.-6:00 p.m.
- ***May 29, 2012*** - Harris County Primary Election Date; Runoff Date is July 31, 2012
- ***Walk Tomball!*** (every Saturday at 9:00 a.m. at the Depot; 8:00 a.m. beginning in May)
- Reports by City staff and members of council about items of community interest on which no action will be taken
  - Robert Hauck – Memorial Presentation, Sherine Amanollahi, Tomball Police Department

7.0 Approve the Minutes of the April 2, 2012 Regular City Council Meeting

8.0 Old Business:

- 8.1 Adopt, on Second Reading, Ordinance No. 2012-04, an Ordinance of the City of Tomball, Texas, amending Article V. Records Management, Division 1, Generally, Section 2-222. Records Control Schedules—to be Developed; Approval; Filing with State, by Deleting Section 2-222 in its Entirety and Adopting a New Section 2-222. Records Control Schedule, Providing for the Publication of this Ordinance; and Making Other Findings and Provisions Related Thereto

9.0 New Business:

- 9.1 Approve ***ZONING CASE P12-421***: Request by Shintaro Yoshida, on behalf of Baker Oilfield Operations, Inc., to amend the City’s Comprehensive Zoning Ordinance by rezoning approximately 10 acres of land, legally described as

Lots 330 and 333, Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located easterly of South Persimmon Road, southerly of F.M. 2920, from the Agricultural District to the Light Industrial District.

- Conduct a Public Hearing on **ZONING CASE P12-421**
  - Approve on First Reading, Ordinance No. 2012-05, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 10 acres of land, Legally described as Lots 330 and 333, Tomball Outlots, Within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District; Said property being generally located easterly of South Persimmon Road, southerly of F.M. 2920; Providing for the Amendment of the Official Zoning Map of the City; Providing for severability; Providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, Making findings of fact; and providing for other related matters
- 9.2 Approve Letter of Support on behalf of the Tomball Sister City Organization for Road Closure of South Cherry Street, a County Road, in Connection with the German Christmas Market, December 7-9, 2012 and the German Heritage Festival, March 22-24, 2013 and Authorize Mayor Fagan to Issue Letter of Support to Harris County Commissioners Court.
- 9.3 Approve Lease Agreement between the City of Tomball and Burlington Northern Santa Fe Railroad (BNSF), Covering Lease of Property off of North Elm Street for City's Parking Lot Project, at an Annual Lease Rate of \$3,000.00, and Authorize a Payment to Cover the Railroad Protective Liability Insurance required by BNSF, in the Amount of \$885.00.
- 9.4 Approve Resolution No. 2012-06, A Resolution of the City of Tomball, Texas, Stating the City of Tomball's Intent to Participate in Tax Abatement and Establishing the Guidelines and Criteria for Granting Tax Abatements in a Reinvestment Zone Created in the City of Tomball.
- 9.5 Approve Resolution No. 2012-07, a Resolution of the City Council of the City of Tomball, Texas, Authorizing the Purchase of Property from Gill Real Estate, LLC, a Texas Limited Liability Company, for Use in the Medical Complex Drive Expansion Project; and Authorizing the City Manager to Execute all Documents Related Thereto
- 9.6 Approve Resolution No. 2012-08, a Resolution of the City Council of the City of Tomball, Texas, Authorizing the Purchase of Property from Orbit Development, Inc., for Use in the Medical Complex Drive Expansion Project; and Authorizing the City Manager to Execute all Documents Related Thereto
- 9.7 Adopt, on First Reading, Ordinance No. 2012-06, an Ordinance of the City of Tomball, Texas, Adopting Homestead Exemptions for Property Owners Sixty-Five Years of Age and Over, and for Property Owners Who Qualify for Disability Benefits Under the Federal Old Age, Survivors, and Disability Insurance Program for the Year 2012 and Future Years, Unless Revised, on All Taxable Real and Personal Property Located in the City of Tomball, Texas; Providing for Penalty, Interest, and Additional Penalty on Taxes Not Timely

Paid; Providing for Severability; and Providing Other Matters Relating to the Subject

9.8 Adopt, on First Reading, Ordinance No. 2012-07, an Ordinance of the City of Tomball, Texas, Amending the Code of Ordinances of the City of Tomball by Amending Chapter 60, Signs, to Add a New Subsection (b)(6) to Section 60-9, Off-Premises Sign Provisions, to Allow the Addition of an LED Clock Display to Off-Premise Signs

9.9 Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.072 – Deliberations Regarding Real Property
- Sec. 551.087 – Deliberations Regarding Economic Development

10.0 Adjournment

#### C E R T I F I C A T I O N

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 13th day of April 2012 by 4:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer

City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT [www.ci.tomball.tx.us](http://www.ci.tomball.tx.us).

Regular City Council  
Agenda Item  
Data Sheet

Meeting Date: April 16, 2012

**Topic:**

- Proclamation - May 5-13, 2012 is *“National Travel and Tourism Week - Tomball, Texas”*

**Background:**

**Origination:**

**Recommendation:**

**Funding:**

**Party(ies) responsible for placing this item on agenda:**

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

**ATTACHMENTS:**

“National Travel and Tourism Week” – Tomball, Texas – May 5-13, 2012

Office of the Mayor  
Tomball, Texas

# Proclamation



- WHEREAS,** international travel to the United States is the nation's largest single export industry—greater than the export of business services, machinery, computer and electronic products, motor vehicles and agriculture, accounting for 8% of total U.S. domestic exports and creating \$134 billion in sales from abroad in 2010, and affecting America's economic prosperity and its image abroad; and
- WHEREAS,** travel is among the largest private-sector employers in the United States, including more than 10 million jobs directly in the travel industry and indirectly in other industries; and
- WHEREAS,** in 2010, direct travel spending in Texas was \$57.5 billion—funds that can be used to support essential services and programs; and
- WHEREAS,** the State of Texas benefited with approximately 465,000 jobs created by travelers in 2010; and
- WHEREAS,** leisure travel, which accounts for more than three-quarters of all trips taken in the United States and an estimated 198 million domestic visits to Texas in 2010, spurs countless benefits to travelers' creativity, cultural awareness, education, happiness, productivity, relationships and wellness; and
- WHEREAS,** the City of Tomball, realizing the vital economic benefits being realized through the City's efforts to attract new tourists to the City, through such events as the City's monthly *2<sup>nd</sup> Saturday at the Depot* events, annual *Trail Rider Reception*, 4<sup>th</sup> annual *City of Tomball Bunny Run 5K and Kids 1 Mile Run*, and the City's first *Tomball Honky Tonk Music Festival*, *Rails and Tails Mudbug Festival*, and *Memorial Day Weekend Chili Challenge* at the Tomball Depot;

**NOW, THEREFORE,** by virtue of the authority vested in me as Mayor of the City of Tomball, on behalf of the Tomball City Council and all citizens hereof, I do hereby proclaim the week of **May 5 through 13, 2012** as:

**“NATIONAL TRAVEL AND TOURISM WEEK - TOMBALL, TEXAS”**



In witness whereof I have hereunto set my hand and caused this seal to be affixed.

ATTEST:

DATE:

*Doni Spier*

*April 12, 2012*

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

#### Topic:

- April 21, 2012 – **Art Walk Tomball!** – 11:00 a.m.-6:00 p.m.
- April 23-28, 2012 – **Annual Tomball Clean-up Week** – 8:00 a.m.-4:30 p.m. daily
- April 24, 2012 – **City of Tomball Volunteer Fire Fighters and Fire Corps, Reserve Police Officers & Volunteers in Policing Appreciation Banquet** – 6:00 p.m.-8:00 p.m. at the Community Center
- April 28, 2012 – **Annual Tomball Clean-up Recycling Day – E-Waste and Drug Take-Back Program – Tuesday Morning/Old Kroger Center Parking Lot**, 9:00 a.m.-1:00 p.m.
- **April 30-May 8, 2012 - Early Voting** for May 12, 2012 General Election and ESD #8 Directors and Tax Election – April 30 through May 8, 2012 at City Hall (Monday, Wednesday, and Thursday – 7:45 a.m.-5:00 p.m.) (Tuesday – 7:45 a.m.-7:45 p.m.) and (Friday – 7:45 a.m.-4:00 p.m.)
- May 5-6, 2012 – **Rails and Tails Mudbug Festival at the Depot** – 11:00 a.m.-6:00 p.m.
- **May 8, 2012 – Mayor’s Coffee – Sol de Luna** – 207 Commerce, 5:00 p.m.
- May 26 – **Memorial Day Weekend Chili Challenge at the Depot** – 11:00 a.m.-6:00 p.m.
- **May 29, 2012** - Harris County Primary Election Date; Runoff Date is July 31, 2012
- **Walk Tomball!** (every Saturday at 9:00 a.m. at the Depot; 8:00 a.m. beginning in May)
- Reports by City staff and members of council about items of community interest on which no action will be taken
  - Robert Hauck – Memorial Presentation, Sherine Amanollahi, Tomball Police Department

#### Background:

#### Origination:

Various

#### Recommendation:

N/A

#### Funding:

#### Party(ies) responsible for placing this item on agenda:

City Secretary

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

#### ATTACHMENTS:

Art Walk Tomball!

Tomball Clean-up Week

Tomball Clean-up Recycling Day – E-Waste and Drug Take-Back Program

Rails and Tails Mudbug Festival at the Depot

Rails and Tails Mudbug Festival at the Depot Sponsors

May 8, 2012 – Mayor’s Coffee

# ART WALK

## TOMBALL!

**April 21, 2012**  
**from 11 a.m. – 6 p.m.**

- View and buy original artwork throughout the historic downtown district, meet the artists and enjoy wine, cheese and more along the route.

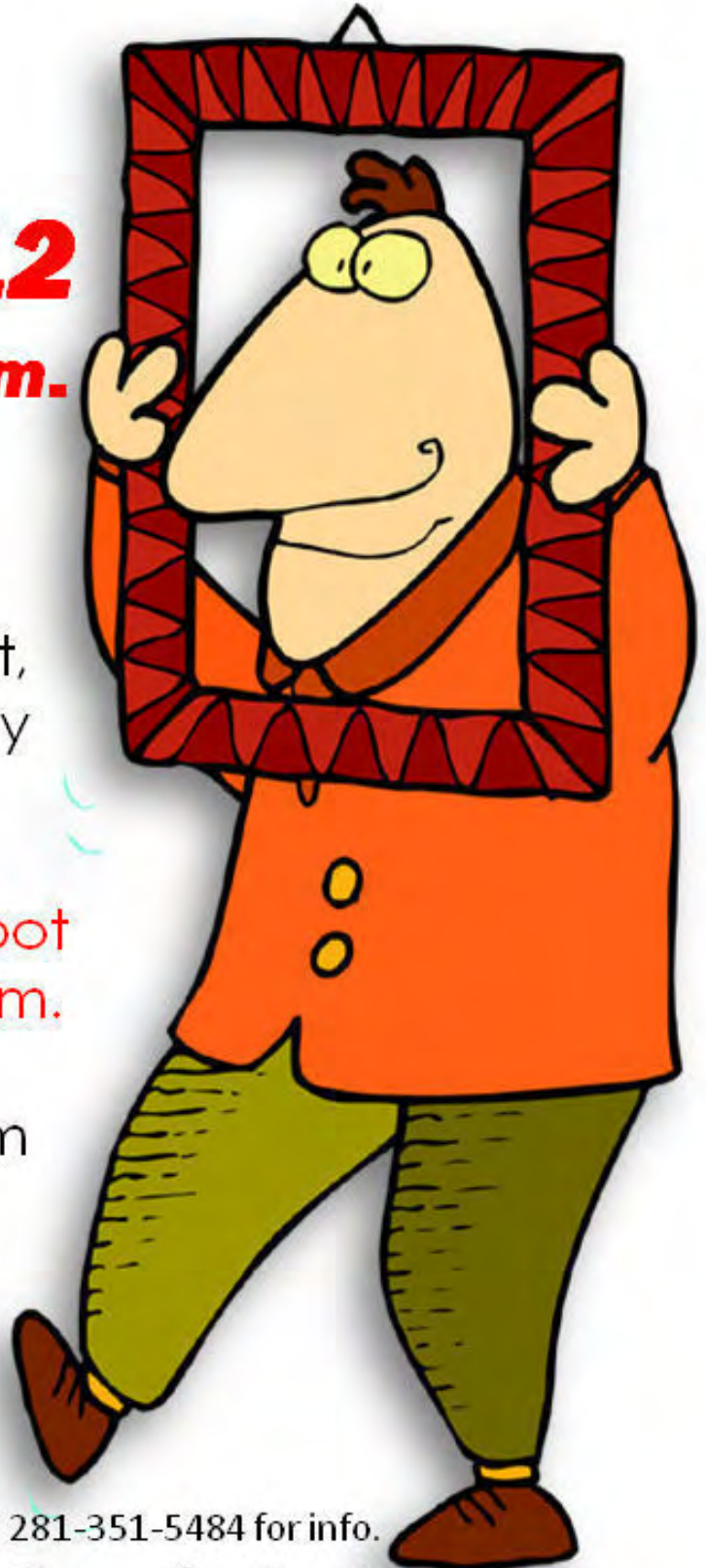
- Free Concert at the Depot Plaza from 4:30 to 7:00 p.m. following the walk.

- Beverages and eats from Cisco's Salsa Company during the concert.



Follow Tomball, Texas on [facebook](#) Call 281-351-5484 for info.

*Remember . . . Tomball is Texan for Fun!*



**City of Tomball**  
**Spring Clean up**  
**Week of April 23-May 4, 2012 (No Sunday)**  
**Monday – Saturday - 8:00 am - 4:30 pm**

**Objective:**

Provide the citizens of Tomball the opportunity to dispose of large, hard-to-handle items that cannot be collected under the normal garbage service. **\*\* (Remember this is for residents of Tomball only (must have City utility bill as proof); NO COMMERCIAL BUSINESS OPERATORS) \*\***

Roll Offs will be available at the City Landfill Site (0.4 miles north of E. Hufsmith on Rudolph) to dispose of the acceptable items. See map to landfill site below.

**Acceptable Items:**

- |                              |                          |                                   |
|------------------------------|--------------------------|-----------------------------------|
| • Lumber                     | • Bricks (small amount)  | • Gutter material                 |
| • Bicycle parts              | • Empty buckets or pails | • Cardboard boxes                 |
| • Plywood (4 cubic yd. max)  | • Rocks (small amount)   | • Lawn mowers (oil & gas removed) |
| • Rugs/carpet                | • Washing machines       | • Dishwashers                     |
| • Siding                     | • Dryers                 |                                   |
| • Clothing                   | • Water heaters          |                                   |
| • Box springs and mattresses | • Furniture              |                                   |

**Not Acceptable:**

- |                                  |                                                        |                                          |
|----------------------------------|--------------------------------------------------------|------------------------------------------|
| • Tree trimmings                 | • Insecticides                                         | • Raw meats, food products or byproducts |
| • Limbs or stumps                | • Container with unmarked labels holding liquids       | • Televisions                            |
| • Tires                          | • Sealed containers of any type                        | • Computers                              |
| • Engine blocks                  | • Large amounts of construction or demolition material | • Refrigerators                          |
| • Structural steel               | • Smoke detectors                                      | • AC units                               |
| • Equipment with oil or gasoline | • Pressurized vessels                                  | • Appliances with Freon or fluids        |
| • Fertilizers                    | • Flammable, combustible or corrosive products         | • Paint                                  |
| • Pool chemicals                 |                                                        |                                          |
| • Batteries                      |                                                        |                                          |
| • Oil filters                    |                                                        |                                          |

All appliances must be drained and tagged by a licensed technician.

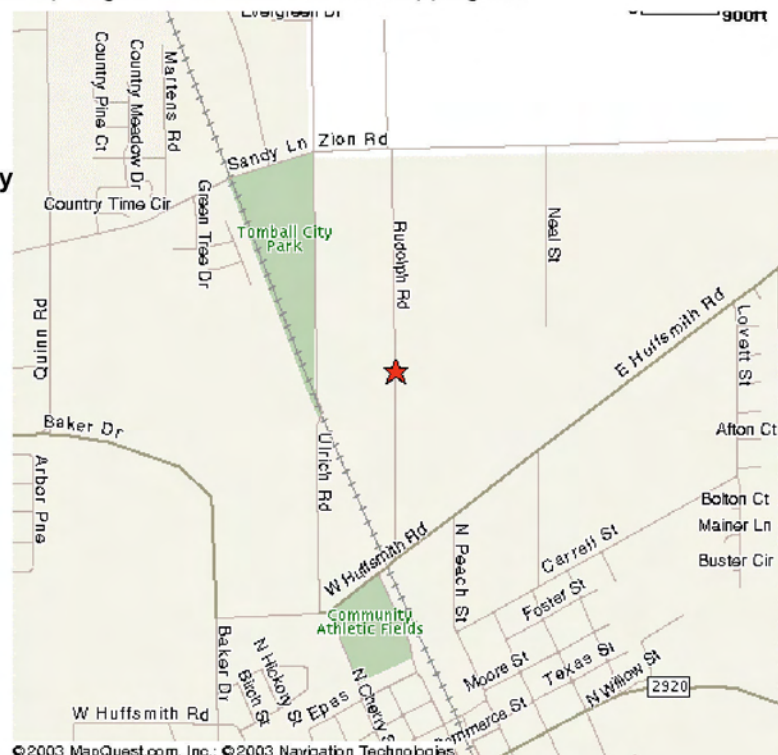
Acceptable items are anything that is inert and would not harm the environment before or after disposal into a landfill.

The City of Tomball will provide a free chipping service for brush and small limbs during the week of Tomball Cleanup. To participate, please call **(281) 290-1400** the week before the cleanup begins to be added to the chipping list.

**CHIPPING SPECIFICATIONS:**

- Turn all big ends toward road or in one direction
- Limit size to 6 ft.-8 ft., maximum
- Keep logs separate from limbs, nothing over 6" dia.
- Place limbs & brush near roadside and not on property
- Leaves, please bag for regular garbage pickup

Map to Tomball landfill site



# Tomball Consolidated Recycling Day

28597 Tomball Parkway  
Old Kroger Center Parking Lot at Four Corners

Enter by Shipley's Donuts on SH 249

**April 28th from 9am-1pm**

Drive Thru and Drop Off the following APPROVED items:  
E-Waste (computers and all accessories, Fax machines, laptop batteries, UPS/Lithium/Ni-Cad Batteries, Small kitchen appliances), Prescription Drugs (pill & liquid), Tires (car/truck/atv), Car Battery (Non-Leaking), Used Motor Oil, Household paper/plastics/glass, Paper Shredding

~~Plastic Bags, Paint, Styrofoam~~

Thanks to our Community Partners and Sponsors!!!



Responsible E-cycling Solutions.

**Got Drugs?**



# RAILS & TAILS MUDBUG FESTIVAL AT THE DEPOT



**MAY 5-6, 2012 - 11 A.M. TO 6 P.M.  
TOMBALL, TEXAS**

**Tons of crawfish, boudin, and more . . . Kids area, too!**

*Live music from The Fab 5, Bayou Roux and  
Louisiana's own Joel Martin on Saturday, May 5th.  
On Sunday, May 6th it's Waylon Thibodeaux, Bayou Roux  
and The Grateful Geezers*

**CALL 281-351-5484 OR VISIT [WWW.CI.TOMBALL.TX.US](http://WWW.CI.TOMBALL.TX.US) FOR INFO!**

**201 S. ELM STREET - TOMBALL, TEXAS - 77375**

# RAILS & TAILS MUDBUG FESTIVAL AT THE DEPOT



**MAY 5-6, 2012 • 11AM-6PM  
TOMBALL, TEXAS**

# MAY 5-6, 2012 • 11AM-6PM

## ADMISSION IS FREE!

**Tons of crawfish, boudin, vendors, games and more ... Kid's area, too!**  
Live music from **The Fab 5**, Bayou Roux and Louisiana's own **Joel Martin Project** on Saturday,  
May 5. On Sunday, May 6, it's **Waylon Thibodeaux**, **Bayou Roux** and **The Grateful Geezers**

### Sally Fishers Custom Frame & Art

104 Commerce St. | Tomball, 77375  
281-351-5535



- Texas Flags
- State Seals
- Maps, New Releases by G. Harvey
- Quality Custom Framing

SalGalAntiques@aol.com  
www.salliefishersart.com

*Come See what Everyone's  
Talking About at*

*Cindy Jaeger*  
DESIGNS

**Happy Spring!**

281-255-4554  
210 West Main St. Tomball, 77375  
cindyjaegerdesigns.blogspot.com  
cindyjaegerdesigns@hotmail.com

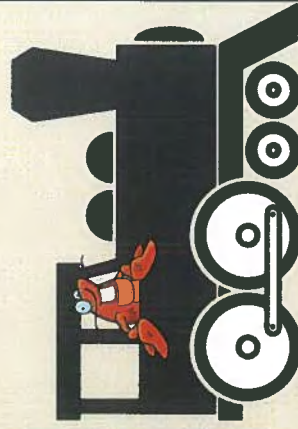
**Food and Beverages  
provided by  
Cisco's Salsa Company**



*Come cool down on our patio!*  
Ice cold margaritas, outdoor dining, live  
music on Sat. night from 7-10pm

**209 Commerce St.  
"Old Town" Tomball 281-351-7572**

PRESENTED BY



Call 281-351-5484 or visit [www.ci.tomball.tx.us](http://www.ci.tomball.tx.us) for info! 201 S. Elm Street | Tomball, 77375

Tuesday, May 8, 2012  
5:00 P.M.  
Sol de Luna  
(Cisco's Banquet Room)  
207 Commerce

# Mayor's Coffee

Stop by to get in  
touch



Gretchen Fagan  
Mayor

For more information call 281-290-1002 or visit [ci.tomball.tx.us](http://ci.tomball.tx.us)

# Regular City Council Agenda Item Data Sheet

Meeting Date: April 16, 2012

**Topic:**

Approve the Minutes of the April 2, 2012 Regular City Council Meeting

**Background:**

**Origination:**

**Recommendation:**

**Funding:**

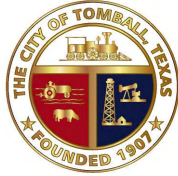
**Party(ies) responsible for placing this item on agenda:**

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

**ATTACHMENTS:**

Draft - Minutes of the April 2, 2012 Regular City Council Meeting

# MINUTES OF REGULAR CITY COUNCIL MEETING CITY OF TOMBALL, TEXAS



**MONDAY, APRIL 2, 2012  
6:00 P.M.**

## 1.0 Call to Order

The Council meeting was called to order by Mayor Gretchen Fagan. Other members present were:

Councilman Hudgens  
Councilman Stoll  
Councilman Brown  
Councilman Townsend  
Councilman Dodson

Others present:

City Manager – George Shackelford  
Assistant City Manager – Christal Weber  
City Secretary – Doris Speer  
City Attorney – Loren B. Smith  
Fire Chief – Randy Parr  
Finance Director – Glenn Windsor  
Marketing Director – Mike Baxter  
IT Director – Doug Tippey  
Community Events Coordinator – Rosalie Dillon  
Chief-NWEMS – Brian Petrilla  
Executive Director-TEDC – Kelly Violette

**draft**

## 2.0 Invocation

- Led by Pastor Bobby Ferguson, Free Will Baptist Church

## 3.0 Pledges to U. S. and Texas Flags

- Led by E. J. Jones, and Kelsey Zalesak, members of the Tomball High School Student Council

4.0 The following public comments were received.

- |                                               |                                                                                                                                                                                                                                                |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sarah Stotts<br>12711 Zion, 77375             | - Presented donation, on behalf of Mitchell and Jeffie Cappadonna, of Lots 16 and 17, Block 69, on Holiday Street to the City of Tomball for use as parking for MLK Park                                                                       |
| Bruce Hillegeist<br>20339 Telge, 77377        | - Expressed his appreciation for the City's assistance in the success of the German Heritage Festival and announced the Candidate Forum, to be held on April 12, 2012 at the Teaching Theater at LoneStar College, from 6:30 p.m. to 8:30 p.m. |
| Camille Hamilton<br>(email)<br>Spring, 77379  | - Email was read into the record; Ms. Hamilton expressed her appreciation of the 1 <sup>st</sup> Annual Honky Tonk Music Festival.                                                                                                             |
| Larry Hugonin<br>30507 Country Meadows, 77375 | - Expressed his appreciation for the support provided by the City's public safety and public works employees and by EMS at the German Heritage Festival.                                                                                       |

5.0 Presentations:

- Mayor Fagan presented the Proclamation - **April 14, 2012 – 2<sup>nd</sup> Day of Healthy Living in Tomball Expo** to Dawna Dyson, representative for Texas Sports Medicine Center.
- Mayor Fagan and Caleb Harris, Tomball-Magnolia Tribune, announced that Courtney Simental was the winner of the Tomball-Magnolia Tribune "***Tomball Mascot Name***" Contest, with her entry of "***Rusty Rails***"

6.0 Reports and Announcements:

- April 4, 2012 – **City of Tomball Youth Opportunity Fair – Beckendorf Conference Center – LoneStar College, 2:00 p.m.-6:00 p.m.**
- April 14, 2012 – **4<sup>th</sup> Annual City of Tomball Bunny Run 5K and Kids 1M**
- April 14, 2012 – **2<sup>nd</sup> Day of Healthy Living in Tomball Expo – Texas Sports Medicine Center, 9:00 a.m.-2:00 p.m.**
- April 14, 2012 – **2<sup>nd</sup> Saturday at the Depot – 5:30 p.m.**
- April 21, 2012 – **Art Walk Tomball! – 11:00 a.m.-6:00 p.m.**
- April 23-28, 2012 – **Annual Tomball Clean-up Week – 8:00 a.m.-4:30 p.m. daily**
- April 24, 2012 – **City of Tomball Volunteer Fire Fighters and Fire Corps, Reserve Police Officers & Volunteers in Policing Appreciation Banquet – 6:00 p.m.-8:00 p.m. at the Community Center**
- April 28, 2012 – **Annual Tomball Clean-up Recycling Day – E-Waste and Drug Take-Back Program – Tuesday Morning/Old Kroger Center Parking Lot**
- May 5-6, 2012 – **Rails and Tails Mudbug Festival at the Depot – 11:00 a.m.-6:00 p.m.**

- **Early Voting** for May 12, 2012 General Election and ESD #8 Directors and Tax Election – April 30 through May 8, 2012 at City Hall (Monday, Wednesday, and Thursday – 7:45 a.m.-5:00 p.m.) (Tuesday – 7:45 a.m.-7:45 p.m.) and (Friday – 7:45 a.m.-4:00 p.m.)
- May 26 – **Memorial Day Weekend Chili Challenge** – 11:00 a.m.-6:00 p.m.
- May 29, 2012 – Harris County Primary Election Date; Runoff Date is July 31, 2012
- **Walk Tomball!** (every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken
  - Mike Baxter - Report on the **Tomball Honky Tonk Music Festival**

7.0 Motion was made by Councilman Townsend, second by Councilman Dodson, to approve the Minutes of the March 19, 2012 Regular City Council Meeting, as Corrected (Item 8.1).

Motion carried unanimously.

8.0 Old Business:

8.1 Motion was made by Councilman Stoll, second by Councilman Brown, to adopt, on Second Reading, Ordinance No. 2012-03, an Ordinance of the City Council of the City of Tomball, Texas, amending Subsection (b)(1) of Section 30-159 of Article IV, Nuisances, of Chapter 30, Environment, of the City's Code of Ordinances relating to the Prohibition of Weeds; Providing a New Definition of “Weeds”; Providing a Penalty of Up to \$2,000.00 for Violations with Each Day Constituting a Separate Violation; Providing for the Publication of This Ordinance; and Making Other Findings and Provisions related Thereto.

Motion to Amend was made by Councilman Stoll, second by Councilman Brown, to delete the “wildflower exemption” contained in the last sentence of Sec. 30-159(b)(1) from proposed Ordinance No. 2012-03, to request that City staff provide a list of accepted “wildflowers” at a later date, and to adopt as amended, on Second Reading, Ordinance No. 2012-03, an Ordinance of the City Council of the City of Tomball, Texas, amending Subsection (b)(1) of Section 30-159 of Article IV, Nuisances, of Chapter 30, Environment, of the City's Code of Ordinances relating to the Prohibition of Weeds; Providing a New Definition of “Weeds”; Providing a Penalty of Up to \$2,000.00 for Violations with Each Day Constituting a Separate Violation; Providing for the Publication of This Ordinance; and Making Other Findings and Provisions related Thereto. Vote was as follows:

|                     |            |
|---------------------|------------|
| Councilman Townsend | <u>Nay</u> |
| Councilman Dodson   | <u>Aye</u> |
| Councilman Hudgens  | <u>Aye</u> |
| Councilman Stoll    | <u>Aye</u> |
| Councilman Brown    | <u>Aye</u> |

**Draft**

Motion, as amended, carried – 4 votes Aye, 1 vote Nay.

9.0 New Business:

- 9.1 Motion was made by Councilman Dodson, second by Councilman Townsend, to approve the Contract with CivicPlus under the State DIR Program for Website Redesign and Management, in the Amount of \$20,048.12.

Motion carried unanimously.

- 9.2 Motion was made by Councilman Townsend, second by Councilman Dodson, to approve **FINAL PLAT ACQUEST TOMBALL**: Being a Subdivision of 7.0434 Acres situated in the Joseph House Survey, A-34, City of Tomball, Harris County, Texas.

Motion carried unanimously.

- 9.3 Motion was made by Councilman Townsend, second by Councilman Hudgens, to read Ordinance No. 2012-04 by caption only on First Reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt, on First Reading, Ordinance No. 2012-04, an Ordinance of the City of Tomball, Texas, amending Article V. Records Management, Division 1, Generally, Section 2-222. Records Control Schedules—to be Developed; Approval; Filing with State, by Deleting Section 2-222 in its Entirety and Adopting a New Section 2-222. Records Control Schedule, Providing for the Publication of this Ordinance; and Making Other Findings and Provisions Related Thereto. Vote was as follows:

|                     |            |
|---------------------|------------|
| Councilman Dodson   | <u>Aye</u> |
| Councilman Hudgens  | <u>Aye</u> |
| Councilman Stoll    | <u>Aye</u> |
| Councilman Brown    | <u>Aye</u> |
| Councilman Townsend | <u>Aye</u> |

Motion carried unanimously.

- 9.4 The City Council recessed at 7:00 p.m. to meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.087 – Deliberations Regarding Economic Development

Upon reconvening in regular session at 7:34 p.m., no action was taken.

**draft**

10.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 16th day of April 2012.

---

Doris Speer, TRMC, CMC  
City Secretary

---

Gretchen Fagan  
Mayor

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

#### **Topic:**

Adopt, on Second Reading, Ordinance No. 2012-04, an Ordinance of the City of Tomball, Texas, amending Article V. Records Management, Division 1, Generally, Section 2-222. Records Control Schedules—to be Developed; Approval; Filing with State, by Deleting Section 2-222 in its Entirety and Adopting a New Section 2-222. Records Control Schedule, Providing for the Publication of this Ordinance; and Making Other Findings and Provisions Related Thereto

#### **Background:**

In 1990, the City of Tomball adopted its official records management program; in 1992, Council approved the set of Records Control Schedules submitted by the City Secretary's office, which were in turn, submitted to and approved by the Texas State Library and we have been operating under these schedules since.

The Texas State Library regularly reviews and revises its Records Control Schedules to incorporate new types of records into the system and to ensure that retention dates meet changing standards.

I believe it would be advantageous for the City to adopt the Texas State Library's Records Control Schedules and to provide for the automatic use of the latest State of Texas Records Retention Schedules. The Local Government Records Act allows cities to adopt the Texas State Library's schedules instead of creating and maintaining their own schedules; the advantage to adopting the Texas State Library's schedules is that the City would not need to submit amended records retention schedules for approval by the State Library should the City's schedules no longer meet state requirements.

The proposed Ordinance will adopt the appropriate Records Control Schedules issued by the Texas State Library and Archives Commission for use in the City of Tomball, as provided by law. Any destruction of City records will continue to be processed in accordance with these schedules and the Local Government Records Act. As new records retention schedules are created by the State Library, they will automatically be included in Tomball's records management program.

The City Secretary, as the records management officer, will monitor the appropriate schedules issued by the Texas State Library and Archives Commission to ensure that the City is in compliance with the records retention schedules issued by the state and the records management program of the City.

#### **Origination:**

Doris Speer, City Secretary

#### **Recommendation:**

Adopt Ordinance No. 2012-04 on Second Reading

#### **Funding:**

#### **Party(ies) responsible for placing this item on agenda:**

Doris Speer, City Secretary

---

#### **ACTION TAKEN**

---

|                                                                             |                                                                                                             |              |
|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|--------------|
| <b>APPROVAL</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO | <b>READINGS PASSED</b><br><input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> | <b>OTHER</b> |
|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|--------------|

**ATTACHMENTS:**

Ordinance No. 2012-04

**ORDINANCE NO. 2012-04**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ARTICLE V. RECORDS MANAGEMENT, DIVISION 1, GENERALLY, SECTION 2-222. RECORDS CONTROL SCHEDULES—TO BE DEVELOPED; APPROVAL; FILING WITH STATE, BY DELETING SECTION 2-222 IN ITS ENTIRETY AND ADOPTING A NEW SECTION 2-222. RECORDS CONTROL SCHEDULE, PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO.**

\* \* \* \* \*

**WHEREAS**, Title 6, Subtitle C. Local Government Code provides that a City must establish by Ordinance an active and continuing Records Management Program to be administered by a Records Management Officer; and

**WHEREAS**, the Tomball city Council adopted Ordinance 90-10 on December 17, 1990 for that purpose and to prescribe policies and procedures consistent with the Local Government Records Act and in the interest of cost-effective record keeping; and

**WHEREAS**, the Tomball City Council now finds it advantageous to adopt the State of Texas Records Retention Schedules and to provide for the automatic use of the latest State of Texas Records Retention Schedules;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

**Section 2.** Section 2-222. “Records control schedules—To be developed; approval; filing with state.” of Chapter 2. Administration of the Code of Ordinances of the City of Tomball, Texas is hereby deleted in its entirety and a new Section 2-222. “Records control schedules—Approval; filing with state.” is hereby added, with the new Section 2-222 to read as follows:

**“Section 2-222. Records control schedules—Approval; filing with state.**

(a) The City of Tomball hereby adopts the appropriate records control schedules issued by the Texas State Library and Archives Commission for use in the City of Tomball, as provided by law. Any destruction of records of the City of Tomball will be in accordance with these schedules and the Local Government Records Act.

**Sec. 2-222. Records control schedules--To be developed; approval; filing with state.**

(b) The records management officer, in cooperation with department heads and records liaison officers, shall maintain an inventory, on a department-by-department basis, listing all records archived by the department and the retention period for each record. Records control schedules shall also contain such other information regarding the disposition of local municipal government records as the records management plan may require.

(c) The records management officer will monitor the appropriate records control schedules issued by the Texas State Library and Archives Commission to ensure that the City is in compliance with the records retention schedules issued by the state and the records management program of the City.

(d) Before implementation of the records control schedules issued by the Texas State Library and Archives Commission, Ordinance No. 2012-04, adopting the Texas State Library and Archives Commission records control schedules shall be submitted to and accepted for filing by the Director and Librarian of the Texas State Library and Archives Commission as provided by state law. If Ordinance No. 2012-04 is not accepted for filing, the Ordinance shall be amended to make it acceptable for filing with the state and presented to Council, after which the records management officer shall submit the amended Ordinance to the Director and Librarian.

**Section 3.** In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**Section 4.** This Ordinance shall become effective fourteen days after the final reading and adoption of this Ordinance when the caption hereof is caused to be published once in the official newspaper of the City, by the City Secretary, as required by law. The City Secretary is directed to publish the caption of this Ordinance in the City's official newspaper within 14 days after the passage of the ordinance.

**Section 5.** City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 16TH DAY OF MARCH 2012.

|                     |            |
|---------------------|------------|
| COUNCILMAN HUDGENS  | <u>AYE</u> |
| COUNCILMAN STOLL    | <u>AYE</u> |
| COUNCILMAN BROWN    | <u>AYE</u> |
| COUNCILMAN TOWNSEND | <u>AYE</u> |
| COUNCILMAN DODSON   | <u>AYE</u> |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF APRIL 2012.

|                     |       |
|---------------------|-------|
| COUNCILMAN HUDGENS  | _____ |
| COUNCILMAN STOLL    | _____ |
| COUNCILMAN BROWN    | _____ |
| COUNCILMAN TOWNSEND | _____ |
| COUNCILMAN DODSON   | _____ |

\_\_\_\_\_  
Gretchen Fagan, Mayor

ATTEST:

\_\_\_\_\_  
Doris Speer, City Secretary

# Regular City Council

## Agenda Item

Meeting Date: April 16, 2012

## Data Sheet

### Topic:

Approve **ZONING CASE P12-421**: Request by Shintaro Yoshida, on behalf of Baker Oilfield Operations, Inc., to amend the City's Comprehensive Zoning Ordinance by rezoning approximately 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located easterly of South Persimmon Road, southerly of F.M. 2920, from the Agricultural District to the Light Industrial District.

- Conduct a Public Hearing on **ZONING CASE P12-421**
- Approve on First Reading, Ordinance No. 2012-05, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by changing the Zoning District Classification of approximately 10 acres of land, Legally described as Lots 330 and 333, Tomball Outlots, Within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District; Said property being generally located easterly of South Persimmon Road, southerly of F.M. 2920; Providing for the Amendment of the Official Zoning Map of the City; Providing for severability; Providing for a penalty of an amount not to exceed \$2,000 for each day of violation of any provision hereof, Making findings of fact; and providing for other related matters

### Background:

On February 29, 2012, the Community Development Department received a rezoning application from the applicant, Shintaro Yoshida of Energy Architecture, on behalf of the property owner, Baker Hughes. According to their application, "We request rezoning of Baker Hughes-owned lands that are currently classified as agricultural to light industrial. This will allow Baker Hughes to utilize the entire site as indicated on the proposed plan." The conceptual site plan shows the subject site, Lots 330 and 333, Tomball Outlots, being utilized for a detention pond and 50,000-square foot warehouse. The proposed detention will replace the existing detention pond on the south side of the Baker Hughes' campus.

There is a mixture of land uses in the vicinity. To the north of the subject site is an undeveloped City of Tomball right-of-way and the Baker Hughes oilfield operations campus within the Light Industrial District; to the south is undeveloped land within the Agricultural District; to the east is undeveloped land and single-family residences within the Agricultural District; and to the west are commercial and warehouse uses in the Commercial District.

On April 9, 2012, the Planning and Zoning Commission, after conducting a public hearing on this request, voted to recommend approval of Zoning Case P12-421. This case is now being forwarded to City Council for consideration and possible action.

### Origination:

Community Development

### Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted to recommend approval of Zoning Case P12-421.

**Funding:**

**Party(ies) responsible for placing this item on agenda:**

Engineering and Planning

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

**ATTACHMENTS:**

Ordinance 2012-05

Notice of Public Hearing

Property Owner Notification Letter

P12-421 Staff Report

**ORDINANCE NO. 2012-05**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 10 ACRES OF LAND, LEGALLY DESCRIBED AS LOTS 330 AND 333, TOMBALL OUTLOTS, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AGRICULTURAL DISTRICT TO THE LIGHT INDUSTRIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED EASTERLY OF SOUTH PERSIMMON ROAD, SOUTHERLY OF F.M. 2920; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS**

\* \* \* \* \*

**Whereas**, the owner(s) of approximately 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, generally located easterly of South Persimmon Road, southerly of F.M. 2920, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; and

**Whereas**, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to change the zoning for the Property from the Agricultural District to the Light Industrial District; and

**Whereas**, the public hearing was held at least forty (40) calendar days after the City's receipt of the request for rezoning; and

**Whereas**, the Planning & Zoning Commission recommended in its final report that City Council grant such proposed change in the zoning district classification of the Property; and

**Whereas**, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing on the proposal to change the zoning district classification for the Property from the Agricultural District to the Light Industrial District, the City Council held the public hearing on the proposal to change the zoning for the Property and the City Council considered the final report of the Planning & Zoning Commission regarding the change of zoning district classification, and

**Whereas**, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:**

**Section 1.** The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

**Section 2.** The zoning classification of 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, within the City of Tomball, Harris County, Texas, is hereby changed from the Agricultural District to the Light Industrial District subject to the regulations, restrictions, and conditions hereafter set forth.

**Section 3.** The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, ("Zoning District Map"), shall be revised and amended to show the designation of 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, generally located easterly of South Persimmon Road, southerly of F.M. 2920, as Light Industrial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

**Section 4.** This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, generally located easterly of South Persimmon Road, southerly of F.M. 2920, to the Light Industrial District as described above.

**Section 5.** In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**Section 6.** Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

**Section 7.** City Council finds and determines that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Tex.Gov't. Code ch. 551.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 16TH DAY OF APRIL 2012.

|                     |       |
|---------------------|-------|
| COUNCILMAN HUDGENS  | _____ |
| COUNCILMAN STOLL    | _____ |
| COUNCILMAN BROWN    | _____ |
| COUNCILMAN TOWNSEND | _____ |
| COUNCILMAN DODSON   | _____ |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF MAY 2012.

|                     |       |
|---------------------|-------|
| COUNCILMAN HUDGENS  | _____ |
| COUNCILMAN STOLL    | _____ |
| COUNCILMAN BROWN    | _____ |
| COUNCILMAN TOWNSEND | _____ |
| COUNCILMAN DODSON   | _____ |

ATTEST:

\_\_\_\_\_  
Gretchen Fagan, Mayor

\_\_\_\_\_  
Doris Speer, City Secretary

**NOTICE OF PUBLIC HEARINGS  
CITY OF TOMBALL  
PLANNING & ZONING COMMISSION  
APRIL 9, 2012  
&  
CITY COUNCIL  
APRIL 16, 2012**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, April 9, 2012, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, April 16, 2012, at 6:00 P.M.** at Regular Meetings, in the City Council Chambers of the City of Tomball at City Hall, 401 Market Street, Tomball, Texas. On such dates, the Planning & Zoning Commission and City Council will consider the following:

**ZONING CASE P12-421:** Request by Shintaro Yoshida, on behalf of Baker Oilfield Operations, Inc., to amend the City's Comprehensive Zoning Ordinance by rezoning approximately 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, within the City of Tomball, Harris County, Texas, generally located easterly of South Persimmon Road, southerly of F.M. 2920, from the Agricultural District to the Light Industrial District.

Persons interested in these cases will be given an opportunity to be heard. Action by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Should the Planning & Zoning Commission vote to table a decision/recommendation on one or more of the above cases, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a decision/recommendation is forwarded to the City Council by the Planning and Zoning Commission. The application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Engineering & Planning Department office, located at 501 James Street, Tomball, TX 77375. **Contact Assistant City Planner** Rodney Schmidt, (281) 290-1410, [rschmidt@ci.tomball.tx.us](mailto:rschmidt@ci.tomball.tx.us)

## CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall; City of Tomball, Texas, a place readily accessible to the general public at all times, on the 5<sup>th</sup> day of April 2012 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate

Brandy Pate

Senior Administrative Assistant

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information. AGENDAS MAY ALSO BE VIEWED ONLINE AT [www.ci.tomball.tx.us](http://www.ci.tomball.tx.us).



## Notice of Public Hearing

**YOU ARE INVITED TO ATTEND** Public Hearings before the **PLANNING AND ZONING COMMISSION** and **CITY COUNCIL** of the City of Tomball regarding the following item:

**CASE NUMBER:** P12-421

**APPLICANT:** Shintaro Yoshida, on behalf of Baker Oilfield Operations, Inc.

**LOCATION:** Easterly of South Persimmon Road, southerly of F.M. 2920

**PROPOSAL:** Request to amend the City's Comprehensive Zoning Ordinance by rezoning approximately 10 acres of land, legally described as Lots 330 and 333, Tomball Outlots, within the City of Tomball, Harris County, Texas, from the Agricultural District to the Light Industrial District.

\* \* \*

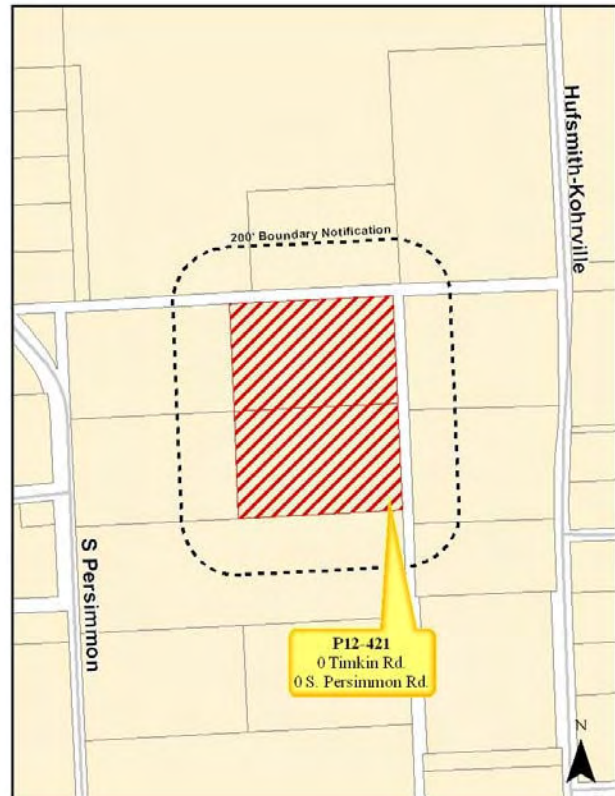
**CONTACT PLANNER:** Rodney Schmidt

**PHONE:** (281) 290-1410

**E-MAIL:** [rschmidt@ci.tomball.tx.us](mailto:rschmidt@ci.tomball.tx.us)

Interested parties may contact the City Planner between 8:00 a.m. and 5:00 p.m. Monday through Friday for further information. The rezoning application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Engineering and Planning Department office, located at 501 James Street, Tomball, TX 77375. The staff report will be available no later than 4:00 p.m. on the Friday preceding the meeting.

This notice is being mailed to all owners of real property within 200 feet of the request as such ownership appears on the last approved Harris County Appraisal District tax roll. Interested parties may appear and speak on the project or the staff recommendation at the meeting. Written comments may also be submitted for consideration.



**Planning and Zoning Commission  
Public Hearing:**

**Monday, April 9, 2012, 6:00 PM**

**City Council Public Hearing:**

**\*Monday, April 16, 2012, 6:00 PM**

**The Public Hearings will be held in the  
City Council Chambers, City Hall  
401 Market Street, Tomball, Texas**

\*Should the Planning & Zoning Commission vote to table the recommendation on the case, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a recommendation is forwarded to the City Council by the Planning and Zoning Commission.



## Rezoning Staff Report

Planning and Zoning Commission Public Hearing Date: April 9, 2012

**Rezoning Case:** P12-421  
**Property Owner(s):** Baker Oilfield Operations, Inc.  
**Applicant(s):** Shintaro Yoshida  
**Legal Description:** Lots 330 and 333, Tomball Outlots  
**Location:** Generally located easterly of South Persimmon Road, southerly of F.M. 2920  
**Area:** 10 acres  
**Present Zoning and Use:** Agricultural District / Undeveloped  
**Comp Plan Designation:** Business / Industrial  
**Proposed Zoning and Use:** Light Industrial District / Detention Pond and Warehouse

**It should be noted, that any use permitted in the proposed district would be allowed at this location if the zoning is changed. Furthermore, the Planning & Zoning Commission may consider zoning classifications other than that sought by the applicant for this property.**

### Adjacent Zoning & Land Uses:

**North:** Light Industrial District / Undeveloped City of Tomball Right-of-Way and Baker Oilfield Operations Campus  
**South:** Agricultural District / Undeveloped  
**East:** Agricultural District / Single-Family Residences and Undeveloped  
**West:** Commercial District / Commercial and Warehouse

### **BACKGROUND**

The subject site is legally described as Lots 330 and 333, Tomball Outlots within the City of Tomball, Harris County, Texas totaling approximately 10 acres. The site is generally located between Hufsmith-Kohrville and South Persimmon Roads, southerly of F.M. 2920, is undeveloped (Exhibit "A"), and is currently zoned Agricultural District (Exhibit "B").

On February 29, 2012, the Community Development Department received a rezoning application and letter for the subject site (Exhibits "C" and "D") from the applicant, Shintaro Yoshida of Energy Architecture. According to their application, "We request rezoning of Baker Hughes owned lands that are currently classified as agricultural to light industrial. This will allow Baker Hughes to utilize the entire site as indicated on the proposed plan." The conceptual site plan

(Exhibit “E”) shows Lots 330 and 333 being utilized for a detention pond and 50,000 square foot warehouse. The proposed detention will replace the existing detention pond on the south side of the Baker Hughes Oilfield Operations campus.

## **ANALYSIS**

According to the Tomball Zoning Ordinance, “The LI, Light Industrial, district is intended primarily for the conduct of light manufacturing, assembling and fabrication activities, and for warehousing, research and development, wholesaling and service operations that do not typically depend upon frequent customer or client visits. Such uses do require accessibility to major thoroughfares, major highways, and/or other means of transportation such as the railroad.”

There is a mixture of land uses in the vicinity (Exhibits “A” and “B”). To the north of the subject site is an undeveloped City of Tomball right-of-way and the Baker Hughes oilfield operations campus within the Light Industrial District; to the south is undeveloped land within the Agricultural District; to the east is undeveloped land and single-family residences within the Agricultural District; and to the west are commercial and warehouse uses in the Commercial District.

The Comprehensive Plan’s future land use map identifies the site as “Business/Industrial” (Exhibit “F”). It states the “Business/Industrial” land use classification is “where industrial and intensive employment activities should occur. Activities that will require unenclosed assembly, repair and/or storage and require heavy truck or rail transportation support are acceptable. Also included would be warehousing and distribution facilities, as well as offices and showrooms.” The proposed rezoning to the Light Industrial District and the expansion of the Baker Hughes oilfield operations campus are generally consistent with the Comprehensive Plan. **It should be noted that any use permitted in the Light Industrial District would be allowed at this location if the zoning is changed.**

As a matter of information, the future development of this site will require the applicant to comply with the City’s platting requirements as well as the use and area regulations outlined in the Zoning Ordinance. A site plan application, which requires civil drawings, including all proposed grading, paving, drainage, and utility plans, building elevations, and landscape plans are required to be submitted and approved by the Engineering & Planning Department and Fire Marshal’s Office prior to a building permit application submittal.

## **ZONING CONSIDERATIONS**

In making its recommendation regarding a proposed zoning change, the Planning and Zoning Commission shall consider the following factors:

- A. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the City as a whole.**

There is a mixture of land uses in the vicinity (Exhibits “A” and “B”). To the north of the subject site is an undeveloped City of Tomball right-of-way and the Baker Hughes oilfield operations campus within the Light Industrial District; to the south is undeveloped land within the Agricultural District; to the east is undeveloped land and single-family residences within the Agricultural District; and to the west are commercial

and warehouse uses in the Commercial District. See the attached site photos (Exhibit “G”).

**B. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area.**

The proposed rezoning is not anticipated to negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.

**C. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development.**

There is an undeveloped 10.4 acre tract at the southeast corner of the Baker Hughes oilfield operations campus zoned Light Industrial.

**D. The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change.**

There has been steady development city-wide and within the vicinity in the Light Industrial District.

**E. How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved.**

If the proposed zoning change were approved, there should be few if any affects on other areas designated for similar developments.

**F. Any other factors that will substantially affect the public health, safety, morals, or general welfare.**

The proposed zone change is not anticipated to adversely affect health, safety, morals, or general welfare.

**G. Whether the request is consistent with the Comprehensive Plan.**

According to the Comprehensive Plan, rezonings are “to conform to the intended future land use pattern shown on the Future Land Use Plan and should occur only when economic, physical, social, and other factors will allow the proposed land use to be developed:

- Within the capacities of existing or funded infrastructure and public facilities and services;
- In a compatible manner with surrounding land uses;
- To standards specified for and appropriate to the proposed land use; and
- In a way that furthers or helps achieve the goals of the Plan.”

The Comprehensive Plan's future land use map identifies the site as "Business/Industrial" (Exhibit "F"). It states the "Business/Industrial" land use classification is "where industrial and intensive employment activities should occur. Activities that will require unenclosed assembly, repair and/or storage and require heavy truck or rail transportation support are acceptable. Also included would be warehousing and distribution facilities, as well as offices and showrooms." The proposed rezoning to the Light Industrial District and the expansion of the Baker Hughes oilfield operations campus are generally consistent with the Comprehensive Plan.

## **PUBLIC COMMENT**

Property owners within 200 feet of the project site were mailed notification of this proposal on March 29, 2012 and, as of the writing of this report, no public comment forms were received.

## **RECOMMENDATION**

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P12-421 based on the following:
  - a. The proposed zoning of Light Industrial District is compatible with the Tomball Comprehensive Plan.
  - b. The proposed zoning of Light Industrial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
  - c. There is sufficient utility capacity to service a light industrial use on this site.
2. APPROVAL of the staff report as the Planning and Zoning Commission's final recommendation to the City Council.

## **EXHIBITS**

- A. Aerial Photo
- B. Zoning Map
- C. Rezoning Application
- D. Rezoning Request Letter
- E. Conceptual Site Plan
- F. Comprehensive Plan Future Land Use Map
- G. Site Photos

Exhibit “A”  
Aerial Photo



**Exhibit “B”  
Zoning Map**



**Exhibit "C"**  
**Rezoning Application**

Revised 1/20/09



**APPLICATION FOR REZONING**  
**Engineering & Planning Department**



**APPLICATION SUBMITTAL:** Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

**Applicant**

Name: Shintaro Yoshida Title: Project Manager  
Mailing Address: 2777 Allen Parkway, Suite 460 City: Houston State: TX  
Zip: 77019  
Phone: (713) 487-3416 Fax: (713) 554-3077 Email: shintaroy@energyarch.com

**Owner**

Name: Baker Oilfield Operations, Inc. successor by merger to BJ Services Company, U.S.A. Title: \_\_\_\_\_  
Mailing Address: 2929 Allen Parkway, Suite 2100 City: Houston State: TX  
Zip: 77019  
Phone: (713) 439-8600 Fax: (713) 439-8558 Email: george.bernhardt@bakerhughes.com

**Engineer/Surveyor (if applicable)**

Name: Salman Qadir, P.E. Title: President  
Mailing Address: 12651 Briar Forest, Suite 151 City: Houston State: TX  
Zip: 77077  
Phone: (281) 741-1998 Fax: (281) 741-2068 Email: sal@momentumtx.com

**Description of Proposed Project:** Manufacturing facilities for an oilfield service company.

**Physical Location of Property:** 11211 FM 2920, Tomball, TX 77375

[General Location – approximate distance to nearest existing street corner]

**Legal Description of Property:** Lots 330 and 333 Tomball Outlots

[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

**Current Zoning District:** Agriculture District

**Current Use of Property:** Agriculture

**Proposed Zoning District:** Light Industrial

**Proposed Use of Property:** Detention Pond to serve light industrial facility

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405

[www.ci.tomball.tx.us](http://www.ci.tomball.tx.us)

035-290-000-0330

HCAD Identification Number: 035-290-000-0333

Acreage: 10.0242 Acres

**Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.**

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

X Shivara 2/10/12  
Signature of Applicant Date

X Paul E E FEB 9, 2012  
Signature of Owner Date

**Exhibit "D"**  
**Rezoning Request Letter**

DATE: February 28, 2012

TO: City of Tomball Engineering & Planning Department  
501 James Street  
Tomball, TX 77375

RE: 11211 FM 2920 Baker Hughes Oilfield Operations Inc.

To Whom it May Concern,

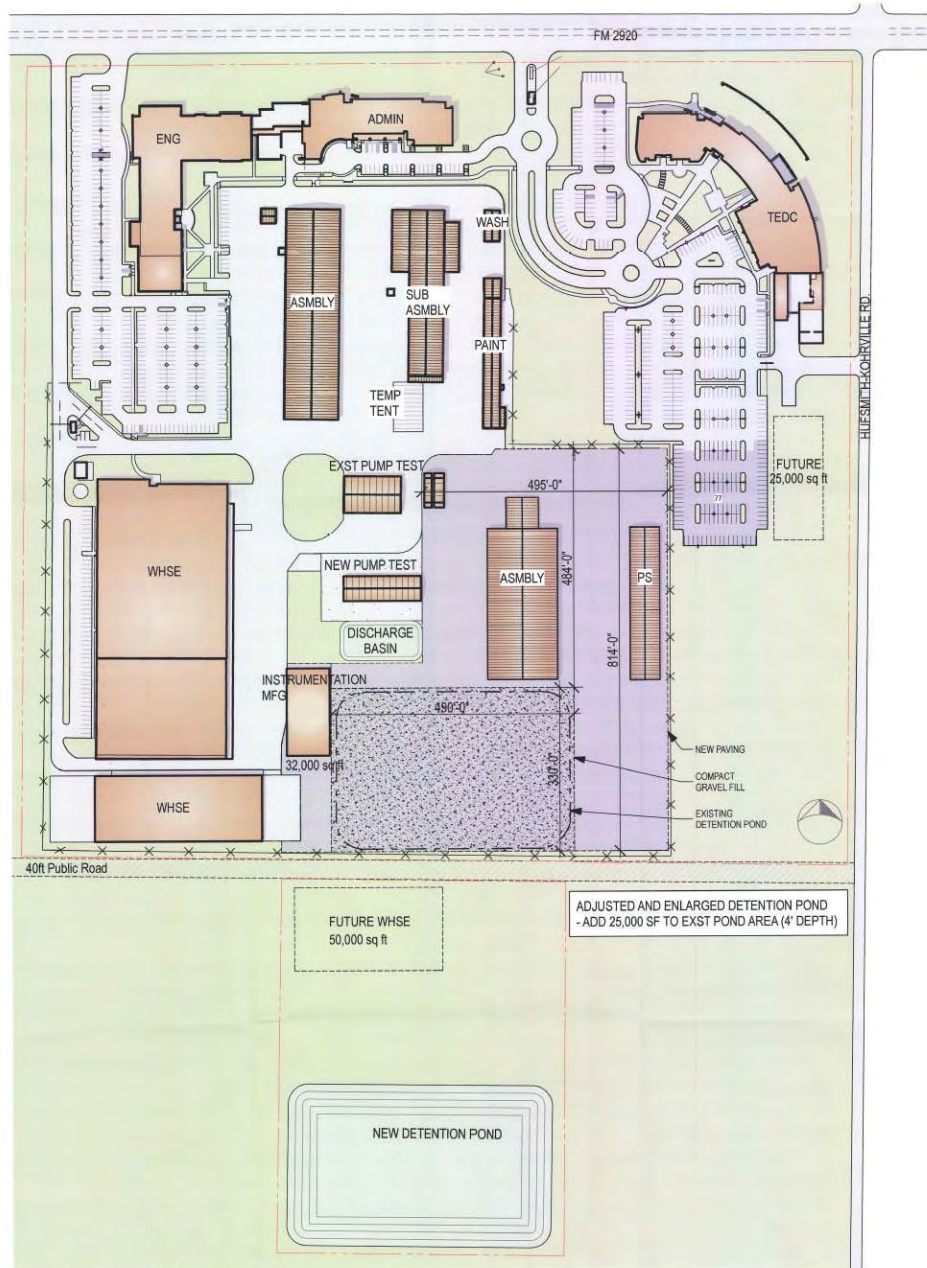
We request rezoning of Baker Hughes owned lands that are currently classified as agricultural to light industrial. This will allow Baker Hughes to utilize the entire site as indicated on the proposed plan.

Sincerely,

Shintaro Yoshida  
Energy Architecture  
2777 Allen Parkway, Suite 460  
Houston, TX 77019

# Exhibit "E"

## Conceptual Site Plan



1 PROPOSED PLAN  
SCALE: 1" = 200'

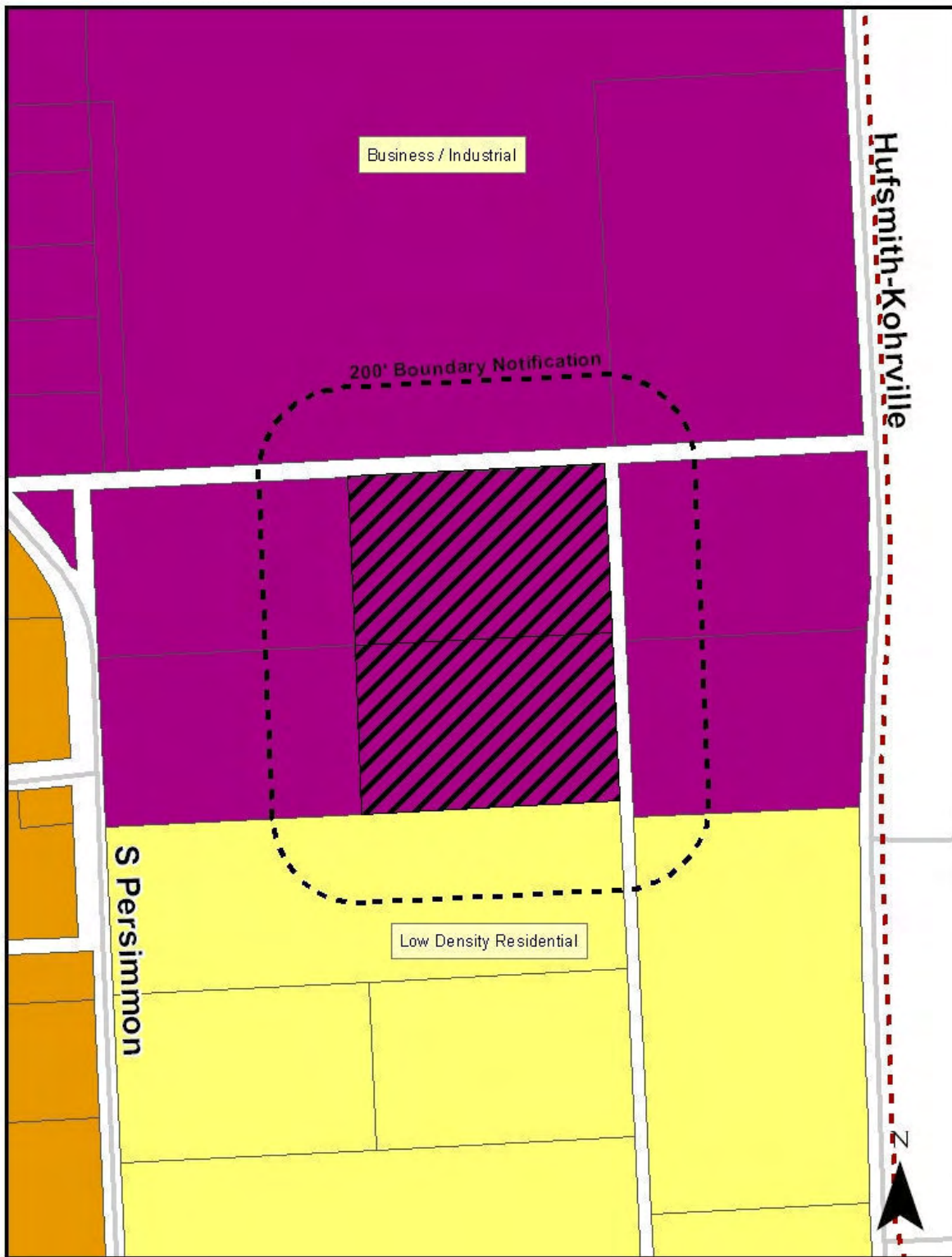
0 200' 400'

**energy**  
ARCHITECTURE  
6699 Portwest Drive, Suite 120  
Houston, Texas  
77024  
713. 554. 3070 ph  
713. 554. 3077 fx

Tomball Campus Office Test Fit  
MASTER PLAN PROPOSED  
12/15/11  
11084

**BAKER  
HUGHES**

**Exhibit “F”**  
**Comprehensive Plan Future Land Use Map**



**Exhibit “G”  
Site Photos**



**Figure 1: Baker Hughes campus to the north of subject site.**



**Figure 2: Undeveloped property to the south of subject site.**



**Figure 3: Commercial property to the west of subject site.**



**Figure 4: Residences to the east of subject site.**

# Regular City Council

## Agenda Item

## Data Sheet

Meeting Date: April 16, 2012

### Topic:

Approve Letter of Support on behalf of the Tomball Sister City Organization for Road Closure of South Cherry Street, a County Road, in Connection with the German Christmas Market, December 7-9, 2012 and the German Heritage Festival, March 22-24, 2013 and Authorize Mayor Fagan to Issue Letter of Support to Harris County Commissioners Court.

### Background:

The Tomball Sister City Organization is planning their Annual German Christmas Market for December 7-9, 2012 and their Annual German Heritage Festival for March 22-24, 2013. Each year these events continue to grow, consistently drawing over 20,000 visitors.

According to Commissioner Cagle, all future road closures must be presented to the County Commissioners Court for approval. The TSCO is requesting a letter of support from the City of Tomball to include with the submission to the County Commissioners Court.

At this time, the Tomball Sister City Organization is not requesting the usual financial and personnel support from the City of Tomball, only a letter of support from the City to Harris County Commissioners Court for the following road closure:

- South Cherry Street - from 4:00 p.m., Friday, December 7, 2012 until 8:00 p.m., Sunday, December 9, 2012 and from 4:00 p.m., Friday, March 22, 2013 until 8:00 p.m., Sunday, March 24, 2013.

Authorizing the Mayor to issue a letter of support should provide ample time for the TSCO to obtain county approval for the closure of South Cherry.

### Origination:

Tomball Sister City Organization

### Recommendation:

N/A

### Funding:

### Party(ies) responsible for placing this item on agenda:

City Secretary

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

### ATTACHMENTS:

TSCO Request for Letter of Support

Draft Letter of Support to HC Commissioners Court

**From:** George Shackelford  
**Sent:** Thursday, April 05, 2012 4:35 PM  
**To:** Gretchen Fagan; Nora Stovall  
**Cc:** Grady and Sandra Martin; Sandra Martin; Larry Love; Doris Speer  
**Subject:** Re: Need Letter of Support

Will do  
Sent from my Samsung smartphone on AT&T

Gretchen Fagan wrote:

George,

Let's put on next agenda.

Gretchen Fagan  
Sent from my iPad  
[gretchen@gretcheninsure.com](mailto:gretchen@gretcheninsure.com)

On Apr 5, 2012, at 3:33 PM, "Nora Stovall" <[norastovall@sbcglobal.net](mailto:norastovall@sbcglobal.net)> wrote:

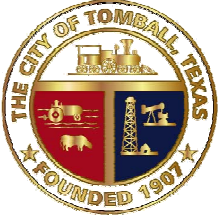
George & Gretchen,  
I just spoke with my contact for road closure at Precinct 4. He informed me that all future road closures will have to be presented before the County Commissioners Court. Since this is now the 3rd year, I had my information in line, but he suggested we get a \*Letter of Support\* from the City of Tomball to enclose with our request.

I know this will probably have to go before council, so the sooner we can get it the better off we will be. I submitted my request on May 29th last year and received the go ahead notice on the day before the festival in December. With Commissioners Court added, we need to submit the request as soon as possible.

I have been submitting for two festivals at a time, which cuts down on their time and paperwork as well as mine.

Festival Dates:  
December 7 - 9, 2012  
March 22-24, 2013

Thank you for all your help and support.  
Nora Stovall  
TGHF Safety/Security Chairman



# City of Tomball

*Gretchen Fagan*  
Mayor

*George Shackelford*  
City Manager

April 17, 2012

**Draft**

Harris County Commissioners Court  
1001 Preston Avenue – Suite 938  
Houston, TX 77002-1817

RE: Tomball Sister City Organization – Request for Road Closure – South Cherry Street  
From 4:00 p.m., Friday, December 7, 2012 until 8:00 p.m., Sunday, December 9, 2012 and  
From 4:00 p.m., Friday, March 22, 2013 until 8:00 p.m., Sunday, March 24, 2013

Dear Sirs:

The City Council of the City of Tomball Texas met April 16, 2012 and voted to authorize a letter of support for the Tomball Sister City Organization regarding their request to close South Cherry Street, a County road, from 4:00 p.m., Friday, December 7, 2012 until 8:00 p.m., Sunday, December 9, 2012 and from 4:00 p.m., Friday, March 22, 2013 until 8:00 p.m., Sunday, March 24, 2013.

The Tomball Sister City Organization holds two large festivals each year; in December, they hold the German Christmas Market, and in March, they hold the German Heritage Festival. These events draw in excess of 20,000 visitors to the City of Tomball.

Due to the size of these events, the City of Tomball typically authorizes the closure of several roads around the Tomball Depot area and South Cherry Street. We believe the requested closure of South Cherry Street is vital to the safety of the anticipated visitors, in addition to the festival volunteers and City employees.

The City Council of the City of Tomball Texas wishes to provide this letter of support, on behalf of the Tomball Sister City Organization, for the closure of South Cherry Street on the dates requested.

Thank you for your consideration.

Respectfully submitted,

Gretchen Fagan, Mayor  
City of Tomball, Texas

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

#### Topic:

Approve Lease Agreement between the City of Tomball and Burlington Northern Santa Fe Railroad (BNSF), Covering Lease of Property off of North Elm Street for City's Parking Lot Project, at an Annual Lease Rate of \$3,000.00, and Authorize a Payment to Cover the Railroad Protective Liability Insurance required by BNSF, in the Amount of \$885.00.

#### Background:

City Council approved the Liveable Centers Downtown Plan in September 2009. The plan identified the construction of three surface parking lots. The City is implementing part of the plan by funding the construction of two parking lots, with one located on Elm Street and the second one located on Fannin Street across from the Police Department. The parking lot on Elm Street would require the use of BNSF property in order to construct the entire parking lot, which is illustrated on the attached Exhibit. BNSF approved the City's application for lease of land and provided the City with a lease agreement for the City to execute. In addition to the executed lease agreement the City will be responsible for an annual lease rate of \$3,000 and a one time Railroad Protective Liability Insurance fee of \$885.

City staff and legal counsel have reviewed the lease agreement and recommend approval of the agreement.

#### Origination:

Community Development

#### Recommendation:

Recommend City Council approve the Lease Agreement with Burlington Northern Santa Fe Railroad and authorize the City Manager to execute the lease agreement.

#### Funding: Yes

Account Number: 400-154-6409

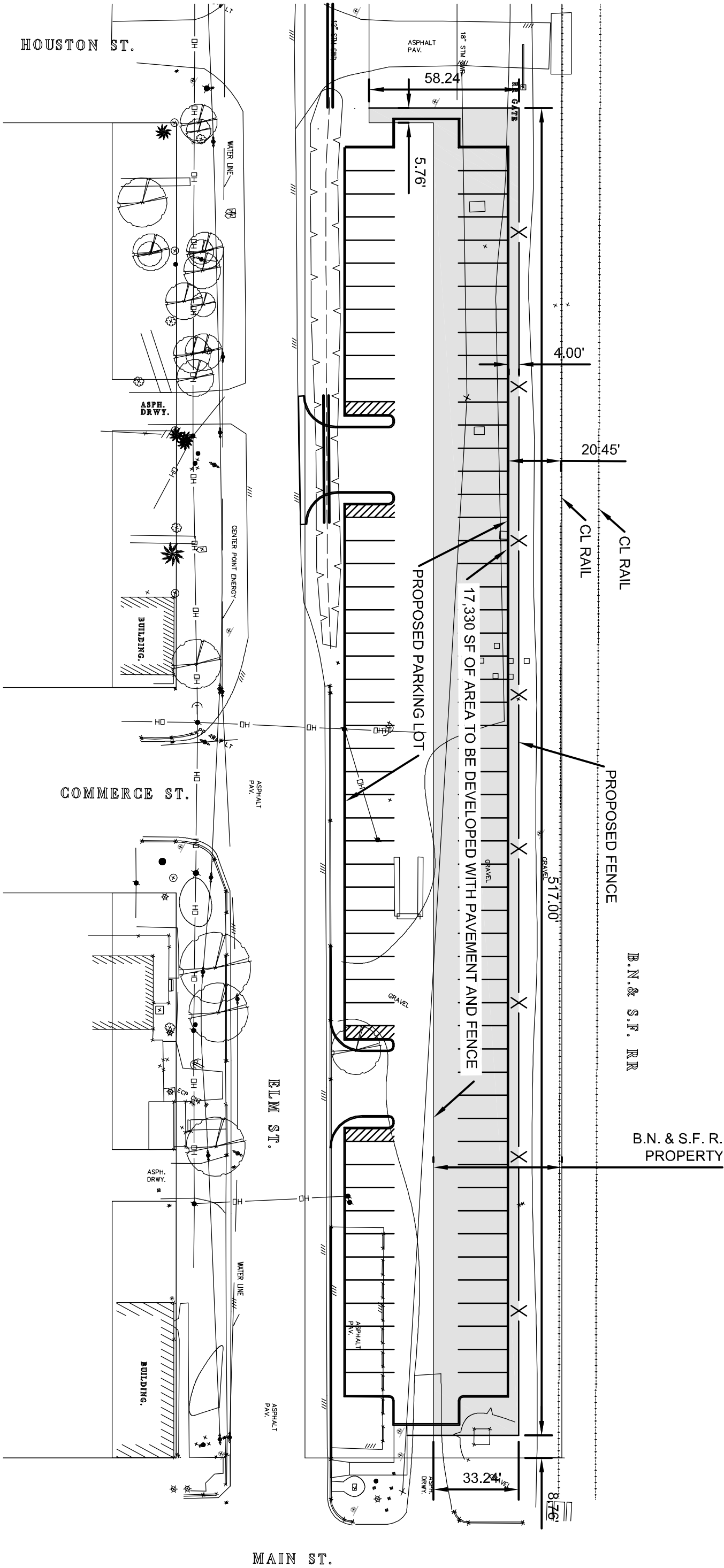
#### Party(ies) responsible for placing this item on agenda:

Community Development

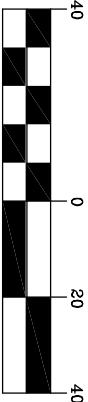
| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

#### ATTACHMENTS:

Exhibit A: Elm Street Parking Lot  
BNSF Lease Agreement



AREA OF CONSTRUCTION WITHIN  
B.N. & S.F. PROPERTY



|                             |  |                             |  |
|-----------------------------|--|-----------------------------|--|
| CITY OF TOMBALL PARKING LOT |  |                             |  |
| ELM STREET LOT              |  |                             |  |
| SCALE<br>1" = 40'           |  | B.N. & S.F. R.R.<br>EXHIBIT |  |
| DATE<br>9-8-11              |  |                             |  |
| PERFORMED FOR               |  |                             |  |
| CITY OF TOMBALL             |  | DWG. NO.<br>11-005-00       |  |

Engineers • Surveyors • GIS  
19530 F.M. 362, Waller, Texas 77484  
Phone: (713) 462-0993 Fax: (713) 462-2732

**CLR, Inc.** TX Firm Reg. No. 275

## INDEFINITE TERM LEASE LAND

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the 23<sup>rd</sup> day of March, 2012 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Lessor") and **The City of Tomball**, a Political Subdivision of the State of Texas ("Lessee").

### RECITALS

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

### AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

#### **Section 1. Premises and Term.**

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated in the City of Tomball, County of Harris, State of Texas, along Line Segment 0492, Mile Post 84.73 and constituting the shaded area shown upon Print No. 1-53005, dated 11/03/2011 a copy of which is attached hereto as Exhibit "A" and made a part hereof ("Premises").

B. Lessee leases the Premises from Lessor beginning April 1<sup>st</sup>, 2012 ("Commencement Date"), and shall continue until terminated by either party as provided in this Section 1(B). This Lease may be terminated by either party, at any time, without cause, for convenience, by serving upon the other party written notice of termination at least thirty (30) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Premises, a sum equal to three (3) months Base Rent (as defined below), and any unearned portion of the annual Base Rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient Base Rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Base Rent which Lessor shall retain as an additional charge for use of the Premises, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "Lease Year."

E. Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this Lease at any time as provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, (ii) Lessee may expend money and effort during the term of this Lease which may not ultimately be of any benefit to Lessee if Lessor terminates this Lease, but nonetheless, Lessor shall have the right to terminate the Lease if Lessor determines in its sole and absolute discretion that

Lessor desires to terminate, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Premises for any length of time.

## **Section 2. Use and Compliance.**

**A.** Lessee may use the Premises for the sole and exclusive purpose of vehicle parking and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

**B.** Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4(A)).

**C.** If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

## **Section 3. Rent.**

**A.** Lessee shall pay as rental for the Premises, in advance, an amount equal to Three-Thousand dollars and no/100 cents (\$3,000.00) annually during the term of the Lease, ("Base Rent"). Base Rent shall increase 3% annually during the term of the Lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

Jones Lang LaSalle – Representative for BNSF Railway Company  
P.O. Box 676160  
Dallas, Texas 75267-6160

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 36 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

**B.** Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

**C.** Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

**D.** If any Base Rent or any payment under Section 9 or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

#### **Section 4. Environmental.**

**A.** Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

**B.** Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

**C.** In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.

**D.** Lessee shall promptly report to Lessor in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

**E.** Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the Premises the following Hazardous Materials: None, and to store on the Premises the following Hazardous Materials (as defined in Section 4(F) below): None; provided, however, that Lessee may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 4(E) is a breach of this Lease.

**F.** For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

**G.** Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

#### **Section 5. Access to Adjacent Property by Lessee.**

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which Lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee any right to cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

#### **Section 6. Access to Premises by Lessor.**

**A.** Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

**B.** For purposes stated in this Section 6, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

**C.** In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 6 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

#### **Section 7. Warranties.**

**LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.** This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

#### **Section 8. Premises Condition; Lessee Improvements.**

**A.** Lessee represents that the Premises, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 8 affects the commencement of the term of the Lease or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 2; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 8, and that Lessor is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

**B.** If improvements are necessary for Lessee's use of the Premises, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the

Premises which are necessary for Lessee's use of the Premises and are acceptable to Lessor in Lessor's sole discretion ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

#### **Section 9. Taxes and Utilities.**

**A.** In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, against the business conducted on the Premises or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the payment of property taxes levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

**B.** Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00) during any Lease Year then such excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

#### **Section 10. Track Clearance.**

**A.** Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of

Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

**B.** Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

**C.** Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

#### **Section 11. Repairs; Maintenance.**

**A.** Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

**B.** Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

#### **Section 12. Safety; Dangerous and Hazardous Conditions.**

It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

#### **Section 13. Indemnity.**

**A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY**

**"LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- (i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;**
- (iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR**
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

**EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.**

**B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

**C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

**D. Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Lessee**

shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

**Section 14. Equal Protection.**

It is agreed that the provisions of Sections 10, 12, and 13 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 10, 12, and 13.

**Section 15. Assignment and Sublease.**

**A.** Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. For purposes of this Section 15, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

**B.** Any assignment, lease, sublease or transfer made pursuant to Section 15(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

**Section 16. Liens.**

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

**Section 17. Insurance.**

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

- A.** All risks property insurance covering all of Lessee's property including property in the care, custody or control of Lessee. Coverage shall include the following:
- ◆ Issued on a replacement cost basis.
  - ◆ Shall provide that in respect of the interest of Lessor the insurance shall not be

invalidated by any action or inaction of Lessee or any other person and shall insure the respective interests of Lessor as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other person.

- ◆ Include a standard loss payable endorsement naming Lessor as the loss payee as its interests may appear.
- ◆ Include a waiver of subrogation in favor of Lessor.

**B. Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$ 2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

**C. Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

**D. Workers Compensation and Employers Liability insurance** including coverage for, but not limited to:

- ◆ Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

**E.** If construction is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the Lessor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.

- ♦ The original policy must be provided to the Lessor prior to performing any work or services under this Lease

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Lessee's care, custody, or control.

Lessee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Railroad and Jones Lang LaSalle, Inc. as additional insureds with respect to work performed under this Lease. Severability of interest and naming Railroad and Jones Lang LaSalle, Inc. as additional insureds shall be indicated on the certificate of insurance.

Lessee is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Premises, Lessee shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor

shall provide and maintain insurance coverages as set forth herein, naming Railroad as an additional insured, and shall require that the contractor shall release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this Section 17 shall entitle, but not require, Railroad to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this Section 17, Railroad shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

### **Section 18. Water Rights and Use of Wells.**

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessor.

### **Section 19. Default.**

**A.** An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

- (i) if Lessee violates any safety provision contained in this Lease;
- (ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;
- (iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;
- (iv) if the Premises is abandoned or vacated by Lessee.

**B.** If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof,

(iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

#### **Section 20. Termination.**

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Premises and shall remove any Lessee Improvements, and restore the Premises to substantially the state and environmental condition in which it was prior to Lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Premises following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

#### **Section 21. Survival of Obligations.**

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

#### **Section 22. Holding Over.**

If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

#### **Section 23. Multiple Party Lessee.**

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

**Section 24. Damage or Destruction.**

If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee under the provisions of this Lease.

**Section 25. Eminent Domain.**

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee taken by the condemning authority. If this Lease is terminated under this Section 25, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

**Section 26. Representations.**

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

**Section 27. Signs.**

No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof.

**Section 28. Consents and Approvals.**

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

**Section 29. Captions.**

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

**Section 30. Public Record.**

It is understood and agreed that this Lease shall not be placed of public record.

**Section 31. Governing Law.**

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the state in which the Premises are located.

**Section 32. No Waiver.**

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

**Section 33. Binding Effect.**

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

**Section 34. Force Majeure.**

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

**Section 35. Entire Agreement/Modification.**

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

**Section 36. Notices.**

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

**City of Tomball**  
Attn: City Manager  
401 Market Street  
Tomball, TX 77375

If to Lessor:

**BNSF Railway Company**  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131-2828  
Attn: Corporate Real Estate

With a copy to:

**Jones Lang LaSalle - RR, Inc.**  
3017 Lou Menk Drive, Suite 100  
Fort Worth, Texas 76131-2800  
Attn: Transaction Manager - Leases

**Section 37. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

**Section 38. Relationship.**

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee.

**Section 39. Severability.**

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**Section 40. Transferability; Release of Lessor.**

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

**Section 41. Tax Waiver.**

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

**Section 42. Attorneys' Fees.**

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

LESSOR

**BNSF Railway Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE

**City of Tomball**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

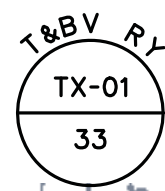
**PREMISES**

# EXHIBIT "A"

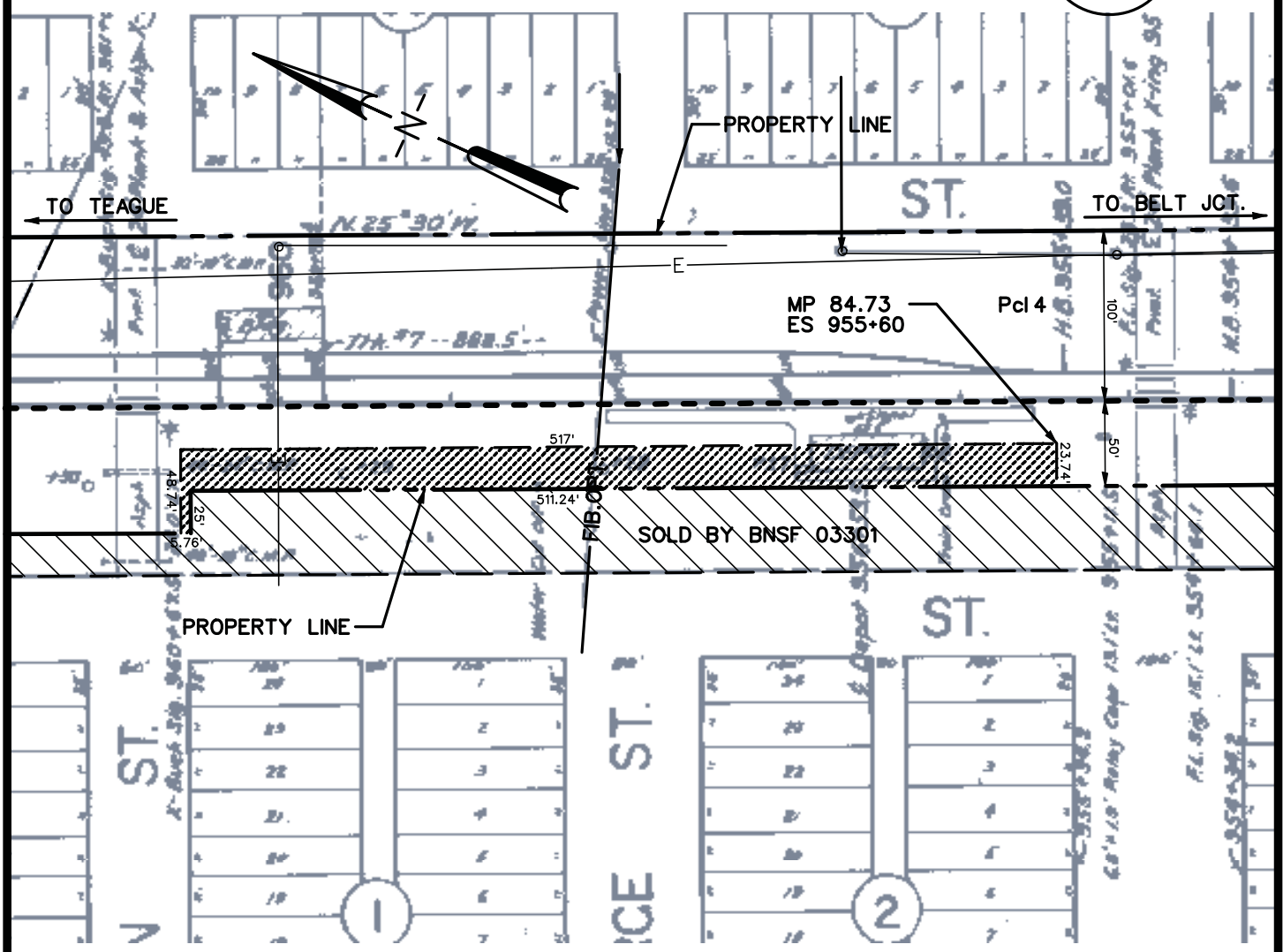
ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND  
**CITY OF TOMBALL**

SCALE: 1 IN. = 100 FT.  
 GULF \_\_\_\_\_ DIV.  
 HOUSTON \_\_\_\_\_ SUBDIV. L.S. 0492  
 DATE 10/21/2011 REV. 11/03/2011

SECTION: \_\_\_\_\_  
 TOWNSHIP: \_\_\_\_\_  
 RANGE: \_\_\_\_\_  
 MERIDIAN: \_\_\_\_\_



MAP REF. \_\_\_\_\_ S67636



**DESCRIPTION:**  
 A PARCEL OF LAND CONTAINING A TOTAL OF 12,419 SQ. FT.  
 (0.29 A.C.) MORE OR LESS SHOWN SHADED.

AT TOMBALL  
 COUNTY OF HARRIS

STATE OF TX

JWD

## EXHIBIT "B"

### WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Indefinite Term Lease for Land ("Lease") dated March 23<sup>rd</sup>, 2012 by and between **BNSF Railway Company**, a Delaware corporation ("Lessor") and **The City of Tomball**, a Political Subdivision of the State of Texas ("Lessee"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, build out, finish out, or other similar work on the Premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of each Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor.

2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease.

3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.

4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.

5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.

6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.

7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.

8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit Lessee and Lessee's Contractors to enter the Premises prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.

9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's Contractors shall keep the Premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14. All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

**BNSF Railway Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSEE:

**The City of Tomball**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

#### Topic:

Approve Resolution No. 2012-06, A Resolution of the City of Tomball, Texas, Stating the City of Tomball's Intent to Participate in Tax Abatement and Establishing the Guidelines and Criteria for Granting Tax Abatements in a Reinvestment Zone Created in the City of Tomball.

#### Background:

The Tax Code requires that each taxing unit that wants to consider tax abatement proposals must adopt a Resolution indicating its intent to participate in tax abatement. This Resolution does not bind the City of Tomball to grant approval of any proposed agreements.

Also, the Tax Code requires any eligible taxing jurisdiction to establish Guidelines and Criteria as to eligibility for tax abatement agreements prior to granting any future tax abatement. These guidelines do not limit the City Council's discretion to choose whether or not to enter into any particular abatement agreement, and they do not give any person a legal right to require the governing body to consider or grant a specific application for tax abatement.

These guidelines are very similar to the previous ones adopted and they incorporate the Tax Code requirements relating to tax abatements and reinvestment zones.

#### Origination:

City Manager's Office

#### Recommendation:

Approve Resolution No. 2012-06

#### Funding:

#### Party(ies) responsible for placing this item on agenda:

George Shackelford, City Manager

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

#### ATTACHMENTS:

ResolutionNo. 2012-06

Tax Abatement Policy

**RESOLUTION NO. 2012-06**

**A RESOLUTION OF THE CITY OF TOMBALL, TEXAS, STATING  
THE CITY OF TOMBALL'S INTENT TO PARTICIPATE IN TAX  
ABATEMENT AND ESTABLISHING THE GUIDELINES AND  
CRITERIA FOR GRANTING TAX ABATEMENTS IN A  
REINVESTMENT ZONE CREATED IN THE CITY OF TOMBALL.**

\* \* \* \* \*

**WHEREAS**, the capital investment and the creation and retention of job opportunities are a community priority; and

**WHEREAS**, new jobs and investment will benefit the area economy, provide needed opportunities, strengthen the real estate market, and generate revenue to support local services; and

**WHEREAS**, the City of Tomball must compete with other localities currently offering tax inducements to attract new business and modernization projects; and

**WHEREAS**, the abatement of property taxes, when offered to attract new investment and primary jobs in industries which bring in money from outside a community instead of merely re-circulating dollars within a community, has been shown to be an effective method of enhancing and diversifying an area of economy; and

**WHEREAS**, Texas law requires any eligible taxing jurisdiction to establish guidelines and criteria regarding eligibility for tax abatement prior to granting of any future tax abatement, and said guidelines and criteria to be unchanged for a two year period unless amended by a three-quarters (3/4) vote; and

**WHEREAS**, the City Council of the City of Tomball desires to adopt guidelines and criteria regarding eligibility for tax abatement from the City of Tomball;

**NOW, THEREFORE, BE IT RESOLVED** that, pursuant to the authority contained in Section 312.002 of the Texas Tax Code, the City of Tomball does hereby intend to participate in tax abatement and adopt the guidelines and criteria for granting tax abatements in reinvestment zones in the City of Tomball attached hereto as Exhibit "A" and incorporated herein as if set forth at length.

**PASSED, APPROVED, AND RESOLVED** this 16th day of April 2012.

\_\_\_\_\_  
Gretchen Fagan, Mayor

ATTEST:

\_\_\_\_\_  
Doris Speer, City Secretary

# CITY OF TOMBALL

## TAX ABATEMENT POLICY



## TAX ABATEMENT GUIDELINES SUMMARY

|                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>TERMS</b>                       | Up to 100% abatement for a period not to exceed 10 years. Each project is reviewed on a case-by-case basis. The amount of the abatement will be determined based on the merits of the project, including, but not limited to, location of the project, its size, total capital investment value, the number of temporary and permanent jobs created, the costs and benefits for the City, and the project's impact on Tomball's economy. |
| <b>FACILITIES<br/>THAT QUALIFY</b> | Corporate Headquarters Facility<br>Manufacturing Facility<br>Research Facility<br>Regional Distribution Facility<br>Regional Service Facility<br>Regional Entertainment/Tourism Facility<br>Other Basic Industry Facilities                                                                                                                                                                                                              |
| <b>AUTHORIZED<br/>INVESTMENTS</b>  | New Facilities<br>Expansions<br>Modernizations                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>ABATED</b>                      | Buildings, structures, fixed machinery, equipment, personal property, site improvements, and related office space                                                                                                                                                                                                                                                                                                                        |
| <b>ECONOMIC<br/>CRITERIA</b>       | <p><b>New business:</b> Minimum two million dollar (\$2,000,000) investment; create a minimum of twenty-five (25) jobs.</p> <p><b>Expansions:</b> Minimum one million dollar (\$1,000,000) investment; must prevent the loss of payroll or retain, increase, or create payroll on a permanent basis in the City of Tomball.</p>                                                                                                          |

# **CITY OF TOMBALL, TEXAS TAX ABATEMENT POLICY**

## **SECTION 1: GENERAL PURPOSE AND OBJECTIVES**

The City of Tomball is committed both to the promotion of high quality development within the City and to the improvement in the quality of life of its citizens. In order to meet these goals, the City will, on a case-by-case basis, give consideration to providing tax abatement within designated reinvestment zones as stimulation for economic development in the City. Texas Tax Code Chapter 311. The purpose of this tax abatement policy is to encourage the growth and establishment of industry and commercial enterprise in the City. Growth is measured by the capital investment in the City for buildings, machinery, and other capital goods that increases the Tomball workforce.

The City of Tomball will consider tax abatement for qualified business and property owners in accordance with the procedures and criteria outlined in this document. Nothing herein shall imply or suggest that the City is under any obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis.

All applications for tax abatement must be for commercial and/or industrial improvements. Tax abatement is available for both new facilities and for the expansion and modernization of existing facilities. No residential developments will be considered for tax abatement. Tax abatement will not be ordinarily considered for projects that would be developed without such incentives unless it is demonstrated that higher development standards or other community development goals will be achieved through the use of an abatement.

## SECTION 2: DEFINITIONS

- (a) **Abatement** means the full or partial exemption from ad valorem taxes of certain new improvements of real and/or personal property in a reinvestment zone designated for economic development purposes.
- (b) **Agreement** means a contractual agreement between the City of Tomball and a property owner and/or lessee for the purpose of tax abatement.
- (c) **Base Year Value** means the assessed value of eligible property on January 1 preceding the execution of the Agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.
- (d) **Corporate Headquarters Facility** means the facility or portion of a facility where corporate staff employees are physically employed and where the majority of the company's financial, personnel, legal, planning or other headquarters related functions are handled either on a national, regional or division basis.
- (e) **Deferred Maintenance** means improvements necessary for continued operations, which do not improve productivity or alter the process technology.
- (f) **Economic life** means the number of years a property improvement is expected to be in service in a facility. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.
- (g) **Effective Date of Abatement** means the first (1<sup>st</sup>) day of January immediately following the date the Agreement is approved by the City Council of Tomball.
- (h) **Eligible Jurisdiction** means the City of Tomball, Harris County and any school district or college district which levies ad valorem taxes upon, and provides services to, property located within the proposed or existing reinvestment zone.
- (i) **Expansion** means the addition of buildings, structures, fixed machinery, equipment, and personal property for the purpose of increasing production capacity.
- (j) **Facility** means property improvements completed or in the process of construction which together comprise an integral whole.
- (k) **Manufacturing Facility** means buildings, structures, fixed machinery, equipment and personal property, the primary purpose of which is or will be the manufacture of tangible goods or materials or the processing of such goods or materials by physical or chemical change.

- (l) **Modernization** means the upgrading of existing facilities, which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation; modernization may result from the construction, alternation, or installation of buildings, structures, fixed machinery, equipment and personal property. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (m) **New Facility** means a property, previously undeveloped, that is placed into service by means other than or in conjunction with expansion or modernization.
- (n) **New Machinery and Equipment** means tangible machinery, equipment, or personal property that is securely placed or fastened and stationary within a building or structure or permanently resides in the City of Tomball.
- (o) **Other Basic Industry Facility** means buildings and structures including fixed machinery, equipment, and personal property not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside the City of Tomball and result in the creation of new permanent jobs and bring new wealth in to the City.
- (p) **Real Property:** The land on which a facility is placed.
- (q) **Regional Distribution Facility** means buildings and structures including fixed machinery, equipment, and personal property used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by the activity at the facility are derived from outside the City of Tomball.
- (r) **Regional Entertainment/Tourism Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside the City of Tomball.
- (s) **Regional Service Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside the City of Tomball.
- (t) **Research Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.

### SECTION 3: GUIDELINES AND CRITERIA

#### **Minimum Standards for Tax Abatement**

- (a) The project shall not have any negative environmental impacts on the community (e.g., significant pollution or hazardous waste).
- (b) The project should stimulate local employment and/or commercial activity and benefit existing business and not compete with existing businesses to the extent of being a detriment to the local economy as a whole.
- (c) **New Facilities:** The project will establish and maintain at least twenty-five (25) jobs in the City of Tomball and have a minimum capital investment of two million (\$2,000,000). *(The acquisition cost of the real property is not included in the project investment).*
- (d) **Expansion/Modernization:** The project must prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the City of Tomball and have a minimum capital investment of one million (\$1,000,000). *(The acquisition cost of the real property is not included in the project investment).*
- (e) The City of Tomball may consider tax abatement for an investment less than the minimum amount required based upon City evaluation of economic development factors, including but not limited to:
  - (a) the location of taxable inventory on the property;
  - (b) the amount of sales tax that the project will generate for the City.
- (f) Tax abatement may only be granted for the additional tax value resulting from any of the following:
  - (a) construction of a new facility of any type as herein defined;
  - (b) expansion of existing facilities of any type as herein defined; or
  - (c) modernization of existing facilities of any type as herein defined.
- (g) The project should have high visibility and image impact, or be a significantly higher level of development quality.
- (h) The project will serve as a catalyst or magnet to attract or retain other high quality industrial/business development.
- (i) The project will not solely and primarily have the effect of transferring employment from one part of the city to another.
- (j) The development must conform to the City's zoning ordinance.
- (k) The costs of city services required for the development should not exceed the amount of taxes generated if abatement is provided.

## SECTION 4: ABATEMENT AUTHORIZED

- (a) **Authorized Tax Abatement Categories.** A facility may be eligible for tax abatement if it is a:
- Corporate Headquarters Facility
  - Manufacturing Facility
  - Research Facility
  - Regional Distribution Facility
  - Regional Service Facility
  - Regional Entertainment/Tourism Facility, or
  - Other Basic Industry Facility
- (b) **Authorized Date:** A facility shall be eligible for tax abatement if it has applied for such abatement prior to the commencement of construction.
- (c) **Creation of New Value:** Abatement may only be granted for the additional value of eligible property improvement made subsequent to and in an abatement agreement between the City of Tomball and the property owner and/or lessee, subject to such limitations as the City Council may require.
- (d) **Eligible Property:** Abatement may be extended to the value of buildings, structures, fixed machinery, equipment, personal property, site improvements plus that office space and related fixed improvements necessary to the operation and administration of the facility. The value of all property shall be the appraised value for each year, as finally determined by the applicable appraisal district.
- (e) **Ineligible Property:** The following types of property shall be generally be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings; and other forms of movable personal property; vehicles; vessels; aircraft; housing; hotel accommodations; deferred maintenance investments; property to be rented or leased except as provided below; improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; property which has an economic life of less than fifteen (15) years; property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas, or any property exempted by local, state or federal law; and property owned or leased by a member of city council or a member of a zoning or planning commission of the City.
- (f) **Leased Facilities:** If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.

- (g) **Value and Term of Abatement:** Abatement shall be granted effective with the January 1 valuation date immediately following the date of execution of the agreement. The value of the abatement will be determined based on the merits of the project, including, but not limited to, total capital investment value and added employment. Up to one hundred percent of the value of new eligible properties may be abated for a total term of abatement not to exceed ten years. However, a project must provide an extraordinary economic benefit to the City to be considered for one hundred percent abatement.

If a modernization project includes facility replacement, the abated value shall be the value of the new unit(s) less the value of the old unit (s).

- (h) **Taxability:** From the execution of the abatement to the end of the agreement, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section 4(e) shall be fully taxable;
- (2) The base year value of existing eligible property as determined each year shall be fully taxable; and,
- (3) The additional value of new eligible property shall be taxable at the end of any abatement period.

## **SECTION 5: APPLICATION**

- (a)** Any present or potential owner of taxable property in the City of Tomball may request the creation of a reinvestment zone or tax abatement by filing a written application with the City Secretary of the City of Tomball.
- (b)** The application shall consist of a completed application form accompanied by: a general description of the project/new improvements to be undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a list of the estimated value of inventory and the location where the inventory will be stored; the projected employment number at the proposed facility and the estimated average salary; the estimated amount of annual sales subject to State Sales & Use Tax; a map and property description; and a time schedule for undertaking and completing the proposed improvements. The applicant shall also include information pertaining to the reasons the abatement is necessary in order to have the project undertaken in the City of Tomball. In the case of modernization, a statement of the assessed value of the facility separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the Tomball City Council deems appropriate for evaluating the financial capacity and other factors of the applicant.
- (c)** The applicant must certify that the applicant does not employ nor will it employ any undocumented workers (an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or, authorized under law to be employed in that manner in the United States). The applicant must agree that if it is convicted of a violation under 8 U.S.C. Section 1324a(f) after receiving a tax abatement, applicant shall repay the amount of the tax abatement with interest, at the rate of 12% per annum, within 120 days after the City notifies the applicant of the violation. The City shall have the authority to bring a civil action to recover any amounts which the applicant must repay the City under this provision, and in such action may recover court costs and reasonable attorneys fees.
- (d)** The City of Tomball may request additional information as deemed appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.
- (e)** Upon receipt of a completed application, the Mayor of the City of Tomball shall notify in writing the presiding officer of the governing body of each eligible jurisdiction.
- (f)** After receipt of a completed application, the City Council through its City Manager shall determine whether the application qualifies for abatement under the terms of these guidelines and criteria.

- (g)** The City Manager shall prepare a fiscal impact analysis setting out the impact of the proposed reinvestment zone and tax abatement. The impact analysis study shall include, but not be limited to, an estimate of the economic effect of the creation of the zone and the abatement of taxes and the benefit to the City of Tomball and the property to be included in the zone. The cost of city services to the development should not exceed the amount of taxes generated by the development.
- (h)** The City Council shall not establish a reinvestment zone or enter into an abatement agreement if it finds that the request for the abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed new facility, expansion, or modernization. An applicant is ineligible for abatement if a decision to commence a new facility, expansion or modernization in the City of Tomball has been formally announced on or before the date of adoption of these guidelines.

## **SECTION 6: PUBLIC HEARING AND APPROVAL**

- (a)** The City Council may not adopt an ordinance designating a reinvestment zone until it has held a public hearing at which interested persons are entitled to speak and present evidence for or against the designation. TEXAS TAX CODE § 312.201. Notice of the hearing must be published at least 7 days before the hearing in a newspaper of general circulation in the City. Id. The presiding officers of eligible jurisdictions shall be notified in writing at least 7 days prior to the hearing. Id.
- (b)** Prior to entering into an tax abatement agreement, the City Council may, at its option, hold a public hearing at which interested persons shall be entitled to speak and present written materials for or against the approval of the agreement.
- (c)** In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet these GUIDELINES AND CRITERIA and that:

  - (1)** There will be no substantial adverse affect on the provision of the City of Tomball's services or tax base; and
  - (2)** The planned use of the property will not constitute a hazard to public safety, health or morals.

## **SECTION 7: AGREEMENT**

- (a)** After approval of a tax abatement application within a designated reinvestment zone, the Tomball City Council shall formally pass a resolution and execute an agreement with the owner of the facility and lessee as required, which shall include:
- (1) Estimated value to be abated and the base year value;
  - (2) Percent of value to be abated each year;
  - (3) The commencement date and the termination date of abatement;
  - (4) The proposed use of the facility, nature of construction, time schedule for completion of the project, map, property description and improvement list;
  - (5) The contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment, or other provisions that may be required for uniformity or compliance with state law;
  - (6) Amount of investment, increase in assessed value and average number of jobs involved; and
  - (7) A requirement that the applicant annually submit to the City, a January employee count for the abated facility which corresponds to employment counts reported in the facility's Employer's Quarterly Report to the Texas Workforce Commission, and a separate notarized letter certifying the number of jobs created or retained as a direct result of the abated improvements and the number of employees in other facilities located within the City of Tomball. Submission shall be used to determine abatement eligibility for that year and shall be subject to audit if requested by the governing body. Failure to submit may result in the ineligibility to receive an abatement for that year and the termination of the tax abatement agreement and subject any abated taxes to recapture pursuant to Section 8 hereof.

Such agreement shall normally be executed within 60 days after the applicant has forwarded all necessary information and documentation to the Tomball City Council.

- (b)** The City Council may impose any other conditions in a tax abatement agreement that the City Council deems necessary to promote the purposes of these guidelines.

## **SECTION 8: RECAPTURE**

- (a)** In the event that the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster for a period of one (1) year during the abatement period, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces. The taxes otherwise abated for that calendar year shall be paid to the City of Tomball within sixty (60) days from the date of termination.
- (b)** Should the City Council determine that the company or individual is in default according to the terms and conditions of its agreement, the City of Tomball shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within sixty (60) days from the date of such notice (the Cure Period), then the agreement may be terminated.
- (c)** In the event that the company or individual allows its ad valorem taxes owed the City of Tomball to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or violates any of the terms and conditions of the abatement agreement and fails to cure during the Cure Period, then the City may terminate the agreement and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination.

## **SECTION 9: ADMINISTRATION**

- (a)** Each year, the company or individual receiving abatement shall furnish the Chief Appraiser and the City's Tax Assessor with such information as may be necessary for the abatement.
- (b)** The agreement shall stipulate that employees and/or designated representatives of the City of Tomball will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.
- (c)** Upon completion of construction, the jurisdiction which created the zone shall annually evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations of the agreement to the City of Tomball and its attorney.
- (d)** All documents related to tax abatements, including the annual certifications, will be kept on file with the City Secretary.

## **SECTION 10: ASSIGNMENT**

An abatement may be assigned by the holder to a new owner or lessee of the same facility with the written consent of the Tomball City Council, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax abatement agreement shall be to an entity that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee are indebted to the City of Tomball for ad valorem taxes or other obligations.

## **SECTION 11: CONFIDENTIALITY OF PROPRIETARY INFORMATION**

Subject to the provisions and limitations of Chapter 552 of the Texas Government Code, information that is provided to the City of Tomball in connection with an application or request for the creation of a reinvestment zone for the purposes of tax abatement in accordance with the above criteria and guidelines and which describes the specific process or business activities to be conducted or equipment or other property to be located on the property for which the tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. Texas Tax Code § 312.003. The information in the custody of the City of Tomball after the agreement is executed will be treated as confidential to the extent allowed by law.

## **SECTION 12: SUNSET PROVISION**

These GUIDELINES AND CRITERIA are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement contracts created pursuant to its provisions will be reviewed by the Tomball City Council to determine whether the goals have been achieved. Based on that review, the GUIDELINES AND CRITERIA will be modified, renewed or eliminated.

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

**Topic:**

Approve Resolution No. 2012-07, a Resolution of the City Council of the City of Tomball, Texas, Authorizing the Purchase of Property from Gill Real Estate, LLC, a Texas Limited Liability Company, for Use in the Medical Complex Drive Expansion Project; and Authorizing the City Manager to Execute all Documents Related Thereto

**Background:**

First American Title Company is requiring City Council to adopt a Resolution authorizing the purchase of property for the Medical Complex Drive expansion project.

**Origination:**

First American Title Company

**Recommendation:**

Adopt Resolution No. 2012-07

**Funding:****Party(ies) responsible for placing this item on agenda:**

City Secretary

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

**ATTACHMENTS:**

Resolution No. 2012-07

**RESOLUTION NO. 2012-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS AUTHORIZING THE PURCHASE OF PROPERTY FROM GILL REAL ESTATE, LLC, A TEXAS LIMITED LIABILITY COMPANY FOR USE IN THE MEDICAL COMPLEX DRIVE EXPANSION PROJECT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED THERETO.**

\* \* \* \* \*

**WHEREAS**, the City of Tomball needs to purchase Parcel 5, being a parcel containing 0.1343 acre (5,851 square feet) of land situated in the J. Pruitt Survey, Abstract No. 629, Harris County, Texas, and being out of and a part OF Lot 5 of Tomball Medical Park Replat of Reserve “B” and a portion of a 0.38 acre tract final, a subdivision of record at film code number 571288, Harris County Map Records (H.C.M.R.) and being out of and a part of a called 1.000 acre tract conveyed to Gill Real Estate, LLC by deed dated January 4, 2010 and recorded under Harris County Clerk’s file (H.C.C.F.) number 20100000958, film code number 069-72-1288, Official Public Records of Real Property of Harris County, (the “Property”) for the completion of the Medical Complex Drive Expansion project; and

**WHEREAS**, the City of Tomball has reached an agreement with the owners of the Property, Gill Real Estate, LLC, a Texas Limited Liability Company., for the purchase of the property; and

**WHEREAS**, the City Council of the City of Tomball wishes to approve the purchase of the Property and to authorize the City Manager to execute all documents related to the purchase of the Property; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS** that the purchase of the Property described above is hereby approved and the City Manager is hereby authorized to execute all documents related to the purchase of the Property.

**PASSED, APPROVED, AND RESOLVED** this 16th day of April 2012.

\_\_\_\_\_  
Gretchen Fagan, Mayor

ATTEST:

\_\_\_\_\_  
Doris Speer, City Secretary

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

**Topic:**

Approve Resolution No. 2012-08, a Resolution of the City Council of the City of Tomball, Texas, Authorizing the Purchase of Property from Orbit Development, Inc., for Use in the Medical Complex Drive Expansion Project; and Authorizing the City Manager to Execute all Documents Related Thereto

**Background:**

First American Title Company is requiring City Council to adopt a Resolution authorizing the purchase of property for the Medical Complex Drive expansion project.

**Origination:**

First American Title Company

**Recommendation:**

Adopt Resolution No. 2012-08

**Funding:****Party(ies) responsible for placing this item on agenda:**

City Secretary

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

**ATTACHMENTS:**

Resolution No. 2012-08

**RESOLUTION NO. 2012-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS AUTHORIZING THE PURCHASE OF PROPERTY FROM ORBIT DEVELOPMENT, INC. FOR USE IN THE MEDICAL COMPLEX DRIVE EXPANSION PROJECT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATED THERETO.**

\* \* \* \* \*

**WHEREAS**, the City of Tomball needs to purchase Parcel 10, being a parcel containing 0.0072 acre (313 square feet) of land situated in the J. Pruitt Survey, Abstract No. 629, Harris County, Texas, and being out of and a part of Unrestricted Reserve “A” of the Final Plat of Cherry Meadows, a subdivision of record at file code number 418117, Harris County Map Records (H.C.M.R.) and being out of and a part of that certain tract conveyed to Orbit Development, Inc. by deed dated April 20, 2007 and recorded under Harris County Clerk’s File (H.C.C.F.) Number 20070239638, film code number 043-04-1877, Official Public Records of Real Property of Harris County, Texas (O.P.R.R.P.H.C.T.) (the “Property”) for the completion of the Medical Complex Drive Expansion project; and

**WHEREAS**, the City of Tomball has reached an agreement with the owners of the Property, Orbit Development, Inc., for the purchase of the property; and

**WHEREAS**, the City Council of the City of Tomball wishes to approve the purchase of the Property and to authorize the City Manager to execute all documents related to the purchase of the Property; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS** that the purchase of the Property described above is hereby approved and the City Manager is hereby authorized to execute all documents related to the purchase of the Property.

**PASSED, APPROVED, AND RESOLVED** this 16th day of April 2012.

\_\_\_\_\_  
Gretchen Fagan, Mayor

ATTEST:

\_\_\_\_\_  
Doris Speer, City Secretary

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

#### Topic:

Adopt, on First Reading, Ordinance No. 2012-06, an Ordinance of the City of Tomball, Texas, Adopting Homestead Exemptions for Property Owners Sixty-Five Years of Age and Over, and for Property Owners Who Qualify for Disability Benefits Under the Federal Old Age, Survivors, and Disability Insurance Program for the Year 2012 and Future Years, Unless Revised, on All Taxable Real and Personal Property Located in the City of Tomball, Texas; Providing for Penalty, Interest, and Additional Penalty on Taxes Not Timely Paid; Providing for Severability; and Providing Other Matters Relating to the Subject

#### Background:

The City has received a letter from the Harris County Tax Assessor-Collector's office, requesting that Tomball adopt the amount of the City's tax exemptions (homestead exemptions) for the 2012 tax year before the July 1, 2012 deadline, as required by the Texas Tax Code, Section 11.13.

In the past, the City has adopted the homestead exemptions in the annual tax levy ordinance; the proposed ordinance will adopt the current homestead tax exemptions for the year 2012 and future years, until the exemption is revised.

#### Origination:

Harris County Tax Assessor-Collector

#### Recommendation:

Adopt Ordinance No. 2012-07, on First Reading

#### Funding:

#### Party(ies) responsible for placing this item on agenda:

City Secretary

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

#### ATTACHMENTS:

Ordinance No. 2012-06

Harris County Request Letter

**ORDINANCE NO. 2012-06**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, ADOPTING HOMESTEAD EXEMPTIONS FOR PROPERTY OWNERS SIXTY-FIVE YEARS OF AGE AND OVER, AND FOR PROPERTY OWNERS WHO QUALIFY FOR DISABILITY BENEFITS UNDER THE FEDERAL OLD AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM FOR THE YEAR 2012 AND FUTURE YEARS, UNLESS REVISED, ON ALL TAXABLE REAL AND PERSONAL PROPERTY LOCATED IN THE CITY OF TOMBALL, TEXAS; PROVIDING FOR PENALTY, INTEREST, AND ADDITIONAL PENALTY ON TAXES NOT TIMELY PAID; PROVIDING FOR SEVERABILITY; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT.**

\* \* \* \* \*

**WHEREAS**, pursuant to the provisions of the Texas Tax Code, Section 11.13, which states that taxing units must adopt the amount of their tax exemptions for the 2102 tax year before July 1, 2012, the City Council of the City of Tomball, Texas, being vested with the power to levy, assess and collect an annual tax upon all taxable real and personal property located within the City Limits, and with the power to grant homestead exemptions for all City of Tomball property owners sixty-five years of age and over or who are disabled; and

**WHEREAS**, pursuant to the Charter of the City of Tomball, this ordinance has been read two (2) times and considered at two (2) sessions of the City Council, and published in the City's official newspaper after the first reading;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The facts and recitations set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**Section 2.** That the City of Tomball adopts an allowance of a \$90,000.00 homestead exemption for City of Tomball property owners sixty-five (65) years of age and over, and for those

property owners (regardless of age) who qualify for disability benefits under the Federal Old Age, Survivors, and Disability Insurance Program administered by the Social Security Administration. An eligible disabled person who is sixty-five (65) years of age or over may not receive the homestead exemption for both qualifying as "65 or over" and "disabled", but may choose either. Each person desiring such exemption shall file an application with the Harris County Appraisal District, such application being in a form and filed at such time as shall be required by law.

**Section 3.** That the adopted tax exemption shall be effective for the year 2012 and all future years, unless and until the tax exemption is revised by City Council.

**Section 4.** All ordinances and parts of ordinances inconsistent or in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5.** In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 16TH DAY OF APRIL 2012.

|                     |       |
|---------------------|-------|
| COUNCILMAN HUDGENS  | _____ |
| COUNCILMAN STOLL    | _____ |
| COUNCILMAN BROWN    | _____ |
| COUNCILMAN TOWNSEND | _____ |
| COUNCILMAN DODSON   | _____ |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT A SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 7TH DAY OF MAY 2012.

|                     |       |
|---------------------|-------|
| COUNCILMAN HUDGENS  | _____ |
| COUNCILMAN STOLL    | _____ |
| COUNCILMAN BROWN    | _____ |
| COUNCILMAN TOWNSEND | _____ |
| COUNCILMAN DODSON   | _____ |

\_\_\_\_\_  
GRETCHEN FAGAN, MAYOR  
City of Tomball

ATTEST:

\_\_\_\_\_  
DORIS SPEER, City Secretary  
City of Tomball



**DON SUMNERS, CPA, RTA**  
*HARRIS COUNTY TAX ASSESSOR - COLLECTOR*  
*WWW.UCTAX.NET*

March 16, 2012

Mr. Glenn Windsor  
City of Tomball  
501 James Street  
Tomball, TX 77375

Re: Adoption of property tax exemptions for 2012

Dear Mr. Windsor:

The Texas Tax Code, Sec. 11.13, states that taxing units must adopt the amount of their tax exemptions for the 2012 tax year before July 1, 2012. Please provide us with a resolution or ordinance adopting the amount of your taxing units exemptions for general homestead, over-65, and disability for the 2012 tax year, even if there is no change in the current exemption amounts.

Please note, if you have not done so, you may avoid this annual requirement by specifying in this year's resolution or ordinance that the adopted exemptions are "for 2012 and all future years, unless revised." If your taxing unit is considering increasing any of your exemptions, we can estimate the tax revenue reduction resulting from the proposed change for you.

Remember, your governing body must approve the exemption amounts before July 1, 2012.

For assistance, please call me at (713) 274-8119.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carolyn Miedke".

Carolyn Miedke, RTA, CTA  
Manager, Special Tax & Jurisdiction Support  
Office of DON SUMNERS  
Tax Assessor-Collector

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

#### Topic:

Adopt, on First Reading, Ordinance No. 2012-07, an Ordinance of the City of Tomball, Texas, Amending the Code of Ordinances of the City of Tomball by Amending Chapter 60, Signs, to Add a New Subsection (b)(6) to Section 60-9, Off-Premises Sign Provisions, to Allow the Addition of an LED Clock Display to Off-Premise Signs

#### Background:

On March 5, 2012, Tomball Regional Medical Center submitted a request to install a digital clock on the following billboard locations:

1. SignAd #87541 located at FM 2920 West of FM 2978
2. Clear Channel #9090 SH 249 (across from Lone Star College)
3. JGI #18 Highway 249, North of Holderrieth Rd.
4. SignAd #26713 SH 249 South of Tomball #3

The proposed digital clocks will be used to display the average wait time in their emergency room. Currently the City's Ordinance does not allow for off-premise signs to be CEVMS. Based on the nature of this particular use, the digital clocks although electronic in nature are not used in the same concept as CEVMS.

Changing the CEVMS portion of the sign ordinance to allow for CEVMS as off-premise signs would not be consistent with the vision the City has established as part of the Comprehensive Plan. Instead staff proposes amending Section 60-9 "Off-premise sign provisions" of the ordinance to allow for LED clocks on off-premise signs as shown on the attached amended ordinance.

Attached are the following items for your reference:

- 1) Tomball Regional Medical Center Request
- 2) Illustration of the LED Clock
- 3) Ch. 60 Ordinance with amendment

#### Origination:

Narciso Lira, Director of Community Development

#### Recommendation:

Staff recommends City Council approve revising Chapter 60 of the Code or Ordinances allowing LED Clocks on Off-premise signs.

#### Funding:

#### Party(ies) responsible for placing this item on agenda:

Narciso Lira, Director of Community Development

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |

**ATTACHMENTS:**

Ordinance No. 2012-07

TMRC Request

Illustration of LED Clock

Ch 60 Signs-Mark-up

**ORDINANCE NO. 2012-07**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL BY AMENDING CHAPTER 60, SIGNS, TO ADD A NEW SUBSECTION (b) (6) TO SECTION 60-9, OFF-PREMISES SIGN PROVISIONS, TO ALLOW THE ADDITION OF AN LED CLOCK DISPLAY TO OFF-PREMISE SIGNS; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000.00 FOR EACH VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SEVERABILITY; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT.**

\* \* \* \* \*

**WHEREAS**, the City Council of the City of Tomball, Texas desires to amend Section 60-9, Off-premises sign provisions, of Chapter 60, Signs, to allow the addition of LED clocks for informational purposes to off-premise signs; and

**WHEREAS**, pursuant to the Charter of the City of Tomball, this ordinance has been read two (2) times and considered at two (2) sessions of the City Council, and published in the City's official newspaper after the first reading;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The facts and recitations set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**Section 2.** Section 60-9, Off-premises sign provisions, of Chapter 60, Signs, of the Code of Ordinances of the City of Tomball is hereby amended to add a new subsection (b) (6) to Section 60-9 thereof to read as follows:

. . . . .

(b) (6) The addition of LED clocks for informational purposes to off-premise signs shall be allowed.

**Section 3.** All ordinances and parts of ordinances inconsistent or in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4.** Any person intentionally, knowingly, recklessly or with criminal negligence violating any provision of this Ordinance shall, upon conviction, be subject to a penalty not to exceed \$2,000.00 for each violation. Each day of violation shall constitute a separate violation.

**Section 5.** In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 16TH DAY OF APRIL 2012.

|                     |       |
|---------------------|-------|
| COUNCILMAN HUDGENS  | _____ |
| COUNCILMAN STOLL    | _____ |
| COUNCILMAN BROWN    | _____ |
| COUNCILMAN TOWNSEND | _____ |
| COUNCILMAN DODSON   | _____ |

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT A SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 7TH DAY OF MAY 2012.

COUNCILMAN HUDGENS  
COUNCILMAN STOLL  
COUNCILMAN BROWN  
COUNCILMAN TOWNSEND  
COUNCILMAN DODSON

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
GRETCHEN FAGAN, MAYOR  
City of Tomball

ATTEST:

\_\_\_\_\_  
DORIS SPEER, City Secretary  
City of Tomball

## Narciso Lira

---

**From:** George Shackelford  
**Sent:** Monday, March 05, 2012 11:43 AM  
**To:** Rodney Schmidt; Lori Lakatos; Narciso Lira  
**Cc:** Christal Weber  
**Subject:** FW: Digital Clocks  
**Attachments:** ER30\_14x48OD3 (2) Billboard.pdf

---

**From:** Abbey Lee [<mailto:ALEE@tomballhospital.org>]  
**Sent:** Monday, March 05, 2012 10:54 AM  
**To:** George Shackelford  
**Subject:** Digital Clocks

George,

I am writing today to request approval to put a digital clock on billboards in the Tomball area. The digital clock will show at any given point one or two numbers to reflect the average wait time in our emergency room. Billboards under consideration include:

1. SignAd #87541 located at FM2920 West of FM 2978
2. Clear Channel #9090 SH 249 (across from Lone Star College)
3. JGI #18 Highway 249, North of Holderrieth Rd.
4. SignAd #26713 SH 249/S of Tomball #3

Attached, you will find the design concept we have created. The digital clock will be set inside the yellow stopwatch.

Thank you for your consideration and I look forward to hearing from you.

Abbey Lee | Director of Marketing | Tomball Regional Medical Center  
605 Holderrieth Blvd. | Tomball, TX 77375 | Tel. 281 401 7785 | Fax 281 401 7010 | Cell 832 585 7263

---

Disclaimer: This electronic message may contain information that is Confidential or legally privileged. It is intended only for the use of the individual(s) and entity named in the message. If you are not an intended recipient of this message, please notify the sender immediately and delete the material from your computer. Do not deliver, distribute or copy this message and do not disclose its contents or take any action in reliance on the information it contains.

---

This email has been scanned by the Symantec Email Security.cloud service.  
For more information please visit <http://www.symanteccloud.com>

---

# Average E.R. wait: minutes.



**TOMBALL REGIONAL  
MEDICAL CENTER**

Based on the average time to be initially seen by a physician, physician assistant or nurse practitioner. If you are experiencing a medical emergency, call 911.

## Chapter 60

### SIGNS\*

---

\* **Editors Note:** Ord. No. 2002-12, § 2, adopted May 6, 2002, enacted provisions intended for use as chapter 58, §§ 58-1--58-10, 58-26--58-33. At the direction of the city, said provisions have been redesignated as chapter 60, §§ 60-1--60-10, 60-26--60-33.

---

#### Article I. In General

Sec. 60-1. Definitions.  
Sec. 60-2. Scope; conflicts.  
Sec. 60-3. Classifications.  
Sec. 60-4. Sign administrator and enforcement.  
Sec. 60-5. Sign permits and fees.  
Sec. 60-6. Sign maintenance and removal.  
Sec. 60-7. Miscellaneous sign provisions.  
Sec. 60-8. On-premises sign provisions.  
Sec. 60-9. Off-premises sign provisions.  
Sec. 60-10. Nonconforming signs.  
Secs. 60-11--60-25. Reserved.

#### Article II. Design and Structural Requirements

Sec. 60-26. Design.  
Sec. 60-27. Construction.  
Sec. 60-28. Electrical requirements.  
Sec. 60-29. Height limitation.  
Sec. 60-30. Size limitation.  
Sec. 60-31. Method of determining area of sign.  
Sec. 60-32. Clearances.  
Sec. 60-33. Portable signs.

### ARTICLE I.

#### IN GENERAL

##### Sec. 60-1. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Advertising* means to seek the attraction of or to direct the attention of the public to any goods, services, or merchandise whatsoever.

*Business purposes* means the erection or use of any property, building or structure, permanent or temporary, for the primary purpose of conducting in the building or structure or on the property a legitimate commercial enterprise in compliance with all ordinances and regulations of the city governing such activity; business purpose shall not include any property, building, or structure erected or used for the primary purpose of securing a permit to erect a sign.

*Commercial or industrial activity* means property that is devoted to use for business purposes, and not for residential purposes. "Commercial or industrial activity" shall not include the following:

- (1) Signs;
- (2) Agricultural, forestry, ranching, grazing, farming, and related activities;
- (3) Activities not housed in a permanent building or structure;
- (4) Activities conducted in a building primarily used as a residence.

*Curbline* means an imaginary line drawn along the edge of the pavement on either side of a public street.

*Display surface* means the entire surface of a sign, on one side, devoted to exhibiting or contrasting exhibits of advertising. The display surface shall generally include the entire sign surface except for the sign frame and incidental supports thereto.

*Electrical sign* means any sign containing electrical wiring or utilizing electric current, but not including signs illuminated by an exterior light source.

*Ground sign* means a sign, which is supported by uprights or braces in or upon the ground, including portable signs as defined herein.

*Integrated business development* shall mean a planned development, comprised of two or more separate commercial entities, whether located on a single lot, tract, or parcel of land or not, which provides common off-street parking, pedestrian ways, landscaping, and/or other areas designed, constructed, and maintained for the common use and benefit of the development's tenants or occupants, and the customers thereof.

*Marquee sign* means a projecting sign attached to or hung from a canopy or covered structure projecting from and supported by a frame or pipe support extending beyond a building.

*Off-premises sign* means any sign advertising a business, person, activity, goods, products, or services not usually located on the premises where the sign is installed and maintained, or which directs persons to any location not on the premises.

*On-premises sign* means any sign identifying or advertising the business, person, activity, goods, products, or services primarily sold or offered for sale on the premises where the sign is installed and maintained when such premises are used for business purposes.

*Person* means an individual, company, corporation, partnership, association, or any other entity.

*Portable sign* means any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier, or other nonmotorized mobile structure; a portable sign which has its wheels removed shall still be considered a portable sign.

*Projecting sign* means any sign which is affixed to any building wall or structure and extends beyond the building wall or structure more than 12 inches.

*Public right-of-way* means any part of a right-of-way not privately owned or controlled, and which is the responsibility of the city or other similar public agency to maintain.

*Public street* means the entire width between property lines of any road, street, way, alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

*Reflectorized lights* means any lamp constructed with reflector-type materials so as to focus, intensify, flood, or spot such lamp in a certain direction, including, but not limited to, lamps designated by the manufacturers as flood, spot, reflector or flood, reflector spot, reflector light, or clear reflector.

*Residential purposes* means property devoted to use as a single-family or multifamily residence. Residential purposes shall include, but not be limited to, property used for houses, duplexes, condominiums, townhomes, patio homes, and apartments; property used for hotels, motels, and boardinghouses shall not be considered as used for residential purposes. Property devoted to both residential and nonresidential use shall be considered as used for residential purposes if its principal use is residential.

*Roof sign* means any sign erected, constructed, or maintained above the roof of any building.

*Sign* means any outdoor display, design, pictorial, or other representation, which is constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever, that is designed, intended, or used for advertising. The term "sign" shall include the sign structure. Every sign shall be classified and conform to the requirements of each of such classification set forth in this chapter.

*Sign facing* or *facing* means a separate and distinguishable portion of the overall display surface.

*Sign structure* means any structure which supports or is capable of supporting any sign. A sign structure may be a single pole and may or may not be an integral part of a building.

*Wall sign* means any sign affixed to or painted upon the wall of any building.  
(Ord. No. 2002-12, § 2, 5-6-02)

## **Sec. 60-2. Scope; conflicts.**

(a) In accordance with the provisions of § 216.902 of the Texas Local Government Code, the provisions of this chapter shall apply to all signs, as that term is defined herein, within the city and shall also extend to and be enforced within the extraterritorial jurisdiction of the city.

(b) Where this chapter shall differ or conflict with article II of chapter 14, adopting the Standard Building Code, or any other ordinance, this chapter will prevail.  
(Ord. No. 2002-12, § 2, 5-6-02)

### **Sec. 60-3. Classifications.**

(a) For the purpose of this chapter, a sign shall be first classified as either an on-premises sign or an off-premises sign.

(b) All signs shall further be classified into one of the following type signs:

- (1) Ground sign;
- (2) Marquee sign;
- (3) Projecting sign;
- (4) Roof sign; or
- (5) Wall sign.

(c) Any on-premises or off-premises sign of any type may also be included within one or more of the following additional classifications according to special functions:

- (1) Electrical sign;
- (2) Portable sign; or
- (3) Temporary sign.

(Ord. No. 2002-12, § 2, 5-6-02)

### **Sec. 60-4. Sign administrator and enforcement.**

(a) *Sign administrator.* The city manager shall appoint a sign administrator. The sign administrator is empowered to delegate the duties and powers granted to and imposed upon him by this chapter to other persons serving under the sign administrator. The sign administrator is directed to enforce and carry out all provisions of this chapter.

(b) *Enforcement responsibility.* The duties of the sign administrator shall include not only the approval of permits as required by this chapter, but also the responsibility of insuring that all signs comply with this chapter and any other applicable law, and that all signs for which a permit is required, do in fact, have a permit. The sign administrator shall make such inspections as may be necessary and initiate appropriate action to bring about compliance with this chapter and other applicable law if such inspection discloses an instance of noncompliance. The sign administrator shall investigate thoroughly any complaints of alleged violations of this chapter.

(c) *Powers of sign administrator.* The sign administrator shall have the power and authority to administer and enforce the conditions of this chapter and all other laws relating to signs. Included among such powers are the following specific powers:

- (1) Every sign for which a permit is required shall be subject to the inspection and approval of the sign administrator or delegated representative.
- (2) Upon presentation of proper identification to the owner, agent, or tenant in charge of such property, the sign administrator or his representative may enter, for the purposes of inspecting and investigating signs or sign structures, any building, structure, or other premises or property between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Saturdays; provided, however, that in cases of an emergency where extreme hazards are known to exist which may involve imminent injury to persons, loss of life, or severe property damage, and where the owner, agent, or tenant in charge of the property is not available after the sign administrator has made a good faith effort to locate same, the sign administrator may enter the aforementioned structures and premises at any time upon presentation of proper identification to any other person upon the premises. Whenever the sign administrator is denied admission to inspect any premises, inspection shall be made only under authority of a warrant issued by a magistrate authorizing the inspection for violations of this chapter.
- (3) Upon notice and issuance of a stop order from the sign administrator, work on any sign that is being conducted in a manner contrary to the provisions of this chapter or is being conducted in a dangerous or unsafe manner shall be immediately stopped. Such notice and order shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. Where an emergency exists, written notice shall not be required to be given by the sign administrator. Following the issuance of a stop order, the sign administrator shall initiate proceedings to revoke any permit issued for the work covered by such stop order, consistent with subsection (c)(4) of this section, unless the cause of the stop order is resolved to the sign administrator's satisfaction.
- (4) The sign administrator is hereby granted the power and authority to revoke any and all permits authorized by this chapter for violation of the terms and provisions of this chapter.

(d) *Violations and penalties.* Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in section 1-14.

(e) *Appeals.* Any person wishing to appeal a decision of the sign administrator on the grounds that the decision misconstrues or wrongly interprets this chapter may appeal the same to the city council, pursuant to its rules and regulations, provided that the appealing party shall give notice of appeal in writing to the city secretary no less than ten days following the decision appealed from and provided further that the appealing party shall comply with the sign administrator's decision pending appeal unless the sign administrator shall direct otherwise.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-5. Sign permits and fees.**

(a) *Permit required.* No person shall erect, construct, or reconstruct a sign without first having secured a written permit from the city to do so, subject to the exceptions in subsection (b).

(b) *Exceptions.*

- (1) *Governmental/public signs.* No permit shall be required under this chapter for signs erected by the city, county, public school district, the state, or other political subdivisions thereof, the federal government, signs otherwise required by federal, state, or local laws, and signs otherwise authorized by the city as public signs.
- (2) *Signs for civic events.* Temporary signs that provide information about and/or direct the public to a special event of civic interest, including, but not limited to, parades, organized community holiday festivities or celebrations, and special events organized by charitable or nonprofit organizations.
- (3) *Other signs.* On-premises signs of the following descriptions; any sign listed hereunder shall be erected and maintained in a safe condition in conformity with section 60-7, all other city ordinances, and the building codes of the city:
  - a. Signs painted on glass surfaces or windows or doors;
  - b. Wall signs;
  - c. Marquee signs;
  - d. Railroad signs;
  - e. Projecting signs;
  - f. Legal notices and house numbers;
  - g. A sign not over 40 square feet in area setting forth information concerning a building or other structure under repair or construction or advertising the sale or rental of the premises;
  - h. Temporary signs setting forth the location of or directions to parking or buildings located on the premises, or regulating of the flow of on-premises traffic. Such directional signs may be lighted, consistent with the other requirements for electrical signs in this chapter and with the requirements of the building code.
  - i. Signs displayed, designed, or used for or upon motor vehicles;
  - j. Signs designed and used for display upon or with lighter or heavier-than-air craft;
  - k. Temporary garage sale signs.
- (c) *Application procedure.*
  - (1) The application for a permit shall be submitted in such form as the sign administrator may prescribe and shall be accompanied by drawings and descriptive data to verify compliance with

the provisions of this chapter. Construction permit applications for new ground signs when erected or constructed to heights exceeding 20 feet above ground level, or for new roof signs when erected 20 feet above ground level, shall be accompanied by a drawing of the sign structure and the sign prepared by and certified by a professional engineer registered in the state; the sign administrator at his option may also require similar certification by a registered professional engineer where any unusual structural provisions of a proposed sign indicate such certification is necessary in the interest of public safety.

- (2) Every application shall be executed by both the owner of the premises upon which the sign is to be constructed, or the authorized lessee of such premises, and the sign company, stating that the sign is authorized to be erected or to be thereafter maintained on the premises, and shall contain a statement of the owner or lessee and the sign company that the sign does not violate any applicable deed restrictions or other similar restrictions on the premises.
- (3) If the location, plans, and specifications set forth in any application for permit conform to all of the requirements of this chapter and other applicable provisions of the building code and other codes, the sign administrator shall issue the permit.

(d) *Existing signs.* All signs lawfully existing on the date of adoption of this chapter, must conform to the requirements of section 60-6 and subsection 60-7(a) through (k). Signs previously erected or in the process of being erected, and lawfully permitted in the city's extraterritorial jurisdiction shall be considered as existing signs under this subsection (d)(1); provided, however, that the date of the first publication of notice for a public hearing (as required by V.T.C.A., Local Government Code § 43.052) regarding the proposed annexation of an area, shall for the purposes of this chapter, be considered the date to determine the applicability of this chapter to any sign within the extraterritorial jurisdiction, as extended by such annexation. Any sign within such area required by any proper authority to be licensed or permitted shall not be considered to have been legally permitted for the purposes of this subsection (d)(1) unless such license or permit has been properly issued.

(e) *Construction permit effectiveness; renewal permit.* Any permit for construction of a sign shall become null and void unless construction of the sign is completed within 180 days, or the permit is renewed for an additional 180 days, in which case an additional fee shall be payable and the proposed sign shall meet all of the requirements of this chapter on the date of renewal.

(f) *Fees.* Permit fees shall be in accordance with the schedule of fees adopted by the city council.

(g) *No refund of fees.* The applicant for a permit or holder of a permit shall not be entitled to a refund of any fee paid in case the permit is revoked.

(h) *Electrical signs.* Any electrical sign shall conform fully to the electrical code of the city and shall receive a permit under the provisions of that code.  
(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-6. Sign maintenance and removal.**

- (a) All signs shall be kept in good repair and, unless of galvanized or noncorroding metal or treated

with appropriate wood preservative, shall be thoroughly painted as often as is necessary consistent with good maintenance. All braces, bolts, clips, supporting frame, and fastenings shall be free from deterioration, termite infestation, rot, or loosening. All signs shall be able to withstand safely at all times the wind pressures specified elsewhere in this chapter. In case any sign is not so maintained, the sign administrator shall give written notice to the owner or lessee thereof to so maintain the sign, or to remove the sign.

(b) Should any sign in the opinion of the sign administrator become insecure or in danger of falling or otherwise unsafe, the sign administrator shall give written notice of the condition of the sign to the person owning, leasing, or responsible for the sign. Such person so notified shall correct the unsafe condition of the sign in a manner to be approved by the sign administrator in conformity with the provisions of this chapter.

(c) In case any sign shall be installed, erected, constructed, or maintained in violation of any of the terms of this chapter, the sign administrator shall give written notice to the owner, lessee, or person responsible for the sign ordering such owner, lessee, or person to alter the sign so as to comply with this chapter or to remove the sign.

(d) Any written notice to alter or to remove a sign shall be given by the sign administrator by certified mail or written notice served personally upon the owner, lessee, or person responsible for the sign, or the owner's agent. If such order is not complied with within ten days, the sign administrator shall revoke the permit and direct the owners, lessee, or person responsible therefore to remove the sign.  
(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-7. Miscellaneous sign provisions.**

(a) *Christmas displays.* Christmas displays and similar temporary displays erected without advertising shall not be subject to the provisions of this chapter, but shall be subject to the fire code and rules and regulations for fire safety promulgated by the fire marshal and shall not violate article II of chapter 66.

(b) *Political signs.* No permit shall be required under this chapter for a sign erected solely for and relating to a public election for a period commencing 60 days prior to and for ten days following such public election, provided that such unpermitted sign shall be located on private property only. Such signs shall also comply with article II of chapter 66. If the sign pertains to a runoff or rescheduled election the initial period shall extend until ten days following the runoff or rescheduled election.

(c) *Signs on public rights-of-way.*

(1) With the exception of signs lawfully permitted or erected prior to the effective date of this chapter, it shall be unlawful to place a sign upon a public street, public sidewalk, public alley, public right-of-way, public curb, or other public improvement in any public street or grounds, on any public bridge or part of same, or on any public building or structure of any kind belonging to the city, or in any public place, or on any public improvement unless express consent therefore shall have first been granted by the city council. However, coin-operated devices used to display and vend newspapers may so be placed, so long as they are not placed to impede vehicular or pedestrian traffic. This subsection does not apply to public property leased for private business purposes.

- (2) Subdivision identification signs erected or painted directly upon the face of lawfully existing fences or walls are permitted provided that:
- a. The subdivision sign is facing a street which serves as an entrance to the subdivision to which such sign pertains;
  - b. The subdivision sign, or any part thereof, does not extend outward more than six inches from the face of the fence or wall upon which it is mounted; and
  - c. The subdivision sign, or any part thereof, does not extend above the fence or wall upon which it is mounted.

- (3) Any unlawful sign found on public property, buildings, or structures belonging to the city or within a public right-of-way of a public street, public sidewalk, or public alley shall be seized and removal thereof is hereby authorized in addition to authority under article II of chapter 66. The sign administrator, employees of the police department and the department of public works are hereby authorized to impound any signs found on public property, buildings or structures, or a public street, public sidewalk, or public alley and transport or cause the same to be transported to a location to be designated by the sign administrator for storage. Any sign impounded and stored and not redeemed by the owner thereof within 30 days may be destroyed or sold at public auction in the same manner as surplus property of the city.

(d) *Signs on private property.* No person shall place a sign on private property or utility easement without the written consent of the owner or agent for the owner of the private property or utility easement.

(e) *Signs resembling official signs.* No sign shall be constructed which resembles any official marker erected by the city, state, or any governmental agency or which by reason of position, shape, or color would conflict with the proper functioning of any traffic sign or signal or which by its shape or color would conflict with or be confused with emergency vehicle lights, especially blinking lights. Use of words such as "stop", "look", "danger", or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse traffic is prohibited.

(f) *Sight obstruction at intersections.* No sign shall be erected, constructed, reconstructed, or maintained in violation of the provisions of article II of chapter 66.

(g) *Signs not to obstruct.*

- (1) No sign shall be erected, constructed, or maintained so as to obstruct any means of egress, or any opening necessary for required light, ventilation, or firefighting or for escape from the premises, or so as to prevent free passage from one part of a roof to any part thereof.
- (2) No sign shall be attached to any exterior stairway, fire escape, fire tower balcony, or balcony serving as a horizontal exit.

(h) *Signs not to create easements.* No permit for a sign extending beyond private property onto a public street, public sidewalk, or public alley shall constitute a permanent easement, and every such permit shall

be revocable at any time by action of the city council, and the city shall not be liable for any damages to the owner by reason of such revocation.

(i) *Change of ornamental features, electric wiring, or advertising display.* No sign permit is required for the change of any of the ornamental features, electric wiring or devices, or the advertising display of a sign lawfully existing or permitted. This provision shall not release a person from complying with all other applicable permitting requirements of the city, including those of the city building code.

(j) *Signs obscuring or interfering with view.* Signs may not be located or illuminated in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or so as to obstruct or interfere with the view of a driver of approaching, emerging, or intersecting traffic, or so as to prevent any traveler on any street from obtaining a clear view of approaching vehicles for a distance of 250 feet along the street.

(k) *Proper shielding of lighted signs; interference with drives of motor vehicles.* Signs containing lights which are not effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled way from which the sign is primarily viewed and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle, are prohibited.  
(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-8. On-premises sign provisions.**

(a) The provisions of this section apply only to on-premises signs.

(b) On-premises signs, including ground signs, wall signs, marquee signs, projecting signs, and roof signs erected, constructed, or reconstructed after the date of adoption of this chapter shall comply with the requirements of this chapter.

(c) On-premises ground signs shall be permitted as follows:

- (1) One on-premises ground sign shall be permitted on a lot, tract, or parcel of land for each 100 feet of frontage on a public street, provided that there is a minimum separation of 100 feet between ground signs (on-premises and off-premises) located on the same lot, tract, or parcel of land, measured in a straight line from the base of each sign structure. Each lot, tract, or parcel of land shall, in any event, be entitled to at least one on-premises ground sign.
- (2) A lot, tract, or parcel of land having frontage on more than one public street shall be entitled to one on-premises ground sign on each frontage, notwithstanding the provisions of subsection (c)(1), provided the frontage on which the sign is located measures at least 50 feet and there is a minimum separation between ground signs (on-premises and off-premises) of 100 feet, measured along the property line at the street frontage.
- (3) An integrated business development shall be permitted one on-premises ground sign for each five entities, with a maximum sign area of 300 square feet plus 50 square feet for each entity in the development identified on such sign in excess of five. Provided, further, if more than one

on-premises ground sign is permitted hereby, there shall be separation between ground signs (on-premises and off-premises) of a minimum distance of 100 feet, measured in a straight line from the base of each sign structure.

(Ord. No. 2002-12, § 2, 5-6-02; Ord. No. 2006-18, § 1, 11-20-06)

#### **Sec. 60-9. Off-premises sign provisions.**

(a) The provisions of this section shall apply only to off-premises signs.

(b) No new permits shall be issued for off-premises signs and no additional off-premises signs shall be erected except as authorized by this section. Off-premises ground signs shall be permitted upon compliance with the following standards:

- (1) Maximum sign height shall be 12 feet measured from the highest point on the sign to the natural grade level of the ground surface in which the sign supports are placed.
- (2) Maximum sign face area shall be 40 square feet.
- (3) There shall be a minimum separation of 500 feet between the off-premises ground sign and any other off-premises sign, and a minimum separation of 100 feet between the off-premises sign and any on-premises ground sign. Such distance shall be measured by the shortest distance in a straight line between the two signs.
- (4) No off-premises ground sign shall be permitted within 350 feet of an intersection of public streets.
- (5) Signs permitted under this section shall otherwise comply with all applicable requirements of this chapter.

#### **(6) The addition of LED Clocks to off-premise signs shall be allowed**

(c) Any off-premises sign structure lawfully erected and maintained which has no copy, transcript, model, likeness, image, advertisement, or written material for 120 consecutive days is hereby declared to be in violation of this section and as such shall be restored to use or removed by the owner or permittee within 30 days after notice by the sign administrator of such violation.

(Ord. No. 2002-12, § 2, 5-6-02; Ord. No. 2006-18, § 2, 11-20-06)

#### **Sec. 60-10. Nonconforming signs.**

A permanent sign lawfully erected within the city or its extraterritorial jurisdiction prior to the date of adoption of this chapter, which does not conform to the regulations of this chapter, shall be deemed to be a nonconforming sign which shall be allowed to continue, with normal maintenance and repair only; provided, however, a nonconforming sign may not be enlarged upon, expanded, or extended. It is not the intent of this section to encourage the survival of nonconforming signs; to the contrary, nonconforming signs are discouraged and contrary to the intent and purpose of this chapter.

- (1) *Obsolescence or destruction.* A nonconforming sign shall not be enlarged, expanded, replaced, or rebuilt in case of obsolescence or total destruction by any means or cause.
- (2) *Repair or reconstruction if damaged.* In the event a nonconforming sign is damaged by any means or cause and the repair or reconstruction cost, whichever is applicable, equals or exceeds 60 percent of the cost of erecting a new sign of the same type at the same location, it must be removed or brought into compliance with this chapter.

(Ord. No. 2002-12, § 2, 5-6-02)

**Editors Note:** Ord. No. 2002-12, § 2, adopted May 6, 2002, enacted provisions intended for use as subsections (a) and (b). To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (1) and (2).

**Secs. 60-11--60-25. Reserved.**

## **ARTICLE II.**

### **DESIGN AND STRUCTURAL REQUIREMENTS**

#### **Sec. 60-26. Design.**

All signs and sign structures shall be designed and constructed to resist wind forces as follows:

Wind Load Pressures in Pounds per Square Foot for all Signs

| Height above ground*<br>(feet)                                             | Pressure (pounds/ft.) |
|----------------------------------------------------------------------------|-----------------------|
| 0--5                                                                       | 0                     |
| 6--30                                                                      | 20                    |
| 31--50                                                                     | 25                    |
| 51--99                                                                     | 35                    |
| *Measured above the average level of the ground adjacent to the structure. |                       |

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-27. Construction.**

The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed, and erected in conformance with the requirements of the city building code.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-28. Electrical requirements.**

All electrical fixtures, equipment, and appurtenances installed in conjunction with a sign shall be designed and installed in accordance with the city building code.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-29. Height limitation.**

No ground sign shall be established, constructed, or erected which exceeds an overall height of 42 1/2 feet including cutouts extending above the rectangular border, measured from the highest point on the sign to the natural grade level of the ground surface in which the sign supports are placed. A roof or wall sign shall not at any point exceed eight feet above the roof level.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-30. Size limitation.**

No on-premises sign, other than an on-premises wall sign and a ground sign permitted by subsection 60-8(c)(3), shall be established, constructed, or erected which has a face area exceeding 300 square feet, including cutouts, but excluding uprights.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-31. Method of determining area of sign.**

In determining the area of any sign, the dimensions of the rectangle enclosing the signboard, excluding the supporting structure, shall be used. If the sign includes cutouts or facings extending beyond the dimensions of the rectangular signboard, the measurement of the sign area shall include the actual area of the cutout or extended facings. For signs of a double-faced, back-to-back, or V-type nature, each face shall be considered a separate sign in computing the face area.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-32. Clearances.**

Signs shall be located at a minimum distance of six feet measured horizontally and 12 feet measured vertically from overhead electric conductors, which are energized in excess of 750 volts.

(Ord. No. 2002-12, § 2, 5-6-02)

#### **Sec. 60-33. Portable signs.**

(a) Every portable sign not in transit shall be securely anchored to the ground by cables, ground supports, or other means acceptable to the sign administrator to prevent overturning in high winds.

(b) Portable signs shall, for the purposes of this chapter, be considered nonmobile, nonportable ground signs and thereby are subject to all provisions of this chapter, including the structural requirements, permitting fee requirements, on-premises and off-premises provisions, and all other provisions of this chapter applicable to ground signs unless a provision which applies by its terms to portable signs is in conflict with a provision applying to ground signs, in which case the provision applying specifically to portable signs shall control.

(Ord. No. 2002-12, § 2, 5-6-02)

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: April 16, 2012

**Topic:**

Executive Session: The City Council will meet in Executive Session as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):

- Sec. 551.072 – Deliberations Regarding Real Property
- Sec. 551.087 – Deliberations Regarding Economic Development

**Background:****Origination:**

City Manager

**Recommendation:**

N/A

**Funding:****Party(ies) responsible for placing this item on agenda:**

City Secretary

| ACTION TAKEN                                             |                                                                                   |       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------|-------|
| APPROVAL                                                 | READINGS PASSED                                                                   | OTHER |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> 1 <sup>ST</sup> <input type="checkbox"/> 2 <sup>ND</sup> |       |