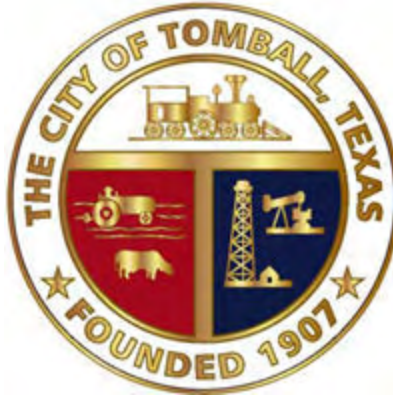


**NOTICE OF REGULAR CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, MAY 16, 2011

6:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, May 16, 2011 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 Victor Peña, River of Praise

3.0 Pledges to U.S. and Texas Flags

- Led by Members of Pack 113, Den 3, Tiger Scouts

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 – **Concordia Lutheran Crusaders Girls Track Team 2011 TAPPS 4A State Champions Day Day** – May 16, 2011
- Proclamation – **Emergency Medical Services Week** – May 15-21, 2011
- Proclamation – **National Public Works Week** – May 15-21, 2011
- Proclamation – **Hurricane Preparedness Week** – May 22-28, 2011

6.0 Reports and Announcements

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday, April through July)
- May 16, 2011 – **Tomball Special Olympics Day** – 9:00 a.m. at the Tomball Depot
- May 15-17, 2011 – **Police Officers Memorial Day and Police Week** – 9:00 a.m. at Heritage Plaza
- **May 17, 2011 – Canvass May 14, 2011 Election Results, Oath(s) of Office, and Elect Mayor Pro-Tem – 6:00 p.m.**
- May 19, 2011 – **Annual Red/White Football Game** – 6 p.m.
- May 28, 2011 – Municipal Pool at Matheson Park Opens
- June 11, 2011 – **2nd Saturday at the Depot**
- **June 20-August 15** (skip July 4th) – **Tomball's Kids Club**, hosted by HEB and partner, Buffalo Wild Wings – **MLK Community Park**
- **Walk Tomball!** (every Saturday at 8:00 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
 - David Kauffman: Spring Clean Up Week, Snook Lane property remediation, water supply capacity and drought contingencies

7.0 Approve the Minutes of the May 2, 2011 Regular City Council Meeting

8.0 Old Business:

- 8.1 Adopt on Second Reading, Ordinance No. 2011-05; An Ordinance of the City of Tomball, Texas, Amending Its Comprehensive Zoning Ordinance by granting a Conditional Use Permit to Jeff Williams III of Professional Welding Supply, to allow the installation/operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling; Said tract being located within the City in Zoning District GR-General Retail District and being legally described as Lot 1, Block 1 of the Williams Number One Replat, generally located southerly of Main Street between Howard Street and Willow Street at 503 East Main Street, Tomball, Texas; Providing requirements and conditions for this Conditional Use Permit; Containing findings and other provisions relating to the subject; Providing a penalty in an amount not to exceed two thousand dollars for violations hereof; and providing for severability.
- 8.2 Discussion and Possible Action to Amend the Professional Services Agreement with CLR, Inc. to Include the Design of Two Additional Parking Lots (DN and CS) on Non-City-owned Property.
- 8.3 Adopt, on Second Reading, Ordinance No. 2011-08, an Ordinance of the City Council of the City of Tomball, Texas, Providing for Minor Plats; and Making

other Findings and Provisions related Thereto

9.0 New Business:

- 9.1 Set June 6, 2011 as Date for City Council Workshop on Possible Revisions to Chapter 70, Plats and the Subdivision of Land
- 9.2 Discussion and Possible Action regarding Advance Refunding of Combination Tax & Revenue Certificates of Obligation, Series 2002
- 9.3 Approve Professional Services Agreement with Rydan & Associates, LLC in the Amount of \$125,000 for Engineering Services related to the Master Drainage Plan.
- 9.4 Approve Request to Change the Tomball Police Department's Table of Organization by Adding Two (2) Police Officer Position Authorities.
- 9.5 Approve the 2011-2012 Interlocal Agreement between the City of Tomball and the Tomball Independent School District (TISD), affording the Tomball Police Department the ability to assign a Student Resource Officers (SRO) to TISD Campuses.
- 9.6 Interlocal Agreement between the City of Tomball and the Tomball Independent School District, affording the Tomball Police Department the ability to provide police services on a contractual basis for specialized events occurring before, during and after the normal campus hours.
- 9.7 Executive Session: The City Council and the Tomball Economic Development Corporation 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
- 9.8 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
- 9.9 Consideration and Possible Action to Direct the City Manager to Make an offer on Approximately 120 Acres of Land Generally Located at the Northwest Corner of Hufsmith-Kohrville and Holderrieth Roads, Tomball, TX, 77375, for Purposes of Projects related to the Creation or Retention of Primary Jobs subject to Tomball Economic Development Corporation Financing and Preparation of a Memorandum of Understanding regarding the Tomball Economic Development Corporation Designation of such Project

10.0 Adjournment

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 13th day of May 2011 by 5:00 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.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

- Proclamation – **Concordia Lutheran Crusaders Girls Track Team 2011 TAPPS 4A State Champions Day** – May 16, 2011
- Proclamation – **Emergency Medical Services Week** – May 15-21, 2011
- Proclamation – **National Public Works Week** – May 15-21, 2011
- Proclamation – **Hurricane Preparedness Week** – May 22-28, 2011

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Concordia Lutheran Crusaders Girls Track Team 2011 TAPPS 4A State Champions Day
Emergency Medical Services Week
National Public Works Week
Hurricane Preparedness Week
Hurricane Preparedness Week Flyer

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** Concordia Lutheran Crusader girls track team successfully defended their TAPPS 4A state crown for the third year last week; and
- WHEREAS,** the team of Irene Featherston, Kelsey Crawford, Beth Thompson and Jessie Barton started things off by winning the 4x100 with a winning time of 48.96, followed by the team of Beth Thompson, Irene Featherston, Katie Reilly and Jessie Barton, who won the 4x200 for the fifth year and broke the 11-years-standing record with a time of 1:42.45; and
- WHEREAS,** the team of Chris Lindquist, Leslie Klein, Katie Reilly and Jessie Barton set another state record in the 4x440 with a time of 4:03.75, improving upon their state record from last year; and
- WHEREAS,** the lone individual champion, Kelsey Crawford, placed 1st in the shot-put for the second straight year, Katelyn Holland finished 2nd in the shot-put and discus, Jessie Barton finished 2nd in high jump, Leslie Klein finished 3rd in the 400 and 800 meter runs, Beth Thompson finished 2nd in long jump, and Katie Reilly finished 3rd in the 200; and
- WHEREAS,** Irene Featherston, Chris Lindquist, Lauren Terry, Kayla McCormack and Monica Dziak also contributed to the state title; and
- WHEREAS,** the Concordia Lutheran Crusaders girls track team also competed at the prestigious Texas Relays, where the 4x100 took 7th and the 4x200 finished 2nd, and during one of the highlights of the season, the team of Beth Thompson, Leslie Klein, Katie Reilly and Jessie Barton claimed the 4x400 title, running a time of 3:57.23, one of the fastest times in Tomball history; and
- WHEREAS,** the City Council wishes to congratulate Coach Jacob Vasquez and the members of the 2011 Concordia Lutheran Crusader girls track team for their tremendous success;

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 **Monday, May 16, 2011**, as:

**“CONCORDIA LUTHERAN CRUSADERS
GIRLS TRACK TEAM
2011 TAPPS CLASS 4A STATE CHAMPIONS DAY”**



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

ATTEST:

DATE:

Robin Speer
May 11, 2011

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS, emergency medical services is a vital public service; and
- WHEREAS, the members of Northwest Rural Emergency Medical Services, Tomball Fire Department and Tomball Police Department are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and
- WHEREAS, the emergency medical services system consists of emergency medical technicians, paramedics, firefighters, police officers and others; and
- WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and
- WHEREAS, the members of Northwest Rural EMS, Tomball Fire Department and Tomball Police Department, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and
- WHEREAS, it is appropriate to recognize the value and the accomplishments of these service providers by designating Emergency Medical Services Week;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, in recognition of this event do hereby proclaim the week of May 15-21, 2011, as

“EMERGENCY MEDICAL SERVICES WEEK”

with the theme, **EMS: Everyday Heroes**, I encourage the community to observe this week with appropriate programs, ceremonies and activities.



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

ATTEST:

DATE:

Doni Spier
May 10, 2011

Office of the Mayor
Tomball, Texas

Proclamation



WHEREAS, the public works services provided in Tomball are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs for the health, safety and comfort of this community, such as water, sewer, gas, streets and highways, public buildings, parks, and solid waste collection; and

WHEREAS, the quality and effectiveness of Tomball's facilities, as well as their planning, design and construction, is vitally dependent upon the efforts and skill of Public Works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff Tomball's Public Works Department is materially influenced by the people's attitude and understanding of the importance of the work they perform; on a daily basis; and

WHEREAS, the Tomball City Council wishes to recognize the dedication, talents and contributions made by Public Works employees;

NOW THEREFORE, I, Gretchen Fagan, Mayor of the City of Tomball, Texas do hereby proclaim May 15-21, 2011 as

"NATIONAL PUBLIC WORKS WEEK"

in the City of Tomball, Texas and I call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our Public Works services and to recognize the contributions that Public Works officials and employees make every day to our health, safety, comfort, and quality of life.



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

ATTEST:

DATE:

[Signature]
[Signature]
May 9, 2011

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** Texas hurricane season officially begins June 1 and ends November 30, and
- WHEREAS,** the 624-mile Texas Gulf coastline, our area in particular, and areas of Texas hundreds of miles inland, are vulnerable to the devastating effects of a hurricane or tropical storm, and
- WHEREAS,** both public and private entities should develop emergency response and recovery plans in accordance with local jurisdictions and local emergency management offices, and
- WHEREAS,** the National Weather Service and the Texas Division of Emergency Management are designating the week of May 22-May 28, 2011 as Hurricane Preparedness Week in Texas and the City of Tomball; and
- WHEREAS,** the National Weather Service, the Texas Division of Emergency Management, and the leaders of the City of Tomball strongly suggest that all residents and visitors to this area be made aware of the potential dangers of these storms; and
- WHEREAS,** the best defense is preparedness and public education about the dangers of the high winds, storm surge, flooding and tornadoes that may occur for hundreds of miles in conjunction with a hurricane or tropical storm;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim the week of May 22 through May 28, 2011 as:

“HURRICANE PREPAREDNESS WEEK”

and urge all citizens of the City of Tomball and the surrounding community to participate in hurricane preparedness activities, and to pay close attention to watch and warning instructions.



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

Gretchen Fagan

ATTEST: *Don Spur*

DATE: *May 10, 2011*

National Hurricane Preparedness Week

May 22-28, 2011

HISTORY	HURRICANE HAZARDS			FORECAST	PREPARE	ACT
						
S	M	T	W	Th	F	S
MAY 22	MAY 23	MAY 24	MAY 25	MAY 26	MAY 27	MAY 28
Hurricane Basics Hurricane History	Storm Surge Marine Safety	High Winds Tornadoes	Inland Flooding	Forecast Process	Disaster Prevention	National Day of Family Preparedness

www.hurricanes.gov/prepare



FEMA

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday, April through July)
- May 16, 2011 – **Tomball Special Olympics Day** – 9:00 a.m. at the Tomball Depot
- May 15-17, 2011 – **Police Officers Memorial Day and Police Week** – 9:00 a.m. at Heritage Plaza
- **May 17, 2011 – Canvass May 14, 2011 Election Results, Oath(s) of Office, and Elect Mayor Pro-Tem – 6:00 p.m.**
- May 19, 2011 – **Annual Red/White Football Game** – 6 p.m.
- May 28, 2011 – Municipal Pool at Matheson Park Opens
- June 11, 2011 – **2nd Saturday at the Depot**
- **June 20-August 15** (skip July 4th) – **Tomball's Kids Club**, hosted by HEB and partner, Buffalo Wild Wings – **MLK Community Park**
- **Walk Tomball!** (every Saturday at 8:00 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
 - David Kauffman: Spring Clean Up Week, Snook Lane property remediation, water supply capacity and drought contingencies

Background:

Origination:

Recommendation:

Funding:

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Notice of Canvass of Election - May 17, 2011

2nd Saturday at the Depot

Tomball Special Olympics Day

Police Officers Memorial Day and Police Week

**NOTICE OF CANVASS OF ELECTION
AT THE
SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**

TUESDAY, MAY 17, 2011



6:00 P.M.

**Notice is hereby given that the Canvass of the May 14, 2011
General City Election will be held at a Special meeting
of the Tomball City Council, on **Tuesday, May 17, 2011 at 6:00 p.m.**,
at City Hall, 401 Market Street, Tomball, Texas 77375.**

***Por el presente se notifica que el escrutinio de la Elección General
de la Ciudad del 14 de mayo de 2011 se realizará en
una asamblea extraordinaria del Consejo Municipal de la
Ciudad de Tomball el **martes 17 de mayo de 2011 a las 6:00 p.m.**
en City Hall, 401 Market Street, Tomball, Texas 77375.***

**Thông báo theo đây cho biết Việc Kiểm Phiếu của
Cuộc Bầu Cử Tổng Quát Thành Phố ngày 14 tháng Năm, 2011
Sẽ được tổ chức tại một buổi họp Đặc Biệt của Hội Đồng Thành Phố
Tomball, vào **thứ Ba, 17 tháng Năm, 2011 lúc 6 giờ chiều**,
Tại Tòa Thị Chính, 401 Market Street, Tomball, Texas 77375.**

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 13th day of May 2010 by 5:00 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.

2ND SATURDAY AT THE DEPOT

May 14 Tomball, TX

Fun Kid's Crafts!

Special Visit from:
Little Orphan Annie!
Daddy Warbucks
&
His assistant
Miss Grace Farrell

Music by:
Tudy
The Flute Player

Face Painting!

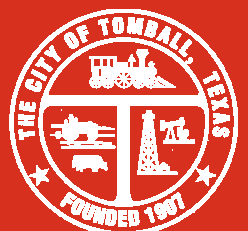
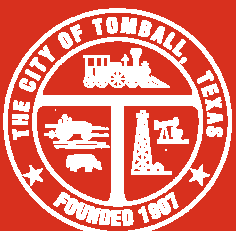
Help
Abandoned
Animal Rescue,
bring, your
favorite pet food
to donate!



HISTORIC TOMBALL DEPOT PLAZA
201 South Elm ~ One block south of Main Street
Opens at 6:00 PM ~ Movie begins at dark

Free family entertainment for all ages
Bring your lawn chairs
No Glass Containers!

For more information, please call
Rosalie Dillon at 281-610-2595



In case of rain, event will be held at the Tomball Community Center—221 Market Street

Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS** the SPECIAL OLYMPICS showcases the courage and perseverance of the human spirit, challenging millions of people with disabilities to set high goals, always try their best, and embody the Special Olympics Athlete Oath "Let me win. But if I cannot win, let me be brave in the attempt"; and
- WHEREAS** the SPECIAL OLYMPICS' mission is to provide year-round sports training and athletic competition in a variety of Olympic-type sports for children and adults with intellectual disabilities, providing continuous opportunities to develop physical fitness, demonstrate courage, experience joy, and share skills, gifts, and fellowship with fellow athletes, their families, and the community; and
- WHEREAS** law enforcement officers serve as the "Guardians of the Flame," the TOMBALL POLICE DEPARTMENT will participate in the SPECIAL OLYMPICS LAW ENFORCEMENT TORCH RUN as it proceeds from Houston to Arlington and will carry the "FLAME OF HOPE" through a portion of the City of Tomball on Thursday, May 26, 2011; and
- WHEREAS** the TORCH RUN will begin in downtown Houston and arrive in Tomball at approximately 9:00 a.m., where participants in the TORCH RUN will proceed, escorted by a rolling barricade, from State Highway 249, down Main Street, to the Tomball Depot; and
- WHEREAS** the City of Tomball wishes to support the SPECIAL OLYMPICS and honor those volunteers and athletes who participate in year-round sports training and athlete competitions for children and adults with intellectual disabilities in 150 countries around the world;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim Thursday, May 26, 2011, as:

"TOMBALL SPECIAL OLYMPICS DAY."

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

ATTEST: _____

DATE: _____



Office of the Mayor
Tomball, Texas

Proclamation



- WHEREAS,** in every American community, committed law enforcement officers are dedicated to the preservation of life and property, risking their lives to protect us from all who would mock the law, providing protection, law and order and serving the cause of justice; and
- WHEREAS,** law enforcement officers, including members of the **Tomball Police Department**, accept a profound responsibility and work to uphold our laws, safeguard our rights and freedoms, and serve on the front lines in the fight against crime and terrorism; and
- WHEREAS,** we honor the heroism of all our law enforcement officers, especially those who have given their lives so that others might live, asking God's blessing for the families and friends they left behind; and
- WHEREAS,** by a joint resolution approved October 1, 1962, as amended, Congress authorized and President Kennedy proclaimed May 15th of each year "**Peace Officers Memorial Day**" in honor of the Federal, State and municipal officers who have been killed or disabled in the line of duty, further designating the calendar week in which May 15 falls "**Police Week**," and has directed that the flag be flown at half staff on "**Peace Officers Memorial Day**"; under Public Law 103-322, as amended, and
- WHEREAS,** across the nation, **Police Week** is observed with ceremonies and observances, including the hanging of a blue bow or ribbon to honor the law enforcements officers who have sacrificed their lives in the line of duty and to further honor those who are still striving to keep us safe; and
- WHEREAS,** I encourage all citizens to express their deep appreciation to the men and women who risk their lives in order to guard and protect us;

NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor of the City of Tomball, do hereby proclaim May 15 of every year as:

"PEACE OFFICERS MEMORIAL DAY"

and May 15-17, 2011 as:

"TOMBALL POLICE WEEK"

and ask the citizens of Tomball and those with us today to join us as we

"HONOR THE STANDING AND THE FALLEN"

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

ATTEST: _____

DATE: _____



Regular City Council Agenda Item Data Sheet

Meeting Date: May 16, 2011

Topic:

Approve the Minutes of the May 2, 2011 Regular City Council Meeting

Background:**Origination:****Recommendation:****Funding:**

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Minutes - May 2, 2011 Regular Council Meeting

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



MONDAY, MAY 2, 2011

7:00 P.M.

1.0 Call to Order

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

Councilman Quinn
Councilman Stoll
Councilman Brown
Councilman Townsend
Councilman Dodson

Others present:

City Manager – George Shackelford
Assistant City Manager – Christal Kliever
City Secretary – Doris Speer
City Attorney – Loren B. Smith
Finance Director – Glenn Windsor
Chief of Police – Robert Hauck
Fire Chief – Randy Parr
Assistant to City Manager – Shawn Cox
Assistant City Engineer – Lori Lakatos
Fire Inspector – Tommy Nicholson
Chief-NWEMS – Brian Petrilla

Draft

2.0 The invocation was given by Anthony Malfitano, Chaplain, Rolling Thunder Texas–Chapter 1

3.0 Pledge to the U. S. flag was led by Cooper Cason; pledge to the Texas flag was led by Anna Liu.

4.0 The following public comments were received:

- | | |
|--|---|
| Sherrie Meicher
222 Southmore, 77375 | - Asked Council and audience to become members of, and City to support, the Tomball Museum Center. |
| Cooper Cason
19302 Red Canyon Lane, 77377 | - Requested City Support/Co-Sponsorship for the 3 rd Annual Homecoming Parade, to be held on September 28, 2011 from 6:30 p.m.-8:00 p.m. |

5.0 Presentations:

- Mayor Fagan presented a Proclamation declaring the Month of May 2011 as **“Motorcycle Safety & Awareness Month”** to members of the Houston Region of the Texas Confederation of Clubs and Independents, Texas Motorcycle Safety Coalition

6.0 Reports and Announcements:

- **Farmers Market** – 9 a.m.-1:00 p.m. (Every Saturday, April through July)
- May 5, 2011 – **Tomball National Day of Prayer** – 12:00 p.m. at the Gazebo (Depot Plaza)
- May 5, 2011 – **Mayor’s Coffee** – **Nona’s Italian Grill** - 5:30 p.m.-7:00 p.m.
- May 14, 2011 – **2nd Saturday at the Depot**
- May 14, 2011 – **Election Day** – **General City Election at City Hall, 7:00 a.m.-7:00 p.m.**
- May 16, 2011 – **Reception honoring David Quinn, Council 1** – **5:00 p.m.**
- May 16, 2011 – **Council Meeting at 6:00 p.m. (new time)**
- **May 17, 2011 – Canvass May 14, 2011 Election Results, Oath(s) of Office, and Elect Mayor Pro-Tem** – **6:00 p.m.**
- **Walk Tomball!** (every Saturday at 8:00 a.m. at the Depot)
- **June 20-August 15** (skip July 4th) – **HEB/City of Tomball’s Mayor’s Summer Nutrition Challenge –MLK Community Park**
- Reports by City staff and members of council about items of community interest on which no action will be taken
 - Glenn Windsor presented the Quarterly Investment Report for Period Ending March 31, 2011 and the Mid-Year Financial Report for Six Months Ending March 31, 2011.
 - Councilman Townsend requested additional information regarding expenditures versus budget in the streets department.
 - Councilman Townsend requested an update regarding the effect of the current drought on the City’s water capacity for the May 16, 2011 meeting.
 - Councilman Stoll announced that Tomball reported the best results during the “Take Back Drugs Program”, sponsored by the Drug Enforcement Administration and Tomball Police Department; the next event in Tomball will be held in October 2011.

- 7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the minutes of the April 18, 2011 Regular City Council Meeting.

Motion carried unanimously.

8.0 Old Business:

- 8.1 Lori Lakatos presented the proposed Professional Services Agreements. Motion was made by Councilman Townsend, second by Councilman Dodson, to approve Professional Services Agreements with CLR, Inc., in an amount not to exceed \$74,186 for Two Parking Lots, City-owned Lots AN and ES, for Professional Services related to Downtown Parking Lots and to authorize the City Manager to Execute the Agreements.

Motion carried unanimously.

- 8.2 Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on Second Reading, Ordinance No. 2011-04, an Ordinance of the City of Tomball, Texas, finding and determining that public convenience and necessity no longer require the continued existence of road right-of-way containing all that certain tract or parcel containing 7,827.73 square feet situated in the William Hurd Survey, A-371 in Harris County, Texas, same also being a part of Ash Street, (variable width, unimproved), as shown on the revised map of Tomball, a subdivision in Harris County, Texas according to the map or plat thereof filed for record in volume 4, page 25 of the Harris County Map Records and a part of Timkin Road, (variable width) as recorded in instruments filed for record in volume 338, page 552 and under Harris County Clerk's File No. M-572329 of the Harris County Deed Records; vacating, abandoning, and closing said roadway right-of-way; authorizing the Mayor to execute and the City Secretary to attest, respectively, deed without warranty of title; providing for severability; and containing other provisions relating to the subject. Vote was as follows:

Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>

Motion carried unanimously.

- 8.3 Motion was made by Councilman Dodson, second by Councilman Townsend, to adopt on Second Reading, Ordinance No. 2011-06, An Ordinance of the City of Tomball, Texas, Amending Its Comprehensive Zoning Ordinance by amending Section 34.6.E.1 ("Additional off-street parking space requirements") to delete the off-street parking requirements in the OT & MU - Old Town & Mixed Use District for that portion of the Old Town area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the Lots that Front on Fannin Street and Houston Street adjacent to

such portion; 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. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>

Motion carried unanimously.

- 8.4 Motion was made by Councilman Townsend, second by Councilman Brown, to adopt, on Second Reading, Ordinance No. 2011-07, an Ordinance of the City of Tomball, Texas, amending Chapter 2. Administration, of Its Code of Ordinances to Change Its Regular Meeting Time to 6:00 P.M.; amending Subsections 2-32(C) Meetings and 2-32(D)(6) Organization and Order Of Agenda Related to the Same; Making Other Provisions Related Thereto; Repealing Ordinances or Parts of Ordinances Inconsistent Herewith; and Providing for Severability. Vote was as follows:

Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Aye</u>
Councilman Dodson	<u>Aye</u>
Councilman Quinn	<u>Aye</u>
Councilman Stoll	<u>Aye</u>

Motion carried unanimously.

9.0 New Business:

- 9.1 Mayor Fagan presented recommendation for appointments to the Planning and Zoning Commission. Councilman Townsend nominated Lisa Daniels and Councilman Stoll nominated John Dillon for consideration; nominations ceased. Vote was as follows:

Councilman Quinn	<u>Michele Beauvais and James Kendler</u>
Councilman Stoll	<u>Michele Beauvais and John Dillon</u>
Councilman Brown	<u>Michele Beauvais and James Kendler</u>
Councilman Townsend	<u>Lisa Daniels and James Kendler</u>
Councilman Dodson	<u>Michele Beauvais and James Kendler</u>

Michele Beauvais and James Kendler are appointed to the Planning and Zoning Commission, effective June 1, 2011.

- 9.2 Lori Lakatos presented an overview of the proposed Contract. Motion was made by Councilman Brown, second by Councilman Stoll, to award Contract for Bid 2011-03,

Project Number 2007-10006, Tomball Hills Lift Station Replacement, to Low Bidder, N&S Construction Co., L.P., in the amount of \$349,775.00.

Motion carried unanimously.

- 9.3 George Shackelford presented an overview of Chapter 60. Signs and LED signage. Brian Lizak, ClearChoice LED, presented information regarding LED signage and possible restrictions that Council might consider. Council requested City staff to review Chapter 60 and bring recommendations to Council at a future meeting. No action taken
- 9.4 The City Council recessed at 8:10 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:
- Sec. 551.071 - Private Consultation with Attorney in Closed Meeting regarding Contemplated Litigation
 - Sec. 551.072 – Deliberations Regarding Real Property

Upon reconvening into regular session at 8:30 p.m., the Item 9.5 was considered and action taken.

- 9.5 Motion was made by Councilman Dodson, second by Councilman Townsend, to request Applicant, Patti Fisher, to Demolish Substandard Building Located at 29503 Orchard Grove Drive.

Motion carried unanimously.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 16th day of May 2011.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: May 16, 2011

Data Sheet

Topic:

Adopt on Second Reading, Ordinance No. 2011-05; An Ordinance of the City of Tomball, Texas, Amending Its Comprehensive Zoning Ordinance by granting a Conditional Use Permit to Jeff Williams III of Professional Welding Supply, to allow the installation/operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling; Said tract being located within the City in Zoning District GR-General Retail District and being legally described as Lot 1, Block 1 of the Williams Number One Replat, generally located southerly of Main Street between Howard Street and Willow Street at 503 East Main Street, Tomball, Texas; Providing requirements and conditions for this Conditional Use Permit; Containing findings and other provisions relating to the subject; Providing a penalty in an amount not to exceed two thousand dollars for violations hereof; and providing for severability.

Background:

On November 11, 2010, Jeff Williams III submitted a Conditional Use Permit application to install an above ground bulk propane tank, pump, scale, and meters to fill propane cylinders at the subject site. The propane storage tank area will be located approximately 11 feet behind the main building, 41 feet from the Harris Flood Control District's ditch, and at least 26 feet from the unimproved Howard Street right-of-way. The propane sales operation will include filling propane cylinders on site as well as taking pre-filled cylinders to be delivered to customer locations. The applicant is not proposing any additional driveway access to the propane tank. Instead, the bulk tank will be filled by a bobtail truck with a 100 foot hose from the existing parking lot.

After reviewing the request, staff prepared and presented a report to the Planning and Zoning Commission recommending approval with conditions. On April 11, 2011, the Planning and Zoning Commission, after conducting a public hearing on this request, voted 3-1 to approve Zoning Case P10-289 with conditions. On April 18, Council adopted Ordinance No. 2011-05 on first reading.

Origination:

Jeff Williams III of Professional Welding Supply

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted 3-1 to approve Zoning Case P10-289 with conditions, as recommended by staff, based on the following findings: The proposal is consistent with the general purpose and intent of the applicable zoning district regulations and Comprehensive Plan and the proposal is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity. Section 37.1.A of the Zoning Ordinance allows the City to impose certain conditions on a CUP request in order to mitigate "external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood." As such, City staff recommends the following conditions of approval: The "Propane Sales Filling (Retail)" use shall not be enlarged, extended, or relocated from what is shown on the approved Concept Plan without the approval of a revised concept plan or new CUP; All proposed structures shall adhere to the setback requirements of the Zoning Ordinance; The "Propane Sales Filling (Retail)" use shall comply with all requirements of the adopted International Fire Code; The proposed propane tank shall be screened from public view with landscaping; The proposed propane tank shall be installed and inspected per Texas Railroad Commission specifications; The existing cylinder dock and its supporting structures (fences, stair treads, risers, ledges, handrails, covers, etc.) shall be brought into conformance with the development standards of the City of Tomball and be properly permitted.

Funding:

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

Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2011-05_Zoning Case P10-289

Tank Research

LPG Safety Rules

P10-289 Working Distance

P10-289 Preferred Evacuation Distance 1

P10-289_Preferred Evacuation Distance2

EPA Propane Guide

P10-289 Staff Report

Property Owner Notification

Notice of Public Hearing

ORDINANCE NO. 2011-05

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY GRANTING A CONDITIONAL USE PERMIT TO JEFF WILLIAMS III OF PROFESSIONAL WELDING SUPPLY, TO ALLOW THE INSTALLATION/OPERATION OF A 1,000-GALLON ABOVEGROUND PROPANE TANK FOR THE PURPOSE OF PROPANE SALES/FILLING; SAID TRACT BEING LOCATED WITHIN THE CITY IN ZONING DISTRICT GR-GENERAL RETAIL DISTRICT AND BEING LEGALLY DESCRIBED AS LOT 1, BLOCK 1 OF THE WILLIAMS NUMBER ONE REPLAT, GENERALLY LOCATED SOUTHERLY OF MAIN STREET BETWEEN HOWARD STREET AND WILLOW STREET AT 503 EAST MAIN STREET, TOMBALL, TEXAS; PROVIDING REQUIREMENTS AND CONDITIONS FOR THIS CONDITIONAL USE PERMIT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS FOR VIOLATIONS HEREOF; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, Jeff Williams III of Professional Welding Supply has made application for a Conditional Use Permit to allow the installation/operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling in the GR-General Retail District. The property is an approximately 0.5019 acre site located at 503 East Main Street, legally described as Lot 1, Block 1 of the Williams Number One Replat, and generally located southerly of Main Street between Howard Street and Willow Street right-of-ways, within the City of Tomball, Harris County, Texas; and

WHEREAS, the Property presently has a zoning classification of GR-General Retail District, pursuant to the Comprehensive Zoning Ordinance of the City; and

WHEREAS, the Owner of the Property, through its duly authorized representative, has presented an application to the City for the granting of a Conditional Use Permit to allow the

installation / operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling in a General Retail District (the “Conditional Use”); and

WHEREAS, the Planning & Zoning Commission of the City, after notice and hearing as required by law, has recommended that the City Council grant the conditional use permit subject to the terms and conditions contained in the final report of said Commission; and,

WHEREAS, the City Council, following notice and hearing as required by law, concurs with the recommendation of the Planning & Zoning Commission that such specific use permit should be granted subject to the terms and conditions contained herein; now, therefore,

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. A Conditional Use Permit to allow the installation / operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling in a General Retail District, to Jeff Williams III of Professional Welding Supply, at 503 East Main Street, Tomball, Texas, in accordance with the application and plans submitted to the Planning and Zoning Commission on April 11, 2011 and subject to the terms and conditions set forth below, is hereby granted to the Owner, including any successor in interest.

Section 3. The Official Zoning District Map of the City shall be revised and amended to show the Conditional Use authorized hereby for the Property as provided in Section 2 hereof, with the appropriate references thereon to the number and effective date of this Ordinance and a brief description of the nature of the Conditional Use authorized.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Conditional Use Permit as herein provided.

Section 5. The Conditional Use Permit granted hereby shall be null and void after the expiration of two (2) years from the date of adoption hereof unless the Property is being used in accordance with the Conditional Use herein authorized within said two-year period, or unless an extension of time is approved by City Council.

Section 6. The Conditional Use authorized and permitted hereby shall be, and is, subject to the following additional limitations, restrictions, and conditions:

- A. The “Propane Sales Filling (Retail)” use shall not be enlarged, extended, or relocated from what is shown on the approved Concept Plan without the approval of a revised concept plan or new CUP. (Exhibit “A”).
- B. All proposed structures shall adhere to the setback requirements of the Zoning Ordinance.
- C. The “Propane Sales Filling (Retail)” use shall comply with all requirements of the adopted International Fire Code.
- D. The proposed propane tank shall be screened from public view with landscaping.
- E. The proposed propane tank shall be installed and inspected per Texas Railroad Commission specifications.
- F. The existing cylinder dock and its supporting structures (fences, stair treads, risers, ledges, handrails, covers, etc.) shall be brought into conformance with the development standards of the City of Tomball and be properly permitted.

Section 7. 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 8. In the event any 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 the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

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 18TH DAY OF APRIL 2011.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</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 MAY 2011.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

Impervious Cover: 34%



1. Information received from Councilman Townsend research.
Information is from Queens University, Mechanical and Materials Engineering Division

BLEVE of a 1000 Gal LPG tank. 1 Liter = .26417205 gal. 1000 gal = 3785.41 liters. 1 meter = 3.2808399 ft.

The following are in imperial measurements:

Working Distance: for Fire Fighters Min. 295 ft - Actual - 410 ft.

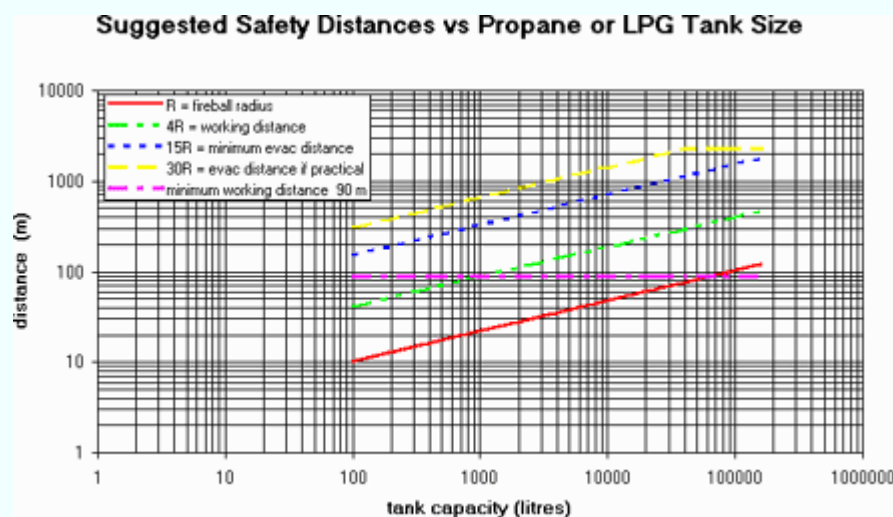
Min Evac Distance: Min 1312 ft

Preferred Evac Distance: 3280 ft

Fire ball Radius: 130'

A. M. Birk, P.Eng. - BLEVE Research

Suggested safety distances vs tank size for BLEVE



This graph shows suggested safety distance for potential propane or LPG BLEVEs. It is suggested that 4R (where R = fireball radius) be used as a working distance for firefighters and emergency responders. It must be stressed that at 4R personnel will still be exposed to some projectile threat.

A distance of 15R is suggested as a minimum for the evacuation of the public.

Revised by [A. Birk@ME.QueensU.CA](mailto:A.Birk@ME.QueensU.CA), 96.01.29

2. Information received from Bob Royall, Assistant Chief, Response and Recovery, Harris County Fire Marshall's Office

-----Original Message-----

From: Royall, Bob (Fire Marshal's Office) [<mailto:Bob.Royall@fmo.hctx.net>]

Sent: Tuesday, April 26, 2011 7:00 PM

To: Randy Parr

Subject: RE: Emailing: BLEVE Research - Suggested safety distances vs tank size for BLEVE - Mechanical Engineering at Queen's University

Chief,
I have consulted several models and SME's both in response and industry. Here is what I found. First off these numbers look very reasonable.

Working Distance: for Fire Fighters Min. 295 ft - Actual - 410 ft.

Min Evac Distance: Min 1312 ft

Preferred Evac Distance: 3280 ft

Fire ball Radius: 130'

It is my understanding that the biggest hazard is blast overpressure as 3-5 pounds can displace internal organs. As such the models that I have looked at all are based on distances that would result in a max of 1 pound overpressure (remember 1/2 pound overpressure is enough to blow windows out). The models say that for a 1,000 gallon BLEVE blast one can expect 1 pound of overpressure at a distance of approximately 100 yards from ground zero. However, there are a lot of facts that will play into the blast wave such as topography, structures and weather.

In summary, persons within 100 yards may have survival issues because of overpressure. However, the thermal effects may extend well beyond that distance.

A rule of thumb in industry is 100 yards or I football field of distance as a minimum. They certainly prefer a greater distance if possible.

Hope this helps.

Thanks,
R. W. "Bob" Royall, Jr.
Assistant Chief, Response & Recovery
Harris County Fire Marshal's Office
2318 Atascocita Rd.
Humble, Texas 77396
281-436-8160 Office
281-436-0196 Fax
713-828-2160 Mobile

A blue banner with a faint background image of industrial machinery. The text is white and bold.

Faculty of Applied Science
Mechanical and Materials Engineering

LIQUEFIED PETROLEUM GAS SAFETY RULES

A manual of rules and procedures for handling and odorizing liquefied petroleum gas in Texas, including specifications for design, construction, and installation of equipment used in transportation, storage, and distribution



RAILROAD COMMISSION OF TEXAS

MICHAEL L. WILLIAMS, CHAIRMAN
ELIZABETH A. JONES, COMMISSIONER
DAVID PORTER, COMMISSIONER

Revised January 2011

Important Notice

These *Liquefied Petroleum Gas (LP-Gas) Safety Rules* apply to the design, construction, location, and operation of LP-gas systems, equipment, and appliances. The rules do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railroad loading racks used in connection with such establishments. The rules do apply to truck loading racks.

The rules in this publication are not consecutively numbered to allow for future expansion, so there may be a break in the numbering.

Revisions to the *LP-Gas Safety Rules* will occur after the date of this publication. It is your responsibility to comply with the *LP-Gas Safety Rules* in effect at the time the LP-gas activities are conducted or performed. The Railroad Commission's current *LP-Gas Safety Rules* can be viewed online at www.rrc.state.tx.us. Click on the black tab labeled "Rules," select "Current Rules," scroll down to "Chapter 9, LP-Gas Safety Rules," and select the rule you want to read.

The majority of the forms listed in §9.3 are also available for viewing and printing online at www.rrc.state.tx.us. Under "Agency Services," click on "Propane/LP-Gas Licensing," select "Forms," and choose the forms you want to view or print. If you are unable to view and print the forms online, please contact the License and Permit Section at (512) 463-6931 and the requested forms will be faxed or mailed to you.

Users are responsible for checking the accuracy, completeness, currency, and/or suitability of all information. The Railroad Commission of Texas makes no representation, guarantee, or warranty as to the accuracy, completeness, currency, or suitability of this information, which is provided strictly "AS IS." The Railroad Commission of Texas specifically disclaims any and all warranties, representations or endorsements, express or implied, with regard to this information, including, but not limited to, the warranties of merchantability, fitness for a particular purpose, or noninfringement of privately owned rights.

To order additional copies of the *LP-Gas Safety Rules*, please contact the Railroad Commission's Publications Section at (512) 463-6747. Checks, money orders and MasterCard or Visa credit cards are accepted. To download or print additional copies, go to www.propane.tx.gov; under "Services for Marketers," click on "Safety Rules(LPG)."

LP GAS SAFETY RULES

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6 - LP-GAS SAFETY RULES

SUBCHAPTER A - GENERAL REQUIREMENTS

§9.1 Application of Rules, Severability, and Retroactivity

(a) The *LP-Gas Safety Rules* apply to the location and operation of liquefied petroleum gas systems, equipment, and appliances. These standards also apply to truck and railcar loading racks, but do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railcar loading racks used in connection with these excluded establishments.

(1) Subchapter A, General Requirements, applies to various types of LP-gas activities, including licensing, examination, and training requirements.

(2) Subchapter B, LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, applies to proposed and existing LP-gas installations, containers, and equipment, including cylinder exchange racks.

(3) Subchapter C, Vehicles and Vehicle Dispensers, applies to transports and bobtails that deliver LP-gas, and school buses and other vehicles that are powered by LP-gas.

(4) Subchapter D, Adoption by Reference of NFPA 54 (*National Fuel Gas Code*), applies to the adoption by reference of NFPA 54 and specifies additional or alternative requirements from those found in NFPA 54.

(5) Subchapter E, Adoption by Reference of NFPA 58 (*LP-Gas Code*), applies to the adoption by reference of NFPA 58 and specifies additional or alternative requirements from those found in NFPA 58.

(b) If any term, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

(c) Nothing in these rules shall be construed as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring licensure.

(d) Unless otherwise stated, the *LP-Gas Safety Rules* are not retroactive.

(e) As stated in Texas Natural Resources Code, Chapter 113, any LP-gas container with a water capacity of one gallon or less, or any LP-gas piping system, or appliance attached or connected to such a container is exempt from the *LP-Gas Safety Rules*, including any adopted NFPA pamphlets. For the purpose of consistency, the figure of 4.20 lb is used to determine the weight of one gallon of LP-gas. The omission of a specific NFPA 58 pamphlet or any other NFPA rule containing any such applicable language from Table 1 of §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections) is inadvertent and shall not be read or understood as requiring or allowing any such size of LP-gas container to comply with the adopted LP-gas safety rule requirements.

(f) This chapter shall not apply to vehicles and fuel supply containers that:

- (1) are manufactured or installed by original equipment manufacturers;
- (2) comply with Title 49, Code of Federal Regulations, the Federal Motor Vehicle Safety Standards; and
- (3) comply with the National Fire Protection Association (NFPA) Code 58, *Liquefied Petroleum Gas Code*.

(g) Vehicles and fuel supply containers excluded from the requirements of this chapter pursuant to subsection (f) of this section shall comply with the requirements of §9.203 of this title, relating to School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections, and the Commission's exception to NFPA 58 §11.4.1.5 in Table 1 in §9.403(a), relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

§9.2 Definitions

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.
- (2) AFRED--The Commission's Alternative Fuels Research and Education Division.
- (3) AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.
- (4) Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.
- (5) Applicant--An individual:
 - (A) who is applying for a new certificate; or
 - (B) whose certification has lapsed for a period of less than two years and who is applying to restore certification by paying any applicable fees and by completing any applicable training or continuing education requirements.
- (6) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(7) Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(8) Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(9) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements as specified in §9.52 of this title (relating to Training and Continuing Education Courses), and paid the applicable fee; or

(B) who has passed the required employee-level qualification examination, paid the applicable fees, and complied with the training or continuing education requirements in §9.52 of this title (relating to Training and Continuing Education Courses); or

(C) who has passed the required employee-level qualification examination, has paid the applicable fee, and is required to comply with a training requirement as specified in §9.52 of this title (relating to Training and Continuing Education Courses) ; or

(D) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or

(E) who holds a current examination exemption pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(10) Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(11) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(12) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(13) Commission--The Railroad Commission of Texas.

(14) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(15) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(16) Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(17) DOT--The United States Department of Transportation.

(18) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(19) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(20) Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(21) Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(22) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(23) *LP-Gas Safety Rules*--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(24) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(25) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(26) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(27) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(28) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(29) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(30) MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(31) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(32) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(33) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

(34) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(35) Outside instructor--An individual, other than a Commission employee, approved by AFRED to teach certain LP-gas training or continuing education courses.

(36) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(37) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(38) Property line--The boundary which designates the point at which one real property interest ends and another begins.

(39) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(40) Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(41) Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(42) Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the

structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(43) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current *LP-Gas Safety Rules*.

(44) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(45) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(46) Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(47) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(48) Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(49) Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(50) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(51) Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(52) Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(53) Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in dispensing LP-gas between containers.

(54) Transport--Any bobtail or semitrailer equipped with one or more containers.

(55) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(56) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(57) Ultimate consumer--The person controlling LP-gas immediately prior to its ignition.

§9.3 LP-Gas Report Forms

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following forms.

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| (1) LPG Form 1. | Application for License. |
| (2) LPG Form 1A. | Branch Outlet List. |
| (3) LPG Form 3. | Liquefied Petroleum Gas License. |
| (4) LPG Form 4. | Liquefied Petroleum Gas Vehicle Identification. |
| (5) LPG Form 5. | Manufacturer's Data Report. |
| (6) LPG Form 7. | Liquefied Petroleum Gas Truck Registration. |
| (7) LPG Form 8. | Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing. |
| (8) LPG Form 8A. | Report of DOT Cylinder Repair. |
| (9) LPG Form 16. | Application for Examination. |
| (10) LPG Form 16A. | Certified Employee Transfer Certification. |
| (11) LPG Form 16B. | Application for Examination Exemption by a Master Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor. |
| (12) LPG Form 16R. | Reciprocity Examination Exemption. |
| (13) LPG Form 17. | Report of Odorization of Liquefied Petroleum Gases. |
| (14) LPG Form 18. | Statement of Lost or Destroyed License. |
| (15) LPG Form 18B. | Statement of Lost or Destroyed LPG Form 4. |
| (16) LPG Form 19. | Inventory of LP-Gas Storage Facility. |
| (17) LPG Form 20. | Report of LP-Gas Incident/Accident. |
| (18) LPG Form 21. | Notice of Intent to Appear. |
| (19) LPG Form 22. | Report of LP-Gas Safety Rule Violations. |
| (20) LPG Form 23. | Statement in Lieu of Container Testing. |

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| (21) LPG Form 25. | Application and Notice of Exception to the <i>LP-Gas Safety Rules</i> . |
| (22) LPG Form 28. | Notice of Election to Self-Insure Per Rule 9.26. |
| (23) LPG Form 28A. | Bank Declarations Regarding Irrevocable Letter of Credit. |
| (24) LPG Form 500. | Application for Installation. |
| (25) LPG Form 500A. | Notice of Proposed LP-Gas Installation. |
| (26) LPG Form 501. | Completion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity. |
| (27) LPG Form 502. | Request for Commission Identification Nameplate. |
| (28) LPG Form 503. | Request for Inspection of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles. |
| (29) LPG Form 505. | Testing Procedures Certification for Category B and O Licenses. |
| (30) LPG Form 506. | Polyethylene Pipe/Tubing Heat-Fusion Certification. |
| (31) LPG Form 995. | Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance. |
| (32) LPG Form 996A. | Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance. |
| (33) LPG Form 996B. | Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance. |
| (34) LPG Form 997A. | Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability. |
| (35) LPG Form 997B. | Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance. |
| (36) LPG 998A. | Certificate of Insurance, General Liability. |
| (37) LPG 998B. | Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance. |
| (38) LPG Form 999. | Notice of Insurance Cancellation. |

§9.4 Records and Enforcement

(a) Records. Each LP-gas licensee or registrant shall retain:

- (1) records of pressure tests and leakage tests for at least five years;
- (2) a copy of all documentation submitted for an exception to an LP-gas rule pursuant to §9.27 of this title (relating to Application for an Exception to a Safety Rule), including the Commission's memorandum granting the exception, for as long as the exception is in use; and
- (3) a copy of all customer records for at least five years.

(b) Periodic inspection. The Safety Division shall formulate a plan or program for periodic evaluation or inspection of records and facilities owned, operated, or serviced by LP-gas licenses or registrants for the purpose of verifying compliance with this chapter.

(c) Scope of inspection. During normal business hours, an authorized representative of the Commission may, at any reasonable time, inspect the files, records, reports, documents, equipment, transports, and facilities of an LP-gas licensee for the purpose of verifying compliance with this chapter.

(d) Licensee and registrant obligations.

- (1) A registrant, officer, employee, or representative of an LP-gas licensee shall cooperate with the Commission and its authorized representatives in the administration and enforcement of the provisions in this chapter, in the determination of compliance with the provisions of this chapter, and in the investigation of violations, complaints alleging violations, and accidents or incidents involving LP-gas.
- (2) A registrant, officer, employee, or representative of an LP-gas licensee shall make readily available all files, records, reports, documents and information, and shall make readily accessible all company equipment, property, and facilities as the Commission or its authorized representative may reasonably require in the administration and enforcement of this chapter, and in the investigation of violations, complaints alleging violations, and accidents or incidents involving LP-gas.
- (3) Upon request by an authorized representative of the Commission, an LP-gas licensee's officer, employee, or representative, or a registrant shall provide copies of records, files, reports, documents, and information for administration and enforcement of this chapter.

§9.5 Effect of Safety Violations

(a) This section implements the provisions of Texas Natural Resources Code, §113.163, and applies to a violation that occurs on or after September 1, 2005.

(b) Except as provided by subsections (e) and (f) of this section, the Commission may not approve an application for

an initial or renewal license or registration for an exemption under this chapter if:

(1) the applicant or registrant for an exemption has violated a statute or Commission rule, order, license, permit, or certificate that relates to safety; or

(2) a person who holds a position of ownership or control in the applicant or registrant for an exemption has held a position of ownership or control in another person during the seven years preceding the date on which the application or registration for an exemption is filed and during that period of ownership or control the other person violated a statute or Commission rule, order, license, permit, or certificate that relates to safety.

(c) An applicant, registrant for an exemption, or other person has committed a violation described by subsection (b) of this section if:

(1) a final judgment or final administrative order finding the violation has been entered against the applicant, registrant for an exemption, or other person and all appeals have been exhausted; or

(2) the Commission and the applicant, registrant for an exemption, or other person have entered into an agreed order relating to the alleged violation.

(d) Regardless of whether the person's name appears or is required to appear on an application or registration for an exemption, a person holds a position of ownership or control in an applicant, registrant for an exemption, or other person if the person is:

(1) an officer, director, general partner, sole owner, or trustee of, or the owner of at least 25 percent of the beneficial interest in the applicant, registrant for an exemption, or other person; or

(2) the applicant, registrant, or other person and has been determined by a final judgment or final administrative order to have exerted actual control over the applicant, registrant, or other person.

(e) The Commission shall approve an application for a license or registration for an exemption under this chapter, if all of the following conditions, if applicable, are met:

(1) the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule to which the Commission and the applicant, registrant for an exemption, or other person have agreed;

(2) all administrative, civil, and criminal penalties have been paid or are being paid in accordance with a payment schedule to which the Commission and the applicant, registrant for an exemption, or other person have agreed; and

(3) the application or registration for an exemption complies with all other requirements of law and Commission rules.

(f) The Commission may issue a license to an applicant described by subsection (b) of this section or approve a registration for an exemption for a registrant for an exemption described by subsection (b) of this section for a term specified by the Commission if the license or registration for an exemption is necessary to remedy a violation of law or Commission rules.

(g) If the Commission is prohibited by subsection (b) of this section from approving an application for a license or a registration for an exemption or would be prohibited from doing so by that subsection if the applicant, licensee, or registrant for an exemption submitted an application or registration for an exemption, then the Commission, after notice and opportunity for a hearing, by order may refuse to renew or may revoke a license or registration for an exemption issued to the applicant, licensee, or registrant for an exemption under this chapter.

(1) In determining whether to refuse to renew or to revoke a person's license or registration for an exemption under this subsection, the Commission shall consider the person's history of previous violations, the seriousness of previous violations, any hazard to the health or safety of the public, and the demonstrated good faith of the person.

(2) If an application or registration for an exemption is denied under this subsection, the Commission shall provide the applicant or registrant for an exemption with a written statement explaining the reason for the denial.

(3) An order issued under this subsection must provide the applicant, licensee, or registrant for an exemption a reasonable period to comply with the judgment or order finding the violation before the order takes effect.

(4) The Commission's refusal to renew or revocation of a person's license or registration for an exemption under this subsection does not relieve the person of any existing or future duty under law, rules, or license or registration conditions.

(5) On refusal to renew or revocation of a person's license or registration for an exemption under this subsection, the person may not perform any activities under the jurisdiction of the Commission under this chapter, except as necessary to remedy a violation of law or Commission rules and as authorized by the Commission under a license or registration for an exemption issued under subsection (f) of this section.

(6) A fee tendered in connection with an application or registration for an exemption that is denied under this section is nonrefundable.

(7) The Commission may not revoke or refuse to renew a license or registration for an exemption under this subsection if the Commission finds that the applicant, licensee, or registrant for an exemption has fulfilled the conditions set out in subsection (e) of this section.

§9.6 Licenses and Fees

(a) A prospective licensee may apply to the License and Permit Section of the Gas Services Division (the Section) for one or more licenses specified in subsection (c)(1)-(16) of this section. Fees required to be paid shall be those established by the Commission and in effect at the time of licensing or renewal.

(b) An original manufacturer of a new motor vehicle powered by LP-gas, or a subcontractor of a manufacturer who produces a new LP-gas powered motor vehicle for the manufacturer, is not subject to the licensing requirements of this title, but shall comply with all other *LP-Gas Safety Rules*.

(c) The license categories and fees are as follows.

- (1) A Category A license for container manufacturers and/or fabricators authorizes the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is \$1,000; the renewal fee is \$600.
- (2) A Category B license for transport outfitters authorizes the subframing, testing, and sale of LP-gas transport containers, the testing of LP-gas storage containers, the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems. The original license fee is \$400; the renewal fee is \$200.
- (3) A Category C license for carriers authorizes the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems. The original license fee is \$1,000; the renewal fee is \$300.
- (4) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LP-gas systems, and motor fuel and recreational vehicle systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category D licensing. The original license fee is \$100; the renewal fee is \$70. Additionally, master or journeyman plumbers who are licensed by the Texas State Board of Plumbing Examiners or persons who are licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department of Licensing and Regulation may register with the Section as described in §9.13 of this title (relating to General Installers and Repairman Exemption). The initial registration fee is \$50; the registration renewal fee is \$20.
- (5) A Category E license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LP-gas at retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers, and except the sale and installation of LP-gas motor or mobile fuel systems that service an engine with a rating of more than 25 horsepower. The original license fee is \$750; the renewal fee is \$300.
- (6) A Category F license for cylinder filling authorizes the operation of a cylinder filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves. The original license fee is \$100; the renewal fee is \$50.
- (7) A Category G license for dispensing stations authorizes the operation of LP-gas dispensing stations filling ASME containers designed for motor or mobile fuel. The original license fee is \$100; the renewal fee is \$50.
- (8) A Category H license for cylinder dealers authorizes the transportation and sale of LP-gas in cylinders. The original license fee is \$1,000; the renewal fee is \$300.
- (9) A Category I license for service stations and cylinder filling authorizes any service station and cylinder activity set out in Category F and Category G of this section. The original license fee is \$150; the renewal fee is \$70.
- (10) A Category J license for service stations and cylinder facilities authorizes the operation of a cylinder filling

facility, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G. The original license fee is \$1,000; the renewal fee is \$300.

(11) A Category K license for distribution systems authorizes the sale and distribution of LP-gas through mains or pipes, and the installation and repair of LP-gas systems. The original license fee is \$1,000; the renewal fee is \$300.

(12) A Category L license for engine fuel authorizes the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor or mobile fuel systems. The original license fee is \$100; the renewal fee is \$50.

(13) A Category M license for recreational vehicle installers and repairmen authorizes the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers. The original license fee is \$100; the renewal fee is \$70.

(14) A Category N license for manufactured housing installers and repairmen authorizes the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing. The original license fee is \$100; the renewal fee is \$70.

(15) A Category O license for testing laboratories authorizes the testing of LP-gas containers, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is \$400; the renewal fee is \$100.

(16) A Category P license for portable cylinder exchange authorizes the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted. The original license fee is \$100; the renewal fee is \$50.

§9.7 Application for License and License Renewal Requirements

(a) No person shall perform work, directly supervise LP-gas activities, or be employed in any capacity requiring contact with LP-gas unless:

(1) that individual has taken and passed any applicable rules examination specified in §9.10 of this title (relating to Rules Examination) and in §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors);

(2) the individual is in compliance with the training and continuing education requirements beginning in §9.51 of this title (relating to General Requirements for Training and Continuing Education), except for a trainee described in §9.12 of this title (relating to Trainees);

(3) prior to performing authorized LP-gas activities in Texas, the individual is employed by a licensee or by a license-exempt entity, such as a political subdivision or a state agency; or

(4) the individual holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption) and is therefore exempt from the requirements of this subsection.

(b) A person exempt from licensing as authorized by Texas Natural Resources Code, §113.081(b), shall not engage in any LP-gas activities in commerce or in business without first obtaining a license.

(c) A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided in §113.081(g) if the entity is performing work for itself on its own behalf, but is required to be licensed to perform work for or on behalf of a second party .

(d) Licensees, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and certification cards for employees at that location available for inspection during regular business hours. In addition, licensees shall maintain a current version of the *LP-Gas Safety Rules* and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(e) Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(f) An applicant for a new license shall file with the License and Permit Section of the Gas Services Division (the Section):

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and, for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), including a 24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with the Section; and

(2) LPG Form 16 or 16B and any of the following applicable forms:

(A) LPG Form 1A if the applicant will establish any outlets;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another owner or name;

(D) LPG Form 996A or 996B if the applicant is required to carry workers' compensation; and the applicant shall also comply with §9.26 of this title (relating to Insurance Requirements);

(E) LPG Form 997A or 997B if the applicant will operate a transport or container delivery unit; and the

applicant shall also comply with §9.26; and/or

(F) LPG Form 998A or 998B if the applicant is required to carry general liability; and the applicant shall also comply with §9.26;

(3) pay the following fees:

(A) the applicable license fee specified in §9.6 of this title (relating to Licenses and Fees);

(B) transport registration fees specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units), if the applicant for license intends to operate a transport or container delivery unit; and

(C) the nonrefundable management-level rules examination fee specified in §9.10 of this title (relating to Rules Examination); and

(D) the nonrefundable fee for any required training course as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(g) An applicant for license shall not engage in LP-gas activities governed by the Texas Natural Resources Code, Chapter 113, and the *LP-Gas Safety Rules*, until it has employed a company representative and/or operations supervisor who has passed the management-level rules examination specified in §9.10 of this title (relating to Rules Examination) with a score of at least 75% and who has completed any required training in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses), or who has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption). Company representatives and operations supervisors shall also comply with §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(h) For license renewals, the Section shall notify the licensee in writing at the address on file with the Section of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, and 7, whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Section with any necessary changes clearly marked on the forms. Licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), shall include on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees). Upon receipt of

the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas related activities.

(3) If a person's license has been expired for one year or more, that person shall not renew, but shall comply with the requirements for issuance of an original license.

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Section a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title (relating to Insurance Requirements) and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(i) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with the Section for each of its outlets legible copies of:

(A) its current Department of Transportation (DOT) authorization. A licensee shall not continue to operate after the expiration date of the DOT authorization; and/or

(B) its current American Society of Mechanical Engineers (ASME) Code, Section VIII certificate of authorization.

(2) An applicant for a Category B or O license or renewal shall file with the Section a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with the Section a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107

(Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.8 Application for a New Certificate

(a) An applicant for a new certificate shall:

(1) file with AFRED a properly completed LPG Form 16 and the applicable nonrefundable rules examination fee specified in §9.10 of this title (relating to Rules Examination);

(2) pass the applicable rules examination with a score of at least 75%; and

(3) complete any required training and/or AFT in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses).

(b) An individual who holds an employee-level certificate who wishes to obtain a management-level certificate shall comply with the requirements of this section, including training and fees.

§9.9 Requirements for Certificate Renewal

(a) Active status. In order to maintain active status, certificate holders shall comply with the applicable continuing education requirements in this section.

(b) Certificate renewal date. AFRED shall notify licensees of any of their employees' pending renewals and shall notify the individual if not employed by a licensee, in writing, at the address on file with AFRED no later than March 15 of a year for the May 31 renewal date of that year.

(c) Certificate holders shall remit the nonrefundable \$35 annual certificate renewal fee to AFRED on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(1) Failure to pay the nonrefundable annual renewal fee by the deadline shall result in a lapsed certification. To renew a lapsed certification, the individual shall pay the nonrefundable \$35 annual renewal fee plus a nonrefundable \$20 late-filing fee. Failure to do so shall result in the expiration of the certificate. If a person's certification expires, that person shall immediately cease performance of any LP-gas activities authorized by the certification. If an individual's certificate has been expired for more than two years from May 31 of the year in which certification lapsed, that individual shall comply with the requirements for a new certificate.

(2) Upon receipt of the annual renewal fee and any late-filing penalty, AFRED shall verify that the individual's certification has not been suspended, revoked, or expired for more than two years. After verification, AFRED shall renew the certification and the individual may continue or resume LP-gas activities authorized by that certification.

(d) Continuing education. Certificate holders shall successfully complete the continuing education requirements as

specified in §§9.51 and 9.52 of this title (relating to General Requirements for Training and Continuing Education, and Training and Continuing Education Courses).

- (1) Failure to comply with the continuing education requirements by the assigned deadline shall result in a lapsed certification.
- (2) If a certification lapses as specified in paragraph (1) of this subsection, the individual shall pay the \$20 late fee.

§9.10 Rules Examination

(a) In addition to complying with NFPA §§4.4 and 11.2, an individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

(1) Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion.

(2) Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I and J may be administered on any scheduled examination day.

(3) The Commission may not issue a certification card to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(4) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

(5) Exam fees.

(A) The nonrefundable management-level rules examination fee (for company representatives and operations supervisors) is \$70.

(B) The nonrefundable employee-level rules examination fee (for employees other than company representatives or operations supervisors) is \$40.

(C) The nonrefundable examination fee shall be paid each time an individual wishes to take the examination.

(D) Individuals who register and pay for a Category E, F, G, I or J training course as specified in §9.51(f)(2)(A) of this title (relating to General Requirements for Training and Continuing Education) shall pay the charge specified for the applicable examination.

(6) Time limits.

(A) Effective June 1, 2008, an applicant shall complete the examination within the time limit specified in this paragraph.

(i) The Category E management-level (closed book), Bobtail employee-level (open book), and Service and Installation employee-level (open book) examinations shall be limited to three hours.

(ii) All other categories of management-level examinations and all other employee-level examinations shall be limited to two hours.

(B) The examination proctor shall be the official timekeeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(7) The Commission may offer employee-level LP-Gas Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel Dispensing examinations in Spanish or English.

(b) Table 1 of this subsection specifies the examinations offered by the Commission.

Employee-Level Examination Requirements for Licenses by Category

Table 1: 16 TAC §9.10(b) (Revised February 2008)

License Categories	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Employee Level Exams Offered:																
1. Bobtail Exam - See §9.10(b)(1)					*											
2. Transport Driver Exam - See §9.10(b)(2)			*		*											
3. On-Road Motor Fuel Exam - See §9.10(b)(3)					*							*				
4. Non-Road Motor Fuel Exam - See §9.10(b)(4)					*							*				
5. Mobile Fuel Exam - See §9.10(b)(5)					*							*				
6. DOT Cylinder Filling Exam - See §9.10(b)(6)					*	*			*	*						
7. Recreational Vehicle Exam - See §9.10(b)(7)					*								*			
8. Service and Installation Exam - See §9.10(b)(8)				*	*					*				*		
9. Appliance Service and Installation Exam - See §9.10(b)(9)				*	*									*		
10. Motor/Mobile Fuel Dispensing Exam - See §9.10(b)(10)					*		*		*	*						

(1) The Bobtail examination qualifies an individual to operate a bobtail, to perform all the LP-gas activities authorized by the Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel examinations, and to perform leak checks and pressure tests, light appliances, and adjust regulators and thermocouples. The Bobtail examination does not authorize an individual to connect or disconnect containers, except when performing a pressure test or removing a container from service.

(2) The Transport Driver examination qualifies an individual to operate an LP-gas transport equipped with a container of more than 5,000 gallons water capacity, to load and unload LP-gas, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to operate a bobtail or to install or repair transport systems.

(3) The On-Road Motor Fuel examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways. The On-Road Motor Fuel examination does not authorize an individual to fill LP-gas motor or mobile fuel containers.

(4) The Non-Road Motor Fuel examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on vehicles such as industrial forklift trucks and lawnmowers. The Non-Road Motor Fuel examination does not authorize an individual to fill LP-gas motor fuel containers or cylinders.

(5) The Mobile Fuel examination qualifies an individual to install LP-gas mobile fuel containers, cylinders, and LP-gas mobile fuel systems, and replace container valves on mobile fuel equipment such as trailers, catering trucks,

mobile kitchens, tar kettles, hot oil units, auxiliary engines and similar equipment. The Mobile Fuel examination does not authorize an individual to fill LP-gas mobile fuel containers or cylinders.

(6) The DOT Cylinder Filling examination qualifies an individual to inspect, requalify, fill, disconnect and connect cylinders, including industrial truck cylinders, and to exchange cylinder valves. The DOT Cylinder Filling examination does not authorize an individual to fill ASME motor or mobile fuel containers.

(7) The Recreational Vehicle examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems on recreational vehicles. The Recreational Vehicle examination does not authorize an individual to fill LP-gas containers.

(8) The Service and Installation examination qualifies an individual to perform all LP-gas activities related to stationary LP-gas systems, including LP-gas containers, appliances, and stationary engines. The Service and Installation examination does not authorize an individual to fill containers or operate an LP-gas transport.

(9) The Appliance Service and Installation examination qualifies an individual to perform all LP-gas activities related to appliances, including installing, repairing and converting appliances, installing and repairing connectors from the appliance gas stop through the venting system, and to perform leak checks on the new or repaired portion of an LP-gas system. The Appliance Service and Installation examination does not authorize an individual to install a container, install or repair piping upstream of and including the appliance gas stop, or to install, repair or adjust regulators.

(10) The Motor/Mobile Fuel Dispensing examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Dispensing examination does not authorize an individual to fill LP-gas cylinders or ASME stationary containers.

(c) Within 15 calendar days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing service, AFRED shall notify the individual of the examination results within 14 days of the date AFRED receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED shall notify the individual of the reason for the delay before the 90th day. AFRED may require a testing service to notify an individual of the individual's examination results.

(2) Successful completion of any required examination shall be credited to and accrue to the individual.

(3) An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.

(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination.

(1) Any individual who fails an examination administered by the Commission only at the Austin location may retake the same examination only one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's designee.

§9.11 Previously Certified Individuals

A licensee, an ultimate consumer, or a state agency, county, municipality, school district, or other governmental subdivision shall notify AFRED when a certified individual is hired by filing LPG Form 16A and a nonrefundable \$10 fee with AFRED within 10 calendar days, or in lieu of that form, the \$10 fee and a written notice including the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, names of the newly-hired certified employee's previous and new employers, and types of LP-gas work to be performed by the newly-hired certified employee. A state agency, county, municipality, school district, or other governmental subdivision is exempt from this subsection if such entity chooses not to certify its employees who perform LP-gas activities.

§9.12 Trainees

(a) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination as specified in §9.10 of this title (relating to Rules Examination) subject to the following conditions. The trainee shall be directly and individually supervised at all times by an individual who has successfully completed the Commission's rules examination for the areas of work being performed by the trainee.

(b) A trainee who successfully completes the rules examination shall comply with the training requirements for a new certificate in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses).

(c) A trainee who fails the rules examination shall immediately cease to perform any LP-gas related activities covered by the examination failed.

(d) A trainee who has been in training for a total period of 45 calendar days, in any combination and with any number of employers, shall cease to perform any LP-gas activities for which he or she is not currently certified.

§9.13 General Installers and Repairman Exemption

(a) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department of Licensing and Regulation may register with the License and Permit Section of the Gas Services Division (the Section) and be granted an exemption to the Category D licensing and examination

requirements (including insurance, and training and continuing education) provided the applicant:

- (1) holds an active license in compliance with Texas Occupations Code, §1302.260, relating to Issuance and Term of License, and §1301.351, relating to License, Endorsement, or Registration Required;
- (2) submits a legible photocopy of a current Air Conditioning and Refrigeration Contractor or Master or Journeyman Plumbers certificate;
- (3) submits a legible photocopy of a picture state-issued identification card or driver's license;
- (4) submits a properly completed LPG Form 16B; and
- (5) pays the \$50 registration fee.

(b) This exemption does not become effective until the registration/examination exemption certificate is issued by the Section.

(c) The registration/examination exemption accrues to the individual and is nontransferable.

(d) Any individual granted such exemption shall maintain registered status at all times. Upon failure to maintain registered status, the individual shall immediately cease all affected LP-gas activities until proper status has been regained.

(e) In order to maintain an exemption, each individual issued a registration/examination exemption certificate shall pay a \$20 annual renewal fee to the Section on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease all LP-gas activities until the exemption has been renewed. To renew a lapsed exemption, the applicant shall pay the \$20 annual renewal fee plus a \$20 late-filing fee. Failure to do so shall result in the expiration of the registration/examination exemption. If an individual's examination exemption has been expired for more than two years, that individual shall complete all requirements necessary to apply for a new exemption.

(f) Any individual who is issued this exemption agrees to comply with the current edition of the *LP-Gas Safety Rules*. In the event the exempt individual surrenders, fails to renew, or has the license revoked either by the Texas State Board of Plumbing Examiners or the Department of Licensing and Regulation, that individual shall immediately cease performing any LP-gas activities granted by this section. The exemption certificate shall be returned immediately to the Section and all rights and privileges surrendered.

§9.16 Hearings for Denial, Suspension, or Revocation of Licenses or Certificates

(a) The Commission may deny, suspend, or revoke a license or certificate for any individual who fails to comply with the *LP-Gas Safety Rules*.

(1) If the Commission determines that an applicant for license, certificate, or renewal has not met the requirements of the *LP-Gas Safety Rules*, the Commission shall notify the applicant in writing of the reasons for the proposed denial. In the case of an applicant for license or certificate, the notice shall advise the person that the application may be resubmitted within 30 calendar days of receipt of the denial with all cited deficiencies corrected, or, if the person disagrees with the Commission's determination, that person may request in writing a hearing on the matter within 30 calendar days of receipt of the notice of denial.

(2) If a person resubmits the application for license or license renewal within 30 calendar days of receipt of the denial with all deficiencies corrected, the License and Permit Section of the Gas Services Division (the Section) shall issue the license or license renewal.

(b) Hearing regarding denial of license or license renewal.

(1) An applicant receiving a notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought. The request for hearing shall be in writing, shall refer to the specific requirements the applicant claims were met, and shall be submitted to the Section within 30 calendar days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, the Section shall forward the request for a hearing to the Office of General Counsel for the purpose of scheduling a hearing within 30 calendar days following the receipt of the request for hearing to determine the applicant's compliance or noncompliance with the licensing requirements for the category or categories of license sought.

(3) If, after hearing, the Commission finds the applicant's claim has been supported, it shall enter an order in its records to that effect, noting the category or categories of license for which the applicant is entitled to be licensed, and the license or renewal shall be issued.

(4) If, after hearing, the Commission finds that the applicant is not qualified for the license or license renewal in the category or categories of license sought, it shall likewise enter an order in its records to that effect, and no license or renewal shall be issued to the applicant.

(c) Suspension or revocation of licenses or certifications.

(1) If the Section or the Safety Division (the Division) finds by means including but not limited to inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or noncompliance with the Texas Natural Resources Code, Chapter 113, or the *LP-Gas Safety Rules*, the Section or the Division shall notify the licensee or certified person of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 calendar days or more than 45 calendar days after the licensee or certified person receives the notice by which the violation or noncompliance shall be corrected or discontinued. If the Section or the Division determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, the Section or the Division may notify the licensee or certified person orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, the Section or the

Division shall follow it with written notification no later than five business days after the oral notification.

(3) The licensee or certified person shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or shall request an extension of time in which to comply. The request for extension of the time to comply shall be received by the Section or the Division within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses and certifications.

(1) If a licensee or certified person disagrees with the determination of the Section or the Division under this section, that person may request a public hearing on the matter to be conducted in compliance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the *LP-Gas Safety Rules*. The request shall be in writing, shall refer to the specific rules or statutes the licensee or certified person claims to have complied with, and shall be received by the Section or the Division within 30 calendar days of the licensee's or certified person's receipt of the notice of violation or noncompliance. The Section or Division shall forward the request for hearing to the Office of General Counsel.

(2) If the Section or the Division determines that the licensee or certified person may not comply within the specified time, the Section or the Division may call a public hearing to be conducted in compliance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and any other applicable rules.

§9.17 Designation and Responsibilities of Company Representatives and Operations Supervisors

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with the License and Permit Section of the Gas Services Division (the Section) designating the company representative for the license and/or LPG Form 1A designating the operations supervisor for each outlet.

(2) A licensee may have more than one company representative.

(3) An individual may be operations supervisor at more than one outlet provided that :

(A) each outlet has a designated LP-gas certified employee responsible for the LP-gas activities at that outlet;

(B) the certified employee's and/or operations supervisor's telephone number is posted at the outlet on a sign with lettering at least 3/4-inch high, visible and legible at all times; and

(C) the certified employee and/or the operations supervisor monitors the telephone number and responds to calls during normal business hours.

(4) The company representative may also serve as operations supervisor for one of the licensee's outlets provided that the individual meets both the company representative and the operations supervisor requirements in this section.

(5) A licensee shall immediately notify the Section in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

(A) A licensee shall cease all LP-gas activities if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted an extension of time in which to comply as specified in subsection (g) of this section.

(B) A licensee shall cease LP-gas activities at an outlet if, at the termination of its operations supervisor for that outlet, there is no other qualified operations supervisor at that outlet who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted an extension of time in which to comply as specified in subsection (g) of this section.

(b) Company representative. A company representative shall comply with the following requirements:

(1) be an owner or employee of the licensed entity, in the case of a licensee other than a Category P licensee;

(2) be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

(3) have a working knowledge of the licensee's LP-gas activities to insure compliance with the *LP-Gas Safety Rules*;

(4) pass the appropriate management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses), or in the case of an applicant for a Category D license, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption);

(5) comply with the work experience or training requirements in subsection (g) of this section, if applicable;

(6) be directly responsible for all employees performing their assigned LP-gas activities, unless an operations supervisor is fulfilling this requirement; and

(7) submit any additional information as deemed necessary by the Section.

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall comply with the following requirements:

(1) be an owner or employee of the licensee;

(2) pass the applicable management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses) or, in the case of a Category D license only, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption), before commencing or continuing the licensee's LP-gas activities at the outlet; and

(3) be directly responsible for actively supervising the LP-gas activities of the licensee at the designated outlet.

(d) In lieu of an operations supervisor requirement for a Category P license, the Category E, J, or other licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(1) prepare a manual containing, at a minimum, the following:

(A) a description of the basic characteristics and properties of LP-gas;

(B) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(C) complete instructions on how to properly transport cylinders in vehicles;

(D) a prohibition against moving or installing cylinder cages at any store location;

(E) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(F) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(G) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(H) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper distancing of cylinders from combustible materials and sources of ignition;

(I) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(J) a requirement that any accidents be reported to the Category E, J, or other licensee who prepares the manual, and detailed procedures for reporting any accidents;

(K) all Railroad Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(L) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(M) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(N) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(2) provide a copy of the manual for display at each outlet or location of the Category P licensee;

(3) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee and maintain records regarding the employees of the Category P licensee who have been trained; and

(4) complete all three requirements of this subsection, for existing Category P licensees, prior to October 25, 2001, and within 45 days of any Category P license obtained on or after September 1, 2001.

(e) The Category P licensee is responsible for the following:

(1) insuring that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(2) insuring that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon their request.

(f) Category P licensees. The company representative requirement for a Category P licensee may be satisfied by employing a Category E, J, or other licensee company representative if the Category E, J, or other company representative is authorized by the Category P licensee to assign and remove any employee who does not comply with the *LP-Gas Safety Rules* or who performs any unsafe LP-gas activities.

(g) Work experience substitution for Category E, F, G, I and J. The assistant director for the Section may, upon written request, allow a conditional qualification for a Category E, F, G, I or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I or J management-level training course, or a subsequent Category E, F, G, I or J management-level training course agreed on by the assistant director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the assistant director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the assistant director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and Continuing Education Courses) prior to the Section issuing a certificate.

§9.18 Reciprocal Examination Agreements with Other States

(a) The Alternative Fuels Research and Education Division (AFRED) may accept the examination requirements for LP-gas transport drivers from other states provided that the qualifying state has entered into a reciprocal agreement with Texas as specified in this section.

(b) A state that is interested in a reciprocal agreement with Texas shall provide a copy of its examination used to qualify transport drivers to AFRED. AFRED shall provide a copy of the Texas examination to the other state's LP-gas authority. The states shall review the materials to ensure that they contain substantially equivalent requirements. If each state accepts the requirements of the other state, both states shall sign the reciprocal agreement.

(1) The reciprocal agreement shall be in the form of a letter on the official letterhead of the state requesting the reciprocal agreement. The letter shall be signed and dated by an official representative of the LP-gas authority in both states. For Texas, the official representative shall be the AFRED director or the director's delegate.

(2) The reciprocal agreement shall remain in effect until either state requests a change and may be terminated by either state at any time.

(3) If either state revises its examination or related requirements, it shall immediately notify the other state by submitting the revised examination or related requirements.

(4) AFRED shall maintain a current list of all states participating in reciprocal agreements, a list of participating states' applicable fees, and a list of all individuals who have received a reciprocal examination exemption.

(5) Copies of examinations from other participating states are subject to or excepted from required disclosure in accordance with Chapter 552 of the Government Code.

(c) Individuals who apply for a reciprocal examination exemption shall pay the applicable fees required by each state in exchange for exemption from examination requirements.

(1) Individuals from other participating states shall remit to AFRED the nonrefundable employee-level rules examination fee and the annual certificate renewal fee specified in §9.10 and §9.9 of this title (relating to Rules Examination, and Requirements for Certificate Renewal, respectively).

(2) Individuals from Texas who apply for a reciprocal examination exemption in other states shall pay to the other state any fees specified by that state.

(d) Applicants for a reciprocal examination exemption shall provide the following information to AFRED to verify that they are properly and currently certified in their state:

(1) a state-issued certification card, license, letter, or similar document which shall clearly show a valid date and an indication that the individual passed the examination. Maintaining valid certification in the other state is required for continuing reciprocity in Texas; and

(2) LPG Form 16R. Applicants from other states shall provide their Social Security numbers to AFRED for purposes of record-keeping and to comply with the requirements in Texas Family Code Annotated §231.302(c) (Vernon

1996), which mandates disclosure of Social Security numbers by applicants to assist in the administration of laws relating to child support. Social Security numbers are subject to or excepted from disclosure to the public in accordance with Texas Government Code, Chapter 552.

(3) Texas applicants shall provide copies of their AFRED-issued wallet certification cards showing their annual certification as their written proof when applying to other states for reciprocal examination exemptions.

(e) Individuals from other states who apply for a reciprocal examination exemption from Texas either shall be employed by a company that is properly and currently licensed in Texas or shall themselves fulfill all other licensing requirements in the *LP-Gas Safety Rules*.

(f) Individuals who obtain reciprocal examination exemptions are liable under the laws and rules of the state in which they perform the LP-gas activities.

(1) Each state shall be responsible for its own enforcement actions against individuals with reciprocal examination exemptions.

(2) If a participating state has an enforcement action against an individual with a reciprocal examination exemption, that state shall inform the other state within 14 calendar days of initiating the action.

(3) A state may suspend, revoke, or deny a reciprocity renewal or an individual's reciprocal examination exemption, as specified in §9.16 of this title (relating to Hearings for Denial, Suspension, or Revocation of Licenses or Certificates) and shall notify the other state and all individuals holding the reciprocal examination exemption within 14 calendar days of such suspension, revocation, or denial.

(g) Upon the effective date of this section, AFRED may issue reciprocal examination exemptions only for LP-gas transport driver examinations. For purposes of reciprocal agreements, a "transport" is defined as a cargo tank motor vehicle of more than 5,000 gallons water capacity.

§9.21 Franchise Tax Certification and Assumed Name Certificates

(a) An applicant for an original or renewal license that is a corporation or limited liability company shall be in good standing with the Office of the Comptroller of Public Accounts of the State of Texas.

(b) All applicants for license shall list on LPG Form 1 all names under which LP-gas related activities requiring licensing are to be conducted. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the secretary of state's office with the Section.

§9.22 Changes in Ownership, Form of Dealership, or Name of Dealership

(a) Changes in ownership which require a new license.

(1) Transfer of dealership or outlet by sale, lease, or gift. The purchaser, lessee, or donee of any dealership or outlet shall have a current and valid license authorizing the LP-gas activities to be performed at the dealership or outlet or shall apply for and be issued an LP-gas license prior to engaging in any LP-gas activities which require a license. The purchaser, lessee, or donee shall notify the License and Permit Section of the Gas Services Division (the Section) by filing a properly completed LPG Form 1 prior to engaging in any LP-gas activities at that dealership or outlet which require an LP-gas license.

(2) Other changes in ownership. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner. Upon the death of a sole proprietor or partner, or the dissolution of a corporation or partnership, or any change in members of a partnership, or other change in ownership not specifically provided for in this section, an authorized representative of the previously existing dealership or of the successor in interest shall notify the Section in writing and shall immediately cease all LP-gas activities of the previously existing dealership which require an LP-gas license and shall not resume until the Section issues an LP-gas license to the successor in interest.

(b) Change in dealership business entity. When a dealership converts from one business entity into a different kind of business entity, the resulting entity shall have a current and valid license authorizing the LP-gas activities to be performed or shall apply for and be issued a license before engaging in any LP-gas activities which require an LP-gas license and shall immediately notify the Section in writing of the change in business entity.

(c) Dealership name change. A licensee which changes its name shall not be required to obtain a new license but shall immediately notify the Section as follows prior to engaging in any LP-gas activities under the new name. The licensee shall file:

(1) an amended LPG Form 1 and, if applicable, Form 1A;

(2) a copy of the licensee's business documents reflecting the name change, such as amendments to the articles of incorporation or assumed name filings;

(3) certificates of insurance or affidavits in lieu of insurance (where permitted by §9.26 of this title (relating to Insurance Requirements) or both;

(4) an amended LPG Form 7 to transfer any LP-gas transport or container delivery unit, including any fees specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units); and

(5) an amended LPG Form 19, if applicable, to specify storage container inventory.

(d) Company representative and operations supervisor. In all changes of ownership, form of dealership, or name of dealership, the resulting entity shall have a properly certified company representative for the license and an operations supervisor, if required, at each outlet and as outlined in §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(e) In the event of a death of a sole proprietor or partner, the assistant director for the Section may grant a temporary exception not to exceed 30 calendar days to the examination requirement for company representatives and operations supervisors. An applicant for a temporary exception shall agree to comply with all applicable safety requirements.

§9.23 Limitation/Avoidance of Licensee Liability

- (a) An LP-gas licensee shall not limit or avoid its liability or that of its insurer for damages proximately resulting from any negligent act or acts of the licensee.
- (b) An attempt to limit or avoid liability before the negligent act or acts, through indemnity clauses or otherwise, shall be null and void.
- (c) This section shall not apply to negotiations or settlements, or both, made subsequent to a licensee's negligent act or acts.
- (d) To the extent that any damage occurring during or subsequent to any of the following acts does not proximately result from any negligent act of the licensee, the licensee may limit liability based upon:
- (1) unauthorized, unsafe, or improper application of LP-gas or any LP-gas system or equipment by any user or other person;
 - (2) any use or operation of LP-gas or any LP-gas system or equipment contrary to specific representations made by any user or other person to an LP-gas licensee during or preceding installation or servicing of such LP-gas system or equipment and relied upon by such LP-gas licensee in selecting, designing, installing, or servicing such system or equipment; or
 - (3) any modification, change, installation, alteration, tampering, or other action by any unlicensed person to or upon any LP-gas system or equipment.

§9.26 Insurance and Self-Insurance Requirements

- (a) LP-gas licensees or applicants for license shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (i) of this section. Before the License and Permit Section of the Gas Services Division (the Section) grants or renews a license, an applicant shall submit either:
- (1) A valid certificate of insurance; an insurance Acord™ form; or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or
 - (2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i) of this section.
- (b) Each licensee shall give the Section written notice 30 calendar days before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by the Section.
- (c) A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employer's liability

insurance, or alternative accident and health insurance coverage. The licensee or applicant for license shall file the required insurance certificate with the Section before hiring any person as an employee.

Table 1: 16 TAC §9.26(a)

CATEGORY OF LICENSE	TYPE OF COVERAGE	FORM REQUIRED	STATEMENT IN LIEU OF REQUIRED INSURANCE FILING
All Except P	Workers' Compensation, including Employer's Liability or Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least \$150,000; accidental death benefits in the principal amount of at least \$100,000; loss of limb or sight on a scale based on principal amount of at least \$100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	LPG Form 996A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 996B
A, B, C, E, O, H, J	General liability coverage including: premises and operations in an amount of at least \$300,000 per occurrence and \$300,000 aggregate	LPG Form 998A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 998B
A, B, C, E, O	Completed operations or products liability insurance, or both, in an amount of at least \$300,000 aggregate	LPG Form 998A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 998B
D, F, G, I, K, L, M, N, P	General liability coverage including: premises and operations in an amount of at least \$25,000 per occurrence with a \$50,000 policy aggregate	LPG Form 998A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 998B
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum \$500,000 (\$300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	LPG Form 997A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 997B

(d) A licensee, applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a certificate of motor vehicle bodily injury and property damage insurance, if this certificate is not otherwise required. The licensee or applicant for a license shall file the required insurance certificate with the Section before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

(e) A licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations or products liability insurance, or both, may file LPG Form 998B in lieu of a certificate of completed operations and/or products liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section before engaging in any operations that require completed operations and/or products liability insurance.

(f) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of a certificate of general liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section before engaging in any operations that require general liability insurance.

(g) A licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

(h) A state agency or institution, county, municipality, school district, or other governmental subdivision shall meet the requirements of this section for workers' compensation, general liability, and/or motor vehicle liability insurance by filing LPG Form 995 with the Section as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §113.097.

(i) Self-insurance requirements.

(1) This subsection applies to a licensee's or a license applicant's motor vehicle bodily injury and property damage liability coverage and general liability coverage. A licensee or license applicant shall not elect to self-insure for more than 12 consecutive months, exclusive of the six-month period for which a letter of credit is required to remain in effect pursuant to paragraph (4) of this subsection.

(2) A licensee or license applicant desiring to self-insure shall file with the Section a properly completed LPG Form 28, Notice of Election to Self-Insure Per Rule 9.26 (created 11/02) and a properly completed LPG Form 28-A, Bank Declarations Regarding Irrevocable Letter of Credit (created 11/02). The licensee or license applicant shall attach to the LPG Form 28-A any documentation necessary to show that the bank issuing the irrevocable letter of credit meets the requirements in paragraph (5)(E) of this subsection.

(3) The irrevocable letter of credit shall be in an amount that is no less than the total of all minimum insurance coverage amounts required by the Commission in the Table in subsection (a) of this section for every coverage for which the licensee or license applicant seeks to self-insure.

(4) The irrevocable letter of credit shall be valid until the expiration date shown on LPG Form 28, which shall be no sooner than six months after the earlier of either:

- (A) the expiration date of the license; or
 - (B) the effective date of insurance coverage.
- (5) A letter of credit commemorated by LPG Form 28-A shall:
- (A) be irrevocable during its term;
 - (B) be payable to the Commission or Commission's designee in part or in full as directed by the Commission in compliance with an order from state or federal court;
 - (C) include a guarantee from the bank that issues the letter of credit (irrevocable confirmed credit);
 - (D) not apply to the licensing requirements for worker's compensation insurance including employers liability insurance or alternative accident/health insurance; and
 - (E) be issued by a federally insured bank authorized to do business in the State of Texas which meets or exceeds the following requirements:
 - (i) Bank management shall attest that the bank is not subject to any outstanding written enforcement action, agreement, order, capital directive, or prompt corrective action directive issued by a state or federal bank regulatory agency;
 - (ii) The bank shall be "well capitalized" as defined in federal bank regulatory statutes with:
 - (I) a total risk-based capital ratio of 10% or greater;
 - (II) a Tier 1 risk-based capital ratio of 6% or greater; and
 - (III) a leverage ratio of 5% or greater.
 - (iii) The bank shall have received a satisfactory or better rating at its most recent Community Reinvestment Act (CRA) examination by a federal bank regulatory agency;
 - (iv) The bank management shall attest that the full amount of the letter of credit, when added to other indebtedness of the licensee or applicant for license to the bank, is within the bank's regulatory lending limit; and
 - (v) The issuing bank shall be in good standing with the State Comptroller's Office regarding the payment of franchise taxes and other obligations to the state.
- (6) Within 30 days of the occurrence of any incident or accident involving the business activities of a self-insured LP-gas licensee that results in property damage or loss and/or personal injuries, the licensee shall notify the Railroad Commission, Safety Division, in writing of the incident. The licensee shall include in the notification a list

of the names and addresses of any individuals known to the licensee who may have suffered losses in the incident. The licensee shall also provide written notice to all such individuals of the licensee's status as being self-insured and of the expiration date of the licensee's letter of credit.

(j) Each licensee shall promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i) of this section. Failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

§9.27 Application for an Exception to a Safety Rule

(a) A person may apply for an exception to the provisions of this chapter by filing LPG Form 25 along with supporting documentation, and a \$50 filing fee with the Safety Division (the Division).

(b) The application shall contain the following:

(1) the section number of any applicable rules;

(2) the type of relief desired, including the exception requested and any information which may assist the Division in comprehending the requested exception;

(3) a concise statement of facts which support the applicant's request for the exception, such as the reason for the exception, the safety aspects of the exception, and the social and/or economic impact of the exception;

(4) for all stationary installations, regardless of size, a description of the acreage and/or address upon which the subject of the exception will be located. The description shall be in writing and shall include:

(A) a site drawing;

(B) sufficient identification of the site so that determination of property boundaries may be made;

(C) a plat from the applicable appraisal district indicating the ownership of the land; and

(D) the legal authority under which the applicant, if not the owner, is permitted occupancy.

(5) the name, business address, and telephone number of the applicant and of the authorized agent, if any;

(6) an original signature in ink by the party filing the application or by the authorized representative;

(7) a list of the names and addresses of all interested entities as defined in subsection (c) of this section.

(c) Notice of the application for an exception to a safety rule.

(1) The applicant shall send a copy of LPG Form 25 by certified mail, return receipt requested, or otherwise delivered to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form or application is filed with or sent to the Division. The applicant shall include a notice to the affected entities that any objection shall be filed with the Division within 18 calendar days of postmark or other delivery of the application. The applicant shall file all return receipts with the Division as proof of notice.

(2) If an exception is requested for a stationary site, affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) persons and businesses owning or occupying property adjacent to the site;

(B) the city council or fire marshal, if the site is within municipal limits; and

(C) the county Commission, if the site is not within any municipal limits.

(3) If an exception is requested for a motor or mobile fuel installation, affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) the Texas Department of Public Safety; and

(B) all processed gas loading and unloading facilities utilized by the applicant.

(4) The Division may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed at the Division within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect of public health, safety, or welfare. The Commission may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) The Division shall review the application within 21 business days of receipt of the application. If the Division does not receive any objections from any affected entities as defined in subsection (c) of this section, the director of the Division or the director's delegate may administratively grant the exception if the director determines that the installation, as proposed, does not adversely affect the health or safety of the public. The Division shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. The Division shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the director of the Division or the director's delegate denies the exception, the Division shall notify the applicant in writing, outlining the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a \$30 resubmission fee, or may request a hearing on the matter. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when the Division receives an objection as set out in subsection (d) from any affected entity, or when the applicant requests one following an administrative denial. The Division shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the

date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the *LP-Gas Safety Rules*.

(g) Applicants intentionally submitting incorrect or misleading information are subject to penalties in the Texas Natural Resources Code, §91.143, and the filing of incorrect or misleading information shall be grounds for dismissing the application with prejudice.

(h) After hearing, exceptions to this chapter may be granted by the Commission if the Commission finds that granting the exception for the installation, as proposed, will not adversely affect the safety of the public.

(i) A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by the Division of an incomplete request. The applicant may resubmit an application request.

§9.28 Reasonable Safety Provisions

If an LP-gas installation, equipment, or appurtenances not specifically covered by the *LP-Gas Safety Rules* has been or will be installed, the Safety Division shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with the Division's determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until the Commission has determined that the installation is safe for LP-gas service.

§9.31 LP-Gas Regional Supply Emergency Response

(a) The purpose of this section is to develop a distribution plan to minimize the severity of disruptions in the supplies of LP-gas in various regions of Texas. This section outlines the Commission's mechanisms for both determining that a regional LP-gas shortage exists and responding to a regional LP-gas shortage emergency.

(b) The Commission may determine that an LP-gas supply emergency exists within designated counties of the state. The Commission may also determine the duration of the regional supply emergency. The Commission shall issue notice when it has determined that an LP-gas regional supply emergency exists and when it determines that the LP-gas regional supply emergency has ended or will end. In determining whether an LP-gas regional supply emergency exists, the Commission may consider any relevant information, including but not limited to the following:

- (1) notification from LP-gas storage facilities as appropriate, including, but not limited to, storage facilities located at gas processing plants, pipeline terminals, petroleum refineries, and inland salt domes, that they are attaining maximum LP-gas withdrawal rates;
- (2) notification from LP-gas licensees that sufficient supplies are not available locally or that curtailments are anticipated; and
- (3) weather data.

(c) Upon the Commission finding that an LP-gas regional supply emergency exists, the Commission may request

selected LP-gas loading rack operators to give first priority in loading to LP-gas transport vehicles whose cargoes are bound for counties designated as within the region subject to the LP-gas supply emergency until the regional supply emergency has been determined to be abated.

§9.32 Consumer Safety Notification

(a) A person holding a license to install or repair an LP-gas system who sells, installs, or repairs an LP-gas system, piping, or other equipment that is part of a system, or an appliance that is connected or attached to a system shall provide the following notice to the purchase or owner of the system, piping, or other equipment or appliance: "WARNING: Flammable Gas. The installation, modification, or repair of an LPG system by a person who is not licensed or registered to install, modify, or repair an LPG system may cause injury, harm, or loss. Contact a person licensed or registered to install, modify, or repair an LPG system. A person licensed to install or repair an LPG system may not be liable for damages caused by the modification of an LPG system by an unlicensed person except as otherwise provided by applicable law."

(b) A person holding a license to install or repair an LP-gas system who sells, installs, or repairs an LP-gas system, piping, or other equipment that is part of a system, or an appliance that is connected or attached to a system shall document the notice requirements in subsection (a) of this section.

§9.35 Written Procedure for LP-Gas Leaks

(a) In addition to NFPA 58 §14.4.9.1, each licensee shall maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee shall ensure that all employees are familiar with the procedure and shall authorize employees to implement the procedure without management oversight. The written procedure shall be available to emergency response agencies as specified in NFPA 58, §6.25.2, and as stated in Table 1 of §9.403 of this title, (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements).

(b) The written procedures shall include the classification of the leak grade as defined in §9.2 of this title (relating to Definitions).

(c) The procedures shall include the appropriate action criteria for the classification of leak determined according to the table in this section. The examples of leak conditions are provided as guidelines and are not exclusive. The judgment of the company personnel at the scene is of primary importance in determining the grade assigned to a leak.

Table 1: 16 TAC §9.35(c)
LP-GAS LEAK CLASSIFICATION

Classification	Action Criteria	Examples
Grade 1	Requires prompt action to protect life and property. The prompt action in some instances may require one or more of the following: 1. Implementation of company emergency plan 2. Evacuating premises 3. Blocking off an area 4. Rerouting traffic 5. Eliminating sources of ignition 6. Venting the area 7. Stopping the flow of gas by closing valves or other means 8. Notifying police and fire departments	1. Any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard 2. Escaping gas that has ignited 3. Any indication of gas which has migrated into or under a building or into a tunnel 4. Any leak that can be seen, heard or felt and which is in a location that may endanger the general public or property
Grade 2	Many Grade 2 leaks, because of their location and magnitude, can be scheduled for repair on a normal routine basis with periodic re-inspection as necessary. Product may not be introduced into a container with a Grade 2 leak on a container appurtenance until the leak is repaired.	Any leak which, in the judgment of operating personnel at the scene, is NOT regarded as an immediate hazard shall be scheduled for repair, where no migration of gas into or under a building or into a tunnel is evident

§9.36 Report of LP-Gas Incident/Accident

(a) In addition to NFPA 58 §14.4.3.3, at the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing the equipment of an installation shall notify the Safety Division by telephone of any event involving LP-gas which:

- (1) caused a death or any personal injury requiring hospitalization; or
- (2) required taking an operating facility out of service; or
- (3) resulted in unintentional gas ignition requiring an emergency response; or
- (4) involved the LP-gas installation on any vehicle propelled by or transporting LP-gas; or
- (5) caused an estimated damage to the property of the operator, others, or both totaling \$5,000 or more, including gas loss; or

(6) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest even though it does not meet paragraphs (1) - (5) of this subsection; or

(7) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or the United States Department of Transportation).

(b) The telephonic notice required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 and shall include the following:

- (1) name of reporting operator;
- (2) location of leak or incident;
- (3) time of incident;
- (4) fatalities and/or personal injuries;
- (5) phone number of operator;
- (6) status of incident regarding immediate hazard; and
- (7) other significant facts relevant to the incident.

(c) Following the initial telephone report, the LP-gas licensee who made the telephone report shall submit a properly completed LPG Form 20 to the Division. The report shall be postmarked within 14 calendar days of the date of initial notification to the Division, or within five business days of receipt of the fire department's report, whichever occurs first, unless the Division grants authorization for a longer period of time when additional investigation or information is necessary.

(d) Within five business days of receipt, the Division shall review LPG Form 20 and notify in writing the person submitting the LPG Form 20 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of LP-gas activities at the involved location.

(e) In the case of an accident or incident at a Category P licensee's location, the Category P licensee shall immediately notify the Category E, J, or other licensee who supplies cylinders to the Category P licensee and the Category E, J, or other licensee shall be responsible for making the accident or incident report to the Division as specified in this section.

§9.37 Termination of LP-Gas Service

(a) If the Safety Division (the Division) determines that any LP-gas container or installation constitutes an immediate danger to the public health, safety, and welfare, the Division shall require the immediate removal of liquid and vapor LP-gas and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include appliances, equipment, or any part of the system including the servicing container. A warning

tag shall be installed by the Division until the unsafe condition is remedied. Once the unsafe condition is corrected, the tag may be removed if authorized by the Division.

(b) If the Division determines that any LP-gas container or installation does not comply with the Texas Natural Resources Code, Chapter 113, or the *LP-Gas Safety Rules*, but does not constitute an immediate danger to the public health, safety, and welfare, the Division shall take action to ensure that the container or installation comes into compliance as soon as practicable. Division action may include the placement of a warning tag. Once the container or installation complies with Texas Natural Resources Code, Chapter 113, and the *LP-Gas Safety Rules*, the Division may remove or delegate the removal of the warning tag.

(c) If the affected entity disagrees with the removal from service and/or placement of a warning tag, the entity may request a review of the Division's decision within 10 calendar days. The Division shall notify such entity of its finding, in writing, stating the deficiencies, within 10 business days. If the entity disagrees, the entity may request or the Division on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered by the Commission.

§9.38 Reporting Unsafe LP-Gas Activities

(a) A person may report any unsafe or noncompliant LP-gas activities to the Safety Division (the Division) by mail, telephone, electronic mail, or facsimile transmission (fax). When possible, the person shall make the report using LPG Form 22. If a person makes a report of unsafe or noncompliant LP-gas activities to the Division without using LPG Form 22, the Division shall complete the LPG Form 22. Within five business days of receipt of such report, the Division shall notify the licensee and any other applicable persons in writing regarding the report and specify the reported violations, if any.

(b) If the submitting person does not specifically request anonymity, the Commission may release the person's name in accordance with any applicable open records procedures.

(c) A person who reports unsafe LP-gas activities may be called to testify at a Commission hearing if one is necessary following the initiation of an enforcement action.

§9.41 Testing of LP-Gas Systems in School Facilities

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) Leakage test--An operation performed on a school LP-gas system using LP-gas as the test medium at not more than normal operating pressure and a gauging instrument measuring gas pressure in psig, ounces/square inch, or inches of water column to verify there is no gas leakage.

(2) School district--An entity created under the laws of this state and accredited by the Texas Education Agency under Texas Education Code, Chapter 39, Subchapter D; a private elementary or secondary school, other than a

school in a residence; or a state or regional school for the blind and visually impaired or the deaf created under Texas Education Code, Chapter 30.

(3) School district facility--Each building or structure operated by a school district and equipped with a school LP-gas system, in which students receive instructions or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, vehicle fueling facilities, administrative offices, and similar facilities not regularly used by students.

(4) School LP-gas system--All piping, fittings, valves, regulators, appliance connectors, equipment, and connections supplying fuel gas from the outlet of the shutoff valve at each LP-gas storage container or upstream of each meter to the shutoff valve(s) on each appliance in a school district facility.

(5) Supplier--An individual or company that sells and delivers LP-gas to a school district facility. If more than one individual or company sells and delivers LP-gas to a school district facility, each individual or company is a supplier for purposes of this section.

(b) School district requirements. A school district shall ensure that a leakage test is performed on each school LP-gas system as specified in this section. The leakage test shall be performed by an LP-gas licensee, an individual registered with the Commission pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption), or an employee of the school district who has been certified by the Commission to perform such a test.

(1) If a leak is found in a school LP-gas system, the school district shall immediately remove the affected school district facility from LP-gas service until repairs are made and it passes a subsequent school LP-gas system leakage test. If an employee of a school district performs the initial test, then the subsequent test may not be performed by a school district employee.

(2) Each school district shall provide the district's supplier with a copy of the most current LP-Gas Form 30 as proof the school LP-gas system has been tested in accordance with this section.

(3) A school district shall retain LPG Form 30 specifying the date and result of the leakage test performed on each school LP-gas system for a minimum of five years from the date each test was performed. A school district shall make LPG Form 30 readily available for review by the Commission or its authorized representative upon request.

(c) Leakage test requirements.

(1) The results of each leakage test shall be immediately documented on LPG Form 30.

(2) LP-gas shall be used as the test medium.

(3) Leakage test pressure shall not exceed normal operating pressure.

(4) Leakage test duration shall not be less than 30 minutes.

(5) Test pressure shall be monitored with a manometer or with a pressure-measuring instrument designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the test period. Mechanical gauges

used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure.

(6) The manual shutoff valve installed in the piping upstream of each appliance must be open and must supply pressure to the appliance. To prove the integrity of the 100 percent pilot shutoff valve on each appliance so equipped, the manual control on the 100 percent pilot shutoff valve must be turned to the on position. Pilots not incorporating a 100 percent pilot shutoff valve and all manual gas valves not incorporating safety shutoff systems shall be in the off position prior to the leakage test.

(d) Methods for conducting a leakage test.

(1) Upstream of first stage regulator. Insert a pressure gauge between the manual shutoff valve on the container(s) and the first stage regulator. Admit full container pressure to the system, and then close the manual shutoff valve on the container(s). Release gas from the system to lower the pressure gauge reading by 10 psig. If there is no decrease or increase in gauge pressure after the minimum test duration, the system has no leakage and may remain in service.

(2) Between first stage and second stage regulators. Insert a pressure gauge with a 30-psig scale downstream of the first stage regulator, pressurize the system to normal operating pressure, and then close the manual shutoff valve on the container(s). Release LP-gas from the system to lower the pressure gauge reading by at least one-half the inlet pressure to the second stage regulator. If there is no decrease or increase in gauge pressure after the minimum test duration, the system has no leakage and may remain in service.

(3) Downstream of final stage regulator(s). For systems serving appliances that receive gas at pressures of 1/2 psig or less, insert a water manometer or pressure gauge into the system downstream of the final system regulator. Pressurize the system to normal operating pressure and close the manual shutoff valve on the container(s). To ensure that all regulators in the system are unlocked and a leak anywhere in the system is communicated to the gauging instrument, release enough gas from the system, through a range burner or other suitable means, to drop the pressure to 9 (plus or minus 1/2) inches of water column. If there is no decrease or increase in gauge pressure after the minimum test duration, the system has no leakage and may remain in service.

(e) Supplier requirements. A supplier shall terminate LP-gas service to a school district facility if:

(1) the supplier receives official notification from the school district, the LP-gas licensee, or the person conducting the leakage test that there is leakage in a school LP-gas system;

(2) the leakage test performed on a school LP-gas system was not performed in accordance with the requirements of this section; or

(3) the supplier has not received a copy of LPG Form 30 from the school district verifying that the school LP-gas system has been tested in accordance with this section.

(f) Commission requirements.

(1) At the request of a school district, the Commission shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct a leakage test.

(2) The Alternative Energy Division shall initiate any enforcement proceedings necessary under Texas Natural Resources Code, Chapter 113.

(g) Compliance deadlines.

(1) Each school district shall ensure a leakage test is performed as required by this section at least once every two years beginning with the 2010-2011 school year.

(2) School districts shall complete the initial leakage tests before the beginning of the 2010-2011 school year. In the case of a year-round school, a school district shall ensure that a leakage test in each school district facility is conducted and reported not later than July 1 of the year in which the test is performed, with the first test due by July 1, 2010.

(3) A school district may perform the leakage tests on a two-year cycle provided that at least one-half of the school district's facilities are tested each year.

§9.51 General Requirements for Training and Continuing Education

(a) In addition to complying with NFPA §§4.4 and 11.2, effective March 1, 2001, individuals shall comply with the training and continuing education requirements in this chapter.

(b) Applicants for new licenses or new certificates, as set forth in §9.7 and §9.8 of this title (relating to Application for License and License Renewal Requirements, and Application for a New Certificate, respectively) and persons holding existing licenses or certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to the Alternative Fuels Research and Education Division (AFRED).

(1) The training requirements apply only to applicants for Category D, E, F, G, I, J, K, or M management-level certificates and certain employee-level certificates.

(2) The continuing education requirements apply to:

(A) all management-level certificate holders and employee-level certificate holders as specified in the tables in §9.52 of this title (relating to Training and Continuing Education Courses); and

(B) any ultimate consumer who has purchased, leased, or obtained other rights in any LP-gas bobtail, including any employee of such ultimate consumer if that employee drives or in any way operates the equipment on an LP-gas bobtail.

(3) The training and continuing education requirements do not apply to:

(A) an ultimate consumer driving or fueling a motor vehicle powered by LP-gas;

(B) an individual who fuels motor vehicles as an employee of an ultimate consumer;

(C) an employee of a state agency, county, municipality, school district, or other governmental subdivision, unless such an individual is or becomes certified;

(D) an individual with a general installers and repairman exemption; or

(E) anyone certified only as a transport driver, or who holds only an on-road motor fuel, non-road motor fuel, or mobile fuel certification.

(4) Each individual who performs LP-gas activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform such LP-gas activities shall be properly trained by a competent person in the safe performance of such LP-gas activities.

(c) Individual credit. Successful completion of any required training or continuing education class shall be credited to and accrue to the individual.

(d) No partial credit. Individuals attending classes shall receive credit only if they attend the entire class and pay any training or continuing education course fees in full. The Commission shall not award partial credit for partial attendance.

(e) Schedules. Dates and locations of available AFRED LP-gas training and continuing education classes can be obtained in the Austin offices of AFRED, and on the Commission's web site at www.rrc.state.tx.us and shall be updated at least monthly. AFRED classes shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that AFRED classes be taught in their area. AFRED shall schedule its classes and locations at its discretion.

(f) Registering for a class.

(1) To register for a scheduled training or continuing education class, an individual shall complete the registration form provided by AFRED and file the form with the AFRED training section prior to the class. AFRED shall also accept class registrations via regular mail, electronic mail (e-mail), or facsimile transmission (fax); such requests shall include the applicant's full name, address, phone number, level (either manager or employee) and category of certification (such as cylinder filling or service and installation), e-mail address, and the name or number, location, and date of the requested class.

(2) Costs for classes.

(A) Each registration for a training class shall require the payment of the applicable nonrefundable class fee as follows:

(i) \$75 for an initial eight-hour class;

(ii) \$150 for the initial 16-hour Category F, G, I, and J class; and

(iii) \$750 for the initial 80-hour Category E class.

(B) The Category E, F, G, I, and J class fees do not include the management-level rules examination or license fee described in §9.6 and §9.10 of this title (relating to Licenses and Fees, and Rules Examination, respectively).

(C) Current certificate holders who have paid the annual renewal fee and who want to add a new certification other than Category E, F, G, I, or J shall not be required to pay the \$75 class fee.

(D) Continuing education classes shall be offered at no charge to certificate holders who have timely paid the annual certificate renewal fee specified in §9.9 of this title (relating to Requirements for Certificate Renewal).

(E) Requests for classes where no training or continuing education class credit is given shall be submitted in writing to the AFRED training section. The AFRED training section may conduct the requested classes at its discretion. The nonrefundable fee for a non-credit class is \$250 if no overnight expenses are incurred by the AFRED training section, or \$500 if overnight expenses are incurred. AFRED may waive the fee for a non-credit class in cases where the Commission recovers the cost of the class from another source, such as a grant.

(F) AFRED may charge reasonable fees for materials for classes using third-party materials.

(3) AFRED shall schedule individuals to attend classes on a first-come, first-served basis, except as follows:

(A) Priority for attending the 16-hour Category F, G, I, and J class, and the 80-hour Category E class is based on when the class fee is paid.

(B) Priority for attending classes other than the 16-hour Category F, G, I, and J class, and the 80-hour Category E class shall be given to applicants or certificate holders who must comply with training or continuing education requirements by the next May 31 deadline.

(C) If any class has fewer than eight individuals registered within seven calendar days prior to the class, AFRED may cancel the class and may reschedule the registered individuals in another class agreed upon by the individuals and the AFRED training section. The AFRED training section reserves the right to determine class sizes for all classes.

(4) If a previously registered individual is unable to attend the class at the time and place for which the individual is registered due to illness or other unforeseen circumstances, another individual from the same company may attend that same class in his or her place.

(5) Applicants who take classes offered by an entity other than AFRED shall comply with the registration, fee, and other requirements specified by that entity.

(g) Retention of records. Individual applicants or certificate holders shall be responsible for promptly notifying the AFRED training section in writing of any discrepancies or errors in the training or continuing education records, and shall notify AFRED of any discrepancies or errors in examination records or certification cards. In the event

of a discrepancy, AFRED's records, including due dates, shall be deemed correct unless the individual has copies of applicable documents which clarify the discrepancy.

§9.52 Training and Continuing Education Courses

(a) Training. In addition to complying with NFPA §§4.4 and 11.2, applicants for a new certification and applicants who have passed a certification examination but have not completed an applicable training course shall complete training as specified in the tables in subsection (h) of this section prior to their first certificate renewal deadline. Category E management-level applicants shall attend the 80-hour class; Category F, G, I, and J management-level applicants shall attend the 16-hour class; and Category D, K and M management-level applicants and all applicants for employee-level certifications that are subject to training requirements shall attend an eight-hour class. A certificate holder's training deadline shall not be extended if that individual retakes and passes an examination for the current category and level of certification. A training deadline shall be extended only after a certificate holder successfully completes an applicable training class.

(1) Individuals who pass an employee level rules examination between March 1 and May 31 of any year shall have until May 31 of the next year to complete any required training. Individuals who pass an employee level rules examination at other times shall have until the next May 31 to complete any required training. Completion of AFT shall be in accordance with subsection (g) of this section.

(2) Applicants for company representative or operations supervisor shall comply with the training requirements in this section prior to the Commission issuing a certificate.

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years as specified in the tables in subsection (h) of this section. Upon fulfillment of this requirement, the certificate holder's next continuing education deadline shall be four years after the May 31 following the date of the most recent class the certificate holder has completed, unless the class was completed on May 31, in which case the deadline shall be four years from that date. A certificate holder's continuing education deadline shall not be extended if an examination for a current category and level of certification is retaken and passed; a continuing education deadline shall be extended only after a certificate holder successfully completes an applicable continuing education class. An individual who completes a continuing education class after the assigned deadline shall have four years from the original deadline to complete the next class.

(1) Continuing education requirements for certain categories.

(A) Certificate holders who hold only a Category D, F, G, J, or K certificate as of the effective date of this section shall have completed their initial continuing education requirement by May 31, 2005. Beginning September 1, 2005, Category M and recreational vehicle technician certificate holders shall have completed their initial continuing education requirement by May 31, 2006. Certificate holders who hold a Category D, F, G, J, K, or M certificate or a recreational vehicle technician certificate and who have more than one certification as of February 1, 2001, shall complete their continuing education requirement by the continuing education deadline assigned for the initial certificate. Public employees who were certified as of June 1, 2006, shall have completed their continuing education requirement by May 31, 2007.

(B) Certificate holders who are certified to perform LP-gas activities covered by different certifications shall

complete the continuing education requirements for any one of the certifications held in order to maintain active status. For each subsequent continuing education requirement, such individuals shall be responsible for attending a different continuing education class relevant to one of the other certifications held.

(2) Certificate holders who attend a class offered by an outside instructor shall not be entitled to a refund of the annual renewal fee or any other fees or penalties required by the Commission.

(3) Individuals who have not paid the annual certificate renewal fee, including general installers and repairman exemption holders or members of the general public, shall not attend training or continuing education classes free of charge, but may request from the AFRED training section to attend classes at the charge specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education). Such requests shall be in writing and handled at AFRED's discretion on an individual basis and if space is available in the requested class.

(4) Any certificate holder who has timely paid the annual certificate renewal fee but is not otherwise required to attend a Commission continuing education class may voluntarily attend a class, if space is available, by registering with the AFRED training section as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(c) Adding a new certification. A current certificate holder who successfully completes an examination for an additional certification that requires completion of a training course shall be assigned a training deadline pursuant to subsection (a)(1) of this section. Upon completion of the required training, the certificate holder shall be assigned a continuing education date pursuant to subsection (b) of this section.

(d) Train-the-Trainer classes. The Train-the-Trainer classes shall not count as credit towards the training or continuing education requirements.

(e) Class materials. Individuals who attend AFRED-taught classes shall receive a copy of the class materials at no charge. Additional copies may be purchased from AFRED at the established price.

(f) Certificates of completion. The AFRED training section shall issue a certificate of completion to each individual who completes an AFRED-taught class. Individuals shall retain the certificates as proof of completion of the class.

(g) Advanced field training (AFT). Some classes may include AFT in addition to the classroom hours, during which class attendees shall perform LP-gas activities. AFT shall be properly completed within 30 calendar days of attending the class. All qualification tasks included in the AFT shall be completed. The AFT materials, including the qualification checklist and the certification page, shall be readily available at the licensee's Texas business location for review by an authorized Commission representative during normal business hours.

(1) The responsibility of certifying AFT activities shall not be delegated to an unauthorized individual. AFT qualification tasks shall be witnessed by an authorized individual, verified as being successfully completed, and the AFT form signed as follows:

(A) For licensees with only one company representative, that company representative shall self-certify the AFT.

Figure: 16 TAC §9.52(h) -- Table One
LP-GAS MANAGEMENT-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (Revised February 2007)

Course Number	Course Hours	AFT	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
1.1	8		Introduction to Propane	x	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations		x	x	x	x	x		
2.3	8	x	Bobtail Operations		x						
3.1	8		Residential System Layout and Design	x	x					x	
3.2	8	x	Residential System Installation	x	x						
3.3	8	x	Appliance Conversion, Installation and Venting	x	x						
3.5	8		Residential Appliance Controls	x	x						
3.7	8		Electrical Troubleshooting and Repair of Residential Gas Appliances	x	x						
3.8	8	x	Recreational Vehicle Gas Appliances								x
3.11	8		Residential System Inspection	x	x						
6.1	8		Regulatory Compliance for Managers	x	x	x	x	x	x	x	x
80	80		Category E Management Course	x	x	x	x	x	x	x	x
16	16		Category F, G, I, and J Management Course		x	x	x	x	x	x	

Figure: 16 TAC §9.52(h) -- Table Two
LP-GAS EMPLOYEE-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (Revised February 2008)

Course Number	Course Hours	AFT	Course Title	DOT Cylinder Filling	Motor & Mobile Fuel Dispensing	Bobtail	Service & Installation	Appliance Service & Installation	Recreational Vehicle
1.1	8		Introduction to Propane	x	x	x	x	x	x
2.1	8	x	Dispenser Operations	x	x	x			
2.3	8	x	Bobtail Operations			x			
3.1	8		Residential System Layout and Design				x		
3.2	8	x	Residential System Installation				x		
3.3	8	x	Appliance Conversion, Installation and Venting				x	x	
3.5	8		Residential Appliance Controls				x	x	x
3.7	8		Electrical Troubleshooting and Repair of Residential Gas Appliances				x	x	
3.8	8	x	Recreational Vehicle Gas Appliances						x
3.11	8		Residential System Inspection			x	x	x	
80	80		Category E Management Course	x	x	x	x	x	x
16	16		Category F, G, I, and J Management Course	x	x	x			

Figure: 16 TAC §9.52(h) -- Table Three
COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT FOR MANAGEMENT-LEVEL CERTIFICATE HOLDERS
(Revised February 2008)

Course Number	Credit Hours ¹	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
CETP 1.0	8	Basic Principles and Practices	x	x	x	x	x	x	x	x
CETP 2.1	8	Delivery Basics		x						
CETP 2.2	8	Operating a Bobtail to Deliver Propane		x						
CETP 2.3	8	Operating a Transport to Deliver Propane		x						
CETP 2.4	8	Operating a Cylinder Delivery Vehicle to Deliver Propane		x				x		
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/Trailer to Deliver or Relocate ASME Tanks		x						
CETP 3.1	8	Maintaining ASME Tanks		x						
CETP 3.2	8	Maintaining DOT Cylinders		x	x		x	x		
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers		x	x	x	x	x		
CETP 3.4	8	Maintaining Bulk Plant Equipment		x						
CETP 3.5	8	Performing Cargo Tank Product Transfers		x						
CETP 3.6	8	Performing Railcar Product Transfers		x						
CETP 3.7	8	Maintaining DOT Intermodal (IM) Tanks		x						
CETP 4.1	8	LAYOUT, Design, and Selection of a Vapor Distribution System	x	x						
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems	x	x						
CETP 5.0	8	Transfer System Operations		x						
CETP 6.0	8	Appliance Installation	x	x						
CETP 7.0	8	Basic Electricity for Propane Appliances	x	x						
CETP 8.0	8	Large Industrial/Commercial Gas-Fired Equipment	x	x						
PERC GAS Check	8	GAS Check	x	x						

¹ Credit hours may not equal the total number of course hours.

Figure: 16 TAC §9.52(h) -- Table Four
COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT
FOR EMPLOYEE-LEVEL APPLICANTS OR CERTIFICATE HOLDERS (Revised February 2008)

Course Number	Credit Hours ¹	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail	Service & Installation	Appliance Service & Installation	Recreational Vehicle
CETP 1.0	8	Basic Principles and Practices	x	x	x	x	x	x
CETP 2.1	8	Delivery Basics			x			
CETP 2.2	8	Operating a Bobtail to Deliver Propane			x			
CETP 2.3	8	Operating a Transport to Deliver Propane			x			
CETP 2.4	8	Operating a Cylinder Delivery Vehicle to Deliver Propane						
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/Trailer to Deliver or Relocate ASME Tanks				x		
CETP 3.1	8	Maintaining ASME Tanks				x		
CETP 3.2	8	Maintaining DOT Cylinders	x					
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers	x	x				
CETP 3.4	8	Maintaining Bulk Plant Equipment				x		
CETP 3.5	8	Performing Cargo Tank Product Transfers			x			
CETP 3.6	8	Performing Railcar Product Transfers						
CETP 3.7	8	Maintaining DOT Intermodal (IM) Tanks						
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System				x		
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems				x		
CETP 5.0	8	Transfer System Operations			x	x		
CETP 6.0	8	Appliance Installation				x	x	
CETP 7.0	8	Basic Electricity for Propane Appliances				x	x	
CETP 8.0	8	Large Industrial/Commercial Gas-Fired Equipment				x		
PERC GAS Check	8	GAS Check			x	x	x	

Note: The CETP 2.4, 3.6, and 3.7 courses are not accepted by the Commission for continuing education credit.

¹ Credit hours may not equal the total number of course hours.

- (B) For licensees with more than one company representative, one company representative may certify the AFT of another company representative, but shall not self-certify.
 - (C) Company representatives shall certify operations supervisors' AFT.
 - (D) The company representative or an operations supervisor authorized by the licensee and in current good standing with the Commission shall certify the employees' AFT.
 - (E) If authorized, a Commission-approved outside instructor may certify any AFT.
- (2) Other AFT situations shall be handled as follows:
- (A) For a certified individual employed by a licensee, the licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in the individual's employment records.
 - (B) For an individual who ceases employment with a licensee, the licensee shall retain the latest required AFT material for at least two years from the date the individual is no longer employed by the licensee. The two-year period shall be based on the renewal period for the examination renewal fee penalty. The licensee shall provide a copy of the AFT material to the individual.
 - (C) For an individual who begins employment with a different licensee, the new licensee shall obtain a copy of the individual's AFT material from the individual and shall place the copy in the individual's employment records.
 - (D) An individual who is never employed by a licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in a safe location for at least two years from the date the class that required the AFT was attended.
 - (E) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified becomes employed by a new licensee, the new licensee shall certify the individual's AFT.
 - (F) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified ceases employment with the licensee and wishes to continue performing LP-gas activities, the individual shall contact a company representative or operations supervisor of another applicable licensee or an AFRED-approved outside instructor to complete the AFT and maintain the LP-gas certification.
- (3) Individuals who attend the 80-hour Category E management-level class or the 16-hour Category F, G, I, and J management-level class shall perform any required AFT activities during the class.
- (4) If AFT is required for a class, the AFT checklist outlining the specific activities to be performed shall be included in the class materials.
- (5) A certified individual is exempt from the AFT requirement of a continuing education course if the individual has previously completed that same course, including the AFT.

(h) Available courses. Training and continuing education courses and other information are shown in Tables 1 through 4 of this subsection. Items on the tables marked with an “x” indicate courses that meet training or continuing education requirements for management-level or employee-level certificate holders in that category.

(i) Credit for attendance at CETP courses. A certificate holder who has successfully completed a CETP class, including any applicable knowledge and skills assessments, may receive credit toward the continuing education requirements specified in this section as follows:

(1) The CETP class shall be approved for the category of certificate held as indicated on Tables 3 and 4 in subsection (h) of this section.

(2) The successful completion of a CETP class is determined by a National Propane Gas Association class certificate, which is issued only after an individual has completed the prescribed course of study, including any related knowledge and skills assessments, for the applicable CETP job classification.

(3) To receive credit toward the Commission’s continuing education requirements, the certificate holder shall submit the following information, clearly readable, by regular mail to AFRED, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, or by electronic mail to the following address: CETP-credit@rrc.state.tx.us.

(A) the individual’s full name, address, telephone number, Social Security number;

(B) the LP-gas certification(s) currently held; and

(C) the CETP class date and a readable copy of the CETP class certificate for an approved CETP class as specified in Tables 3 and 4 of subsection (h) of this section. The CETP class attendance date shall be within one year of the certificate holder’s continuing education deadline.

(4) AFRED shall review the submitted material within 30 business days of receipt and shall notify the certificate holder in writing that the request is approved, denied, or incomplete. If the material is incomplete, AFRED shall identify the necessary additional information required. The certificate holder shall file the additional information within 30 calendar days of the date of a notice of deficiency in order to receive credit for the CETP course attendance. Certificate holders requesting credit for CETP class attendance shall submit such requests to allow processing time so that a request is finally approved by May 31 in order for the certificate holder to receive credit toward that deadline.

§9.54 Commission-Approved Outside Instructors

(a) General.

(1) AFRED may approve and award training or continuing education credit for the management-level and employee-level applicants and certificate holders specified in this section offered by an outside instructor provided the outside instructor complies with the requirements of this section.

(A) Authorized Category D outside instructors may offer only the applicable training and continuing education classes to Category D or K management-level applicants or certificate holders and to service and installation and appliance service and installation employee-level applicants or certificate holders.

(B) Authorized Category E outside instructors may offer only the applicable training and continuing education classes to Category D or K management-level applicants and to portable cylinder filling, motor/mobile fuel dispenser, bobtail, service and installation, and appliance service and installation applicants and employee-level certificate holders.

(C) Authorized Category I outside instructors may offer only the applicable training and continuing education classes to Category F, G, I, and J management-level certificate holders and DOT cylinder filling and motor/mobile fuel dispenser applicants and employee-level certificate holders.

(D) Authorized Category M outside instructors may offer only the applicable training and continuing education classes to Category M management-level applicants and recreational vehicle technician employee-level applicants or certificate holders.

(2) LP-gas companies may offer courses to their own personnel and to other companies' personnel provided that the LP-gas company and the outside instructor comply with the requirements of this section.

(3) All curriculum and course materials submitted for AFRED review by an outside instructor applicant shall be printed or typewritten, organized, and easily readable, and shall remain confidential within the limits of Tex. Gov't Code, Chapter 552 (Public Information Act).

(4) Copies of the AFRED's curricula and materials are available from AFRED at a reasonable cost.

(b) Application process. Outside instructor applicants shall submit the following to AFRED:

(1) a non-refundable \$300 registration fee for each outside instructor;

(2) a copy of the applicant's Category D, E, I, or M current certification card or, in the case of Category D only, a copy of the master or journeyman plumber/class A or B registration/examination exemption certificate issued by the License and Permit Section of the Gas Services Division;

(3) for each course the outside instructor applicant intends to teach:

(A) the curriculum for and a description of the course;

(B) the course materials and related supporting information or a statement that the instructor will use AFRED course materials;

(C) a statement specifying whether the outside instructor seeks approval to certify any AFT described in §9.52 of this title (relating to training and continuing education courses);

(4) proof that the outside instructor applicant has experience, during at least three of the four years prior to the date of filing the application, in both:

(A) conducting LP-gas training or continuing education courses and

(B) performing or supervising LP-gas activities; and

(5) any other information required by this section.

(c) Curriculum standards. The curriculum for each course that an outside instructor applicant intends to teach shall include, where applicable, information that is at least the equivalent of AFRED's course or courses on the same topic or topics, and shall include all applicable current LP-gas regulations for Texas. Courses not offered by AFRED may be approved if the courses are equal or greater in overall quality to other approved courses.

(d) AFRED review. AFRED shall review the application for approval as an outside instructor and, within 14 business days of the filing of the application, shall notify the applicant in writing that the application is approved, denied, or incomplete. If an application is incomplete, AFRED's notice of deficiency shall identify the necessary additional information, including any deficiencies in course materials. The outside instructor applicant shall file the necessary additional information within 30 calendar days of the date of AFRED's notice of deficiency. The outside instructor applicant's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the outside instructor's application and the necessity of the outside instructor applicant again paying the non-refundable \$300 registration fee for each subsequent filing of an application.

(e) Additional requirements for approval. Outside instructor applicants whose applications are approved in writing by AFRED shall attend AFRED's Train-the-Trainer Course, the fee for which is included in the \$300 registration fee. The Train-the-Trainer Course shall include classroom instruction and the subject-matter examinations for each course for which the applicant seeks approval to conduct. An outside instructor applicant shall pass the subject-matter examination for each course with a score of at least 85 percent and shall attend the subject-matter courses for which the applicant seeks approval to conduct.

(f) Notification of approval. Within 10 business days of the outside instructor applicant's completion of the requirements of this section, AFRED shall notify the applicant in writing that the applicant is approved as an outside instructor and the outside instructor may then begin offering the courses for which AFRED approved the outside instructor.

(g) Term of approval. AFRED approval of an outside instructor remains valid for three years unless the Commission revokes the approval pursuant to subsection (1) of this section.

(h) Renewal of approval. To continue offering AFRED-approved LP-gas classes, an outside instructor shall renew his or her AFRED approval every three years by paying a nonrefundable \$150 renewal fee to AFRED and attending a Train-the-Trainer refresher class prior to the outside instructor's next renewal deadline.

(i) Revision of course materials. An outside instructor who revises any course materials previously approved by AFRED shall submit the revisions in writing, along with a nonrefundable \$100 review fee to AFRED, and shall not use the materials in a course until the outside instructor has received written AFRED approval. AFRED shall review the revised course materials and, within 14 business days, shall notify the outside instructor in writing that the revised course materials are approved or not approved. If the revised course materials are not approved, AFRED's notice shall identify

the portion or portions that are not approved and/or shall describe any deficiencies in the revised course materials. The outside instructor shall file any necessary additional information within 30 calendar days of the date of AFRED's notice of disapproval. The outside instructor's failure to file the necessary additional information within the prescribed time period may result in the dismissal of the outside instructor's request for approval of revised course materials and the necessity of again paying the \$100 review fee for each subsequent filing of revised course materials.

(j) Continuing requirements. Outside instructors shall:

(1) maintain their Category D, E, I, or M certificate or Category D registration/examination exemption certificate in continuous good standing. The Train-the-Trainer class shall not count as credit towards any training or continuing education requirements. Any interruption of the required Category D, E, I, or M certification or Category D registration/examination exemption certificate may result in the Commission revoking the outside instructor's approval;

(2) adhere to professional standards of conduct in class presentations; and

(3) report to AFRED within three business days of the conclusion of a class the names, social security numbers, and any other information required by AFRED, of the persons completing the class. The report shall be made by electronic mail (e-mail) in an electronic format provided by AFRED. The outside instructor shall ensure that AFRED receives the report by securing written acknowledgment of its receipt by AFRED. This acknowledgment may be by return electronic mail (e-mail) or by facsimile transmission (fax).

(k) Disclaimer. Outside instructors are responsible for every aspect of the classes they teach, including the location, schedule, date, time, duration, price, content, material, demeanor and conduct of the outside instructor, and reporting of attendance information. AFRED shall not monitor or supervise the actual class presentations by outside instructors. AFRED is not obligated to gather, maintain, or distribute information about outside instructors' course offerings, other than the names, telephone numbers, and addresses of approved outside instructors and the date on which an outside instructor's approval would expire, absent renewal. AFRED may refuse to issue or renew a certificate for an individual who presents for credit an unapproved class; a class taught by an unapproved outside instructor; or a class taught using unapproved, incomplete, or incorrect materials.

(l) Complaints.

(1) Complaints regarding outside instructors shall be made to AFRED in writing by electronic mail (e-mail), facsimile transmission (fax), or U. S. Postal Service; shall include the printed name, address, telephone number, and, if filed by fax or U.S. Postal Service, the signature of the person complaining; shall state the outside instructor's name, the date, location, and title of the course; and shall set forth the facts that the complainant alleges demonstrate that the outside instructor:

(A) failed to meet or maintain AFRED requirements for outside instructor approval;

(B) failed to deliver a course as approved, including failure to follow the approved curriculum, to use the approved course materials, or to deliver the requisite numbers of hours of instruction; or

(C) engaged in other conduct, including the use of language, that created an atmosphere not conducive to learning. Such conduct includes but is not limited to demeaning, derogating, or stereotyping women or

men, disabled persons, members of any political, religious, racial, or ethnic group, or a particular individual, organization, or product.

(2) Upon receipt of a complaint and at its discretion, AFRED may gather any additional information necessary or appropriate to making a full and complete analysis of the complaint. AFRED shall deliver a written copy of the analysis and any findings by certified mail to the outside instructor who is the subject of the complaint. The outside instructor may file a written response within 20 calendar days from the date the findings are postmarked.

(3) If AFRED determines that an outside instructor has engaged in conduct prohibited by this section, AFRED may prepare a report that states the facts on which the determination is based and the recommendation as to the action AFRED intends to take. AFRED may issue a written warning to the outside instructor; decline to approve or renew the outside instructor's approval; or revoke the outside instructor's approval.

(4) AFRED shall mail a copy of the report and recommendation to the outside instructor by certified mail and shall include a statement that the outside instructor has a right to a hearing on the determination contained in the report.

(5) Within 20 calendar days after the date the notice is postmarked, the outside instructor shall file a written response either accepting the determination and recommended action or requesting a hearing on the determination.

(6) If the outside instructor accepts the determination, he or she shall notify AFRED in writing of the acceptance, and AFRED shall take the action indicated in the report.

(7) If an outside instructor requests a hearing or fails to respond timely to the notice given under paragraph (5) of this subsection, the AFRED director shall refer the matter to the Office of General Counsel for the setting of a hearing. The Office of General Counsel shall assign an examiner to conduct a hearing, which shall be conducted under the Commission's General Rules of Practice and Procedure, Chapter 1 of this title (relating to Practice and Procedure).

(8) Following the hearing, the Commission may enter an order finding that the outside instructor has violated Commission rules or that no violation has occurred; and may make any other finding based on the evidence in the record.

(9) If the outside instructor does not comply with the order of the Commission, and if the enforcement of the Commission's order is not stayed, then the Office of General Counsel may refer the matter to the attorney general for enforcement of the Commission's order.

SUBCHAPTER B - LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES AND EQUIPMENT REQUIREMENTS

§9.101 Filings Required for Stationary LP-Gas Installations

(a) No LP-gas container shall be placed into LP-gas service or an installation operated or used in LP-gas service until the requirements of this section, as applicable, are met and the facility is in compliance with all applicable *LP-Gas Safety Rules* and statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located. LP-gas systems under the jurisdiction of DOT Safety regulations in 49 CFR Parts 192 and 199, and Part 40 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service.

(b) Commercial installations with an aggregate water capacity of less than 10,000 gallons.

(1) Within 30 calendar days following the completion of a container installation, the licensee shall submit LPG Form 501 to the Gas Services Division (the Division) stating:

(A) the installation is in total compliance with the statutes and *LP-Gas Safety Rules*;

(B) all necessary LP-gas licenses and certificates have been issued; and

(C) the date the installation has been placed into LP-gas service.

(2) Pay a nonrefundable fee of \$10 for each LP-gas container, including cylinders, each retail LP-gas cylinder exchange storage rack, and each forklift cylinder exchange rack or a forklift cylinder exchange installation where a storage rack is not installed that is listed on the form. A nonrefundable \$35 fee shall be required for any resubmission.

(3) The Division shall review the submitted information within 21 business days of receipt of all required information and shall notify the applicant in writing of any deficiencies. LP-gas operations may commence prior to the submission of LPG Form 501 if the facility is in compliance with the *LP-Gas Safety Rules*.

(c) Aggregate water capacity of 10,000 gallons or more.

(1) For installations with an aggregate water capacity of 10,000 gallons or more, the licensee shall submit the following information to the Division at least 30 days prior to construction if the applicant is required to give notice as described in §9.102 of this title (relating to Notice of Stationary LP-Gas Installations):

(A) LPG Form 500;

(B) LPG Form 500A with all applicable documents;

(C) a plat drawing from the appropriate appraisal district identifying:

(i) the facility's property boundaries;

- (ii) the names of all real property owners within 500 feet; and
- (iii) a 500-foot radius measured from the proposed container location on the site.

(D) a site plan of sufficient scale that identifies:

- (i) the location, types, and sizes of all containers already on site or proposed to be on site;
- (ii) the distances from the containers and the transfer system to the property lines, buildings, and railroad, pipeline, or roadway rights-of-way;
- (iii) any known potential hazards;
- (iv) location of bulkhead and distance from nearest container;
- (v) location of remote emergency shut-off valves;
- (vi) route of vehicular traffic around containers;
- (vii) location of any electrically operated material handling equipment such as pumps or compressors; and
- (viii) distance and location to nearest highway.

(E) If the facility is accessed from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the LP-gas transports.

(F) pay a nonrefundable fee of \$50 for the initial application. A nonrefundable \$30 fee shall be required for any resubmission.

(2) In addition to NFPA 58, §6.5.4, prior to the installation of any individual LP-gas container, the Division shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare.

(A) The Division may impose restrictions or conditions on the proposed LP-gas installation based on one or more of the following factors:

- (i) nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;
- (ii) nature of use of property located within 500 feet of the LP-gas installation;
- (iii) nature and volume of vehicular traffic within 500 feet of the proposed container;
- (iv) type and number of roadways within 500 feet of the proposed container;

(v) type of operations on the installation's premises;

(vi) potential sources of ignition that might affect an LP-gas leak;

(vii) existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

(viii) any other factors material to the public health, safety, and welfare.

(B) The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations.

(3) If an LP-gas stationary installation, equipment, or appurtenances not specifically covered by the *LP-Gas Safety Rules* has been or will be installed, the Division shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with the Division's determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until the Division has determined that the installation is safe for LP-gas service.

(4) The Division shall notify the applicant in writing outlining its findings. If the application is administratively denied, the applicant may modify the submission and resubmit it or request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(5) The licensee shall not commence construction until notice is received from the Division. Upon completion of a field inspection as specified in §9.109 of this title (relating to Physical Inspection of Stationary LP-Gas Installations), the operator, pending the inspection findings, may commence LP-gas operations of the facility.

(6) If the subject installation is not completed within one year from the date of the Division's completed review, the requirements of this subsection shall be resubmitted for the Division's review.

(d) An applicant or operator shall not be required to submit LPG Form 500, LPG Form 500A, or a site plan prior to the installation of bulkheads, swivel-type piping, breakaway devices, pneumatically-operated internal valves, or emergency shutoff valves, or when maintenance and improvements are being made to the piping system at an existing LP-gas installation with a capacity of 10,000 gallons or more.

(e) If a licensee is replacing a container with the same or less overall length and diameter, installed in the identical location of the existing container, the licensee shall file LPG Form 500.

(f) In addition, the Division may request LPG Form 5, LPG Form 8, or any other documentation or information pertinent to the installation in order to determine compliance with the *LP-Gas Safety Rules*.

§9.102 Notice of Stationary LP-Gas Installations

(a) For a proposed installation with an aggregate water capacity of 10,000 gallons or more, an applicant shall

send a copy of the filings required under §9.101(c) of this title (relating to Filings Required for Stationary LP-Gas Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with the License and Permit Section of the Gas Services Division (the Section). The Section shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners. The applicant may obtain names and addresses of owners from current county tax rolls.

(b) An applicant shall notify owners of real property situated within 500 feet of any proposed container location if:

- (1) the current aggregate water capacity of the installation is more than doubled in a 12-month period;
- (2) the resulting aggregate water capacity of the installation will be more than 120,000 gallons; or
- (3) the Section considers notice to be in the public interest.

(c) An applicant shall not be required to give notice for installations at “hot-mix” plants where LP-gas containers of 10,000 gallons aggregate water capacity or more are used as fuel storage supply for asphalt heating provided that:

- (1) the applicant submits proof that such “hot-mix” operations will not exceed two years at the specified location; and
- (2) the applicant has obtained approval from the fire marshal if the operations are within a city’s limits or extraterritorial jurisdiction.

§9.103 Objections to Proposed Stationary LP-Gas Installations

(a) Each owner of real property situated within 500 feet of the proposed location of any LP-gas containers of 10,000 gallon aggregate water capacity or more receiving notice of a proposed installation shall have 18 calendar days from the date the notice is postmarked to file a written objection using the LPG Form 500A sent to them by the applicant as described in §9.107(a)(1) of this title (relating to Hearings on Stationary LP-Gas Installations) with the License and Permit Section of the Gas Services Division (the Section). An objection is considered timely filed when it is actually received by the Commission.

(b) The Section shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

- (1) does not comply with the *LP-Gas Safety Rules*, specifying which rules are violated;
- (2) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or
- (3) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, “danger” means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic values in the area.

(c) Upon review of the objection, the Section shall either:

(1) schedule a public hearing as specified in §9.107 of this title (relating to Hearings on Stationary LP-Gas Installations); or

(2) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of the Section's letter to file its corrected objection. Clarification of incomplete or nonsubstantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

§9.107 Hearings on Stationary LP-Gas Installations

(a) Reason for hearing. The License and Permit Section of the Gas Services Division (the Section) shall call a public hearing if:

(1) the notice given to each real property owner situated within 500 feet of the proposed installation does not meet the requirements set forth in §9.102(a) of this title (relating to Notice of Stationary LP-Gas Installations);

(2) the Section receives an objection that complies with §9.103 of this title (relating to Objections to Proposed Stationary LP-Gas Installations); or

(3) the Section determines that a hearing is necessary to investigate the impact of the installation.

(b) Notice of public hearing. The Section shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under §9.102 of this title (relating to Notice of Stationary LP-Gas Installations).

(c) Procedure at hearing. The public hearing shall be conducted in accordance with the Texas Government Code, Chapter 2001 et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the *LP-Gas Safety Rules*.

§9.108 Interim Approval Order for Stationary LP-Gas Installations

If the Commission finds after a public hearing that the proposed installation complies with the *LP-Gas Safety Rules* and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(1) the applicant has introduced LP-gas into the system prior to final approval; or

(2) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat

drawing for the installation, the *LP-Gas Safety Rules* or the statutes of the State of Texas; or

(3) the installation constitutes a danger to the public health, safety, and welfare.

§9.109 Physical Inspection of Stationary LP-Gas Installations

(a) Aggregate water capacity of 10,000 gallons or more. The applicant shall notify the Safety Division (the Division) in writing when the installation is ready for inspection. If the Division does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility may operate conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of the Division's initial inspection, the installation may be required to cease LP-gas operations until the violations are corrected.

(b) Aggregate water capacity of less than 10,000 gallons. After receipt of LPG Form 501, the Division shall conduct an inspection as soon as possible to verify that the installation described is in compliance with the *LP-Gas Safety Rules*. The facility may be operated prior to inspection if it is in compliance with the *LP-Gas Safety Rules*. If any LP-gas statute or safety rule violation exists at the time of the first inspection at a commercial installation, the subject container, including any piping, appliances, appurtenances, or equipment connected to it may be immediately removed from LP-gas service until the violations are corrected.

(c) Material variances. If the Division determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to the Division or resubmission of the application is required. The review of such resubmitted application shall comply with §9.101 of this title (relating to Filings Required for Stationary LP-Gas Installations).

(d) In the event an applicant has requested an inspection and the Division inspection identifies violations requiring modifications by the applicant, the Division shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§9.110 Emergency Use of Proposed Stationary LP-Gas Installations

When there is an immediate need for LP-gas supply under emergency circumstances, the Safety Division (the Division) may waive the requirement for the initial complete inspection for a limited time period in order to meet the emergency need. LP-gas shall not be introduced into the container and it shall not be placed into LP-gas service until the Division grants permission to do so.

§9.113 Maintenance

All LP gas storage containers, valves, dispensers, accessories, piping, transfer equipment, gas utilization equipment, and appliances shall be maintained in safe working order and in accordance with the manufacturer's instructions and the LP Gas Safety Rules. If any one of the LP gas storage containers, valves, dispensers, accessories, piping, transfer

equipment, gas utilization equipment, and appliances is not in safe working order, the Safety Division may require that the installation be immediately removed from LP gas service and not be operated until the necessary repairs have been made.

§9.114 Odorizing and Reports

(a) Odorization shall comply with NFPA 58, §4.2.

(b) If the Commission determines that there shall be insufficient odorization, the Commission may require testing as deemed necessary to determine its sufficiency. If testing is deemed necessary, the Commission shall notify the necessary parties in writing as soon as possible. The written notification will advise which entity is responsible for having the tests performed and paying for the tests to be conducted. The testing shall be performed by a recognized testing laboratory equipped for and experienced in testing of odorization and, if requested, a copy of the test results shall be provided to the Commission.

(c) The person or facility odorizing the gas or the operator of an automatic loading rack shall be responsible for the odorization and for filing LPG Form 17 with the Commission.

(d) Each person or facility who odorizes LP-gas shall file with the Commission a completed LPG Form 17 after each quarter of the Railroad Commission's fiscal year. The Railroad Commission's fiscal year begins on September 1 of one year and ends on August 31 of the next year. The reports are due as follows:

(1) The report for the quarter ending on November 30 shall be postmarked by December 31.

(2) The report for the quarter ending on February 28 (or February 29 in the case of a leap year) shall be postmarked by March 31.

(3) The report for the quarter ending on May 31 shall be postmarked by June 30.

(4) The report for the quarter ending on August 31 shall be postmarked by September 30.

(5) If a specified due date falls on a Saturday, Sunday, or holiday, the report shall be postmarked by 5:00 p.m. on the next business day following the Saturday, Sunday, or holiday.

§9.115 Examination and Testing of Containers

(a) In order to determine the safety of a container, the Safety Division (the Division) may require that the licensee or operator of the container send a copy of the manufacturer's data report on that container to the Division. The Division may also require that the container and equipment be examined by a Category A, B, or O licensee, with a comprehensive report on the findings submitted to the Division for its consideration. This subsection may be applied even though an acceptable LPG Form 23 has been received.

(b) Any stationary ASME LP-gas container previously in LP-gas service which has not been subject to continuous LP-

gas vapor pressure shall be retested by an authorized Category A, B, or O licensed entity utilizing recognized ASME test methods to determine if the container is safe for LP-gas use in Texas, and the test results shall be submitted to the Division on LPG Form 8.

(c) Any stationary ASME LP-gas container which has been subject to continuous LP-gas vapor pressure is not required to be tested prior to installation, provided the licensee or operator of the container files a properly completed LPG Form 23 with the Division at the time LPG Form 500 is submitted for any facility requiring submission of a site plan in accordance with §9.101 of this title (relating to Filings Required for Stationary LP-Gas Installations).

(d) Any stationary ASME LP-gas container brought into Texas from out-of-state and intended for stationary LP-gas installation in Texas at any facility requiring submission of a site plan shall be tested in accordance with subsection (b) of this section prior to review approval being granted by the Division, unless that container is owned by a valid licensee. In this case, the Division may determine that such tests are not necessary upon the receipt of an acceptable LPG Form 23 from the licensee.

§9.126 Appurtenances and Equipment

(a) All appurtenances and equipment placed into LP-gas service shall be listed by a nationally recognized testing laboratory such as Underwriters Laboratory (UL), Factory Mutual (FM), or American Gas Association (AGA) unless:

- (1) it is specifically prohibited for use by another section of the *LP-Gas Safety Rules*;
- (2) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment;
or
- (3) it is used and in compliance with any NFPA standard adopted by the Commission.

(b) Appurtenances and equipment that cannot be listed but are not prohibited for use by the *LP-Gas Safety Rules* or the manufacturer's instructions shall be acceptable for LP-gas service, provided the appurtenances and equipment are installed in compliance with the applicable *LP-Gas Safety Rules*.

(c) The licensee or operator of the appurtenances or the equipment shall maintain documentation sufficient to substantiate any claims regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to the Safety Division.

§9.129 Manufacturer's Nameplate and Markings on ASME Containers

(a) LP-gas shall not be introduced into an ASME container unless the container is equipped with an original nameplate or at least one of the nameplates defined in this subsection permanently attached to the container.

- (1) Commission identification nameplate--A nameplate issued under the procedures specified in §9.130 of this title (relating to Commission Identification Nameplates) and attached by an authorized representative of the Railroad Commission for the purpose of identifying an ASME stationary container when the original nameplate is lost or

illegible.

(2) Duplicate nameplate--An additional ASME container nameplate issued by the original manufacturer with duplicate information as the original nameplate and clearly marked as a duplicate nameplate, but installed in a remote location.

(3) Modification (or alteration) nameplate--A nameplate issued and affixed by an ASME Code facility including only partial information applicable to a modification or alteration performed on that container.

(4) Replacement nameplate--A nameplate including the identical information as the original nameplate and identified as a replacement nameplate, but issued and affixed by the original manufacturer or its successor company or companies when the original nameplate is lost or illegible.

(b) Nameplate thickness for stainless steel nameplates issued on or after September 1, 1984, shall be sufficient to resist distortion due to the application of markings and fusion welding.

(c) Nameplates shall be attached in a location that will remain visible after installation of the containers.

(d) Nameplates on containers built prior to September 1, 1984, shall include at least the following legible information:

- (1) the name of container manufacturer;
- (2) the manufacturer's serial number;
- (3) the container's working pressure; and
- (4) the container's water capacity.

(e) Nameplates on containers built on or after September 1, 1984, shall be stainless steel and permanently attached to the container by continuous fusion welding around the perimeter of the nameplate, and shall be stamped or etched with the following information in characters at least 5/32 inch high:

- (1) service for which the container is designed (underground, aboveground, or both);
- (2) name and address of container supplier or trade name of container;
- (3) water capacity of container in pounds or U.S. gallons;
- (4) design pressure in pounds per square inch;
- (5) the wording "This container shall not contain a product that has a vapor pressure in excess of _____ psi at 100 degrees F";
- (6) outside surface area in square feet;
- (7) year of manufacture;

- (8) shell thickness and head thickness;
- (9) overall length of the container, the outside diameter of the container, and dish radius of the heads;
- (10) manufacturer's serial number;
- (11) ASME Code symbol;
- (12) minimum design metal temperature _____ F degrees at MAWP _____ psi;
- (13) type of construction "W"; and
- (14) degree of radiography "RT-_____".

(f) Any replacement nameplate issued by an original container manufacturer for containers constructed prior to September 1, 1984, shall be stainless steel and shall be affixed in accordance with ASME Code. The owner or operator of the container shall ensure that a copy of LPG Form 8 is filed with the Safety Division (the Division) when a replacement nameplate is affixed.

(g) Nameplates on LP-gas motor or mobile fuel tanks shall be permanently attached in a manner which will minimize corrosion of the nameplate or its fastening means and not contribute to corrosion of the container. If the nameplate is not continuously welded to the container, then it shall be raised at least 1/4 inch but no more than 1/2 inch from the container's surface.

(h) In addition to a container nameplate, underground containers shall have a system nameplate permanently attached to the system in a location that will be readily accessible for inspection when the containers are buried. Where the container is buried, mounded, insulated, or otherwise covered so the nameplate is obscured, a duplicate nameplate shall be installed in a clearly visible and accessible location.

(i) The Division may remove a container from LP-gas service or require ASME acceptance of a container at any time if the Division determines that the nameplate, in any form defined in subsection (a)(1) - (4) of this section, is loose, unreadable, or detached, or if it appears to be tampered with or damaged in any way and does not contain at a minimum the items defined in subsection (d) of this section.

§9.130 Commission Identification Nameplates

(a) Prior to an original ASME nameplate or any manufacturer-issued nameplate becoming unreadable or detached from a stationary container with a water capacity of 4,001 gallons or more, the owner or operator of the container may request an identification nameplate from the Commission. Commission identification nameplates shall be issued only for containers which can be documented as being in continuous LP-gas service in Texas from a date prior to September 1, 1984. The container's serial number and manufacturer on the original or manufacturer-issued nameplate shall be clearly readable at the time the Commission identification nameplate is attached.

- (1) The owner or operator of the container shall submit LPG Form 502 including clear photographs of the container

showing:

- (A) nozzle openings;
- (B) front, rear, and side views;
- (C) location of the nameplate;
- (D) detailed view of the nameplate; and
- (E) if a photograph cannot clearly depict the lettering on the nameplate, a pencil rubbing of the nameplate shall be submitted.

(2) The Safety Division (the Division) shall review LPG Form 502 and the supporting documentation. The Division shall have the manufacturer's data report on file for the container or the licensee shall provide a copy to the Division. The Commission identification nameplate shall not be issued unless the manufacturer's data report is reviewed. Upon review of submitted documents and confirmation of the manufacturer's data report, the Division shall mail a letter to the owner or operator of the container stating the estimated costs, which will be based on the following:

- (A) actual cost of the nameplate itself, including adhesive and other materials necessary to attach the nameplate; and
- (B) projected travel costs for the Commission employee performing the inspection and/or attachment of the nameplate, at a cost of \$60 plus the mileage and rate from Austin as set by the official state travel mileage chart.

(3) The owner or operator of the container shall pay the total estimated costs to the Division before the Division will proceed. Within 15 business days of receipt of all required documents and fees, the Division shall:

- (A) verify that it has continuous documentation for the container, showing the container in LP-gas service in Texas prior to September 1, 1984;
- (B) inspect the container to ensure that the container is not dented, pitted, or otherwise damaged, and complies with other applicable *LP-Gas Safety Rules*, unless additional time is necessary as determined by the director of the Safety Division; and
- (C) advise the owner or operator that the container shall be tested if it appears to be pitted or otherwise damaged.
 - (i) If the owner or operator refuses to test the container, it shall be removed from service within 10 calendar days of the date of inspection.
 - (ii) If the container passes the test, the Division shall proceed with the attachment of the nameplate.
- (D) Within the 15-day period, the Division shall notify the applicant in writing, in clear and specific language, of the outcome of the Division's review.

(4) Following the Division's review of any required tests and payment of all other amounts due in addition to the

previously-paid estimated costs, and when all requirements have been met, the Division shall issue an identification nameplate for the container.

(5) The Commission identification nameplate shall be stainless steel, stamped or etched with the Commission's mark or symbol, and attached by a Commission employee using an adhesive material. Nameplates shall include the wording and information as follows:

(A) Railroad Commission of Texas LP-Gas Container Identification Nameplate;

(B) RRC ID No. *00000*; and

(C) For Identification Only.

(6) Commission identification nameplates shall be affixed only by a Commission employee and shall be affixed at the Commission's convenience.

(b) Commission identification nameplates shall serve only to identify the container as being an ASME container and shall in no way indicate the condition of the container or whether it is safe for LP-gas service.

(c) Commission identification nameplates shall not be valid until the Division has received the final paperwork for the Commission employee who attached the nameplate. The Division shall mail a letter to the owner or operator of the container stating the date on which the nameplate is valid.

(d) If at any time during the Commission identification nameplate request or approval process, the original ASME nameplate becomes completely unreadable or detached, the owner or operator of the container shall immediately remove the container from service and no Commission identification nameplate shall be issued or attached. In addition, the Division may remove such a container from service as specified in §9.129(i) of this title (relating to Manufacturer's Nameplate and Markings on ASME Containers).

(e) If the Commission employee finds upon inspection of a container prior to the attachment of the Commission identification nameplate that the container does not pass inspection, for whatever reason, the inspector shall not attach the nameplate, but shall return the nameplate and all paperwork to the Commission's Austin office.

(f) Fees charged for the Commission identification nameplate are nonrefundable except as described in this section. The cost of the nameplate is refundable only if the Commission employee finds upon actual inspection of the container that the original nameplate has become totally detached or unreadable, or that the container is pitted, dented, or otherwise damaged, therefore prohibiting attachment of the nameplate. The fees charged relating to the Division's travel and research costs will be refunded only if the Division's research shows that the nameplate cannot be issued. Otherwise, these fees will be nonrefundable if these activities have taken place before the Commission employee inspects a container and finds that a nameplate cannot be issued.

§9.131 200 PSIG Working Pressure Stationary Vessels

In addition to NFPA 58, §5.2.4.2 and 5.7.2.4, 200 psig working pressure stationary vessels in LP-gas service in Texas prior to September 1, 1981, may be continued in service for commercial propane provided that they are fitted with pressure relief valves set for 250 psig normal start to discharge and comply with other provisions of this chapter. For the purpose of this section, “commercial propane” is defined as having a vapor pressure not in excess of 210 psig at 100 degrees Fahrenheit. This section does not apply to LP-gas motor fuel and mobile fuel containers.

§9.132 Sales to Unlicensed Individuals

A licensee shall not sell LP-gas or an LP-gas container to an unlicensed individual for resale. A licensee shall not sell an LP-gas container to an unlicensed individual for installation without determining that such container will be installed by a licensee authorized to perform such installation.

§9.134 Connecting Container to Piping

LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources Code, §113.081. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual’s single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the *LP-Gas Safety Rules*, and filed a properly-completed LPG Form 22 with the Safety Division, identifying the unlicensed person who installed the LP-gas piping.

§9.135 Unsafe or Unapproved Containers, Cylinders, or Piping

In addition to NFPA 58, §§5.2.1.1, 7.2.2.11, and 5.2.2, a licensee or the licensee’s employees shall not introduce LP-gas into any container or cylinder if the licensee or employee has knowledge or reason to believe that such container, cylinder, piping, or the system or the appliance to which it is attached is unsafe or is not installed in accordance with the statutes or the *LP-Gas Safety Rules*.

§9.136 Filling of DOT Containers

(a) In addition to NFPA 58 §7.4.2.1, DOT containers of less than 101 pounds LP-gas capacity, other than containers designed to be used on forklift or industrial trucks, shall be filled by weight only. The weight of such containers shall be determined by scales that meet the specifications of the National Institute of Standards and Technology’s Handbook 44. Scales at licensees’ facilities shall be currently registered with the Texas Department of Agriculture. The scales shall have a rated weighing capacity which exceeds the total weight of the cylinders being filled. The scales shall be accurate during the filling of the cylinder. The formula for filling LP-gas containers by weight under this section is as follows:

(1) The propane capacity in pounds is determined by multiplying the total water capacity in pounds by .42.

(2) Add the tare weight of a cylinder to the liquid weight of the product plus the weight of the hose and nozzle. The total weight of these three is the proper scale setting.

(b) Containers designed to be used on forklifts or industrial trucks shall be filled as specified in NFPA 58, §11.12.

§9.137 Inspection of Containers at Each Filling

In addition to NFPA 58, §§5.2.1.1, 7.2.2.11, and 5.2.2, before filling a container or cylinder, the individual filling the container or cylinder shall conduct a visual inspection of the exposed, readily accessible areas of the container or cylinder for any obvious defects. Where the container or cylinder is dented, bulged, gouged, or corroded such that the integrity of the container or cylinder is substantially reduced, such container or cylinder shall not be filled.

§9.140 Uniform Protection Standards

(a) In addition to NFPA 58 §6.24.3.14, LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1)-(4) of this subsection, are not required to comply with the fencing and guard railing requirements in subsections (b) and (d) of this section. The fencing and guard railing requirements also do not apply to the following:

- (1) LP-gas systems and containers located at private residences;
- (2) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;
- (3) LP-gas piping which contains no valves and which complies with all other applicable *LP-Gas Safety Rules*; and
- (4) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.

(b) In addition to NFPA 58, §§6.18.4.2, 6.19.3.2, 6.24.3.7, 7.2.3.8, 8.2.1.1, and 8.4.2.1, fencing at LP-gas installations shall comply with the following:

- (1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size, or industrial-type fencing, or material providing equivalent protection as determined by the Safety Division.
- (2) Fencing shall be at least six feet in height at all points.
- (3) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material.
- (4) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be

locked whenever the area enclosed is unattended. Gate posts on gates installed directly in front of the bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead. There shall be at least two means of emergency access from the fenced enclosure. If guard service is provided, it shall be extended to the LP-gas installation. Guard service shall be properly trained as set forth in §9.51(b)(4) of this title (relating to General Requirements for Training and Continuing Education). However, if a fenced area is not larger than 100 square feet in area, the point of transfer is within three feet of a gate, and any containers being filled are not located within the enclosure, a second gate shall not be required.

(5) Clearance of at least three feet shall be maintained between the fencing and the container and the entire transfer system.

(6) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container shall be designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in subsection (d) of this section.

(7) The operating end of a container, including the entire transfer system, shall be completely enclosed by fencing.

(c) Containers which are exempt from the fencing requirements include:

(1) ASME containers or manual dispensers originally manufactured to or modified to be considered by the Safety Division (the Division) as self-contained units. Self-contained units shall be protected as specified in subsection (d) of this section;

(2) DOT portable or forklift containers in storage racks or at single family dwellings used as private residences; and

(3) DOT portable or forklift containers that have been used in LP-gas service but are not awaiting use or resale.

(d) In addition to NFPA 58, §§6.6.1.2, 6.6.6.1(a)-(d), 6.6.6.2(6), 6.18.4.2, 6.24.3.12, and 8.4.2, guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) In addition to NFPA 58 §6.18.4.2(c), where fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas, and guardrailing specified in paragraphs (2)-(6) of this subsection, or protection considered by the Division to be equivalent, shall be required.

(2) Vertical supports for guardrails shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The vertical supports shall be capped on the top or otherwise protected to prevent the entrance of water or debris into the guardpost; anchored in concrete at least 18 inches below the ground; and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

(3) The top of the horizontal guardrailing shall be secured to the vertical supports at least 30 inches above the ground. The horizontal guardrailing shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrailing shall be capped on the ends or otherwise protected to prevent the entrance of water or debris into the guardpost; and welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions, including the nature of

the traffic to which the protected equipment is subjected.

(4) Openings in horizontal guardrailing, except the opening that is permitted directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrailing. A means of temporarily removing the horizontal guardrailing and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrailing.

(5) Clearance of at least three feet shall be maintained between the railing and any part of an LP-gas transfer system or container or clearance of two feet for retail cylinder filling or service station installations. The two posts at the ends of any railing which protects a bulkhead shall be located a minimum of 24 and a maximum of 36 inches at 45-degree angles to the nearest corner of the bulkhead.

(6) The operating end of the container and any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic shall be protected from this type of damage. The protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(e) A combination of fencing and guardrails specified in subsections (b) and (d) of this section shall not result in less protection than using either fencing or guardrails alone.

(f) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter guardrailing, then the licensee or operator shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

(g) In addition to NFPA 58 §5.2.8.1, LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.

Figure: 16 TAC §9.140(g), cont.

§9.140. Uniform Protection Standards -- Table 1 (Revised February 2008)

Figure: 16 TAC §9.140(g)

§9.140. Uniform Protection Standards -- Table 1 (Revised February 2008)

Requirements	Self-service Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non- Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
1. Red letters at least 2" high (or at least 1 1/4" high for storage racks for DOT portable or forklift cylinders) on white or aluminum background: NO SMOKING	*	*	*	*
2. Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
3. Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
4. Letters at least 1/2" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
5. Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
6. Block letters at least 2" high on a background of contrasting color to the letters, including instructions on activation and visible from the point of transfer: PROPANE (or LP-GAS) EMERGENCY SHUTOFF	*		*	*
7. Letters at least 4" high on container or 1 1/4" high on cylinder exchange or storage rack indicating contents: LP-GAS or BUTANE or PROPANE and FLAMMABLE		*	*	*
8. Letters at least 4" high on a background of contrasting color to the letters, marked on both sides or both ends of any container holding unodorized gas: NOT ODORIZED			*	*
9. Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*
10. Letters at least 2" high on operating end of container: W.P. ____, WORKING PRESSURE ____, or WORK PRESS. ____			*	*

11. If more than one container, letters at least 2" high on operating end of each container: CONTAINER NO. ____ or TANK NO. ____			*	*
12. Letters at least 2" high on a background of contrasting color, readily visible to the public, stating: 24-Hour Emergency Number ____ (not required at non-licensee installations)	*	*	*	*
13. Lettering at least 3/4" high with the telephone number of the certified employee responsible for the outlet, and/or the operations supervisor, on a background of contrasting color, readily visible to the public (not required at non-licensee installations)	*		*	*

(1) Unless colors are specified, lettering shall be in a color that sharply contrasts to the background color of the sign, and shall be readily visible to the public.

(2) Items 1, 2, and 3 in Table 1 may be combined on one sign.

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by guardrailing as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating to Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) Item 11 in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(5) Item 13 in the column entitled "Requirements" in Table 1 applies to outlets where an LP-gas certified employee is responsible for the LP-gas activities at that outlet, when a licensee's employee is the operations supervisor at more than one outlet as required by §9.17(a) of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(6) Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(7) Licensees and non-licensees shall comply with operational and/or procedural actions specified by the signage requirements of this section.

(8) Any 24-hour emergency telephone numbers shall be:

(A) monitored at all times; and

(B) be answered by a person who is knowledgeable of the hazards of LP-gas and who has comprehensive LP-gas emergency response and incident information, or has immediate access to a person who possesses

such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this section.

(h) Storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (d) of this section; or

(2) installing guard posts, provided:

(A) effective February 1, 2008, for new installations, the guard posts are installed a minimum of 18 inches from each storage rack and consist of at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, no more than four feet apart, and anchored in concrete at least 30 inches below ground and rising at least 30 inches above the ground; or

(B) effective February 1, 2008, for new installations, the guard posts are installed a minimum of 18 inches from each storage rack and are constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guard post, and attached by welding to a minimum 8-inch by 8-inch steel plate at least 1/2 inch thick. The guard posts and steel plate shall be permanently installed and securely anchored to a concrete driveway or concrete parking area.

(3) Guardrail or guard posts are not required to be installed if:

(A) the cylinder storage rack is located a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of five inches in height above the grade of the driveway or parking area;

(B) if the requirements of subparagraph (A) cannot be met, the cylinder storage rack must be installed a minimum of 48 inches behind a concrete curb or concrete wheel stop that is a minimum of four inches in height above the grade of the driveway or parking area, and a concrete wheel stop at least four inches in height must be installed at least 12 inches from the curb or first wheel stop;

(4) All parking wheel stops and cylinder storage racks in paragraph (3) of this subsection must be secured against displacement.

(i) Self-service dispensers shall be protected against vehicular damage by:

(1) guardrails that comply with subsection (d)(2)-(6) of this section; or

(2) guard posts that comply with subsection (d)(2) of this section; or

(3) where routine traffic patterns expose only the approach end of the dispenser to vehicular damage, support columns, concrete barriers, bollards, inverted U-shaped guard posts anchored in concrete, or other protection acceptable to the Safety Division, provided:

(A) such protection extends beyond the framework of the dispenser; and

(B) at least 24 inches of clearance is maintained between the approach end of the dispenser and the protective barrier.

(4) Self-service dispensers utilizing protection specified in paragraphs (2)-(3) of this subsection shall be connected to supply piping by a device designed to prevent the loss of LP-gas in the event the dispenser is displaced. The device must retain liquid on both sides of the breakaway point and be installed in a manner to protect the supply piping against damage.

§9.141 Uniform Safety Requirements

(a) In addition to NFPA 58, §6.6.1.4, containers shall be painted as follows:

(1) ASME containers, except vaporizers, shall be painted white or aluminum, or any other heat-reflective color (such as light green, light blue, etc.). Darker, heat-absorbing colors (such as black, navy blue, etc.) shall not be permitted.

(2) If the Safety Division (the Division) disapproves of a certain color, the licensee or ultimate consumer shall provide to the Division information from the container or paint manufacturer stating specific reasons why the color is heat-reflective and should be approved. The director of the Division shall make the final determination and shall notify the licensee or ultimate consumer.

(b) In addition to NFPA 58, §6.24.4.2, each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a breakaway device. Any vapor return hose installed at such installations shall also be equipped with a breakaway device. LP-gas installations at which forklift cylinders are completely removed from the forklift before being filled are not required to have a breakaway device.

(c) Locking handles on ball-type shutoff valves. Any ball-type shutoff valve less than two inches in size shall have a locking handle. If a ball-type shutoff valve of any size has a locking handle installed at the terminal end of the hose, the main liquid and/or vapor valves or main shutoff valves on the stationary container at an attended installation may remain open as long as the locking handle on the transfer hose remains locked until the transfer hose is properly connected. If a ball-type shutoff valve two inches or larger in size does not have a locking handle, the main liquid and/or vapor valves or main shutoff valves on the stationary container shall remain closed at all times and shall not be opened until the transfer hose is properly connected or disconnected.

(d) Pumps. A retail operated DOT portable container filling installation and/or service station installation shall be equipped with a pump.

(e) In addition to NFPA 58, §5.2.8.1, all containers shall be numbered in accordance with the requirements set forth in Table 1 of §9.140 of this title (relating to Uniform Protection Standards).

(f) In addition to NFPA 58, §6.4.7, no canopies or coverings are allowed over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed. Non-combustible wind breaks and other weather protection may be installed to provide employees and customers protection against the elements of weather, but shall not be installed over any portion of an LP-gas container.

(g) Any container that may have contained product other than LP-gas shall be thoroughly cleaned and purged prior to introducing LP-gas into such container. Only grades of LP-gas determined to be noncorrosive may be introduced into any container. LP-gas may not contain anhydrous ammonia, hydrogen sulfide, or any other contaminant.

(1) If it is known or suspected that the LP-gas has been or may be contaminated, the person responsible for the contamination shall have one or more of the tests contained in "Liquefied Petroleum Gas Specifications for Test Methods, Gas Processors Association (GPA) 2140" performed by a testing laboratory or individual qualified to perform the tests. The Division may request information necessary to determine the qualification of any testing laboratory or individual.

(2) The results of the tests shall certify whether the LP-gas is contaminated or corrosive, whether the use of the LP-gas in the containers will damage either the stationary or non-stationary containers or the container valves, fittings, or appurtenances, or whether the contaminated product or container or container valves, fittings, or appurtenance will endanger the health, safety, and welfare of the general public.

(3) Based on the results of the tests, the Division may require that the LP-gas be removed immediately from the container or that the container be removed immediately from LP-gas service.

(h) A container designed for underground installation only shall not contain liquid fuel at any time the container is aboveground or uncovered.

§9.142 LP-Gas Container Storage and Installation Requirements

Except as noted in this section and in addition to NFPA 58 §6.3.1, LP-gas containers shall be stored or installed in accordance with the distance requirements in NFPA 58, §§6.2.2, 6.4.5, and 8.4.1 and any other applicable requirements in NFPA 58 or the *LP-Gas Safety Rules*.

(1) An LP-gas liquid dispensing installation other than a retail operated DOT portable container filling/service station installation is not required to have a pump, provided that the storage containers are located one and one half times the required distances specified in NFPA 58, §6.2.2, or a minimum distance of 15 feet if the storage container is less than 125 gallons water capacity.

(2) Any LP-gas container constructed prior to 1970 which has an odd-numbered water gallon capacity (for example, 517 water gallons instead of 500 water gallons) that is not more than 5.0% greater than the standard water gallon capacity may be installed utilizing the minimum distance requirement based on the standard water gallon capacity.

§9.143 Bulkhead, Internal Valve, API 607 Ball Valves, and ESV Protection for Stationary LP-Gas Installations With Individual or Aggregate Water Capacities of 4,001 Gallons or More

(a) Instead of NFPA 58, §6.6.12, effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical

bulkhead, and for all container openings 1 1/4 inches or greater, pneumatically-operated emergency shutoff valves (ESV), pneumatically-operated internal valves, or pneumatically-operated API 607 ball valves as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes or Additional Requirements) for NFPA 58, §6.11.1. In lieu of a pneumatically-operated internal valve or a pneumatically-operated ESV, a backflow check valve may be installed where the flow is in one direction into the container. The backflow check valve shall have a metal-to-metal seat or a primary resilient seat with metal backup, not hinged with combustible material, and shall be designed for this specific application.

(1) The pneumatic ESV and/or backflow check valves shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 inches long installed between the ESV and the bulkhead.

(2) The ESV shall be installed in the piping so that any break resulting from a pull away will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESV at the bulkhead and the internal valves, ESV, and API 607 ball valves at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Pneumatically-operated ESV, internal valves, and API 607 ball valves shall be equipped for automatic shutoff using thermal (fire) actuation where the thermal element is located within five feet (1.5 meters) of the ESV, internal valves, and/or API 607 ball valves. Temperature sensitive elements shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

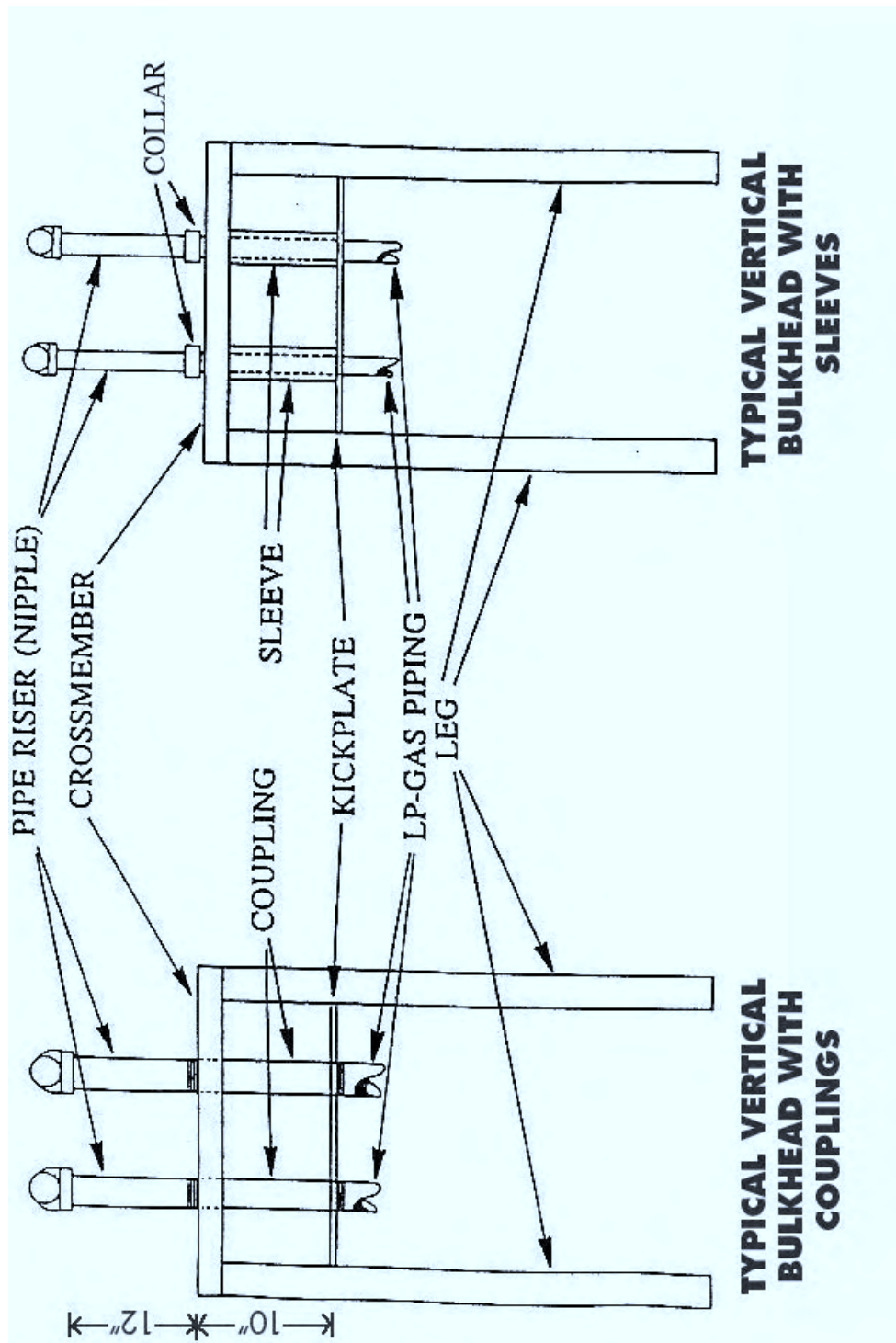
(5) Pneumatically-operated internal valves, ESV, and API 607 ball valves shall be interconnected and incorporated into at least one remote operating system.

(b) In addition to NFPA 58 §5.9.6, within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead, ESV, and/or backflow check valves where the flow is in one direction into the container shall install vertical bulkheads, pneumatic ESV and/or backflow check valves where the flow is in one direction into the container.

(c) Existing installations which have horizontal bulkheads and cable-actuated ESV shall comply with the following:

- (1) If the horizontal bulkhead requires replacement, it shall be replaced with a vertical bulkhead;
- (2) If a cable-actuated ESV requires replacement, it shall be replaced with a pneumatically operated ESV;
- (3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original

Figure: 16 TAC §9.143(d)(7)



location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatically operated ESV;

(4) All cable-actuated ESV shall be replaced with pneumatically-operated ESV by January 1, 2011.

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) Bulkheads shall be installed for both liquid and vapor return piping;

(2) No more than two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pull away;

(3) Both liquid and vapor transfer hoses shall be plugged or capped;

(4) Bulkheads shall be located at least 10 feet from any aboveground container or containers and a minimum of 10 feet horizontally from any portion of a container or valve exposed aboveground on any underground or mounded container. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform the Safety Division (the Division) in writing and include all necessary information. The Division may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule);

(5) Horizontal bulkheads shall not be converted to vertical bulkheads;

(6) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a pullaway;

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.

(A) Six-inch steel channel iron shall be used;

(B) Legs shall be four-inch schedule 80 piping;

(C) The top crossmember of a vertical bulkhead shall be six-inch standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris. The height of the top crossmember above ground shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway;

(D) The kick plate shall be at least 1/4 inch steel plate installed at least 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers;

(E) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember

and the kick plate;

(i) Pipe sleeves shall have a clearance of 1/4 inch or less for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a schedule 80 pipe collar, a minimum 12-inch schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling;

(ii) If a 3,000-pound coupling is used, no collar is required; however, the minimum 12-inch length of schedule 80 threaded pipe riser and an elbow or other fitting between the bulkhead and hose coupling are required;

(iii) Elbows or other fittings shall comply with NFPA 58, §2.4.4 and shall direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8) In lieu of a minimum 12-inch nipple or a vertical bulkhead, swivel-type piping (breakaway loading arm) may be installed. The swivel-type piping shall meet all applicable provisions of the *LP-Gas Safety Rules*. The swivel-type piping may also be used for unloading, but shall not be used in lieu of ESVs. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(9) The Division may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) In addition to NFPA 58, §5.7.4.2 as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements), ESVs, internal valves, and API 607 ball valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards) as follows:

(1) Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV. Existing installations shall have complied by August 1, 2001.

(2) Beginning September 1, 2005, for new installations, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 25 and 100 feet from the ESV at the bulkhead and in the path of egress from the ESV. API 607 ball valves installed after February 1, 2008, shall also meet the requirements of this section.

(3) The use of swivel-type piping as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) The bulkheads, internal valves, backflow check valves, and ESVs shall be kept in working order at all times in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*. If the bulkheads, internal valves, backflow

check valves and ESVs are not in working order in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*, the licensee or operator of the installation shall immediately remove them from LP-gas service and shall not operate the installation until all necessary repairs have been made.

(g) In addition to NFPA 58 §§5.9.6 and 6.9.6.1, by February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall have been replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 60 inches in length or less, and shall comply with all applicable *LP-Gas Safety Rules*. Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) If necessary to increase LP-gas safety, the Division may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) and (b) of this section provided:

(1) each container is filled solely through a 1 3/4 inch double back check filler valve installed directly into the container; and

(2) at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 25 and 100 feet from the point of transfer in the path of egress to close the primary discharge valves in the containers; and

(3) the LP-gas installation is not used to fill an LP-gas transport.

SUBCHAPTER C – VEHICLES AND VEHICLE DISPENSERS

§9.201 Applicability

(a) This subchapter applies to transport containers and moveable fuel storage tenders such as farm carts constructed to MC-330 or MC-331 Department of Transportation (DOT) specifications, nonspecification units, container delivery units, school buses, mass transit vehicles, special transit vehicles, and public transportation vehicles.

(1) Transfer of LP-gas from one transport to another shall be permitted only through a hose with a nominal inside diameter of 1 1/4 inch or less and protected by an off-truck remote control shutdown as required in 49 CFR.

(2) An LP-gas transport shall not be joined to manifold piping or to a stationary container for use as an auxiliary storage container at any stationary installation except with prior approval from the Safety Division.

(b) All transports and moveable fuel storage tenders shall comply with MC-330 or MC-331, or the exemption in Title 49, Code of Federal Regulations (CFR), §173.315(k).

(c) Licensees and ultimate consumers shall comply with other DOT or motor vehicle requirements, if applicable. In addition, transports and container delivery units shall also comply with the applicable sections of Title 49 CFR, the Federal Motor Vehicle Safety Standards, and any other applicable regulations. Examples of such additional requirements are as follows:

(1) 49 CFR §177.834(j) states: "Except for a cargo tank conforming to §173.29(b)(2) of this subchapter, a person may not drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless: (1) All manhole closures are closed and secured; and (2) All valves and other closures in liquid discharge systems are closed and free of leaks."

(2) 49 CFR §177.840(g) states: "Each liquid discharge valve on a cargo tank, other than an engine fuel line valve, must be closed during transportation except during loading and unloading."

(3) 49 CFR §180.405(n) states: "Thermal activation. No later than the date of its first scheduled leakage test after July 1, 1999, each specification MC 330 or MC 331 cargo tank motor vehicle and each nonspecification cargo tank motor vehicle conforming to §173.315(k) of this subchapter, marked and certified before July 1, 1999, that is used to transport a liquefied compressed gas, other than carbon dioxide and chlorine, that has a water capacity of 13,247.5 liters (3,500 gallons) or less must be equipped with a means of thermal activation for the internal self-closing stop valve as specified in §178.337- 8(a)(4) of this subchapter."

§9.202 Registration and Transfer of LP-Gas Transports or Container Delivery Units

(a) A person who operates a transport equipped with LP-gas cargo tanks or any container delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with the License and Permit Section of the Gas Services Division (the Section) in the name or names under which the operator conducts business in Texas prior to the unit being used in LP-gas service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to the Section the \$270 registration fee for each bobtail truck, semitrailer, container delivery unit, or other motor vehicle equipped with LP-gas cargo tanks; and

(B) file a properly completed LPG Form 7.

(2) To register an MC-330/MC-331 specification unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to the Section the \$270 registration fee;

(B) file a properly completed LPG Form 7; and

(C) file a copy of the latest test results if an expired unit has not been used in the transportation of LP-gas for over one year.

(3) To transfer a unit, the new operator of the unit shall:

(A) pay the \$100 transfer fee for each unit; and

(B) file a properly completed LPG Form 7.

(b) The Section may also request that an operator registering or transferring any unit:

(1) file a copy of the Manufacturer's Data Report; or

(2) have the unit tested by a test other than those required by §9.208 of this title (relating to Testing Requirements).

(c) When all registration or transfer requirements have been met, the Section shall issue LPG Form 4 which shall be properly affixed in accordance with the placement instructions on the form. LPG Form 4 shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of LP-gas and to fill the transport containers.

(1) A person shall not operate an LP-gas transport unit or container delivery unit in Texas unless the LPG Form 4 has been properly affixed or unless its operation has been specifically approved by the Section.

(2) A person shall not introduce LP-gas into a transport container unless that unit bears an LPG Form 4 or unless specifically approved by the Section.

(3) LPG Form 4 shall not be transferable by the person to whom it has been issued, but shall be registered by any subsequent licensee or ultimate consumer prior to the unit being placed into LP-gas service.

(4) This subsection shall not apply to:

(A) a container manufacturer/fabricator who introduces a reasonable amount of LP-gas into a newly constructed container in order to properly test the vessel, piping system, and appurtenances prior to the initial sale of the container. The liquid LP-gas shall be removed from the transport container prior to the unit leaving the container manufacturer/fabricator's premises; or

(B) a person who introduces a maximum of 150 gallons of LP-gas into a newly constructed transport container when such container will provide the motor fuel to the chassis engine for the purpose of allowing the unit to reach its destination.

(5) The Section shall not issue an LPG Form 4 if;

(A) the Section or a Category A, B, or O licensee determines that the transport is unsafe for LP-gas service.

(B) the Section does not have an inspection record of the transport or cylinder delivery unit by a Commission representative within four years of its initial registration on or after January 1, 2006; or

(C) the Section has not inspected the transport or cylinder delivery unit at least once within a four-year cycle thereafter.

(6) If an LPG Form 4 decal on a unit currently registered with the Section is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LPG Form 18B and a \$50 replacement fee with the Section.

§9.203 School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections

(a) After the manufacture of or the conversion to an LP-gas system on any vehicle to be used as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify the Safety Division (the Division) in writing on LPG Form 503 that the applicable LP-gas powered vehicles are ready for a complete inspection to determine compliance with the *LP-Gas Safety Rules*.

(b) If the Division's initial complete inspection finds the vehicle in compliance with the *LP-Gas Safety Rules* and the statutes, the vehicle may be placed into LP-gas service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the *LP-Gas Safety Rules*. If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into LP-gas service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. For public transportation vehicles only, either manufactured to use or converted to LP-gas, if the Division does not conduct the initial inspection of such vehicle within 30 business days of receipt of LPG Form 503, the vehicle may be operated in LP-gas service if it complies with the *LP-Gas Safety Rules*. The manufacturer, licensee, or ultimate consumer shall file with the Division documentation demonstrating compliance with the *LP-Gas Safety Rules*, or the Division shall conduct another complete inspection before the vehicle may be placed into LP-gas service.

(c) The manufacturer, licensee, or ultimate consumer making the installation or conversion shall be responsible for compliance with the *LP-Gas Safety Rules*, statutes, and any other local, state, or federal requirements.

(d) If the requested Division inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, the Division shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§9.204 Maintenance of Vehicles

All LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas container, gas utilization equipment, and appliances shall be maintained in safe working order and in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*. If any of the LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas containers, gas utilization equipment, or appliances is not in safe working order, the Safety Division may require that the vehicle be immediately removed from LP-gas service and not

be operated until the necessary repairs have been made.

§9.206 Vehicle Identification Labels

LP-gas shall not be introduced into any vehicle powered by LP-gas and designed for regular use on public roadways unless the vehicle is properly identified by a weather-resistant diamond-shaped label described in NFPA 58, §11.11.1, as that section is amended in Table 1 of §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes or Additional Requirements).

§9.208 Testing Requirements

Each transport container unit required to be registered with the License and Permit Section of the Gas Services Division (the Section) shall be tested in accordance with 49 CFR 180.407, relating to requirements for test and inspection of specification cargo tanks. The tests shall be conducted by any individual authorized by the United States Department of Transportation through a DOT "CT" number to conduct such tests. This section shall not apply to the initial transfer of unregistered units that are tested and transferred from another state. If the test results show any unsafe condition, or if the transport unit does not comply with 49 CFR Parts 100-185, the transport container unit shall be immediately removed from LP-gas service and shall not be returned to LP-gas service until all necessary repairs have been made and the Section authorizes in writing its return to service.

§9.211 Markings

In addition to NFPA 58 §9.4.6.2, each LP-gas transport and container delivery unit in LP-gas service shall be marked on each side and the rear with the name of the licensee or the ultimate consumer operating the unit. Such lettering shall be legible and at least two inches in height and in sharp color contrast to the background. The Safety Division shall determine whether the name marked on the unit is sufficient to properly identify the licensee or ultimate consumer.

§9.212 Manifests

(a) All manifests or bills of lading shall indicate the amount and type of odorant per gross gallons, the vapor pressure of the product at 100 degrees Fahrenheit, the net gallons, the loading temperature, the specific gravity at 60 degrees Fahrenheit, the type of product, and the United Nations number with verification by the loading entity and loader. A copy of the manifest or bill of lading shall be given to the entity receiving the shipment.

(b) This requirement shall not apply to loads covered by permanent shipping papers authorized by DOT.

(c) Manifests shall be made available to the Commission upon request.

SUBCHAPTER D - ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

§9.301 Adoption by Reference of NFPA 54

(a) Except as modified in the remaining sections of this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2006 edition of the National Fuel Gas Code, commonly referred to as NFPA 54 or Pamphlet 54. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 54 which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 54 are:

- (1) NFPA 30A, Code for Motor Fuel Dispenser Facilities and Repair Garages, 2003 edition;
- (2) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2002 edition;
- (3) NFPA 51, Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes, 2002 edition;
- (4) NFPA 52, Vehicular Fuel Systems Code, 2006 edition;
- (5) NFPA 58, Liquefied Petroleum Gas Code, 2004 edition;
- (6) NFPA 70, National Electrical Code, 2005 edition;
- (7) NFPA 82, Standard on Incinerators and Waste, and Linen Handling Systems and Equipment, 2004 edition;
- (8) NFPA 88A, Standard for Parking Structures, 2002 edition;
- (9) NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 2002 edition;
- (10) NFPA 90B, Standard for the Installation of Warm Air Heating and Air Conditioning Systems, 2006 edition;
- (11) NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition;
- (12) NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2003 edition;
- (13) NFPA 409, Standard on Aircraft Hangars, 2004 edition;
- (14) NFPA 853, Standard for the Installation of Station Fuel Cell Power Systems, 2003 edition; and

(15) NFPA 1192, Standard on Recreational Vehicles, 2005 edition.

§9.302 Clarification of Certain Terms Used in NFPA 54

(a) Authority having jurisdiction. As pertains to LP-gas activities in Texas, the phrase “authority having jurisdiction” defined in NFPA 54, §3.2, and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of “approved,” “engineering,” “labeled,” and “listed” in NFPA 54, §3.2.

(b) Qualified agency. The term “qualified agency” as defined in NFPA 54, §3.3.83, shall include a person (as “person” is defined in §9.2 of this title (relating to Definitions)) who holds a current license issued by the Commission, or a person performing certain LP-gas activities on his own premises, as allowed in §9.134 of this title (relating to Connecting Container to Piping).

(c) Engineering. The Commission does not adopt language in any NFPA 54 rule such as “sound engineering practice,” “accepted engineering practice,” “good engineering practice,” “sound engineering design,” or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 54 rule or other NFPA pamphlets containing such language from the exceptions listed in this subchapter is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

§9.303 Exclusion of NFPA 54, §10.29

The Commission does not adopt NFPA 54, §10.29, which refers to NFPA 52, Vehicular Fuel Systems Code. Persons engaging in CNG activities shall comply with the Commission’s adopted rules at Chapter 13 of this title (relating to Regulations for Compressed Natural Gas (CNG)).

§9.306 Room Heaters in Public Buildings

In addition to applicable requirements in NFPA 54, Chapter 10, Installation of Specific Equipment, room heaters in schools, day care centers, foster homes, hotels or other similar buildings or rooms used for temporary lodging shall be vented and equipped with a safety shut-off device, except that room heaters with 40,000 Btu or less input and infrared heaters are not required to be vented, but shall have a safety shutoff device and an oxygen depletion system (ODS).

§9.307 Identification of Converted Appliances

(a) In addition to the requirements of NFPA 54, §9.1.3, and NFPA 58, §5.20, upon completion of the conversion and testing of LP-gas appliances, the licensee, registrant, or appliance manufacturer making the conversion shall attach to each such appliance a decal or tag of metal or other permanent material indicating that the appliance is converted for

use with LP-gas.

(b) Conversion of an appliance for use with LP-gas by an authorized representative of the appliance manufacturer, using parts provided by the manufacturer, is not an activity requiring licensing pursuant to Texas Natural Resources Code, §113.081.

§9.308 Identification of Piping Installation

(a) In addition to the requirements of NFPA 54, Chapter 7, Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage tested only by persons properly licensed or certified by the Commission.

(b) Licensees and registrants shall document and retain such documentation of all pressure and leakage tests pursuant to §9.4 of this title (relating to Records and Enforcement).

§9.311 Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support

(a) In addition to the requirements of NFPA 54, §9.6.2 and NFPA 58 §5.9.6.5 regarding gas hose connectors, agricultural structures, such as greenhouses or broiler houses, or industrial structures not inhabited by humans may have appliance connectors more than six feet in length provided that:

- (1) the hose used shall be marked as acceptable for LP-gas service;
- (2) the hose shall comply with NFPA 58, §§5.9.6.1 through 5.9.6.4;
- (3) the length of the hose used shall be only that which is sufficient to serve the purpose for which it is intended; and
- (4) manufactured hose connections, such as quick-connect or threaded fittings, shall be used.

(b) Only broiler houses and other types of poultry houses may connect LP-gas piping with stainless steel screw-type banded clamps in lieu of the required manufactured hose connections specified in subsection (a)(4) of this section, provided that the clamps are properly installed and the connections are gas-tight, that the clamps are used in conjunction with hose barb adaptors, and that the system's operating pressure is 6 1/2 ounces or less. Other agricultural structures shall comply with the requirements of subsection (a)(4) of this section.

(c) In addition to the requirements in NFPA 54, §7.2.6, the support spacing requirement for 3/4 to one inch pipe shall not apply to agricultural structures not inhabited by humans, such as greenhouses and broiler houses, provided that:

- (1) such piping is supported by ceiling trusses no more than ten feet apart; and
- (2) pipe joints and fittings are supported by the trusses.

§9.312 Certification Requirements for Joining Methods

- (a) In addition to the requirements in NFPA 54, §5.6.4, and NFPA 58, §5.9.5, and in addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, an individual shall be certified by either the Safety Division (the Division) or a person or certification school authorized by the Division. The certification shall confirm that the individual has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity.
- (b) The employer of an individual certified to perform heat-fusion activities shall complete LPG Form 506, which shall be maintained and available for review by a Commission representative. If the individual certified as required by subsection (a) of this section does not perform any heat-fusion activities for 12 consecutive months, that individual shall be recertified prior to resuming any heat-fusion activities.
- (c) Licensees shall retain written proof regarding any current certifications for installation and repair methods for corrugated stainless steel tubing.

§9.313 Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted

Table 1 of this section lists certain NFPA 54 sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission’s rules in this chapter.

Table 1: 16 TAC §9.313

NFPA 54 SECTIONS WITH ADDITIONAL REQUIREMENTS OR NOT ADOPTED

Affected NFPA 54 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments
5.6.4	additional requirements	See Commission rule §9.312, Certification Requirements for Joining Methods
Chapter 7	additional requirements	See Commission rule §9.308, Identification of Piping Installation
7.2.6	additional requirements	See Commission rule §9.311(c), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
9.1.3	additional requirements	See Commission rule §9.307, Identification of Converted Appliances.
9.2.6	additional requirements	See Commission rule §9.311(a), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
Chapter 10	additional requirements	See Commission rule §9.306, Room Heaters in Public Buildings.
10.29	not adopted	See Commission rule §9.303, Exclusion of NFPA 54, §10.29.

SUBCHAPTER E - ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

§9.401 Adoption by Reference of NFPA 58

(a) Except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association (NFPA) in its 2008 edition of the Liquefied Petroleum Gas Code (formerly titled Standard for the Storage and Handling of Liquefied Petroleum Gases), commonly referred to as NFPA 58 or Pamphlet 58, effective February 1, 2008. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) The Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 58, §2.1, which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 58 are:

- (1) NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition;
- (2) NFPA 13, Standard for the Installation of Sprinkler Systems, 2007 edition;
- (3) NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection, 2007 edition;
- (4) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2005 edition;
- (5) NFPA 30, Flammable and Combustible Liquids Code, 2008 edition;
- (6) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2008 edition;
- (7) NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 2003 edition;
- (8) NFPA 55, Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, 2005 edition;
- (9) NFPA 59, Utility LP-Gas Plant Code, 2004 edition;
- (10) NFPA 70, National Electrical Code, 2008 edition;
- (11) NFPA 99, Standard for Health Care Facilities, 2005 edition;
- (12) NFPA 101, Life Safety Code, 2006 edition;
- (13) NFPA 160, Standard for the Use of Flame Effects Before an Audience, 2006 edition;

(14) NFPA 220, Standard on Types of Building Construction, 2006 edition;

(15) NFPA 251, Standard Methods of Tests of Fire Resistance of Building Construction and Materials, 2006 edition;

(16) NFPA 1192, Standard on Recreational Vehicles, 2005 edition.

§9.402 Clarification of Certain Terms Used in NFPA 58

(a) Authority having jurisdiction. As pertains to LP-gas activities in Texas, the phrase “authority having jurisdiction” defined in NFPA 58, §3.2, and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of “approved,” “labeled,” and “listed” in NFPA 58, §3.2.

(b) Engineering. The Commission does not adopt language in any NFPA 58 rule such as “sound engineering practice,” “accepted engineering practice,” “good engineering practice,” “sound engineering design,” or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 58 rule or other NFPA pamphlets containing such language from Table 1 of §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements) is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

(c) Container capacity, piping system, and appliance exceptions. The Commission does not adopt language in any NFPA rule, chart, figure, or table pertaining to any LP-gas container having a water capacity of one gallon (4.2 pounds LP-gas capacity) or less, or to any LP-gas piping system or appliance attached or connected to such a container.

§9.403 Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission’s corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission’s existing rules.

Table 1: 16 TAC §9.403(a)

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
1.7.11 3.2.2	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
1.4.1 4.3.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
1.4.2 4.3.2	not adopted	See Commission rules §9.101, Filings Required for Stationary LP-Gas Installations, and §9.102 (c), Notice of Stationary LP-Gas Installations.
1.5. 4.4	additional requirements	See Commission rule §9.10, Rules Examination, 9.51, General Requirements for Training and Continuing Education, and §9.52, Training and Continuing Education Courses.
5.2.1.1	additional requirements	See Commission rule §9.135, Unsafe of Unapproved Containers, Cylinders, or Piping and §9.137, Inspection of Containers at Each Filling.
5.2.2	additional requirements	See Commission rule §9.135, Unsafe of Unapproved Containers, Cylinders, or Piping and §9.137, Inspection of Containers at Each Filling.
2.2.2.2 5.2.4.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
2.2.6.1 5.2.8.1	additional requirement	See Commission rules §9.140 (g), Table 1, Uniform Protection Standards, and §9.141 (e), Uniform Safety Requirements.
2.2.6.3 5.2.8.3	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
2.2.6.4 5.2.8.4(1)	with changes	Warning labels shall be applied to all cylinders of <u>4.2 lb (1.9 kg)</u> to 100 lb (45.4 kg) LP-Gas capacity and not filled on site. The label shall include information on the potential hazards of LP-Gas.
2.2.6.5 5.2.8.5	not adopted	See Commission rule §9.140, Table 1, Uniform Protection Standards.
2.3.1.5 5.7.3.1	with changes	Cylinders with <u>4.2 lb (1.9 kg)</u> 4 lb (1.8 kg) through 40 lb (18 kg) propane capacity for vapor service shall be equipped or fitted with a listed overfilling prevention device that complies with UL 2227, <i>Overfilling Prevention Devices</i> , and a fixed maximum liquid level gauge. These devices shall be permitted to be a part of the container valve assembly.
2.3.2.3 5.7.2.4(A)	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
5.7.4.1	additional requirements and with changes	See Commission rules §9.9.143(e), Containers of 4000 gal <u>2000 gal</u> (7.6 m ³) water capacity or less shall be fitted with valves and other appurtenances in accordance with Table 5.7.4.1. Shutoff, filler, check, and excess-flow valves shall comply with ANSI/UL 125, <i>Standard for Valves for Anhydrous Ammonia and LP-Gas (Other than Safety Relief)</i> , except that shutoff valves used on DOT cylinders shall comply with UL 1769, Cylinder Valves. Containers over 4000 gal (15.1 m ³) of 2001 gal through 400 gal (7.6 m³ through 15.1 m³) water capacity in bulk plant and industrial plant service shall be fitted with valves and other appurtenances in accordance with 5.7.4.2 as adopted <u>with changes</u> . Containers of 2001 gal through 4000 gal (7.6 m ³ through 15.1 m ³) water capacity in other than bulk plant and industrial plant service shall be in accordance Table 5.7.4.1.
Table 2.3.3.2(a) Table 5.7.4.1	with changes	Heading: Container Connection and Appurtenance Requirements for Containers Used in Other Than Bulk Plants and Industrial Plants Column 1 Header: Cylinders <u>4.2</u> 2 Through 420 lb Propane Capacity Part F, Column 2: R (<u>4.2</u> 4 thru 40 lb) (see 5.7.3)

2.3.3.2(a)(5) 5.7.4.1(G)	with changes	Overfilling prevention devices shall be required on cylinders having <u>4.2 lb</u> 4 lb through 40 lb (<u>1.9 ±.8 kg</u> through 18 kg) propane capacity for vapor service. (See 2.3.15.) (See 5.7.3)
2.3.3.2(b)(2) 5.7.4.2	with changes	ASME containers over 4000 gal (15.2 m ³) water capacity shall be equipped in accordance with 5.7.4.2(A) through 5.7.4.2(G) and Table 5.7.4.2 the following: (A through I not adopted.) 1. Container openings 1¼ -inch or greater: a. <u>A pneumatically operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation where the thermal element is located within 5 ft (1.5 m) of the internal valve, or a double back flow check filler valve, or a positive shutoff valve in combination with a back flow check valve.</u> b. <u>An internal valve installed in containers prior to February 1, 2001, shall be equipped for pneumatically-operated remote closure and automatic shutoff using thermal (fire) actuation as described above by February 1, 2003.</u> c. <u>Each container equipped with a positive shutoff valve that is located as close to the container as is practical in combination with an excess flow valve shall be retrofitted by February 1, 2006, with one of the following:</u> 1. <u>A pneumatically operated internal valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed directly into the container.</u> 2. <u>A pneumatically operated emergency shutoff valve equipped for remote closure and automatic shutoff using thermal (fire) actuation installed in the line downstream within four feet of the existing positive shutoff valve.</u> 3. <u>A double back flow check filler valve.</u> 4. <u>A positive shutoff valve in combination with a back flow check valve.</u> d. <u>Any vapor or liquid withdrawal opening 1 1/4 inch or larger with piping attached that exclusively provides service to stationary appliances or equipment, which is not part of a transfer system, may be equipped with an excess flow valve and a shutoff valve installed as close as practical to the container, in lieu of an internal valve or emergency shutoff valve.</u> e. <u>For reducing the size of a container opening, only one bushing with a minimum pressure rating in accordance with Table 5.9.4.1 shall be installed.</u> f. <u>Container openings that are not compatible with internal valves shall be permitted to utilize both an excess-flow valve installed in the container and a valve complying with API 607, <i>Fire Test Soft-Seated Quarter Turn Ball Valves</i>, which shall be pneumatically actuated and shall fail in the closed position.</u> 2. Container openings less than 1¼-inch: a. <u>A positive shutoff valve that is located as close to the container as practical in combination with either an excess-flow valve or a back flow check valve installed in the container, or</u> b. <u>A pneumatically operated internal valve with an integral excess-flow valve or excess-flow protection, or</u> c. <u>A double back flow check filler valve.</u>
Table 5.7.4.2	not adopted	See NFPA 58 5.7.4.2 with changes
5.7.4.3	not adopted	See NFPA 5.7.4.1 with changes
5.7.4.5	with changes	The appurtenances specified in Table 5.7.4.1 and 5.7.4.3 shall comply with the following: (1 - 6 no changes)
5.7.7.1	with changes	Other container openings shall be equipped with any of the following: (1 - 5 no change) (6) <u>For reducing the size of a container opening, only one bushing with a minimum pressure rating in accordance with Table 5.9.4.1 shall be installed.</u>

2.4.4.3 5.9.5	additional requirement	See Commission rule §9.312(b), Certification Requirements for Joining Methods.
2.4.6 5.9.6	additional requirement	See Commission rule §9.143(b) and (g), Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
2.4.4 5.9.6.5	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
2.6.2.1 5.20	additional requirement	See Commission rule §9.307, Identification of Converted Appliances.
3.2.2.1 6.2.2	with changes	LP-Gas containers shall be located outside of buildings. 1: (no change.) 2: Containers <u>from 1 gal (3.785 l) to of less than 125 gal (0.5 m3) water capacity</u> for the purposes of being filled in buildings or structures complying with Chapter 10. [3 – 7 no changes]
3.2.2.2 6.3.1	additional requirement <u>and with changes</u>	In addition to Table 6.3.1 , see Commission rule §9.142, LP-Gas Container Storage and Installation Requirements. <u>Containers installed outside of buildings, whether of the portable type replaced on a cylinder exchange basis or permanently installed and refilled at the installation, shall be located with respect to the adjacent containers, important building, group of buildings, or line of adjoining property that can be built upon, in accordance with Table 6.3.1, Table 6.4.2, Table 6.4.5.8, and 6.32 6.3.3 through 6.3.12.</u>
6.3.2	not adopted	
3.2.2.3 6.4.1	additional requirement with changes	Where storage containers having an aggregate water capacity of more than 4000 gal (15.1 m3) are located in heavily populated or congested areas, the siting provisions of 6.3.1 and Table 6.3.1 shall be permitted to be modified by the fire-safety analysis described in 6.25.3 <u>Commission</u> .
3.2.2.8 6.4.7	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.
6.5.4	additional requirement	See Commission rule §9.101(c)(2), Filings Required for Stationary LP-Gas Installations.
3.2.4.2 6.6.1.2	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.4.4 6.6.1.4	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
3.2.5 6.6.2.1	with changes	Cylinders shall be installed only aboveground, and shall be set upon a firm foundation <u>of concrete, masonry, or metal and or be otherwise</u> firmly secured <u>against displacement</u> . The cylinder shall not be in contact with the soil.
6.6.3.1	with changes	Horizontal ASME containers designed for permanent installation in stationary service above ground shall be placed on masonry or other noncombustible structural supports located on concrete or masonry foundations with the container supports. <u>Containers shall not be in contact with the soil.</u>
3.2.9.1 6.6.6.1 (a) - (d)	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
3.2.9.2(d) 6.6.6.2(6)	additional requirement	See Commission rule §9.140, Uniform Protection Standards.
3.2.12.1 6.8.2(B)	with changes	Single-stage regulators shall not be installed in fixed piping systems <u>on or after February 1, 2001 June 30, 1997</u> , except for installations covered in 6.8.2(C). <u>Single-stage regulators in good working order installed prior to February 1, 2001, may remain in service.</u>

6.9.6.1 6.9.6.1	additional requirement	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
6.9.6.2	with changes	Flexible metallic connectors shall not exceed 60 in. (1.52 m) in overall length when used with liquid or vapor piping on stationary containers of 2000 gal (7.6-m³) <u>water capacity or less.</u>
6.11.1 6.11.1	with changes	The requirements of 6.11.2 through 6.11.5 shall be required for internal valves in liquid <u>and/or vapor</u> service installed on containers over 4000-gal (15.2-m ³) water capacity by July 1, 2003.
6.11.2	with changes	Internal valves shall be installed in accordance with 5.7.4.2 <u>with changes</u> and Table 5.7.4.2 on containers over 4000 gal (15.2 m ³) water capacity.
6.11.3 6.11.3	with changes	Automatic shutdown of internal valves in liquid <u>and/or vapor</u> service shall be provided using thermal (fire) actuation. The thermal sensing element of the internal valve shall be within 5 ft (1.5 m) of the internal valve.
6.11.4 6.11.4	with changes	At least one remote shutdown station for internal valves in liquid <u>and/or vapor</u> service shall be installed not less than 25 ft (7.6 m) or more than 100 ft (30 m) from the liquid transfer point. This shall be retroactive to all internal valves required by the code.
6.11.5	not adopted	See Commission rule §9.140 (g), Uniform Protection Standards, Table 1.
6.12 6.12	not adopted	See Commission rule §9.143, Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
6.16.2 6.16.2	not adopted	
6.18.1	not adopted	See Commission rule §9.113.
6.18.4.2 6.18.4.2	additional requirements	See Commission rule §9.140 (b) and (d), Uniform Protection Standards.
6.19.2.1 6.19.2.1	with changes	Cylinders shall be in accordance with the following requirements: (1) - (4) (No change.) (5) Cylinders with <u>LP-gas</u> propane capacities greater than <u>4.2 lb (1.9 kg)</u> 2-lb (0.9 kg) shall be equipped as provided in Table 5.7.4.1, and an excess-flow valve shall be provided for vapor service when used indoors. (6) (No change.) (7) Cylinders having <u>LP-gas</u> water capacities greater than <u>4.2 lb (1.9 kg)</u> 2-7-lb (1.2 kg) and connected for use shall stand on a firm and substantially level surface. (8 – 9 No change)
6.19.3.2 6.19.3.2	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
6.19.3.6 6.19.3.6	with changes	Transportation (movement) of cylinders having <u>LP-gas</u> water capacities greater than <u>4.2 lb (1.9 kg)</u> 2-7-lb (1.2 kg) within a building shall be restricted to movement directly associated with the uses covered by section 6.19. (a A) Valve outlets on cylinders having <u>LP-gas</u> water capacities greater than <u>4.2 lb (1.9 kg)</u> 2-7-lb (1.2 kg) shall be tightly plugged, capped, or sealed with a listed quick-closing coupling or a listed quick-connect coupling. (b B-C) (No change.)
6.19.5.1(2) 6.19.5.1(2)	with changes	Cylinders having <u>an LP-gas</u> a water capacity greater than <u>4.2 lb (1.9 kg)</u> 2-7-lb (1.2 kg) shall not be left unattended.
6.19.5.2	with changes	During the hours the building is not open to the public, cylinders used and transported within the building for repair or minor renovation and with an <u>LP-gas</u> water capacity greater than <u>4.2 lb (1.9 kg)</u> 2-7-lb (1.2 kg) shall not be left unattended.

3.4.8.3 6.19.9.3	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.8.4 6.19.9.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
3.4.9.2 6.19.11.2	with changes	Cylinders having an LP-gas water capacity greater than 4.2 lb (1.9 kg) 2.7 lb (1-kg) {nominal 1 lb (0.5 kg)} LP-gas shall not be located on decks or balconies of dwellings of two or more living units above the first floor unless they are served by exterior stairways.
6.20.2.1	with changes	Patio heaters utilizing an integral LP-Gas container greater than 4.2 lb (1.9 kg) 1.08 lb (0.49 kg) propane capacity shall comply with 6.20.2.2 and 6.20.2.3.
3.7.2.2 6.22.2.4	with changes	The provision of 6.22.2.2 shall not apply to fixed electrical equipment at residential installations of LP-Gas systems or to systems covered by Section 6.23.
6.24.3.7	additional requirements	See Commission rule §9.140(b), Uniform Protection Requirements.
6.24.3.8	with changes	The container liquid withdrawal opening used with <u>retail operated</u> vehicle fuel dispensers and <u>retail operated</u> dispensing stations shall be equipped with one of the following: (1) – (2) (No change)
3.9.3.8 6.24.3.12	additional requirement	See Commission rule §9.140(d), Uniform Protection Standards.
6.24.3.13	with changes	A listed quick-acting shutoff valve <u>or a listed quarter turn ball valve with a locking handle</u> shall be installed at the discharge end of the transfer hose.
3.9.3.10 6.24.3.14	additional requirements	See Commission rule §9.140, Uniform Protection Standards, Table 1.
6.24.4.2	additional requirements	See Commission rule §9.141(b), Uniform Safety Requirements.
3.10.2.1 6.25.2.1	additional requirement	See Commission rule §9.35, Written Procedure for LP-Gas Leaks.
3.10.2.2 6.25.3	not adopted	Commission rules require all redundant safety features.
6.26	with changes	Alternate Provisions for Installation of <u>Underground and Mounded</u> ASME Containers.
4.2.3.8 7.2.3.8	additional requirement	See Commission rule §9.140 (b), Uniform Protection Standards.
4.4.3.1 7.4.2.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
4.4.3.2 7.4.3.1	with changes	The volumetric method shall be limited to the following containers, where they are designed and equipped for filling by volume: (1) Cylinders of less than 200 lb (91 kg) water capacity that are not subject to DOT jurisdiction (1) (2) Cylinders of 101 lb LP-gas capacity <u>200 lb (91 kg) water capacity</u> or more (2) (3) Cargo tanks or portable tanks containers complying with DOT specifications MC 330, MC 331, or DOT 51 (3) (4) ASME and API-ASME containers complying with 5.2.1.1 or 5.2.4.2
5.2.1.1 8.2.1.1	additional requirement	See Commission rule §9.140(b), Uniform Protection Standards.
8.3.1	not adopted	
Table 8.3.1(a)	not adopted	
Table 8.3.1(b)	with changes	Heading: Maximum Allowable Storage Quantities of LP-Gas in Mercantile , Industrial; and Storage Occupancies Column 2 (Mercantile) Not Adopted
5.3.1 8.3.2	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
5.4.2.1 8.4.2.1	additional requirement	See Commission rule §9.140(b) and (d), Uniform Protection Standards.

5.4.2.2 8.4.2.2	not adopted	See Commission rule §9.140(d), Uniform Protection Standards.
5.4.3 8.4.3	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
6.3.6 9.4.6.2	Additional requirement	See Commission rule §9.211, Markings.
6.5.2.1 9.6.2.2(2)	with changes	Valves and fittings shall be protected by a method approved by the authority having jurisdiction to minimize the possibility of damage.
8.1.3 11.2	additional requirements	See Commission rules §9.10, General Requirements for Training and Continuing Education, and §9.51, Training and Continuing Education Courses.
11.3.4	Not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
8.2.3(1) 11.4.1.15	with changes	Where an overfilling prevention device is installed on an engine fuel container, venting of gas through a fixed maximum liquid level gauge shall not be required; provided: 1. The OPD is verified by the owner of the vehicle to be working properly; 2. The verification of the valve is documented yearly and clearly marked on the container in a visible location; and 3. The OPD is replaced every two years, documentation is kept by the owner of the vehicle, and the container is marked in a visible location verifying its replacement.
8.2.6.6 11.7.4.1	with changes	Fuel containers shall be installed to prevent their jarring loose and slipping or rotating, and the fastenings shall be designed and constructed to withstand without permanent deformation static loading in any direction equal to four times the weight of the container filled with fuel. <u>This shall not prohibit the use of specific mounting brackets designed and manufactured by a container manufacturer, original vehicle manufacturer, or the authorized representative of either. Each specific mounting bracket shall be marked in a visible location, to indicate the manufacturer of the bracket.</u>
8.2.10 11.11.2.2	with changes	The marking shall consist of a border and the word PROPANE [1 in. (25 mm) minimum height centered in the diamond] in silver or white reflective luminous material on a black <u>or Pantone 2945 C Royal Blue or equivalent</u> background.
Chapter 10 13	not adopted	Commission authority does not extend to marine shipping and receiving activities.
14.1	with changes	Scope. This chapter includes requirements related to the operations and maintenance of bulk plant, industrial plant, refrigerated, marine, and pipeline LP-Gas systems. The provisions of this chapter shall be applicable to all new and existing installations.
14.4.3.3	Additional requirement	See Commission rules §9.36, Report of LP-Gas Incident/Accident.
14.4.9.1	Additional requirement	See Commission rules §9.35, Written Procedure for LP-Gas Leaks.

(b) If a section in NFPA 58 refers to another section in NFPA 58 which the Commission has not adopted, or which the Commission has adopted with additional or alternative language, then persons shall comply with the applicable Commission rule.

CHAPTER 113

TEXAS NATURAL RESOURCES CODE (LP-GAS CODE)

SUBCHAPTER A - GENERAL PROVISIONS

§113.001 Title

This chapter may be cited as the Liquefied Petroleum Gas Code or LPG Code.

§113.002 Definitions

In this chapter:

- (1) "Commission" means the Railroad Commission of Texas.
- (2) Repealed by Acts 2001, 77th Leg., ch. 1233, § 76(2), eff. Sept. 1, 2001.
- (3) "Employee" means any individual who renders or performs any services or labor for compensation and includes individuals hired on a part-time or temporary basis or a full-time or permanent basis including an owner-employee.
- (4) "Liquefied petroleum gas," "LPG," or "LP-gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.
- (5) "Container" means any receptacle designed for the transportation or storage of LPG or any receptacle designed for the purpose of receiving injections of LPG for use or consumption by or through an LPG system.
- (6) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.
- (7) "LPG system" means all piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LPG.
- (8) "Transport system" means any and all piping, fittings, valves, and equipment on a transport, excluding the container.
- (9) "Transfer system" means all piping, fittings, valves, and equipment utilized in dispensing LPG between containers.
- (10) "Transport" means any bobtail or semitrailer equipped with one or more containers.
- (11) "Subframing" means the attachment of supporting structural members to the pads of a container but does not

include welding directly to or on the container.

(12) "Representative" means the individual designated to the commission by a license applicant or licensee as the principal person in authority and, in the case of a licensee other than a category "P" licensee, actively supervising the conduct of the licensee's LPG activities.

(13) "Person" means any individual, partnership, firm, corporation, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision.

(14) "Registrant" means any person exempt from the licensing requirements, as established by rule pursuant to Section 113.081 of this code, who is required to register with the commission, any person qualified by examination by the commission, or any person who applies for registration with the commission.

(15) "Intermodal portable tank" means a portable tank built according to the United States Department of Transportation specifications and designed primarily for international intermodal use.

(16) "Intermodal container" means a freight container designed and constructed for interchangeable use in two or more modes of transport.

(17) "Mobile fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(18) "Mobile fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(19) "Motor fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an engine used to propel the vehicle.

(20) "Motor fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an engine used to propel the vehicle.

(21) "Portable cylinder" means a receptacle constructed to United States Department of Transportation specifications, designed to be moved readily, and used for the storage of LPG for connection to an appliance or an LPG system. The term does not include a cylinder designed for use on a forklift or similar equipment.

§113.003 Exceptions

(a) None of the provisions of this chapter apply to:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

- (3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car;
- (4) any deliveries of LPG to another person at the place of production, refining, or manufacturing;
- (5) underground storage facilities other than LP-gas containers designed for underground use;
- (6) any LP-gas container having a water capacity of one gallon or less, or to any LP-gas piping system or appliance attached or connected to such container; or
- (7) a railcar loading rack used by a pipeline company, producer, refiner, or manufacturer.

(b) Nothing in Subsection (a) of this section shall be construed to exempt truck loading racks from the jurisdiction of the commission under this chapter.

SUBCHAPTER B - ADMINISTRATIVE PROVISIONS

§113.011 Regulation of Liquefied Petroleum Gas Activities

The commission shall administer and enforce the laws of this state and the rules and standards of the commission relating to liquefied petroleum gas.

§113.014 Employees

Sufficient employees shall be provided for the enforcement of this chapter.

§113.015 Funds for Financing Regulation of LPG Activities

The commission shall look only to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of regulating liquefied petroleum gas activities and administering this chapter.

SUBCHAPTER C - RULES AND STANDARDS

§113.051 Adoption of Rules and Standards

Except as provided in Section 113.003 of this code, the commission shall promulgate and adopt rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public.

§113.0511 Limitations on Rulemaking Authority

- (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee except to prohibit false, misleading, or deceptive practices.
- (b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:
 - (1) restricts the use of any medium for advertising;
 - (2) restricts the use of a licensee's personal appearance or voice in an advertisement;
 - (3) relates to the size or duration of an advertisement by the licensee; or
 - (4) restricts the licensee's advertisement under a trade name.

§113.052 Adoption of National Codes

The commission may adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LPG or any one or more of these purposes.

§113.053 Effect on Certain Containers

Rules, standards, and codes adopted pursuant to Sections 113.051 through 113.052 of this code do not apply to containers used in accordance with and subject to the regulations of the United States Department of Transportation or to containers that are owned or used by the United States government.

SUBCHAPTER D - LICENSING

§113.081 License Requirement

(a) Unless otherwise stated in this chapter, no person may engage in any of the following activities unless that person has obtained a license from the commission authorizing that activity:

(1) container activities: the manufacture, assembly, repair, testing, sale, installation, or subframing of containers for use in this state, except that no license is required for the sale of a new container of 96 pounds water capacity or less;

(2) systems activities: the installation, service, and repair of systems for use in this state, including the laying or connecting of pipes and fittings connecting with or to systems or serving a system and appliances to be used with liquefied petroleum gas as a fuel;

(3) appliance activities: the service, installation, and repair of appliances used or to be used in this state in connection with systems using liquefied petroleum gas as a fuel, except that no license shall be required for installation or connection of manufactured unvented appliances to LPG systems by means of LPG appliance connectors, or where only duct or electrical work is performed to or on an LP-gas appliance; or

(4) product activities: the sale, transportation, dispensation, or storage of liquefied petroleum gas in this state, except that no license shall be required to sell LPG where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

(b) The provisions of Subsection (a) of this section do not apply to a person who is not engaged in business as provided in Section 113.082 of this code. A person, except a political subdivision, is considered to be engaged in business as provided in Section 113.082 of this code if such person installs or services an LPG motor or mobile fuel system on a motor vehicle used in the transportation of the general public. The provisions of Subsections (a)(1) and (a)(2) of this section do not apply to intermodal containers or intermodal portable tanks constructed in accordance with United States Department of Transportation specifications.

(c) A mobile home park operator will not be deemed to be a person engaged in business as provided in Section 113.082 of this code if such mobile home park operator obtains no possessory rights to LP-gas products, and utilizes only LP-gas licensees in the installation and maintenance of the LP-gas containers and system. For purposes of this subsection, the term "mobile home park operator" means an individual or business entity owning or operating a place, divided into sites, at which the primary business is the rental or leasing of the sites to persons for use in occupying mobile homes as dwellings. "Mobile home" has the meaning set out in Chapter 1201, Occupations Code.

(d) The commission by rule may exempt from Section 113.082(a)(4) of this code journeymen or master plumbers licensed by the Texas State Board of Plumbing Examiners.

(e) The commission by rule may exempt from Section 113.082(a)(4) of this code a person licensed under Chapter 1302, Occupations Code.

(f) No license is required by an original manufacturer of a new motor vehicle powered by LPG or subcontractor of such a manufacturer who produces a new LPG-powered vehicle for the manufacturer.

(g) The commission by rule may establish reasonable conditions for licensing and exemptions from license requirements for a state agency or institution, county, municipality, school district, or other governmental subdivision.

§113.082 Categories of LPG Activities; Fees

(a) A prospective licensee in LPG may apply to the commission for a license to engage in any one or more of the following categories of LPG activities:

(1) container manufacturers/fabricators: the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LPG containers, including LPG motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems;

(2) transport outfitters: the subframing, testing, and sale of LPG transport containers, the testing of LPG storage containers, the installation, testing, and sale of LPG motor or mobile fuel containers and systems, and the installation and repair of transport systems, and motor or mobile fuel systems;

(3) carriers: the transportation of LPG by transport, including the loading and unloading of LPG, and the installation and repair of transport systems;

(4) general installers and repairmen: the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LPG systems, excluding motor fuel and recreational vehicle systems;

(5) retail and wholesale dealers: the storage, sale, transportation, and distribution of LPG at retail and wholesale, and all other activities included in this section except the manufacture, fabrication, assembly, repair, subframing, and testing of LPG containers, and except the sale and installation of LPG motor or mobile fuel systems that have an engine with a rating of more than 25 horsepower;

(6) cylinder filling: the operation of a cylinder-filling facility, including cylinder filling, the sale of LPG in cylinders, and the replacement of a cylinder valve;

(7) service station: the operation of an LPG service station filling ASME containers designed for motor and mobile fuel;

(8) cylinder dealers: the transportation and sale of LPG in cylinders;

(9) service station and cylinder filling: any service station and cylinder activity set out in Subdivisions (6) and (7);

(10) service station and cylinder facilities: the operation of a cylinder-filling facility, including cylinder filling and the sale, transportation, installation, and connection of LPG in cylinders, the replacement of cylinder valves, and the operation of an LPG service station as set out in Subdivision (7);

(11) distribution system: the sale and distribution of LPG through mains or pipes and the installation and repair of LPG systems;

(12) engine fuel: the sale and installation of LPG motor or mobile fuel containers, and the sale and installation of LPG motor or mobile fuel systems;

(13) recreational vehicle installers and repairmen: the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LPG systems, including recreational vehicle motor or mobile fuel systems and containers;

(14) manufactured housing installers and repairmen: the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing;

(15) testing laboratory: the testing of an LP-gas container, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the container or systems for LP-gas service, including the necessary installation, disconnection, reconnecting, testing, and repair of LPG motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers; or

(16) portable cylinder exchange: the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds; the portable cylinders are not filled on site, and no other LP-gas activity requiring a license is conducted.

(b) The commission by rule shall establish reasonable application and original license fees and renewal fees for each type of license listed in this section.

§113.083 Liquefied Petroleum Gas Emergency

(a) In the event of a temporary statewide, regional, or local shortage of liquid petroleum gas in this state or another state, as determined under Subsection (b) of this section, LP gas trucks and operators meeting all certification, permitting, and licensing requirements of the federal government and another state whose governor has declared an LP gas emergency may transport LP gas in this state without having first obtained any license, permit, or certification ordinarily required under state law.

(b) The governor may determine the existence of a temporary statewide, regional, or local shortage of LP gas in this state or another state and on such a determination, the governor may join with the governor of any other state in declaring an LP gas emergency.

(c) The waiver of Texas licensing, permitting, and certification requirements regarding LP gas trucks and operators is valid only during the time of the emergency. An LP gas emergency may not continue for more than 14 days unless renewed by the governor.

§113.084 Application

- (a) An application for a license shall be submitted to the commission on forms furnished by the commission or on a facsimile of those forms.
- (b) A prospective licensee shall submit the required application together with the original nonrefundable license fee established by the commission under Section 113.082 for each type of license for which an application is made. The applicant shall submit additional information and data with each application as the commission may reasonably require.
- (c) A licensee shall submit the nonrefundable renewal fee for each type of license sought along with information and data the commission may reasonably require.

§113.087 Course of Instruction, Examination, and Seminar Requirements

- (a) The satisfactory completion of the requirements of this section is mandatory, and operations requiring an LP-gas license may not commence, continue, or resume unless examination and seminar requirements are fulfilled. The commission shall prepare, administer, and grade or review an examination required by this section or contract with a testing service to prepare, administer, and grade or review the examination.
- (b) Before license issuance, the commission shall require the individual designated as the licensee's representative to the commission to provide good and sufficient proof through examination of working knowledge of this chapter and rules of the commission which affect the type of license for which application is made. Thereafter, each licensee shall maintain a qualified representative at all times.
- (c) Each individual who will be actively supervising those operations requiring any license under this chapter, other than a license under Section 113.082(a)(16), at any outlet or location, as designated by the commission, shall be required to provide good and sufficient proof through examination that the supervisor has a working knowledge of the safety requirements and penalties in this chapter and the rules of the commission which apply to that type of license. Each licensee under Section 113.082(a)(5) who provides portable cylinders to a licensee under Section 113.082(a)(16) shall:
 - (1) prepare or obtain a manual approved by the commission covering the proper procedures for handling LP-gas in the portable cylinder exchange process;
 - (2) provide a copy of the manual to each outlet or location of the licensee under Section 113.082(a)(16); and
 - (3) provide training approved by the commission regarding the contents of the manual to each individual who will be actively supervising operations requiring a license under Section 113.082(a)(16) at each outlet or location.
- (d) As determined by commission rule, each individual who is or will be utilized by a licensee or a public employee of the state, the federal government, or a state or federal subdivision in LPG-related activities shall be required to provide good and sufficient proof through examination that the employee has a working knowledge of the safety requirements in the rules of the commission relating to the activity or activities. Should the commission determine that an individual

has a history of failure to comply with the requirements of this code or with the rules of the commission, the commission shall promptly mail written notification of failure to qualify for LP-gas employee certification and the reasons therefor to the registrant. Written notice by the commission, a written request for a hearing, and the public hearing itself shall be governed by Section 113.091.

(e) No licensee may employ or otherwise utilize any person as a representative to the commission, nor as a supervisor or employee in LPG-related activities, unless and until the person has qualified by satisfactory completion of the examination or training requirements, as applicable, established by this section.

(f) The commission shall promulgate rules relating to changes in representatives, supervisors, and employees, and may permit temporary exemption from the examination or training requirements, as applicable, for a maximum period of 45 days.

(g) In no event shall an original or renewal license be issued to an applicant whose listed representative has not maintained qualified status, as defined by rule, or to any person who has a history of failure to comply with the requirements of this code or with the rules of the commission. The commission shall have written notification of license denial and the reasons therefor prepared promptly and mailed to both the representative and the license applicant. Written notice by the commission, a written request for a hearing, and the public hearing itself shall be governed by Section 113.091 of this code.

(h) Satisfactory completion of any required examination or training under this section shall accrue to the individual.

(i) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the commission shall notify the person of the results of the examination.

(j) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(k) The commission may require a testing service to notify a person of the results of the person's examination.

(l) If requested in writing by a person who fails a licensing examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(m) The commission, by appropriate rule, shall require, in addition to examination requirements as set out in Subsections (b), (c), and (d) of this section:

(1) an examination for technical competence that is validated by a recognized educational testing organization or similar organization; or

(2) attendance at approved academic, trade, professional, or commission-sponsored seminars, other continuing

education programs, and periodic reexaminations.

(n) Prior to qualifying an individual to perform LP-gas work, the commission may establish by rule an initial course of instruction for any person who has not yet passed the examination for the LPG activity for which the person seeks qualification; for any person who has not maintained qualified status, as defined by rule; and for any person whose certification has been revoked pursuant to Subchapter F of this code. If an initial course of instruction is established by the commission, it shall be available at least once every 180 days.

(o) The commission by rule may exempt from any provision of this section:

(1) a journeyman or master plumber licensed by the Texas State Board of Plumbing Examiners;

(2) a person licensed under Chapter 1302, Occupations Code; or

(3) company representatives, operations supervisors, or employees of a testing laboratory that was registered under Section 113.135 prior to the effective date of this subsection.

§113.088 Examination; Seminar Fees

(a) The commission shall establish reasonable examination, course of instruction, and seminar registration fees.

(b) Before seminar attendance or examination of any person, except as provided by this subsection or Subsection (c), the commission shall receive a nonrefundable fee for each examination or seminar registration. If the examination is administered by a testing service, the testing service may administer the examination before the commission receives the fee. A testing service that administers an examination shall collect a nonrefundable fee for the examination before the examination is administered and shall forward the fee to the commission not later than the fifth business day after the date the testing service receives the fee.

(c) The commission may exempt voluntary firemen, or public employees of the State of Texas, federal government, or state or federal subdivisions from the examination fee, the examination renewal fee, and seminar fees.

§113.089 Special Requirements for Licensing

(a) If application is made for a license under Section 113.082(a)(5) or for any other type of license specified by commission rule, the commission, in addition to other requirements, shall have an actual inspection conducted of any and all facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices. The inspection may be waived by the commission on an application resulting solely from a change in legal entities under which a current licensee operates.

(b) The inspection, if required, shall be performed before the issuance of the license, but in no event later than 15 days after the inspection is requested in writing by the applicant for license.

(c) A license under Section 113.082(a)(5) and any other type of license specified by commission rule shall not be issued until the inspection under Subsection (a) of this section verifies the applicant to be in satisfactory compliance with all current safety laws, rules, and practices.

§113.090 Filing and Registration Fees

(a) The commission by rule may establish reasonable fees for the review of site applications related to the installation of containers when site applications are reviewed by the commission before such installation is placed into LP-gas service.

(b) The commission by rule may establish reasonable fees for recording the location of containers at public buildings and commercial installations when prior approval of site applications is not required.

(c) The commission by rule may establish reasonable fees for any registration required under this code.

§113.091 License Denial

(a) Should an applicant fail to meet the requirements for original or renewal licensing set out in this chapter, the commission shall have written notification prepared promptly and mailed to the applicant. The notice shall specify the reason for the applicant's failure to qualify for license and advise the applicant of the right to request a hearing.

(b) Within 30 days of the notice of denial, an applicant for license under this chapter who is denied a license may request a hearing to determine whether or not the applicant has complied in all respects with the licensing procedure applicable to each type of license sought. The applicant's request for hearing must be in writing and delivered to the commission.

(c) A hearing to determine an applicant's compliance with the licensing procedure applicable to each type of license sought must be scheduled within 30 days following receipt of a request under Subsection (b) of this section.

(d) If the record made at the hearing supports the applicant's claim, the commission shall enter an order in its records to that effect, noting each type of license to which the applicant is found entitled, and the commission shall have the license or licenses issued. If the applicant is found unqualified, the commission shall likewise enter an order in its records to that effect, and no license may be issued to the applicant.

§113.092 License Issuance

(a) The commission shall issue the appropriate license to an applicant who has satisfied the licensing procedures and requirements set out in this chapter and in the rules of the commission, except where a prior license has been revoked as provided for in Subsection (a) of Section 113.163 of this code.

(b) The license shall be issued in the name under which the applicant proposes to conduct business.

(c) The license shall belong to the applicant to which it is issued and shall be nontransferable.

§113.093 License Renewal

(a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

(g) A renewal license will be issued to a licensee as soon as is practicable after compliance with this section, and fulfillment of insurance, examination, and seminar requirements established by this chapter, and submission of any information and data the commission may reasonably require.

(h) Renewal fees shall be nonrefundable.

§113.094 Staggered Renewal of Licenses

The commission, by rule, may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on a specified date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

§113.095 License and Examination by Endorsement

- (a) The commission may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.
- (b) The commission by rule may waive the requirements of Section 113.087 for an applicant holding a valid examination certificate issued by another state having certification requirements substantially equivalent to those of this state.

§113.096 Provisional License

- (a) The commission may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:
 - (1) has been licensed in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;
 - (2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and
 - (3) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.
- (b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.
- (c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder if:
 - (1) the provisional license holder is eligible to be licensed under Section 113.095; or
 - (2) the provisional license holder:
 - (A) passes the part of the examination under Section 113.087 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;
 - (B) meets the academic and experience requirements for a license under this chapter; and
 - (C) satisfies any other licensing requirements under this chapter.
- (d) The commission must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

§113.097 Insurance Requirement

(a) The commission shall not issue a license authorizing activities under Section 113.082 of this code or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state as evidenced by a certificate of authority having been issued to the carrier by the State Board of Insurance or, if the applicant is unable to obtain coverage from such a carrier, provides, on approval of the commission, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter.

(b) A licensee shall not perform any licensed activity under Section 113.082 of this code unless the insurance coverage required by this chapter is in effect.

(c) Except as provided in Section 113.099 of this code, the types and amounts of insurance provided in Subsections (d) through (i) of this section are required while engaged in any of the activities set forth in Section 113.082 of this code or any activity incidental thereto.

(d) Each licensee under Section 113.082(a)(3), (5), (8), or (10) must carry motor vehicle bodily injury and property damage liability coverage on each motor vehicle, including trailers and semitrailers, used to transport LP-gas. The commission shall establish by rule a reasonable amount of coverage to be maintained, except that coverage shall not be less than the amounts required as evidence of financial responsibility under Chapter 601, Transportation Code.

(e) All licensees must carry general liability coverage in a reasonable amount, based on the type or types of licensed activities, which shall be established by commission rule.

(f) Each licensee, other than a category "P" licensee, must acquire and maintain appropriate workers' compensation or coverage for its employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits, from an insurance carrier authorized to provide coverage in this state, in the amounts required by the commission.

(g) Notwithstanding Subsection (f) of this section, a state agency or institution, county, municipality, school district, or other governmental subdivision may submit appropriate evidence of workers' compensation coverage by self-insurance if permitted by the state workers' compensation act. The commission may require forms of evidence of coverage for this purpose other than that required under Section 113.098 of this code.

(h) As required by commission rule, a licensee under Section 113.082(a)(1), (2), (3), (5), or (15) must carry completed operations or products liability insurance, or both, in a reasonable amount, based on the type or types of licensed activities.

(i) The commission by rule may exempt or provide reasonable alternatives to the insurance requirements set forth in Subsections (a) through (e) and (h) of this section for a state agency or institution, county, municipality, school district, or other governmental subdivision.

(j) The commission by rule may exempt from the insurance requirements of this section or adopt a reasonable alternative to those requirements for:

- (1) a master or journeyman plumber licensed by the Texas State Board of Plumbing Examiners; or
- (2) a person licensed under Chapter 1302, Occupations Code.

(k) The commission by rule may allow a licensee to self-insure under Subsection (d), (e), or (f) and by rule shall establish standards for that self-insurance.

§113.098 Insurance Conditions

(a) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the commission shall be filed with the commission before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the commission in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the commission, but which complies with the substantive requirements of this section and with the rules adopted under this section may be considered by the commission to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the commission an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(b) All certificates filed under this section shall be continuous in duration.

(c) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

- (1) commission receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time equivalent to the notice period required by law to be given the insured before the insurance cancellation;
- (2) receipt by the commission of an acceptable replacement insurance certificate;
- (3) voluntary surrender of a license and the rights and privileges conferred by the license;
- (4) commission receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the commission; or
- (5) written order of commission.

(d) Cancellation under Subsection (c) of this section shall not become effective until approved by the commission.

§113.099 Statements in Lieu of Insurance Certificates

- (a) A licensee or an applicant for a license under Section 113.082(a)(3), (5), (8), or (10) that does not operate or contemplate the operation of a motor vehicle equipped with an LP-gas cargo container and does not transport or contemplate the transportation of LP-gas by vehicle in any manner, may make and file with the commission a statement to that effect in lieu of filing a certificate of motor vehicle bodily injury and property damage insurance.
- (b) A licensee or an applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the commission a statement to that effect in lieu of filing a certificate of general liability insurance.
- (c) A licensee or an applicant for a license that does not employ or contemplate the hiring of an employee or employees to be engaged in LPG-related activities in this state may make and file with the commission a statement to that effect in lieu of filing evidence of coverage of workers' compensation or other alternative form of coverage as provided in this subchapter.
- (d) A licensee or an applicant for a license under Section 113.082(a)(1), (2), (3), (5), or (15) that does not engage in or contemplate engaging in any LP-gas operations which would be covered by completed operations or products liability insurance, or both, for a period of time may make and file with the commission a statement to that effect in lieu of filing a certificate of insurance.
- (e) Any statement filed pursuant to Subsections (a) through (d) of this section must further state that the licensee or applicant agrees to file a certificate of insurance evidencing appropriate coverage before engaging in any activities that require insurance coverage under this subchapter.

SUBCHAPTER E - MOTOR VEHICLES AND TESTING LABORATORIES

§113.131 Transport Trucks and Trailers

- (a) Each transport truck, trailer, or other motor vehicle equipped with an LPG cargo container and each truck used principally for transporting LPG in portable containers shall be registered with the commission.
- (b) A licensee who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the name or names under which the licensee conducts business before the transportation of LPG by means of that unit.
- (c) An ultimate consumer of LPG who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the person's name before the transportation of LPG by means of that unit on public roads or highways.
- (d) The commission, by rule, shall establish reasonable, nonrefundable annual registration and transfer fees for each

LP-gas cargo trailer, semitrailer, bobtail, and cylinder-delivery unit registered or transferred as follows:

(1) the annual registration fee established by the commission shall not be less than \$100 nor more than \$300.

(2) the annual transfer fee established by the commission shall not be less than \$25 nor more than \$100.

(e) Any unit registered pursuant to this section shall be covered by motor vehicle bodily injury and property damage liability insurance as prescribed by Section 113.097 of this code.

(f) Any delivery or transport driver shall meet the applicable examination and seminar requirements set out in Section 113.087 of this code.

§113.133 Motor Carrier Laws

No provision of this chapter shall be construed to modify, amend, or revoke any motor carrier law of this state.

§113.134 Department of Public Safety

The Department of Public Safety shall cooperate with the commission in the administration and enforcement of this chapter and the rules promulgated under this chapter to the extent that they are applicable to motor vehicles.

SUBCHAPTER F - LICENSE AND REGISTRATION FOR AN EXEMPTION: DENIAL AND DISCIPLINARY ACTION

§113.161 Violations of Chapter or Rules; Informal Actions

(a) The commission shall notify a licensee or registrant in writing when it finds probable violation or noncompliance with this chapter or the safety rules promulgated under this chapter.

(b) The notification shall specify the particular acts, omissions, or conduct comprising the alleged violation and shall designate a date by which the violation must be corrected or discontinued.

(c) The licensee or registrant shall report timely compliance or shall request extension of time for compliance if deemed necessary.

(d) If a licensee or registrant objects to the complaint or requirements under this section, or if the commission determines that the licensee or registrant is not proceeding adequately to compliance, then, on written request of the licensee or registrant or order of the commission, a public hearing shall be conducted as provided in Section 113.162 of this code.

(e) If the commission determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing as provided in Section 113.162.

§113.162 Hearings

Any hearing or proceeding under this chapter shall be subject to the provisions of the Administrative Procedure and Texas Register Act.

§113.163 Denial, Refusal To Renew, or Revocation of License or Registration for an Exemption in Event of Violation

(a) Except as provided by Subsections (d) and (f), the commission may not approve an application for a license under this chapter or approve a registration for an exemption under Section 113.081(d) or (e) if:

(1) the applicant or registrant for an exemption has violated a statute or commission rule, order, license, permit, or certificate that relates to safety; or

(2) a person who holds a position of ownership or control in the applicant or registrant for an exemption has held a position of ownership or control in another person during the seven years preceding the date on which the application or registration for an exemption is filed and during that period of ownership or control the other person violated a statute or commission rule, order, license, permit, or certificate that relates to safety.

(b) An applicant, registrant for an exemption, or other person has committed a violation described by Subsection (a) if:

(1) a final judgment or final administrative order finding the violation has been entered against the applicant, registrant for an exemption, or other person and all appeals have been exhausted; or

(2) the commission and the applicant, registrant for an exemption, or other person have entered into an agreed order relating to the alleged violation.

(c) Regardless of whether the person's name appears or is required to appear on an application or registration for an exemption, a person holds a position of ownership or control in an applicant, registrant for an exemption, or other person if:

(1) the person is:

(A) an officer or director of the applicant, registrant for an exemption, or other person;

(B) a general partner of the applicant, registrant for an exemption, or other person;

(C) the owner of a sole proprietorship applicant, registrant for an exemption, or other person;

(D) the owner of at least 25 percent of the beneficial interest in the applicant, registrant for an exemption, or other person; or

(E) a trustee of the applicant, registrant for an exemption, or other person; or

(2) the applicant, registrant for an exemption, or other person has been determined by a final judgment or final administrative order to have exerted actual control over the applicant, registrant for an exemption, or other person.

(d) The commission shall approve an application for a license under this chapter or for a registration for an exemption under Section 113.081(d) or (e) if:

(1) the conditions that constituted the violation are corrected or are being corrected in accordance with a schedule to which the commission and the applicant, registrant for an exemption, or other person have agreed;

(2) all administrative, civil, and criminal penalties are paid or are being paid in accordance with a payment schedule to which the commission and the applicant, registrant for an exemption, or other person have agreed; and

(3) the application or registration for an exemption is in compliance with all other requirements of law and commission rules.

(e) If an application or registration for an exemption is denied under this section, the commission shall provide the applicant or registrant for an exemption with a written statement explaining the reason for the denial.

(f) Notwithstanding Subsection (a), the commission may issue a license to an applicant described by Subsection (a) or approve a registration for an exemption for a registrant for an exemption described by that subsection for a term specified by the commission if the license or registration for an exemption is necessary to remedy a violation of law or commission rules.

(g) A fee tendered in connection with an application or registration for an exemption that is denied under this section is nonrefundable.

(h) If the commission is prohibited by Subsection (a) from approving an application for a license or a registration for an exemption or would be prohibited from doing so by that subsection if the applicant, licensee, or registrant for an exemption submitted an application or registration for an exemption, the commission, after notice and opportunity for a hearing, by order may refuse to renew or may revoke a license or registration for an exemption issued to the applicant, licensee, or registrant for an exemption under this chapter. The commission may not revoke or refuse to renew a license or registration for an exemption under this subsection if the commission finds that the applicant, licensee, or registrant for an exemption has fulfilled the conditions set out in Subsection (d).

(i) An order issued under Subsection (h) must provide the applicant, licensee, or registrant for an exemption a reasonable period to comply with the judgment or order finding the violation before the order takes effect.

(j) On refusal to renew or revocation of a person's license or registration for an exemption under Subsection (h), the person may not perform any activities under the jurisdiction of the commission under this chapter, except as necessary to remedy a violation of law or commission rules and as authorized by the commission under a license or registration for

an exemption issued under Subsection (f).

(k) In determining whether to refuse to renew or to revoke a person's license or registration for an exemption under Subsection (h), the commission shall consider the person's history of previous violations, the seriousness of previous violations, any hazard to the health or safety of the public, and the demonstrated good faith of the person.

(l) Refusal to renew or revocation of a person's license or registration for an exemption under Subsection (h) does not relieve the person of any existing or future duty under law, rules, or license or registration conditions.

§113.164 Appeal

Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

SUBCHAPTER G - FEES AND FUNDS

§113.201 Deposit and Expenditure of Fees and Funds

Money received by the commission under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund and spent in accordance with the appropriations made by law.

SUBCHAPTER H - ENFORCEMENT

§113.231 Injunctions

(a) On request of the commission, the attorney general may bring an action in the name and on behalf of the state to enjoin a person from committing any act that violates or does not comply with any provision of this chapter or of any rule promulgated under this chapter.

(b) A suit for injunction instituted pursuant to Subsection (a) of this section shall be in addition to any other remedies at law or in equity.

(c) A district court of any county in which it is shown that all or part of the acts have been or are about to be committed has jurisdiction of an action brought under Subsection (a) of this section.

(d) No bond for injunction may be required of the commission or the attorney general in relation to a proceeding instituted pursuant to Subsection (a) of this section.

§113.232 General Penalty

(a) In addition to injunctive relief and other penalties provided in this chapter, a person who knowingly violates or fails

to comply with this chapter or rules adopted under this chapter is guilty of a Class C misdemeanor and is punishable by a fine of not less than \$100 nor more than the maximum fine as set out in Section 12.23 of the Penal Code.

(b) A person previously convicted under Subsection (a) of this section who knowingly violates or fails to comply with this chapter is guilty of a Class A misdemeanor punishable by a fine of not less than the maximum fine allowed by law for a Class C misdemeanor, nor more than the maximum fine as set out in Section 12.21 of the Penal Code.

(c) A penalty prescribed by this section is in addition to injunctive relief and other penalties provided by this chapter.

(d) Each day the violation or failure to comply continues constitutes a separate offense.

§113.233 Entry for Inspection and Investigation

(a) An inspector, employee, or agent of the commission may enter the premises of a licensee under this chapter or any building or other premises open to the public at any reasonable time for the purpose of determining and verifying compliance with this chapter and the safety rules of the commission. This same authority shall extend to private property with the permission of the owner of such private property or an authorized agent of the owner.

(b) Any authorized representative of the commission may enter any buildings or premises where an accident has occurred in which LP-gas was a probable cause for purposes of investigating the cause, origin, and circumstances of such accident. The commission may request that any state or local authority having jurisdiction take appropriate action, to the extent permitted by law, as may be necessary for preservation of property and premises.

§113.234 Warning Tag

An inspector, employee, or agent of the commission may declare any container, appliance, equipment, transport, system, or LP-gas operation that does not conform to the safety requirements of this chapter or rules adopted under this chapter, or which is otherwise defective, as unsafe or dangerous for LP-gas service and shall attach a warning tag in a conspicuous location.

§113.235 Supplying or Removing LPG After Warning Tag Attached

(a) Any person who knowingly sells, furnishes, delivers, or supplies LPG for storage in or use or consumption by or through a container, appliance, transport, or system to which a warning tag is attached is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 and not more than \$2,000.

(b) LP-gas shall be removed from a container to which a warning tag is attached only under the direction of the commission.

(c) In an emergency situation and for immediate need, the commission may allow a reasonable amount of LP-gas to be

introduced into a container or may allow an LP-gas system or an LP-gas appliance to be placed into LP-gas service, for a reasonable time period provided the reasons for the warning tag have been eliminated.

§113.236 Penalty for Unauthorized Removal of Tag

An unauthorized person who knowingly removes, destroys, or in any way obliterates a warning tag attached to a container, appliance, transport, or system is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 and not more than \$2,000.

SUBCHAPTER I - ALTERNATIVE FUELS RESEARCH AND EDUCATION

§113.241 Rules Regarding Research and Education

The commission may adopt all necessary rules relating to the purposes of this subchapter and activities regarding the use of LPG and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state.

§113.242 Advisory Committees

The commission may appoint one or more advisory committees composed of members representing the LPG industry and other environmentally beneficial alternative fuels industries, consumers, and other interests to consult with and advise the commission on opportunities and methods to expand the use of LPG and other environmentally beneficial alternative fuels.

§113.243 Alternative Fuels Research and Education Fund

(a) The alternative fuels research and education fund is created in the state treasury.

(b) The fund consists of money from:

- (1) fees charged under this subchapter;
- (2) the penalties for the late payment of the fee charged under this subchapter;
- (3) gifts, grants, or other assistance received by the commission from any source for the purposes of this subchapter;

(4) interest earned on amounts in the fund;

(5) amounts collected by the commission under an agreement with another state in accordance with Section 113.246(e);

(6) assessments, rebates on assessments, and other money collected by the commission under the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) or other applicable federal law; and

(7) fees, royalties, or other things of value received from the items described by Subsections (f)(1)(A)-(D).

(c) The fund may be used only by the commission to pay for activities relating to the specific fuel from which the fee, royalty, or other thing of value was derived or the specific fuel, if any, for which the gift, grant, or other assistance is given, including direct and indirect costs relating to:

(1) researching all possible uses of LPG and other environmentally beneficial alternative fuels to enhance air quality;

(2) researching, developing, and implementing marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers;

(3) developing and implementing conservation and distribution plans to minimize the frequency and severity of disruptions in the supply of alternative fuels;

(4) developing a public information plan that will provide advisory services relating to alternative fuels to consumers;

(5) developing voluntary participation plans to promote the use of alternative fuels by federal, state, and local agencies;

(6) implementing consumer incentive or rebate programs developed pursuant to Section 113.2435 of this subchapter;

(7) other functions the commission determines are necessary to add a program established by the commission for the purpose of promoting the use of LPG or other environmentally beneficial alternative fuels; and

(8) the administrative costs incurred by the commission under this subchapter.

(d) If a specific fee, royalty, gift, grant, other thing of value, or other assistance is designated for or collected from discrete components of the alternative fuels industry, the fee, royalty, gift, grant, other thing of value, or other assistance shall be deposited in a separate account in the fund.

(e) The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this subchapter. Money received under this subsection shall be deposited in a separate account in the fund as provided in Subsection (d) of this section.

(f) The commission may:

(1) apply for, register, secure, hold, and protect under the laws of a state, the United States, or a foreign country a patent, copyright, trademark, or other evidence of protection or exclusivity issued for an idea, publication, or other original innovation fixed in a tangible medium, including:

(A) a logo;

(B) a service mark;

(C) a study;

(D) an engineering, architectural, or graphic design;

(E) a manual;

(F) automated systems software;

(G) an audiovisual work; or

(H) a sound recording;

(2) enter into a license agreement with a third party in return for a fee, royalty, or other thing of value; and

(3) waive or reduce the amount of a fee, royalty, or other thing of value to be assessed if the commission determines that the waiver will:

(A) further the goals and missions of the commission's division responsible for alternative fuels research and education; and

(B) result in a net benefit to the state.

(g) Money received under Subsection (f) shall be deposited in a separate account in the fund as provided by Subsection (d), except that any money received by the commission from the items described by Subsections (f)(1)(E)-(H) shall be deposited in the general revenue fund.

§113.2435 Consumer Incentive or Rebate Programs

(a) The commission may establish consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

(b) The commission may adopt rules necessary to establish a program under this section.

(c) Rules adopted and promulgated by the commission under this section shall specify the following:

- (1) rebate levels for various types of equipment such that the rebates achieve an amount of public good comparable to the rebate amount;
- (2) a condition that the recipient agree to practice environmentally sound operating principles;
- (3) a condition that the rebate recipient agree to not modify the equipment for a specified number of years as set by the commission;
- (4) any other conditions or restrictions determined by the commission that would help ensure that either of the desired goals of achieving energy conservation and efficiency or improving air quality in this state is furthered;
- (5) a limitation on the proportion of the fund usable for the rebate program that limits the proportion usable to not more than 50 percent of the funds available; and
- (6) that the name or seal of the commission shall not be used on any advertising that promotes the propane water heater rebate program.

(d) Notwithstanding Subsection (c)(5), the commission shall make available for rebates during a fiscal year the entire amount of money made available for rebates during the preceding fiscal year that was not spent during the preceding fiscal year. The amount of money made available for rebates during the preceding fiscal year that was not spent during the preceding fiscal year is not counted in determining the limitation on the proportion of the fund usable for the rebate program during a fiscal year.

§113.244 Fee on Delivery of LPG

(a) A fee is imposed on odorized LPG delivered into any means of conveyance to be sold and placed into commerce. Except as provided by Subsection (e), the fee is in an amount determined as follows:

- (1) \$7.50 for each delivery into a cargo tank having a capacity of less than 1,500 gallons;
- (2) \$9 for each delivery into a cargo tank having a capacity of 1,500 gallons or more but less than 1,800 gallons;
- (3) \$10 for each delivery into a cargo tank having a capacity of 1,800 gallons or more but less than 2,000 gallons;
- (4) \$12.50 for each delivery into a cargo tank having a capacity of 2,000 gallons or more but less than 2,500 gallons;
- (5) \$13.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 2,700 gallons;
- (6) \$25 for each delivery into a cargo tank having a capacity of 2,700 gallons or more but less than 5,000 gallons;

(7) \$37.50 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(8) \$50 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 12,000 gallons;
and

(9) \$25 for each increment of 5,000 gallons or any part of 5,000 gallons delivered into a cargo tank having a capacity of 12,000 gallons or more.

(b) The owner of LPG at the time of odorization or at the time of import of odorized LPG shall pay the fee based on the net amount of odorized LPG sold and placed into commerce. The fee shall be collected and remitted to the commission as provided by Section 113.245 by the person who odorizes the LPG or imports odorized LPG.

(c) "Time of import" means the time of entry into this state from another state or from outside the United States.

(d) The fee does not apply to a delivery of odorized LPG destined for export from the United States or this state if the LPG is in continuous movement to a destination outside the United States or this state. As to LPG exported from this state, and notwithstanding any other provision of this chapter, a delivery fee may be levied and collected under this section only if required to be levied and collected by implementation of the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.).

(e) If the commission is party to an agreement with another state's propane education and research program under Section 113.246(c), the fee on LPG destined for export to that state and in continuous movement to a destination in that state shall be assessed at the rate in effect in that state.

(f) The commission may transfer fees collected under Subsection (e) to the agency or organization in the other state that is party to the commission's agreement with that state.

§113.245 Report and Remission of Fees

(a) Each person responsible for collecting and remitting a fee on a delivery of LPG shall, on or before the 25th day of the month following the end of each calendar month, file a report with the commission and remit the amount of fees required to be collected or paid during the preceding month.

(b) Each person responsible for collecting and remitting a fee on a delivery of LPG or the person's representative shall prepare the report required under Subsection (a) of this section on a form provided or approved by the commission.

§113.246 Rules Regarding Fees; Agreements With Other States

(a) The commission shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this subchapter and the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) or other applicable federal law.

(b) The rebate program provided in Section 113.2435 shall be funded by 50 percent of the total delivery fees collected under Section 113.244. Administrative costs for the Alternative Fuels Research and Education Division program may not exceed 25 percent of the total delivery fees collected. The remainder of the total delivery fees collected may be expended at the discretion of the commission.

(c) The commission may enter into an agreement with an agency of or an organization in another state and with the national Propane Education and Research Council to coordinate the administration, collection, reporting, and payment of the fees payable or collected under the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) or other applicable federal law.

(d) The commission may enter into an agreement with an agency of or an organization in another state to coordinate the administration, collection, reporting, and payment of the fees payable or collected under this subchapter and the other state's propane education and research program created by that state's law or rule.

(e) An agreement executed under Subsection (c) or (d) may include reporting, auditing, collecting, apportioning, and remitting fees and assessments payable or collected under this subchapter, the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) or other applicable federal law, and the other state's propane education and research program. The commission may adopt rules necessary to implement the agreements authorized by this section.

(f) None of the funds payable or collected under or by the authority of the Propane Education and Research Act of 1996 (15 U.S.C. Section 6401 et seq.) may be spent on the promotion or marketing of propane for use in on-the-road vehicles.

§113.247 Penalties Related to Report or Fees

(a) A person who fails to file a report as provided by this subchapter or who possesses a fee collected or payable under this subchapter and who fails to remit the fee to the commission at the time and in the manner required by this subchapter and rules of the commission shall pay a penalty of five percent of the amount of the fee due and payable. If the person fails to file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(b) The commission may add a penalty of 75 percent of the amount of the fee or penalty due if failure to file the report or pay the fee when it comes due is attributable to fraud or an intent to evade the application of this section or a rule made under this subchapter.

§113.248 Civil Penalty

A person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person:

- (1) fails or refuses to comply with or violates this subchapter; or
- (2) fails or refuses to comply with or violates a commission rule for administering or enforcing this subchapter.

§113.249 Attorney General

The attorney general, at the request of the commission, may sue in a court of competent jurisdiction to collect any fee or penalty due under this subchapter.

§113.250 Criminal Penalty

(a) A person commits an offense if the person makes and delivers to the commission a report required under this subchapter to be made and delivered to the commission, if the report contains false information. An offense under this subsection is a felony of the third degree.

(b) The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(c) In addition to a sentence imposed on a corporation, the court shall give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

SUBCHAPTER J - ALTERNATIVE FUELS COUNCIL

§113.281 Definition

In this subchapter, “council” means the Alternative Fuels Council.

§113.282 Alternative Fuels Council

The Alternative Fuels Council is an agency of the state.

§113.283 Composition

(a) The council is composed of the following individuals:

- (1) the commissioner of the General Land Office;
- (2) the members of the Railroad Commission of Texas;

(3) the comptroller; and

(4) the chairman of the Texas Natural Resource Conservation Commission.

(b) A member may designate an individual from the state agency the member represents to serve in place of the member.

(c) The initial chairman of the council shall be the commissioner of the General Land Office or a person designated by the commissioner. Chairmanship of the council shall rotate annually between the commissioner of the General Land Office and the chairman of the Railroad Commission of Texas or individuals designated by those members under Subsection (b) of this section.

§113.284 Alternative Fuels Program

(a) The council shall coordinate a comprehensive program to be carried out by state agencies in support of the use of environmentally beneficial alternative fuels.

(b) In developing a program under this section, the council may adopt rules necessary to achieve the purposes of this subchapter.

§113.285 Legislative Findings

(a) The legislature finds that this subchapter serves the public purposes of:

- (1) development and diversification of the economy of the state;
- (2) elimination of unemployment or underemployment in the state; and
- (3) development or expansion of transportation or commerce in the state.

(b) The enumeration of public purposes in Subsection (a) of this section is not intended to be a complete list of the public purposes served by this subchapter and does not preclude a finding that this subchapter serves a public purpose not enumerated in that subsection.

§113.286 Alternative Fuels Conversion Fund

(a) The alternative fuels conversion fund is in the state treasury.

(b) To the extent permitted by federal law or regulations, the council may use the money in the fund only to:

- (1) make loans or grants under this subchapter;

(2) finance activities supporting or encouraging the use of compressed natural gas, liquefied natural gas, liquefied petroleum gas, methanol or methanol/gasoline blends of 85 percent or greater, ethanol or ethanol/gasoline blends of 85 percent or greater, or electricity; or

(3) pay the costs of administering this subchapter.

(c) The council may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this subchapter.

(d) The council shall maintain a separate account in the fund for money received that is designated for the promotion of a specific fuel or that is collected from a discrete component of the alternative fuels industry. The council may use money in a separate account in the fund only to finance an activity that relates to the fuel for which the money is received.

(e) The fund consists of:

(1) oil overcharge funds appropriated by the legislature;

(2) gifts, grants, and other assistance to the council or fund for the purpose of financing alternative fuels activities;

(3) other money designated by the legislature or the executive branch;

(4) payments of principal and interest on loans made under this subchapter; and

(5) interest earned on amounts in the fund.

§113.287 Fuels Conversion Loan Program

(a) The council may make loans, grants, or other distributions to eligible borrowers to fund conversion or infrastructure projects to promote the use of environmentally beneficial fuels or for other purposes, subject to applicable regulations or approval of the United States Department of Energy.

(b) The council shall adopt rules necessary to administer the fuels conversion loan program.

(c) The council shall adopt rules under this section in accordance with applicable rules and regulations of the United States Department of Energy.

(d) The council by rule shall determine which individuals and businesses are eligible for a loan, grant, or other disbursement under this section. The rules shall provide for historically underutilized businesses, individuals with low incomes, institutions of higher education, and health care facilities to be eligible for loans, grants, or other disbursements to undertake conversion and infrastructure projects for fuels.

(e) A state agency, county, municipality, school district, or mass transit authority or department is eligible to receive a

loan, grant, or other disbursement under this subchapter to carry out an eligible conversion or infrastructure project regarding LPG or another environmentally beneficial fuel to comply with fuel requirements provided by or by rules adopted under:

- (1) Subchapter A, Chapter 2158, Government Code; or
- (2) Subchapter C, Chapter 2171, Government Code.

(f) The council may make a loan to finance the construction of an infrastructure refueling facility only if the facility is to serve and be accessible to the general public to the extent practicable.

§113.288 Interest Amounts

(a) The council may loan money under this subchapter at no interest to a state agency, county, municipality, school district, or mass transit authority or department.

(b) A loan to any other entity must bear interest at a rate that is not greater than the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States as published by the federal reserve board for the week preceding the week in which the interest rate is determined, plus two percent.

§113.289 Term of Loan

A loan under this subchapter must be repaid not later than the fifth anniversary of the date the loan was issued.

§113.290 Transfer of Vehicle or Other Property Converted With Loan Proceeds

A borrower may not transfer to another person a vehicle or other property converted to alternative fuel use with the proceeds of a loan under this subchapter unless before the transfer:

- (1) the loan is fully repaid; or
- (2) the alternative fuels equipment purchased, installed, or constructed with the loan proceeds is removed and installed on another vehicle or other property owned by the person.

SUBCHAPTER K - LIABILITY OF LICENSE HOLDER

§113.301 Limitation of Liability of Licensed Installer or Servicer

A person is not liable for damages caused solely by a malfunction or the installation, modification, or improper operation of an LPG system that the person delivered for installation, installed, or serviced in a residential, commercial, or public building or in a motor vehicle if:

- (1) the person was licensed by the commission to perform the installation or service or was a registrant;
- (2) the delivery, installation, or service was performed in compliance with the safety rules and standards adopted by the commission;
- (3) the person has no control over the operation or use of the LPG system;
- (4) the person was not negligent; and
- (5) the person did not supply a defective product which was a producing cause of harm.

SUBCHAPTER L - TESTING OF LP-GAS SYSTEMS IN SCHOOL FACILITIES

§113.351 Definitions

In this subchapter:

- (1) "School district" means:
 - (A) an entity created under the laws of this state and accredited by the Texas Education Agency under Subchapter D, Chapter 39, Education Code;
 - (B) a private elementary or secondary school, other than a school in a residence; or
 - (C) a state or regional school for the blind and visually impaired or the deaf under Chapter 30, Education Code.
- (2) "Supplier" means an individual or company that sells and delivers liquefied petroleum gas to a school district facility. If more than one individual or company sells and delivers LP-gas to a facility of a school district, each individual or company is a supplier for purposes of this subchapter.

§113.352 Duty to Test for Leakage

- (a) Each school district shall perform pressure tests for leakage on the LP-gas piping system in each school district facility at least biennially. The tests must be performed before the beginning of the school year.
- (b) The school district may perform the pressure tests on a two-year cycle under which the tests are performed for the LP-gas piping systems of approximately one-half of the facilities each year.
- (c) If a school district operates one or more school district facilities on a year-round calendar, the pressure test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.
- (d) A test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

§113.353 Requirements of Test

- (a) The school district shall perform the pressure test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the National Fire Protection Association 54, National Fuel Gas Code.
- (b) The pressure test must be conducted in accordance with National Fire Protection Association 54.
- (c) At the request of a school district, the commission shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct the test and in developing a procedure for conducting the test.

§113.354 Notice of Test

- (a) A school district shall provide written notice to the commission specifying the date and the result of each pressure test or other inspection of the LP-gas piping system.
- (b) Before the introduction of any LP-gas into the LP-gas piping system, the school district shall provide verification to the district's supplier that the piping has been tested in accordance with this subchapter.
- (c) The commission shall maintain a copy of the notice provided under Subsection (a) until at least the first anniversary of the date the commission received the notice.

§113.355 Termination of Service

A supplier shall terminate service to a school district facility if:

- (1) the supplier receives official notification from the firm or individual conducting the test of a hazardous leakage

in the facility LP-gas piping system; or

(2) a test at the facility is not performed as required by this subchapter.

§113.356 Report to Board of Trustees

An identified LP-gas leakage in a school district facility shall be reported to the board of trustees of the district in which the facility is located.

§113.357 Enforcement

The commission shall enforce this subchapter.

SUBCHAPTER M - CONSUMER SAFETY NOTIFICATION

§113.401 Notice Required

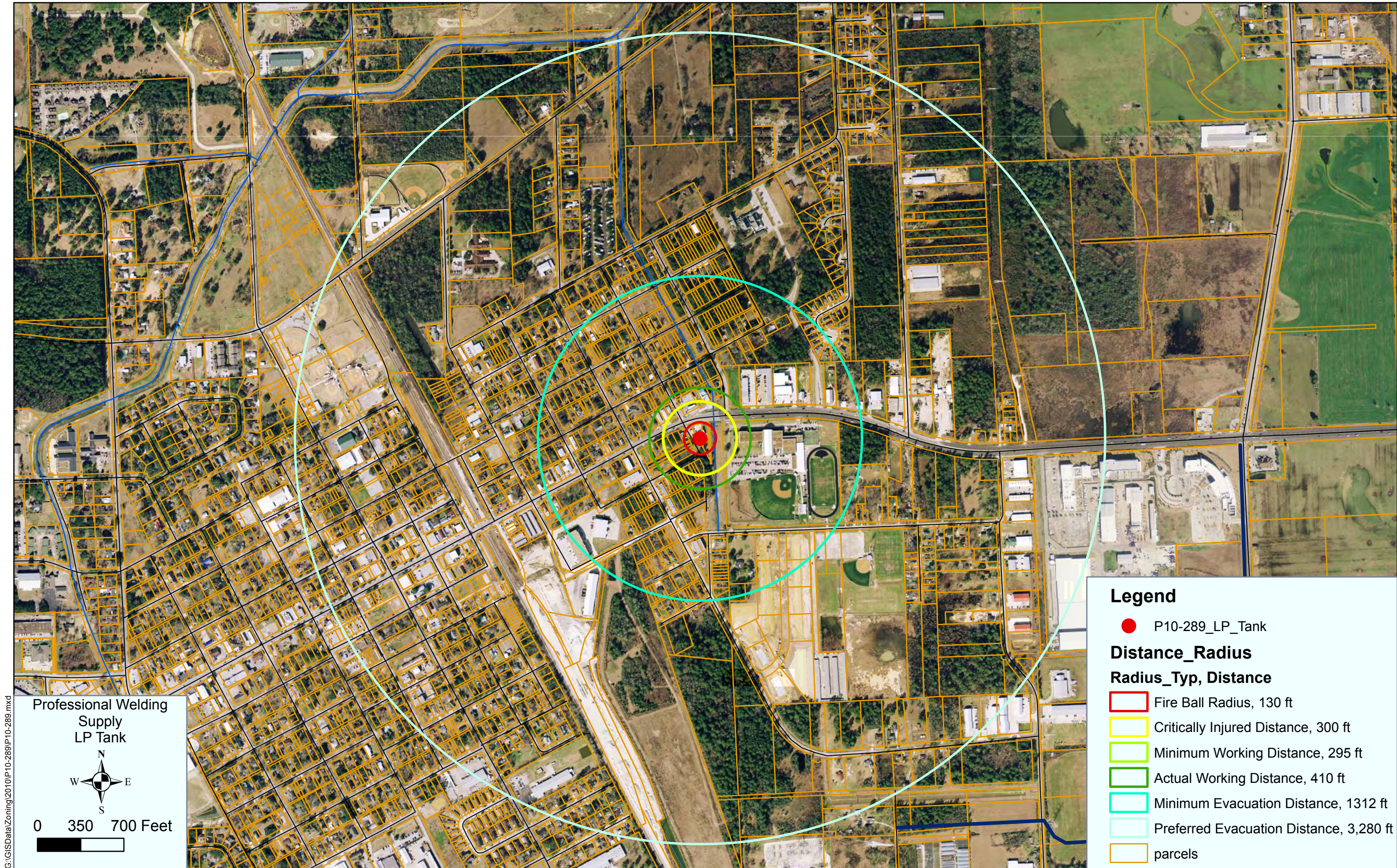
(a) A person holding a license to install or repair an LPG system who sells, installs, or repairs an LPG system, piping or other equipment that is part of a system, or an appliance that is connected or attached to a system shall provide the following notice to the purchaser or owner of the system, piping or other equipment, or appliance:

WARNING: Flammable Gas. The installation, modification, or repair of an LPG system by a person who is not licensed or registered to install, modify, or repair an LPG system may cause injury, harm, or loss. Contact a person licensed or registered to install, modify, or repair an LPG system. A person licensed to install or repair an LPG system may not be liable for damages caused by the modification of an LPG system by an unlicensed person except as otherwise provided by applicable law.

(b) The commission shall adopt rules relating to the notice required by Subsection (a).



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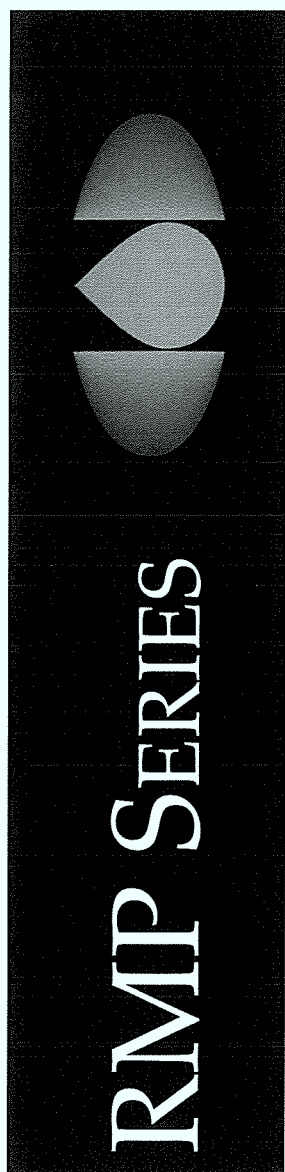
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RISK MANAGEMENT PROGRAM GUIDANCE FOR PROPANE STORAGE FACILITIES (40 CFR PART 68)



This document provides guidance to owners and operators of stationary sources to determine if their processes are subject to regulation under section 112(r) of the Clean Air Act and 40 CFR part 68 and to comply with regulations. This document does not substitute for EPA's regulations, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon circumstances. This guidance does not represent final agency action, and EPA may change it in the future, as appropriate.

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TABLE OF POTENTIALLY REGULATED ENTITIES

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated under 40 CFR part 68. This table lists the types of entities that EPA is now aware could potentially be regulated by this rule and covered by this document. Other types of entities not listed in this table could also be affected. To determine whether your facility is covered by the risk management program rules in part 68, you should carefully examine the applicability criteria discussed in Chapter 1 of this guidance and in 40 CFR 68.10. If you have questions regarding the applicability of this rule to a particular entity, call the EPCRA/CAA Hotline at (800) 424-9346 (TDD: (800) 553-7672).

Category	NAICS Codes	SIC Codes	Examples of Potentially Regulated Entities
Propane manufacturers and processors	32411 32511	2911 2865 2869	Petroleum refineries Petrochemical Manufacturers
Propane wholesalers	42271 42272	5171 5172	Bulk stations and terminals Other petroleum product wholesalers

INTRODUCTION

This guidance is intended for propane storage facilities, such as wholesale distribution facilities and bulk storage terminals. This document is a revision of EPA's October 1998 guidance for propane storage facilities. The document has been revised to reflect changes resulting from the 1999 Chemical Safety Information, Site Security and Fuels Regulatory Relief Act.

If you have more than 10,000 pounds of propane stored in a single vessel or in a group of vessels (tanks, cylinders) that are connected or stored close together, you may need to comply with the Chemical Accident Prevention rule issued by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act. The rule is codified as part 68 of Title 40 of the Code of Federal Regulations (CFR). The goal of this rule is to prevent accidental releases that could affect the public or the environment. If you are subject to part 68 for propane storage, you must be in compliance no later than January 5, 2000, or the date on which you first have more than a threshold quantity of a regulated substance in a process, whichever is later.

If you have more than 10,000 pounds of propane, you are subject to part 68 unless one of the following applies to you:

- ◆ The propane is stored for use as a fuel at your facility.
- ◆ The propane is held for sale, and the facility is a retail facility. A retail facility is one at which more than half of the income is obtained from direct sales to end users or at which more than half the fuel sold, by volume, is sold through a cylinder exchange program.

If you have more than 10,000 pounds of propane and you manufacture propane, use it as a feedstock, or store it in bulk for sale, other than to end users, or if your retail sales do not make up more than half of your income, you are subject to part 68. If you manufacture or use propane as a feedstock or store it for wholesale distribution and use it as a fuel, the propane used for fuel is not covered by part 68; the propane manufactured, processed, or stored for wholesale distribution is subject to part 68 provided the quantity is greater than 10,000 pounds. If you use propane to fuel a covered process containing other regulated substances above their thresholds, the propane is not covered, but you will have to consider the hazards created by the propane when you conduct your process hazard analysis or hazard review.

For most propane storage facilities, complying with this rule will be easy because most of the requirements are similar to those you already comply with under state or local rules based on the National Fire Protection Association (NFPA) standard number 58 on propane. If you are complying with NFPA-58 and implementing other safe engineering practices for propane, you should have little more to do for this rule besides filing a report with EPA.

AM I COVERED?

The capacity of propane tanks is usually given as water capacity (this information should be on the nameplate of the tank). Table 1 translates the water capacity (in gallons) into propane weight (in pounds). Read the tank capacity on the nameplate and check this table.

Table 1 assumes that tanks are filled to 88 percent of capacity, the maximum level allowable under NFPA-58 at 60°F. If you always keep your tanks filled to a lower level, you should adjust these numbers to reflect your lower inventory. If you have larger tanks, multiply the water capacity times 3.696 to determine pounds at 88 percent capacity.

TABLE 1
TYPICAL WATER CAPACITY OF PROPANE TANKS,
TRANSPORTS AND RAILROAD TANK CARS

	Capacity in Gallons	Capacity in Pounds
Storage Tank	12,000	44,400
Storage Tank	18,000	66,500
Storage Tank	30,000	111,000
Storage Tank	40,000	148,000
Storage Tank	60,000	222,000
Storage Tank	100,000	370,000
Storage Tank	120,000	444,000
Transport (Cargo Tank)	8,000 - 11,000	30,000-41,000
Rail Car DOT Class 105J300W & 105A300W	11,000 - 34,500	41,000-128,000
Rail Car DOT Class 112J340W & 112T340W 114J340W & 114T340W 114J400W & 114T400W	26,000 - 34,500	96,000-128,000
Bobtails (Delivery Cargo Tank)	750 - 3200	2,800-12,000

Also, add up the amounts of propane in tanks that are connected or close together. If you have four 750-gallon tanks, you are subject to the rule if the tanks are connected by piping, or if you store the tanks close enough together that they could be involved in a single accident. For example, if a fire could spread to all the tanks, they are considered one “process,” and the propane in all the tanks must be counted toward the 10,000-pound threshold. You should also consider whether, if one tank exploded, the other tanks could be affected by the shrapnel or fire. If you have several groups of propane tanks, widely separated, you may be considered to have multiple processes (see Appendix A for additional guidance on determining whether your propane tanks are separated far enough to be considered multiple processes.)

WHAT DO I HAVE TO DO?

The first step you should take after determining that you are covered by the rule is to decide which Program level you are in. EPA developed the rule with three Program levels to reflect different levels of risk and levels of effort needed to prevent accidents.

- ◆ **Program 1** is a minimal set of requirements for processes that have a very low risk of affecting the public in the event of an accident.
- ◆ **Program 2** is a streamlined set of requirements for processes not eligible for Program 1 or subject to Program 3.
- ◆ **Program 3** applies to processes that are not eligible for Program 1 and that are either subject to the Process Safety Management (PSM) Standard of the Occupational Safety and Health Administration (OSHA) or in certain industrial sectors (some chemical manufacturers, all refineries, and all pulp mills).

This document does not provide detailed guidance on Program 3. Propane storage facilities subject to part 68 will generally either be eligible for Program 1 or subject to Program 3. The OSHA PSM standard exempts all retail facilities, using the same definition of retail facilities given above, and fuel users, but covers wholesalers and manufacturers that process propane. Consequently, a propane facility subject to part 68 will generally also be subject to the OSHA PSM standard. If you are subject to the OSHA PSM standard, you should also see EPA's *General Guidance for Risk Management Programs* or OSHA's *Process Safety Management Guidelines for Compliance* (OSHA 3133).

If you can qualify a process for Program 1, it is in your best interests to do so, even if the process is already subject to OSHA PSM. For Program 1 processes, the implementing agency will enforce only the minimal Program 1 requirements. If you assign a process to Program 3 when it might qualify for Program 1, the implementing agency will enforce all of the requirements of the higher program level. If, however, you are already in compliance with the prevention elements of Program 3, you may want to use your RMP to inform the community of your prevention efforts.

January 27, 2000

PROGRAM 1

ELIGIBILITY

Some propane storage facilities will be eligible for Program 1, particularly those that are a considerable distance from any other business or residence. For a process to be eligible for Program 1, it must meet the following criteria:

- ◆ The process must not have had an accidental release of propane that led to deaths or injuries of people offsite or response or restoration activities at environmental receptors in the last five years. Environmental receptors are limited to national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas; and,
- ◆ There are no public receptors within a distance to a 1 psi overpressure from a worst-case release.

A worst-case release is defined by the rule as the loss of the contents of the single largest vessel (or piping) containing the regulated substance. For propane and other flammable substances, the released substance is assumed to explode and generate a pressure wave that can damage people or structures. The rule requires you to determine the distance to a 1 psi overpressure (at 1 psi, windows will break). This scenario is required by the regulation, and you must adopt this scenario. Table 2 provides the worst-case distance to a 1 psi overpressure for propane tanks.

TABLE 2
DISTANCE TO A 1 PSI OVERPRESSURE

Nominal Water Capacity (Gallons)	Distance to Endpoint (Miles)
500 - 1,750	0.1
1,751 - 7,000	0.2
7,001 - 23,000	0.3
23,001 - 51,000	0.4
51,001 - 90,000	0.5
90,001 - 120,000	0.6

If you have different quantities, RMP*Comp, a software system developed by EPA and NOAA, will allow you to calculate worst-case distances quickly. RMP*Comp can be downloaded from

<http://epa.gov/ceppo/>. You may also use other models to develop distance estimates (see 40 CFR 68.22 for the parameters you must use in estimating worst-case release distances).

Next, you must determine if there are “public receptors” within a circle whose radius is equal to this distance. Public receptors include “offsite residences, institutions (e.g., schools and hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.” Offsite means areas beyond your property boundary and “areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.” Public roads are not public receptors.

If there are no public receptors within the distance to a 1 psi overpressure for your largest vessel and the process has not had an accidental release that caused any of the listed offsite impacts, your process is eligible for Program 1. If you have questions about whether certain areas are considered public receptors, call the Emergency Planning and Community Right-to-Know Act (EPCRA) hotline at (800) 424-9346 (for DC area (703) 412-9810; T.D. (800) 553-7672) or check EPA’s *General Guidance for Risk Management Programs* (available from the hotline or electronically at <http://www.epa.gov/ceppo/>).

WHAT MUST I DO FOR A PROGRAM 1 PROCESS?

Because your worst-case release would not affect public receptors, you only need to do two things:

- ◆ Coordinate emergency response with your local fire department and any other local emergency planning and response agencies; and,
- ◆ Complete a brief Risk Management Plan (RMP), as described below.

Coordination with the fire department may consist of a discussion with them or a walk-through of your facility. The purpose is simply to be sure that the fire department is aware of the hazards associated with propane at your facility and ready to respond if an accident occurs. Also, contact your State Emergency Response Commission (SERC) to identify your Local Emergency Planning Committee (LEPC). You can get contact information for your SERC from the EPCRA hotline (noted above).

The RMP will be filed with EPA and made available to state and local agencies and the public. EPA has developed an electronic submission system that will make filing the RMP easy. To submit your RMP electronically, you will need to download free software, called RMP*Submit, from EPA’s Internet website at <http://www.epa.gov/ceppo>. The software will provide you with all the necessary instructions to complete your RMP. You submit the completed electronic RMP to EPA by copying it onto a 3½-inch diskette and mailing the diskette to EPA. If you do not have access to a computer to load the software on to, you may file a paper version. The necessary submission forms for the paper version are available from the hotline mentioned above or EPA’s Internet website at <http://www.epa.gov/ceppo>.

The RMP includes registration information (basic facility information); the worst-case release scenario; a five-year accident history (of accidents that caused deaths, injuries, or significant property damage on site, known offsite deaths or injuries, offsite property or environmental damage, or evacuations or shelterings in place); emergency response activities; a brief executive summary; and a certification statement.

The executive summary should be a brief description of the facility, the worst-case release scenario, steps you take to prevent accidents (e.g., complying with state and local laws), emergency response information (e.g., your coordination with the fire department), and any steps you are planning to take to improve safety (e.g., upgrading equipment to meet newer editions of NFPA-58). The rest of the RMP is filling in names, addresses, and numbers, and checking appropriate boxes. You do not need to submit supporting documentation; you need only keep it onsite for inspection. Most propane storage facilities will not have any accidents to report on the five-year accident history. If you do not, you need not complete that section. A sample RMP for a Program 1 propane facility is attached.

January 27, 2000

PROGRAM 3

If your process is not eligible for Program 1, the process is most likely in Program 3 because it is probably subject to the OSHA PSM standard. Most propane storage facilities that are in commercial or industrial areas or close to residential areas will be subject to Program 3.

WHAT MUST I DO FOR PROGRAM 3?

For Program 3, you must:

- ◆ Analyze both a worst-case release scenario and an alternative release scenario;
- ◆ Implement a prevention program;
- ◆ Implement an emergency response program if your employees will respond to a release; and
- ◆ File an RMP.

WHAT ARE THE RELEASE SCENARIOS?

Worst-Case Scenario. Part 68 defines the worst-case release scenario you must analyze. It is described in the previous section of this guidance (regarding Program 1). You can simply use Table 2 or RMP*Comp to define the distance to the 1 psi endpoint for your largest tank.

Alternative Release Scenario. An alternative release scenario is a scenario that is more likely to happen. It must reach an endpoint offsite unless no such scenario exists. One of the following scenarios may be appropriate for you.

- ◆ **Pull-Away Explosion.** An alternative scenario may be a hose rupture caused by a pull-away. A pull-away can occur if the driver fails to remove the hoses between the storage tank and the transfer vehicle before moving the vehicle. In this scenario, the failure involves a 25-foot length of unloading hose, 4" in diameter. The active mitigation devices are assumed to work as designed, limiting the release to the contents of the hose. The release leads to a vapor cloud explosion (endpoint 1 psi). The quantity released is 69 pounds. The distance to the endpoint is 175 feet (report as 0.03 miles).
- ◆ **Piping Break.** Another alternative scenario you may want to consider is a break in propane piping leading to a 10-minute release and explosion. The distance to the 1 psi endpoint is shown in Table 3.

Appendix B includes release calculations for alternative scenarios as well as scenarios in addition to the two provided above.

TABLE 3
DISTANCES TO 1 PSI FOR PIPE RELEASES

Pipe Size (inches)	Quantity Released (pounds)	Distance to 1 psi
0.5	4,738	0.1
1	18,951	0.2
2	75,804	0.3

You must estimate in the RMP residential populations within the circles defined by the endpoints for your worst-case and alternative release scenarios (i.e., the center of the circle is the point of release and the radius is the distance to the endpoint). You may use Census data and round to two significant digits (e.g., 1147 becomes 1100, and 123 becomes 120). You do not need to conduct surveys or correct Census data. In addition, you must report in the RMP whether certain types of public receptors (e.g., schools, hospitals) and environmental receptors are within the circle. You do not need to identify specific receptors; you simply need to check off the category.

WHAT DO I HAVE TO DO FOR THE PREVENTION PROGRAM?

The Program 3 prevention program is identical to the OSHA PSM Standard and has 12 elements:

- ◆ Safety information
- ◆ Process Hazard Analysis
- ◆ Operating procedures
- ◆ Training
- ◆ Mechanical Integrity (Maintenance)
- ◆ Pre-startup reviews
- ◆ Management of change
- ◆ Compliance audits
- ◆ Incident investigation
- ◆ Employee participation
- ◆ Hot work permit
- ◆ Contractors

If you are complying with NFPA-58 or state or local laws based on it, following the guidelines in the National Propane Gas Association (NPGA) LP Gas Safety Handbook, and implementing NPGA safety bulletins, you are probably already doing most of what you need to do to comply with these requirements. The following sections provide additional information on how your current practices will help you comply with the EPA rule. For a more complete discussion of the requirements, see the *General Guidance for Risk Management Programs*, available at www.epa.gov/ceppo/, and OSHA's *Process Safety Management Guidelines for Compliance* (OSHA 3133).

Safety Information. You must have up-to-date information on propane and your propane equipment. You must have a Material Safety Data Sheet (MSDS) on propane. If you do not have one, contact your

supplier for a copy. You must also document your maximum intended inventory for your propane equipment. This will generally be the capacity of your tank or tanks; see Table 1.

You need information on safe upper and lower temperatures, pressures, flows, and compositions. The following information should meet this requirement:

- ◆ Propane is a gas at normal temperatures and pressures. It is commonly liquefied by storing it in a closed container at pressures higher than its equilibrium vapor pressure. There is a direct relationship between ambient temperature and the pressure inside the storage container. As the ambient temperature increases, the pressure of the container increases proportionately. According to NFPA 58, 1998 Edition, Table B-1.2.1, commercial propane when heated to a temperature of 105°F will produce a pressure of 210 pounds per square inch, gauge (psig). NFPA 58, 1998 Edition, Table 2-2.2.2 sets the current minimum design pressure for an ASME tank at 250 pounds per square inch, absolute (psia). This design allows for a maximum vapor pressure of 215 psia at 100°F. The discharge piping for pumps and compressors is currently designed to 350 psi and vapor piping is designed for 250 psi according to NFPA 58, 1998 Edition, 3-2.10.2. The minimum temperatures are determined by the steel used in the design of the storage tank and the piping. Liquid propane (if released at atmospheric pressure) can refrigerate steel pipes and tanks down to temperatures of -44°F.
- ◆ Another property of propane in its liquid form is its ability to greatly expand when heated. Therefore, NFPA 58, 1998 Edition sets the maximum filling capacity of large tanks in Table 4-4.2.2(b) to avoid overfilling.

You must maintain equipment specifications for all equipment that is part of a covered process, including your bulk storage tank(s), piping, pressure relief valves, hydrostatic relief valves, emergency shutoff valves, temperature, pressure and level gauges, valves, pumps, compressors, and hoses. Specifications for your bulk propane storage tank(s) are provided on the nameplate attached to the tank. If you do not have the information, obtain it from your vendor and keep all such information on file.

You must document the codes and standards you used to design and build your propane facility and that you follow to operate it. These codes will probably include the electrical and building codes that you must comply with under state or local laws. Your equipment vendors will be able to provide you with information on the codes they comply with for their products.

The equipment specifications and lists of standards and codes will probably ensure that your process is designed in compliance with recognized and generally good engineering practices.

See the EPA and OSHA guidance documents cited above for more information on the elements that must be documented as part of your safety information.

Process Hazard Analysis. You are required to conduct a process hazard analysis (PHA) to identify the hazards associated with your equipment and propane, the possible malfunctions of equipment or human errors that could cause a release, the safeguards needed to control hazards or prevent malfunctions or errors, and any steps needed to detect or monitor releases. If you are required to comply with NFPA-58, your review can focus on whether you are in compliance with that standard. You may need to consider

external events as well as internal failures. If you are in an area subject to earthquakes, hurricanes, or floods, you should examine whether your system would survive these natural events without releasing propane. You should consider the potential impacts of lightning strikes and power failures. If your equipment could be hit by vehicles, you should examine the consequences of that. If you have anything near the process that could burn, ask yourself what would happen if the fire affected the propane tanks or equipment. See the EPA and OSHA guidance documents cited above for more information on analysis techniques and issues to be considered. Appendix C provides a checklist that you can use.

When you complete the review, you must document the results and ensure and document that any problems are addressed in a timely manner.

Operating Procedures. Written operating procedures describe the tasks you or your operators must perform, safe process operating parameters that must be maintained, and safety precautions for operations and maintenance activities. These procedures tell you or your employees how to work safely every day. Applicable portions of the National Propane Gas Association (NPGA) Certified Employee Training Program and compliance with certain NPGA Safety Bulletins can be used to meet this requirement. Other programs may be available that will also be acceptable. See the EPA and OSHA guidance documents cited above for more information on the elements that must be included in the procedures. A list of NPGA documents that may meet these requirements is included in Appendix C.

Training. You must ensure that any employee presently operating a process and any employee newly assigned to a covered process have been trained or tested competent in the operating procedures that pertain to their duties. For those employees already operating a process on June 21, 1999, you may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures. You are not required to provide a specific amount or type of training. You should develop a training approach that works for you. The NPGA's Certified Employee Training Program and any training you do to meet DOT requirements may satisfy this requirement. You must provide refresher training. You must determine the frequency of refresher training in consultation with any affected employees, but you must provide refresher training at least once every three years. Training must be documented.

Maintenance. You must prepare and implement procedures to maintain the on-going mechanical integrity of your propane equipment. You may use procedures or instructions provided by equipment vendors or procedures in Federal or state regulations or industry codes as the basis for maintenance procedures. You must also train maintenance workers in these procedures (if a contractor maintains your equipment, the contractor's employees should be trained as well). NPGA's Certified Employee Training Program covers many of the maintenance procedures for your propane equipment.

You must establish a schedule for inspecting and testing equipment associated with your propane storage facility. You may obtain recommendations from manufacturers, vendors, or trade associations. You should, however, use your own experience as a basis for examining any schedules you obtain from others. Many things may affect whether a schedule is appropriate. The manufacturer may assume a constant rate of use. If your actual rate of use (e.g., the amount of propane pumped per hour) varies considerably, the variations may cause additional wear on the equipment. Extreme weather conditions may also increase wear on equipment.

If you have workers that use your propane facility, talk with them as you prepare or adopt these procedures and schedules. If their experience indicates that equipment fails more frequently than the manufacturer expects, you should adjust the inspection schedule to reflect that experience.

See the EPA and OSHA guidance documents cited above for more information on these requirements. A list of NPGA training that applies to maintenance procedures and a maintenance inspection checklist are included in Appendix C.

Management of Change. You must prepare and implement procedures to manage changes, except replacements in kind. The purpose of this requirement is to ensure that changes you make do not create any new hazards and that your employees and contractors are informed of the changes and trained in any new procedures that are needed prior to start-up. See the EPA and OSHA guidance documents cited above for more information on these requirements.

Pre-Startup Review. Whenever you install a new covered process or modify an existing one, you must perform a pre-startup review to ensure that the equipment is in accordance with the design specifications, that all procedures related to the equipment are up-to-date, and that employees have been trained in the operation of the new or modified process. See the EPA and OSHA guidance documents cited above for more information on these requirements.

Compliance Audits. At least every three years, you must certify that you have evaluated compliance with EPA's requirements for the prevention program for each covered process. At least one person who conducts the audit must be knowledgeable about the process. You must develop a report of the audit's findings, determine and document an appropriate response to each finding, and document that you have corrected all deficiencies. You must retain compliance audit reports for five years.

Incident Investigation. You must investigate each incident that resulted in, or could have resulted in, a "catastrophic" release of propane. A catastrophic release is one that presents an imminent and substantial endangerment to public health and the environment. You must start the investigation no later than 48 hours after the accident. You must create a report on the accident that includes, at least, the date of the accident and the date the investigation began, a description of the accident, the factors that contributed to the accident, and any recommendations that resulted from the investigation. You must address the recommendations and share the findings with any employees whose jobs are affected by the findings. Investigation reports must be retained for five years.

The NPGA "LP-Gas Safety Handbook," and NPGA bulletin #202-93 "After Accident Procedure" may help you comply with this requirement.

Employee Participation. You must develop a written plan to implement the requirements for employee participation. See the OSHA guidance document cited above for more information on this requirement.

Hot Work Permit. You must issue hot work permits for hot work conducted near your covered process. See the OSHA guidance document cited above for more information on this requirement.

Contractors. If you use contractors to perform maintenance, renovation, or specialty work on or near a covered process, you must implement a program to ensure that your contractors are qualified to perform

the work and are informed of the potential hazards. See the OSHA guidance document cited above for more information on these requirements.

Table 4 summarizes the ways that propane facilities can comply with some of these requirements.

TABLE 4
WAYS TO COMPLY WITH SOME PREVENTION ELEMENTS

Program 3 Prevention Element	How a Propane Facility Can Meet This Requirement
Safety Information	- Maintain Material Safety Data Sheets on propane - Use the information provided in this guidance - Document NFPA-58 information - Maintain propane equipment vendor-supplied information - Maintain records on electrical and building codes followed
Hazard Review	- Use checklist in Appendix C - Review compliance with NFPA-58
Operating Procedures	- Implement NPGA Certified Employee Training Program - Comply with NFPA-58 - Comply with NPGA safety bulletins - Use written operating procedures for propane systems
Training	- Implement NPGA Certified Employee Training Program. - Document training done to meet DOT requirements - Document training done to comply with NFPA-58 - Comply with NPGA Safety Bulletins - Provide refresher training at least every three years
Maintenance	- Implement NPGA Certified Employee Training Program - Use checklist in Appendix C - Establish a maintenance and testing schedule - Document inspections and maintenance done by equipment vendors
Compliance Audits	- Conduct and document a compliance audit every three years; respond to each finding, and document that you have corrected any deficiencies.
Incident Investigation	- Implement practices in NPGA's LP-Gas Safety Handbook - Implement NPGA bulletin #202-93 "After Accident Procedure"

WHAT DO I HAVE TO DO FOR THE EMERGENCY RESPONSE PROGRAM?

If you have at least one Program 3 process at your facility, you may be required to implement an emergency response program, consisting of an emergency response plan, emergency response equipment procedures, employee training, and procedures to ensure the program is up-to-date. This requirement applies if your employees will respond to some releases involving propane. The emergency response section of EPA's rule allows you to decide first whether the employees will respond to an accidental release of propane and then what involvement the employees will have in the event of a release of propane. If you choose not to have employees respond, then you must coordinate response actions with the local fire department and have in place appropriate mechanisms to notify emergency responders when there is a need for a response.

Some propane storage facilities will rely on local responders to handle any accident. If you plan to have your employees respond to a propane release, you should consult EPA's *General Guidance for Risk Management Programs* to determine what you need to do to develop and implement an emergency response program.

WHAT DO I HAVE TO DO FOR MY RMP?

The RMP for a Program 3 process will include the same sections covered in the Program 1 process, plus a report on the alternative release scenario and the report on the prevention program. Except for the executive summary, the RMP consists of names, numbers, and check-off boxes. If you have more than one process, you still file only one RMP. If you have multiple Program 3 processes, but they all contain propane, you report only one worst-case scenario and one alternative scenario to cover all of them. (If you have multiple Program 1 processes, you must report a worst-case scenario for each Program 1 process to establish that the process is eligible for Program 1.)

If you have one Program 3 process, your RMP will include:

- ◆ The executive summary (covering the alternative release scenario as well as worst-case)
- ◆ Registration data
- ◆ Worst-case and alternative release data
- ◆ Five-year accident history (only if you've had any accidents to report)
- ◆ Prevention program data
- ◆ Emergency response data
- ◆ The certification

A sample RMP and certification statement for a Program 3 propane facility is attached.

January 27, 2000

SAMPLE RMP for PROGRAM 1 PROPANE STORAGE FACILITY

*(This sample RMP is for a fictitious facility named, "Smith Gas Company Terminal."
Any resemblance to any actual facility is accidental).*

CERTIFICATION STATEMENT

Based on the criteria in 40 CFR 68.10, the distance to the specified endpoint for the worst-case accidental release scenario for the following processes is less than the distance to the nearest public receptor:

- Wholesale LPG facility

Within the past five years, the process has had no accidental release that caused offsite impacts provided in the risk management program rule (40 CFR 68.10(b)(1)). No additional measures are necessary to prevent offsite impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process, entry within the distance to the specified endpoint may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete.

William R. Smith
Signature

William R. Smith
Print Name

Company Owner
Title

6/21/99
Date

EXECUTIVE SUMMARY

The accidental release prevention and emergency response policies at your facility: This facility complies with NFPA-58 requirements for LP-Gas storage, and it is our policy to adhere to all applicable federal, state, and local laws. If an emergency were to occur, it is our policy to notify the Garvin County Fire Department and request that they respond to the emergency.

A description of your facility and the regulated substances handled. This facility wholesales LPG, supplying retail outlets, primarily gas stations and cylinder filling operations at cooperatives. The facility consists of a single 18,000-gallon tank, which we fill to between 85% and 88% capacity.

The worst-case release scenario. Our worst-case scenario is failure of the 18,000-gallon storage tank when filled to the greatest amount allowed (88% at 60F), resulting in a vapor cloud explosion. Since this facility is located in a relatively remote, unoccupied area, the worst-case scenario would not affect anyone beyond our property.

The general accidental release prevention program and chemical-specific prevention steps. This facility complies with EPA's accident prevention rule and all applicable state and local codes and regulations. The propane system is designed, installed, and maintained in accordance with NFPA-58 and state law.

Five-year accident history. We have never had an accident involving propane that caused deaths, injuries, property or environmental damage, evacuations, or shelterings in place.

The emergency response program. In the event of an emergency involving our propane system, it is our policy to notify the Garvin County Fire Department and request that they respond to the emergency. We have discussed this policy with the fire department; members of the fire department have inspected our propane system.

January 27, 2000

Planned changes to improve safety. None.

1. REGISTRATION

1.1 Source Identification

1.1.a. Facility Name: **Smith Gas Company**

1.1.b. Parent Company #1 Name: N/A

1.1.c. Parent Company #2 Name:

1.2. RMP Facility Identifier: [EPA will assign]

1.3. EPA Identifier:

1.4. Dun and Bradstreet Numbers (DUNS) N/A

1.4.a. Facility DUNS:

1.4.b. Parent Company #1 DUNS:

1.4.c. Parent Company #2 DUNS:

1.5 Facility Location Address

a. Street **42 Rural Rt 7**

b. Street - Line 2:

c. City: **Plainville** d. State: **OK** e. Zip Code: **12345** f. County: **Garvin**

g. Facility Latitude (degrees, minutes, and seconds): **34 40 20**

h. Facility Longitude (degrees, minutes, and seconds): **-097 21 06**

i. Method for determining Lat/Long : **I1 (interpolation, map)**

j. Description of location identified by Lat/Long : **AB Storage Tank**

1.6 Owner/Operator

a. Name: **William R. Smith**

b. Phone: **(555) 555-5555**

Mailing Address:

c. Street 1: **42 Rural Rt 7**

e. City: **Plainville** f. State: **OK** g. Zip: **12345**

1.7. Name and title of person responsible for RMP (part 68) implementation

a. Name: **William R. Smith**

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b. Title: **Company owner**

1.8. Emergency Contact

a. Name: **William R. Smith**

b. Title: **Company owner**

c. Phone: **(555) 555-5555**

d. 24-hour phone: **(555) 555-1111** e. Ext. or PIN:

1.9. Other Points of Contact (Optional)

a. Facility or parent company e-mail address:

b. Facility public contact phone: **(555) 555-5555**

c. Facility or parent company www homepage address:

1.10. LEPC (Optional): **Garvin County LEPC**

1.11. Number of full-time employees (FTEs) On Site: **1**

1.12. Covered by (select all that apply)

a. OSHA PSM: **Yes**

b. EPCRA section 302:

c. CAA Title V Air Operating Permit ID:

1.13. OSHA Star or Merit Ranking: **No**

1.14. Last Safety Inspection Date: **12/07/97**

1.15. Last Safety Inspection Performed by (select one) **Fire department**

1.16. Will this RMP involve Predictive Filing? **No**

1.17. Process Specific Information. For each covered process fill in the following chart. Use a separate sheet for each process

Process Number: (optional to help you track)	1
Process Description: (optional to help you track)	Storage tank
a. Program Level:	1
b. NAICS Code(s):	42272

c. Chemical	c.1. Name:	c.2. CAS Number:	c.3. Quantity (lbs.):
	Propane	74-98-6	67,000

4. FLAMMABLES: WORST CASE

4.1. Chemical Name **Propane**

4.2. Results based on (select one)

c. EPA's *RMP Guidance for Propane Storage Facilities* Reference Tables or Equations

4.3. Scenario: **Vapor Cloud Explosion**

4.4. Quantity released (lbs.) **67,000 pounds**

4.5. Endpoint Used: **1 psi**

4.6. Distance to endpoint (miles) **0.30 miles**

4.7. Residential population within distance to endpoint **0**

4.8. Public receptors within distance to endpoint (select all that apply)

- | | |
|---------------|-------------------------------------|
| a. Schools | d. Prisons /Correctional facilities |
| b. Residences | e. Recreation areas |
| c. Hospitals | f. Commercial/industrial areas |

4.9. Environmental receptors within distance to endpoint (select all that apply)

- a. National or state parks, forests, or monuments
- b. Officially designated wildlife sanctuaries, preserves, or refuges
- c. Federal wilderness area

4.10. Passive mitigation considered (select all that apply)

- a. Dikes
- b. Fire walls
- c. Blast walls
- d. Enclosures
- e. Other (specify)

4.11. Graphics file name (Optional)

9. EMERGENCY RESPONSE

9.1. Emergency response (ER) plan

- a. Is facility included in the written community emergency response plan? **No**
- b. Does facility have its own written emergency response plan? **No**

9.2. Does facility ER plan include specific actions to be taken in response to accidental releases of regulated substance(s)?

9.3. Does facility ER plan include procedures for informing public and local agencies responding to accidental release?

9.4. Does facility ER plan include information on emergency health care?

9.5. Date of most recent review/update of facility ER plan

9.6. Date of most recent emergency response training for facility's employees

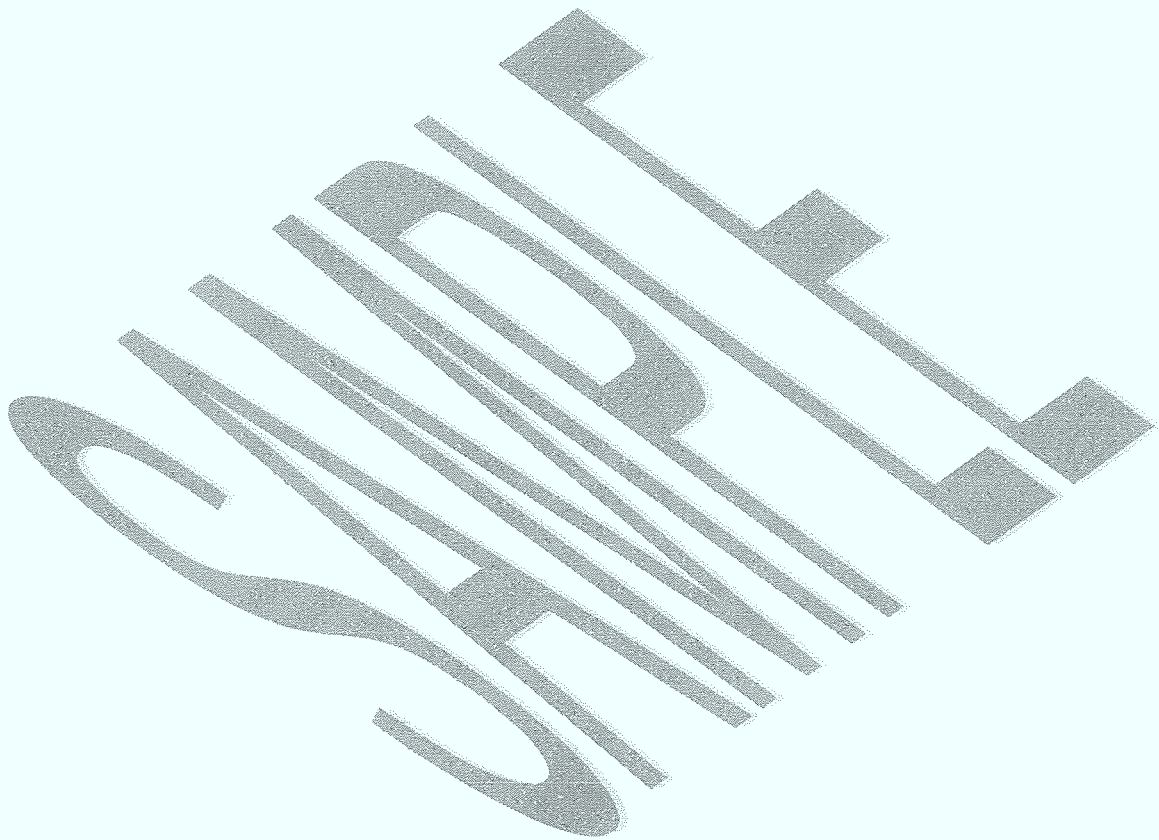
9.7. Local agency with which the facility ER plan or response activities are coordinated

a. Name of agency **Garvin County Fire Department**

b. Phone number **(555) 555-1000**

9.8. Subject to (select all that apply)

- 9.8.a. OSHA 1910.38 ☒
- 9.8.b. OSHA 1910.120
- 9.8.c. Clean Water Act/SPCC
- 9.8.d. RCRA
- 9.8.e. OPA-90
- 9.8.f. State EPCRA rules/law
- 9.8.g. Other (specify)



January 27, 2000

SAMPLE RMP for PROGRAM 3 PROPANE STORAGE FACILITY

(This sample RMP is for a fictitious facility named "Maryland LPG.")

Any resemblance to any actual facility is accidental).

CERTIFICATION STATEMENT

To the best of the undersigned's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

Mary L. Jones
Signature

Mary L. Jones
Print Name

Company Owner
Title

6/21/99
Date

EXECUTIVE SUMMARY

The accidental release prevention and emergency response policies at your facility: This facility complies with NFPA-58 requirements for LP-Gas storage, and it is our policy to adhere to all applicable federal, state, and local laws. If an emergency were to occur, it is our policy to notify the Howard County Fire Department and request that they respond to the emergency. We also maintain a fire brigade on site to handle small emergencies.

A description of your facility and the regulated substances handled. This facility is a bulk terminal storing LPG for resale to retail propane outlets. The facility consists of four 30,000-gallon tanks and two 120,000-gallon tanks.

The worst-case and alternative release scenarios. Our worst-case scenario is failure of one 120,000-gallon storage tank when filled to the greatest amount allowed (88% at 60F), resulting in a vapor cloud explosion. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint. Our alternative release scenario is a break in a 0.5-inch diameter pipe, leading to a 10-minute release and explosion. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint.

The general accidental release prevention program and chemical-specific prevention steps. This facility complies with EPA's accident prevention rule, the OSHA PSM standard, and all applicable state and local codes and regulations. The propane system is designed, installed, and maintained in accordance with NFPA-58 and state law.

Five-year accident history. We have never had an accident involving propane that caused deaths, injuries, property or environmental damage, evacuations, or shelterings in place.

The emergency response program. In the event of an emergency involving our propane system, it is our policy to notify the Howard County Fire Department and request that they help respond to the emergency. We also have a trained fire brigade. We have coordinated our response plans with the fire department; members of the fire department have inspected our propane system and conducted a joint exercise with us.

Planned changes to improve safety. None.

January 27, 2000

1. REGISTRATION

1.1 Source Identification

- a. Facility Name: **Maryland LPG**
- b. Parent Company #1 Name: N/A
- c. Parent Company #2 Name:

1.2. RMP Facility Identifier: [EPA will assign]

1.3. EPA Identifier:

1.4. Dun and Bradstreet Numbers (DUNS) N/A

- a. Facility DUNS:
- b. Parent Company #1 DUNS:
- c. Parent Company #2 DUNS:

1.5 Facility Location Address

- a. Street **238 Main Street**
- b. Street - Line 2:
- c. City: **Odenton** d. State: **MD** e. Zip Code: **21873** f. County: **Howard**
- g. Facility Latitude (degrees, minutes, and seconds): **39 11 15**
- h. Facility Longitude (degrees, minutes, and seconds): **-076 50 10**
- i. Method for determining Lat/Long : **I1 (interpolation, map)**
- j. Description of location identified by Lat/Long : **AB Administrative Building**

1.6 Owner/Operator

- a. Name: **Mary L. Jones**
- b. Phone: **(410) 777-1234**

Mailing Address:

- c. Street 1: **238 Main St.**
- e. City: **Odenton** f. State: **MD** g. Zip: **21873**

1.7. Name and title of person responsible for RMP (part 68) implementation

- a. **Mary L. Jones**
- b. **Company Owner**

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1.8. Emergency Contact

- a. Name: **Mary L. Jones**
- b. Title: **Company owner**
- c. Phone: **(410) 777-1234**
- d. 24-hour phone: **(410) 777-4321** e. Ext. or PIN:

1.9. Other Points of Contact (Optional)

- a. Facility or parent company e-mail address:
- b. Facility public contact phone: **(410) 777-1234**
- c. Facility or parent company www homepage address:

1.10. LEPC (Optional): **Howard County LEPC**1.11. Number of full-time employees (FTEs) On Site: **6**

1.12. Covered by (select all that apply)

- a. OSHA PSM: **Yes**
- b. EPCRA section 302:
- c. CAA Title V Air Operating Permit ID:

1.13. OSHA Star or Merit Ranking: **No**1.14. Last Safety Inspection Date: **10/19/98**1.15. Last Safety Inspection Performed by (select one) **Fire department**1.16. Will this RMP involve Predictive Filing? **No**

1.17. Process Specific Information. For each covered process fill in the following chart. Use a separate sheet for each process.

Process Number: (optional to help you track)	1
Process Description: (optional to help you track)	Storage Tanks
a. Program Level:	3
b. NAICS Code(s):	42271 Petroleum Bulk Terminal

c. Chemical	c.1. Name:	c.2. CAS Number:	c.3. Quantity (lbs.):
	Propane	74-98-6	1,331,000

4. FLAMMABLES: WORST CASE

4.1. Chemical Name **Propane**

4.2. Results based on (select one)

c. EPA's *RMP Guidance for Propane Storage Facilities* Reference Tables or Equations

4.3. Scenario: **Vapor Cloud Explosion**

4.4. Quantity released (lbs.) **120,000 pounds**

4.5. Endpoint Used: **1 psi**

4.6. Distance to endpoint (miles) **0.60 miles**

4.7. Residential population within distance to endpoint **200**

4.8. Public receptors within distance to endpoint (select all that apply)

- | | |
|-----------------|-------------------------------------|
| a. Schools ✓ | d. Prisons /Correctional facilities |
| b. Residences ✓ | e. Recreation areas ✓ |
| c. Hospitals ✓ | f. Commercial/industrial areas ✓ |

4.9. Environmental receptors within distance to endpoint (select all that apply)

- a. National or state parks, forests, or monuments
- b. Officially designated wildlife sanctuaries, preserves, or refuges
- c. Federal wilderness area

4.10. Passive mitigation considered (select all that apply)

- a. Dikes
- b. Fire walls
- c. Blast walls
- d. Enclosures
- e. Other (specify)

4.11. Graphics file name (Optional)

5. FLAMMABLES: ALTERNATIVE RELEASES [Program 2 processes only]5.1. Chemical Name **Propane**5.2. Results based on: **EPA's *RMP Guidance for Propane Storage Facilities* Reference Tables or Equations**5.3. Scenario **Vapor cloud explosion**5.4. Quantity released (lbs.) **4,738**5.5. Endpoint used (select one) **1 psi**5.6. Distance to endpoint (miles) **0.10**5.7. Residential population within distance to endpoint **14**

5.8. Public receptors within distance to endpoint (select all that apply)

- | | |
|--------------------|-------------------------------------|
| a. Schools | d. Prisons /Correctional facilities |
| b. Residences ✓ | e. Recreation areas |
| c. Hospitals | f. Commercial/industrial areas ✓ |

5.9. Environmental receptors within distance to endpoint

- a. National or state parks, forests, or monuments
- b. Officially designated wildlife sanctuaries, preserves, or refuges
- c. Federal wilderness area

5.10. Passive mitigation considered (select all that apply)

- a. Dikes
- b. Fire walls
- c. Blast walls
- d. Enclosures
- e. Other (specify)

5.11. Active mitigation considered (select all that apply)

- a. Sprinkler system
- b. Deluge system
- c. Water curtain
- d. Excess flow valve
- e. Other (specify)

5.12. Graphics file name (Optional)

7. PREVENTION PROGRAM - PROGRAM 3

For each process or process unit:

7.1. NAICS Code for process: 42271

7.2. Chemical name(s):	Propane
------------------------	----------------

7.3. Safety information

Date of most recent review/revision of safety information **02/04/97**

7.4. Hazard review

a.1 Date of completion of most recent PHA/update **02/04/98**

a.2 Technique used **Checklist**

b. Expected date of completion of any changes resulting from the PHA **02/04/98**

c. Major hazards identified (select at least one)

Toxic release	Overpressurization	✓	Earthquake
Fire	✓	Corrosion	Floods
Explosion	✓	Overfilling	✓
Runaway reaction	Contamination	Hurricanes	
Polymerization	Equipment Failure	✓	Other

Loss of cooling, heating, electricity, instrument air

7.4.d. Process controls in use (select at least one)

Vents	✓	Emergency air supply	
Relief valves	✓	Emergency power	
Check valves		Backup pump	
Scrubbers		Grounding equipment	✓
Flares		Inhibitor addition	
Manual shutoffs	✓	Rupture disks	
Automatic shutoffs	✓	Excess flow device	✓

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Interlocks	Quench system
Alarms and procedures ✓	Purge system
Keyed bypass	Other: Breakaway couplings

7.4.e. Mitigation systems (select all that apply)

Sprinkler system ✓	Deluge system
Dikes	Water curtain
Fire walls	Enclosure
Blast walls	Neutralization
	Other (specify)

7.4.f. Monitoring/detection systems (select all that apply)

Process area detectors	Other (specify)
Perimeter monitors	

7.4.g. Changes since last PHA update (select all that apply)

Reduction in chemical inventory	Installation of perimeter monitoring systems
Increase in chemical inventory	Installation of mitigation systems
Change in process parameters	None required/recommended
Installation of process controls ✓	Other (specify)
Installation of process detection systems	

7.5. Date of most recent review/revision of operating procedures **03/01/97**

7.6. Training

a. Date of most recent review/revision of training programs **03/01/97**

b. Type of training provided (select at least one)

Classroom	On the job	✓
Other (specify)		

c. Type of competency test used (select at least one)

Written test	Observation	✓
Oral test	Other (specify)	
Demonstration	✓	

7.7. Maintenance

- a. Date of most recent review/revision of maintenance procedures **04/01/97**
- b. Date of most recent equipment inspection/test **10/19/98**
- c. What equipment inspected/tested **Propane tanks, valves, and piping**

7.8 Management of Change

- a. Date of the most recent change that triggered management of change procedure:
- b. Date of the most recent review or revision of management of change procedures: **6/14/98**

7.9 Pre-Startup Review

The date of the most recent pre-startup review:

7.10. Compliance audits

- a. Date of most recent compliance audit
- b. Expected date of completion of any changes resulting from the compliance audit

7.11. Incident investigation:

- a. Date of most recent incident investigation
- b. Expected date of completion of any changes resulting from the investigation

7.12 Employee participation plan

Date of the most recent review or revision of the employee participation plan: **4/16/99**

7.12 Hot work permit procedures

Date of the most recent review or revision of the hot work permit procedures: **24/12/97**

7.13 Contractor safety procedures

- a. Date of the most recent review or revision of the contractor safety procedures: **4/16/99**
- b. The date of the most recent review or revision of contractor safety performance: **4/16/99**

9. EMERGENCY RESPONSE

9.1. Emergency response (ER) plan

- a. Is facility included in the written community emergency response plan? **Yes**
- b. Does facility have its own written emergency response plan? **Yes**

9.2. Does facility ER plan include specific actions to be taken in response to accidental releases of regulated substance(s)? **Yes**

9.3. Does facility ER plan include procedures for informing public and local agencies responding to accidental release? **Yes**

9.4. Does facility ER plan include information on emergency health care? **Yes**

9.5. Date of most recent review/update of facility ER plan **11/06/98**

9.6. Date of most recent emergency response training for facility's employees **3/14/99**

9.7. Local agency with which the facility ER plan or response activities are coordinated

a. Name of agency **Howard County Fire Department**

b. Phone number **(410) 123-4567**

9.8. Subject to (select all that apply)

9.8.a. OSHA 1910.38 ☒

9.8.b. OSHA 1910.120

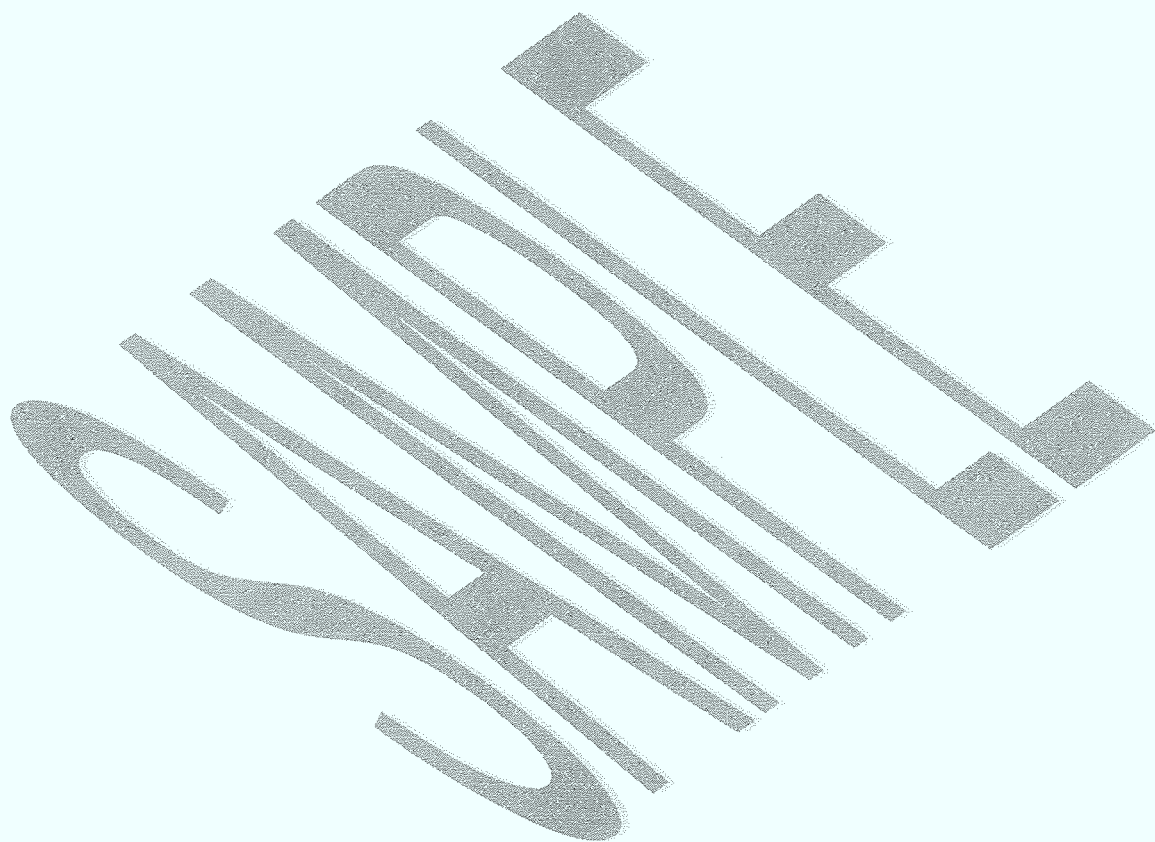
9.8.c. Clean Water Act/SPCC

9.8.d. RCRA

9.8.e. OPA-90

9.8.f. State EPCRA rules/law

9.8.g. Other (specify)



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APPENDIX A
**HOW DO I DETERMINE IF MY SEPARATE (NON-
INTERCONNECTED) PROPANE TANKS ARE CO-LOCATED?**

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APPENDIX A

HOW DO I DETERMINE IF MY SEPARATE (NON-INTERCONNECTED) PROPANE TANKS ARE CO-LOCATED?

For separate, above-ground, non-interconnected propane tanks, one way to determine whether the tanks constitute a single process (i.e., in rule language are “co-located”) is to determine whether they are close enough together for a vapor cloud explosion resulting from the release of the total contents of one tank to cause the catastrophic failure of an adjacent tank. Table A-1 indicates estimated separation distances based on this method.

TABLE A-1
ESTIMATED SEPARATION DISTANCES FOR CONSIDERING NON-INTERCONNECTED PROPANE TANKS AS SEPARATE PROCESSES

Tank Capacity (gal)	Tank Confinement	Estimated Separation Distance (ft)
500	Partial - High	61
500	Low	41
1000	Partial - High	76
1000	Low	51
2000	Partial-High	96
2000	Low	64

The estimated separation distances in Table A-1 corresponding to “Partial - High” confinement are based on a TNT-equivalent yield factor of 10 percent. This is the same yield factor specified in the RMP rule for conducting flammable gas worst-case scenario modeling using TNT-equivalent methods (readers should note that the distances in Table A-1 are not intended as worst-case endpoint distances). This yield factor is appropriate for vapor cloud explosions occurring in areas with numerous obstructions, such as in pipe racks, between stacks of crates or pallets, or near other closely spaced structures¹. Table A-1 distances corresponding to “Low” confinement may be used if your propane tanks are located outdoors² in relatively flat, open terrain with few structures nearby (these separation distances are based on a TNT-equivalent yield factor of 3%). Otherwise, the distances corresponding to “Partial-High” confinement should be used to give reasonably conservative separation distance estimates.

¹ Vapor cloud explosions occurring in congested or confined spaces are generally stronger due to higher flame speeds resulting from turbulence produced in unburned gases expanding ahead of the propagating flame front.

² NFPA-58 generally requires propane tanks to be located outside of buildings.

To determine whether adjacent, non-interconnected propane tanks constitute a single process, measure the linear distance between the tanks and compare it to the estimated separation distance in Table A-1 for tanks of that size and with that degree of confinement. Tanks that are separated by less than the estimated separation distance in Table A-1 should generally be considered a single process and their quantities added together to determine if the process exceeds the RMP threshold of 10,000 pounds. Individual tanks of propane which are separated by at least the estimated separation distance in Table A-1 for tanks of that size and with that degree of confinement may generally be considered as separate processes and thus not subject to the RMP regulation.

The distances provided in the Table above should be treated as estimates. Other methods of determining separation distances may provide more accurate estimates and you are free to use other reasonable methods if you choose. Also, the separation distances provided here should be considered in relation to any unique circumstances at your site, such as topography, the presence of structures and obstacles, the presence of blast-mitigation features, and other site-specific factors. For example, if engineered blast-barriers are located between tanks, or if your tanks are underground, smaller separation distances may be appropriate³. On the other hand, topographical features, such as a depression between two tanks where heavier-than-air propane vapor might collect, may warrant the use of larger separation distances. Additionally, you should evaluate whether there are potential events other than vapor cloud explosions that could reasonably be expected to cause multiple tanks to fail, even at distances larger than those in Table A-1. EPA believes that for most properly designed outdoor propane installations, such events are extremely unlikely, and that separating tanks by at least the appropriate distance in Table A-1 is sufficient to establish separate processes. However, you should evaluate your own circumstances and maintain documentation to support your determination.

Some readers of this guidance may conclude that it will be easier to re-locate one or more of their propane tanks to conform to the distances provided above rather than taking the steps necessary to comply with the regulation. This is certainly permitted, and in some cases may be an appropriate risk-reduction measure. However, when taking such actions, you should be careful to maintain sufficient separation distances between your propane tanks and nearby buildings, roads, and public receptors. EPA recommends consulting NFPA-58 or other applicable codes or standards to identify such distances.

³ NFPA-58 generally recommends against installing fire walls, fences, earth or concrete barriers, and other similar structures around or over non-refrigerated LP-gas containers. There are some exceptions. For example, the standard permits such structures to partially enclose LP-gas containers, if the structure is designed in accordance with a sound fire protection analysis.

APPENDIX B RELEASE CALCULATIONS

February 24, 1999

February 24, 1999

APPENDIX B - RELEASE CALCULATIONS

The endpoints that can be considered for the alternative release scenario are explosion damage, radiant heat effect and lower flammability limit vapor concentration. Review these potential alternative scenarios and pick one or more that best describes a scenario that is more likely to occur than the worst-case scenario and that has an endpoint which is beyond your facility boundary. The following are possible alternative release scenarios that use a vapor cloud explosion and an overpressure of 1 psi.

PULL-AWAY: (ACTIVE MITIGATION DEVICES PERFORM AS DESIGNED)

An alternative scenario for a propane storage facility may be a hose rupture caused by a pull-away. A pull-away can occur if the driver fails to remove the hoses between the storage tank and the transfer vehicle (bobtail or transport) before moving the vehicle. In this case, the analysis considers the failure of a 25 foot length of unloading hose, 4" in diameter. The active mitigation devices are assumed to work as designed, limiting the release to the contents of the hose.

Volume of hose = cross sectional area of hose x length of hose

$$\text{Volume of hose} = \pi \times (4 \text{ in} / 2)^2 \times 1 \text{ ft}^2 / 144 \text{ in}^2 \times 25 \text{ ft} = 2.182 \text{ ft}^3$$

$$W_f = 2.182 \text{ ft}^3 \times .504 \times 62.37 \text{ pounds/ft}^3 = 68.59 \text{ pounds of propane}$$

There are three methods described in EPA's OCA that you can use to determine the distance to the endpoint for an alternative scenario. Two of those methods are used here as an example.

PULL-AWAY EXPLOSION

You can use equation C-1 from EPA's OCA to calculate the distance exposed to greater than 1 psi overpressure. This method results in a distance to endpoint of 175 feet and the endpoint is 1 psi overpressure.

$$D = 17 (0.1 \times W_f \times HC_f / HC_{TNT})^{1/3}$$

Where,

W_f is the weight of propane in kilograms in the vapor cloud,

HC_f is the heat of combustion of propane from Appendix C of EPA's OCA,

HC_{TNT} is the heat of combustion of TNT from Appendix C of EPA's OCA, and

D is the distance in meters from the explosion where overpressure exceeds 1 psi.

$$D = 17 (.1 \times W_f \times 46333/4680)^{1/3} = 17 (.1 \times 68.6/2.2046 \times 46333/4680)^{1/3} = 53.29 \text{ meters} =$$

$$D = 174.8 \text{ feet}$$

If you use this scenario as your alternative release scenario, the distance to endpoint is 175 feet and the endpoint used is 1 psi overpressure.

PROCESS PIPING BREAKS

Liquid propane pipe failures: ½", 1", 2", 3", 4" and 6". (Causes: liquid expansion [failure of hydrostatic valves], a pull-away [failure of breakaway devices⁴], collision, corrosion.) For long pipes, where the length to diameter ratio is significantly greater than one, flashing (i.e., conversion of gaseous propane to liquid) in the discharge pipe results in a two-phase release. You can estimate the amount released from a line shear using the following equation:

$$QR = 0.0853 \times HA \times F \times L / [V_{gl} \times (T \times C_p)^{0.5}]$$

Where: QR is the release rate in pounds per minute.
 HA is the cross-sectional area of the pipe in square inches.
 F is the frictional factor, which is 0.85 for pipe with a length to diameter ratio of 50.
 L is the heat of vaporization, which is 426,000 joules per kilogram for propane.
 V_{gl} is the specific volume of gas minus liquid in m³/kg, which is 0.056 for propane.
 T is the temperature in Kelvins (assumed to be 298).
 C_p is the heat capacity, which is 2,400 joules/kilogram/Kelvin for propane.
 0.0853 is a units conversion factor.

QR can be calculated using the values in the table below for HA. Now Q (the release quantity) can be calculated for a 10-minute release, and D (the distance to the endpoint in feet) can be calculated using equation C-1 from EPA's OCA. Note that Q cannot be larger than the amount of propane contained in your storage tank (this should be considered especially for 6" pipes).

For a 1" pipe:

$$QR = 512.5 \text{ pounds per minute}$$

$$Q = QR \times 10 \text{ minutes} = 5,125 \text{ total pounds released } (Q = W_f)$$

$$D = 17 (0.1 \times W_f \times HC_f / HC_{TNT})^{1/3} = 17 \times (0.1 \times 5,125 / 2.2046 \times 46333 / 4680)^{1/3} = 224$$

$$D = 224 \text{ meters} = 735 \text{ feet} = 0.1 \text{ mile}$$

If you use this scenario as your alternative release scenario, the distance to endpoint is 735 feet (or about 0.1 mile) and the endpoint used is 1 psi overpressure.

⁴ See NFPA 58, 1998 Edition, Section 3-9.4.2. A breakaway device is used when dispensing LPG. It is designed so that the breakaway device fails (instead of the piping or hose) allowing other safety devices to retain the fuel and limit the spill. Failure of the breakaway device means that the breakage occurs somewhere else rather than at the breakaway device during a pull away, thus negating the effectiveness of some or all of the other safety devices.

TABLE B-1
POTENTIAL DISTANCES TO ENDPOINT FOR PIPE RELEASES
(for 1 psi Overpressure)

Pipe Size (inches)	HA (inches ²)	QR (pounds/minute)	Q Total Amount Released after 10 minutes (pounds)	D (Miles)
0.50	0.20	128	1,281	0.1
1	0.79	512	5,125	0.1
2	3.14	2,050	20,499	0.2
3	7.07	4,612	46,122	0.3
4	12.57	8,199	81,995	0.4
6	28.27	18,449	184,488	0.5

OVERFILL STORAGE TANK - RELIEF VALVE LIFTS

A safety relief valve lifts (causes: overpressure or overfilling [failure of your level indicator and administrative procedures]).

A four-valve multiport relief valve has a flow capacity of 27,750 SCFM/Air at 300 psi with three of the four valves lifting. Estimate the amount of propane discharged from one port over 5 minutes and the distance to endpoint if the vapor cloud finds a source of ignition and explodes. The density of air is 12.39 ft³/lb and the density of propane is 8.66 ft³/lb. To convert SCFM_(air) to SCFM_(propane) multiply by 0.808.

The release rate from one port is 27,950 SCFM_(air) / 3 = 9,250 SCFM (air)

$$Q_{(\text{propane})} = Q_{(\text{air})} \times 0.808 / 8.66 \text{ ft}^3/\text{lb} = 863 \text{ lbs/min} \times 5 \text{ min} = 4,315 \text{ lbs} = 1957.4 \text{ kg}$$

$$D = 17 (0.10 \times 1957.4 \times 46,333/4680)^{1/3} = 211.9 \text{ meters} \times 3.281 \text{ ft/meter} = 695.2 \text{ ft} / 5280 \text{ ft/mile} = 0.13 \text{ miles.}$$

TABLE B-2
RELIEF VALVE DISCHARGES (FOR 1 PSI OVERPRESSURE)

Relief Valve Size (inches)	Capacity SCFM of Air	Release Rate (lbs/min) Propane	Duration (min)	Amount Released (lbs)	Distance to Endpoint (Miles)
Multiport 2½"	9,250	863	5	4,315	0.1
Dual Port 1¼"	5,250	490	5	2,449	0.08
2½"	10,390	969	5	4,847	0.1
1½"	6,080	567	5	2,836	0.1
1¼"	5,280	492	5	2,463	0.1
1 "	3,340	312	5	1,558	0.09

APPENDIX C

CHECKLISTS AND OTHER DOCUMENTS

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PROCESS SAFETY INFORMATION

Process Safety Information Worksheet: Propane Storage	
Item	Description
MSDS Propane	
Maximum Intended Inventory	
Nominal Water Capacity of Largest Tank	
Temperature	Upper: Lower:
Pressure	Upper: Lower:
Flow Rate	Loading: Unloading:
Vapor Piping	
Liquid Piping	
Safety Relief Valves RV1 RV2 RV3 RV4	
Internal Valve	
Excess Flow Valve EFV1 EFV2 EFV3 EFV4	
Emergency Shutoff Valve ESV1 ESV2	

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Item	Description
Hydrostatic Relief Valve HSV1 HSV2 HSV3 HSV4 HSV5 HSV6	
Pump 1	
Pump 2	
Compressor 1	
Compressor 2	
Vaporizer	Type: Sz. Flow:
Strainer	
Check valves	
Sightflow Indicator	
Tank Level Indicator	
Tank Temperature Indicator	
Tank Pressure Indicators	
Other Temperature Indicators	
Other Pressure Indicators	
Design Codes	
State or Local Codes	
Piping Design	
Tank Design	ASME NB# State ID#
Vaporizer Design	ASME NB# State ID#
Date of Most Recent Revision	Revised By:

C-3

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PROPANE STORAGE FACILITY CHECKLIST^{5,6}

Answer the questions below by indicating "Yes", "No" or "N/A" (for not applicable). "No" responses require further comment and a projected completion date for correcting the deficiency.

Siting	Yes/No/NA	Comments
1. Does the arrangement of your fixed storage tanks conform with the minimum distances allowed in Table 3-2.2.2 of NFPA 58, 1998 Edition?		
2. Are your fixed storage tanks separated from any oxygen or hydrogen storage by the minimum distances given in Table 3-2.2.7(f) of NFPA 58, 1998 Edition?		
3. Are your transfer points separated from the exposure points by the minimum distances given in Table 3-2.3.3 of NFPA 58, 1998 Edition?		
Piping, Equipment & Container Appurtenances	Yes/No/NA	Comments
1. Is your storage facility designed according to ASME code for pressure vessels? Fixed Storage Tanks ASME? Vaporizers ASME?		
2. Is the pressure rating of your storage tanks appropriate for the product in service? Storage Tanks? Vaporizers?		
3. Is the stored product properly identified?		
4. On installations with multiple tanks, are the elevations of your storage tanks arranged to prevent unintentional overfilling of the lowest container?		

⁵ Completing the Propane Storage Facility Hazard Review Checklist does not guarantee that your facility is in complete compliance with NFPA 58, 1998 Edition.

⁶ The Propane Storage Facility Hazard Review Checklist is based on NFPA 58, 1998 Edition. Over the years, various changes in NFPA 58 have been made to reduce the probability of a propane release. You should carefully review any change to NFPA 58 since your facility was constructed and consider appropriate changes to ensure the safety of your facility. Document the actions that you take. You should be ready to explain any differences between the version of NFPA 58 that you used to construct your facility and the current version.

Piping, Equipment & Container Appurtenances	Yes/No/NA	Comments
5. On installations with stairways or ladders, are they well anchored, supported and of slip proof construction?		
6. On installations with stairways or ladders, are railings provided and in good condition?		
7. On installations with stairways or ladders, are catwalks provided so personnel need not walk on any portion of the container?		
8. Is your piping designed according to NFPA 58, 1998 Edition, Section 3-2.10? Are your pump and compressor discharge and liquid transfer lines suitable for a working pressure of 350 psi? Is your vapor piping suitable for a working pressure of 250 psi? On installations with vaporizers, are your vaporizers designed according to 2-5.4.2 or 2-5.4.3 or 2-5.4.4 and 2-5.4.5 or 2-5.4.6 or 2-5.4.7 of NFPA 58, 1998 Edition?		
9. Is the relief capacity of your pressure relief devices: For fixed storage tanks, designed according to Sections 2-3.2 and 3-2.5 or 3-2.6 of NFPA 58, 1998 Edition? On installation with vaporizers, are your vaporizers designed according to 2-5.4.5 or 2-5.4.6 or 2-5.4.7 of NFPA 58, 1998 Edition?		
10. Is the capacity of your pressure relief devices designed according to 2-3.2 and 3-2.5 or 3-2.6 of NFPA 58, 1998 Edition? Have your relief devices been tested or replaced every ten years according to the good practice recommended by Section E-2.3.2 of NFPA 58, 1998 Edition?		
11. Do you have appropriate level gauges, temperature indicators, and pressure gauges installed on your fixed ASME storage tanks as specified in 2-3.3.2(b), 2-3.3.3, 2.3.4, 2.3.5 of NFPA 58, 1998 Edition?		

Piping, Equipment & Container Appurtenances	Yes/No/NA	Comments
12. Do you have the appropriate hydrostatic relief valves installed between every section of liquid piping which can be blocked by manual or automatic valves according to 2-4.7 and 3-2.11 of NFPA 58, 1998 Edition?		
13. Do you have the appropriate corrosion protection required by 3-2.14 of NFPA 58, 1998 Edition?		
14. On installations with pumps, are they installed according to 3-2.15.1 of NFPA 58, 1998 Edition? On installations with automatic bypass valves, are they installed on the discharge of your pump according to 3.2.15(b)1 and 2-5.2 of NFPA 58, 1998 Edition?		
15. On installations with compressors, are they installed according to 2-5.3 and 3-2.15.2 of NFPA 58, 1998 Edition? On installations with compressors, is there either an integral means of preventing liquid from entering the compressor or a liquid suction protection trap according to 3-2.15.2(b) of NFPA 58, 1998 Edition?		
16. Do your compressor and pump motors conform with 2-5.1.4 of NFPA 58, 1998 Edition?		
17. On installations with liquid strainers, are they installed on the suction of your pump or meter according to 3-2.15.3 and 2-5.5 of NFPA 58, 1998 Edition and capable of being cleaned?		
18. On installations with flexible connections on pumps, compressors or loading and unloading bulkheads, are they installed as specified by 2-4.6 of NFPA 58, 1998 Edition?		
19. Do you have either excess flow valves, backflow check valves or internal valves as specified by 2-3.3.3 and 3-3.3.7 of NFPA 58, 1998 Edition?		
20. Do you have container appurtenance protection as specified in 2-3.7 of NFPA 58, 1998 Edition?		
21. Do you have manual valves and emergency shutoff valves as required by 2-4.5.4, 3-2.10.11, 3-3.3.7 and 3-3.3.8 of NFPA 58, 1998 Edition?		

Piping, Equipment & Container Appurtenances	Yes/No/NA	Comments
22. On installations with vaporizing equipment, is it installed according to 2-5.4 and 3-6 of NFPA 58, 1998 Edition? Have the liquid traps, temperature controls, and interlocks been tested per the manufacturer's guidelines?		
23. On installations with regulators, are they installed according to 2-5.7 and 3-2.7 of NFPA 58, 1998 Edition?		
24. Do you have a breakaway stanchion as required by 3-9.4.2 of NFPA 58, 1998 Edition?		
25. On installations with swivel-type piping, are they installed as specified by 3-2.10.11(a) of NFPA 58, 1998 Edition?		
26. Are all above ground lines securely fastened to structural members of adequate strength and supported at proper intervals?		
27. Are pressure gauges located so that they will not be exposed to physical damage?		
28. Are there sufficient lines for all purposes, without improper dual use or make-shift connections being used for some operations?		
29. Are hoses the correct type for each use?		
30. Are hose couplings of the correct type and properly attached (fully seated on the hose)?		
31. Is adequate transfer hose storage provided?		
32. Are the written transfer, loading & unloading instructions available (see § 68.52 of this model program)?		
Human Factors	Yes/No/NA	Comments
1. Have your operators been trained on the written operating instructions for this propane storage facility (see § 68.54 of this model program)?		
2. For operators on the job on or before June 21, 1999, do they have the required knowledge, skills and ability to perform their duties safely?		

Human Factors	Yes/No/NA	Comments
3. Are your operators whose job duties require the use of the above listed equipment understand the operating limits of the system in regards to: Capacity? Pressure? Temperature? Adverse Weather or Natural Conditions?		
4. Have your operators been trained in the correct response to conditions which exceed the operating limits of the system?		
5. Have your operators been trained in their duties for emergency conditions? Fire? LP Gas Release? Severe Weather or Natural Conditions?		
6. Are the written operating instructions available to the operators (see § 68.52 of this model program)?		
7. Do the written operating instructions reflect current operation of the facility (see § 68.52 of this model program)?		
8. Have major modifications to your propane storage facility taken place (see § 68.48 of this model program)?		
9. Are contractors used at the facility?		
10. Are safe work practices such as lock/tag, hot work and line opening followed at the facility?		

Human Factors	Yes/No/NA	Comments
11. Is there a written emergency response plan (see Subpart E of this model program)? Is it current? Have your operators been trained? Do you provide emergency response equipment? Has it been checked?		
General Hazards	Yes/No/NA	Comments
1. Does your propane storage facility have protection against tampering as specified in under 3-3.6 of NFPA 58, 1998 Edition?		
2. Does your propane storage facility have lighting as specified in 3-3.7 of NFPA 58, 1998 Edition?		
3. Is the area around your containers and transfer piping free of all combustible material?		
4. Has a fire safety analysis been performed for your propane storage facility as suggested by 3-10.2.2 and 3-10.2.3 of NFPA 58, 1998 Edition?		
5. Has your fire safety analysis been reviewed by your local fire authority?		
6. Has your facility been required by your local fire authority to provide special protection? Fixed Water Sprays/Monitor Nozzles? Insulating Coatings? Mounding/Burial? Other types?		
7. Has a federal, state or local agency or fire authority required: Local Gas Detection Monitors? Perimeter Gas Monitors and Public Alarms?		
This Hazard Review was Completed by:	On (Date):	

The latest date by which all changes resulting from the process hazard review are expected

March 4, 1999

to be completed is _____.

Date

OPERATING PROCEDURES REQUIREMENTS

Procedure Requirement		NPGA	Certified Employee Training Program (CETP)	NPGA Bulletin	
(1)	<i>Initial Startup:</i>	Distribution Systems Operations	"Preparing Propane Storage Containers for Installation."		
		Distribution Systems Operations	"Identifying Procedures Used to Pressure Test and Leak Check New Propane Distribution Systems."		
(2)	<i>Normal Operations:</i>	Transfer Systems	"Identifying Propane Pumps and their Operation."		
		Transfer Systems	"Identifying Parts and Devices Basic to Compressors."		
		Plant Operations	"Filling Propane Storage Containers."		
		Plant Operations	"Unloading a Propane Transport."		
		Plant Operations	"Unloading a Propane Tank Car."		
		Propane Delivery	"Filling Cargo Tanks on Bulk Delivery Vehicles."		
(3)	<i>Temporary Operations:</i>	Plant Operations	"Removing Propane from Stationary ASME Tanks and DOT Cylinders."		
(4)	<i>Emergency Shutdown and Operation:</i>			200-89	How to Control LP-Gas Leaks & Fires
				202-81	What you should do in case of accidents involving LP-Gas
				202-93	Steps to Take in the Event of an Accident Involving Propane
				204-88	How to Handle LP-Gas Fires with Portable Fire Extinguisher
				206-91	Emergency Response Guidelines

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Procedure Requirement		NPGA Certified Employee Training Program (CETP)		NPGA Bulletin	
				207-94	Guidelines for Developing Plant Emergency Procedures
				211-91	LP-Gas Fire Control and HAZ MAT Training Guide
(5)	Normal (Manual) Shutdown:				
(6)	Startup following a normal or emergency shutdown or a major change that requires a hazard review: See item (1) above.				
(7)	Consequences of deviations and steps required to correct or avoid deviations.				
(8)	Equipment inspections.				

MAINTENANCE TRAINING

Module	Certified Employee Training Program (CETP)
Basic Principles	Identifying the Proper Use of Personal Protective Equipment
Basic Principles	Identifying the Proper Use of Tools and Equipment
Basic Principles	Identifying by Sight Hand Tools Commonly Used by Service Technicians
Basic Principles	Identifying Pipe/Tube, Pipe/ Fittings, and Associated Tools
Transfer Systems Operations	Identifying Propane Pumps and Their Operation
Transfer Systems Operations	Identifying the Standards for Sizing, Installing and Inspecting Pump Protective Devices
Transfer Systems Operations	Troubleshooting Propane Pumps and Metered Delivery Systems
Transfer Systems Operations	Identifying Parts and Devices Basic to Compressors
Transfer Systems Operations	Maintaining and Troubleshooting Compressors
Distribution Systems	Identifying the Operating Characteristics of Propane Vapor Regulators and Metering Systems
Distribution Systems	Installing Propane Vapor Regulating and Metering Systems
Distribution Systems	Sizing Pipe for Use in Low Pressure Propane Distribution Systems
Distribution Systems	Identifying Steel/Wrought Iron Piping Materials and Installing Procedures
Distribution Systems	Identifying Tubing Materials and Installing Procedures
Distribution Systems	Identifying and Sizing Vaporizer Systems
Distribution Systems	Sizing Propane Liquid Piping Systems
Distribution Systems	Identifying Installing and Servicing Procedures for Vaporizer Systems
Plant Operations	Identifying the Operating Characteristics of Pressure Relief Valves
Plant Operations	Identifying and Installing Gauges in Propane Storage Containers
Plant Operations	Identifying the Operating Characteristics of Check Valves
Plant Operations	Identifying the Operating Characteristics of Service Valves
Plant Operations	Installing Valves in Propane
Plant Operations	Inspecting Servicing and Maintaining Container Valves

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Module	Certified Employee Training Program (CETP)
Transfer Systems Operations	Identifying the Operation and Maintenance of Withdrawal Valves
Transfer Systems Operation	Identifying the Operation and Maintenance of Bulkheads and Emergency Shutoff Valves (ESVs)
Distribution Systems Operations	Installing Propane Liquid Distribution and Vaporizer Systems
Transfer Systems Operation	Identifying the Operation and Maintenance of Hoses, Hose End Valves, and Hose Reels
Distribution Systems Operations	Identifying the Causes of Corrosion on Metal Surfaces
Distribution Systems Operations	Identifying Methods and Procedures Used to Protect Metal Structures from Corrosion
Distribution Systems Operations	Identifying Procedures Basic to Installing Anodes and Testing Cathodic Protection Systems
Distribution Systems Operations	Identifying Procedures Used to Pressure Test and Leak Check New Propane Distribution Systems

MAINTENANCE INSPECTION CHECKLIST AND TESTS FOR PROPANE STORAGE FACILITIES

I. Construction Code Compliance		Yes	No and Comment
a)	Check manufacturer's data plate. Is it securely attached and legible? For each fixed storage vessel? On installations with vaporizers, for each vaporizer?		
b)	Are the data plate(s) free of corrosion?		
II. Conditions of Container(s) and Vaporizer(s) and Paint		Yes	No and Comment
a)	Are above-ground containers properly painted? Fixed storage tanks? On installations with vaporizers, the vaporizers?		
b)	Are containers and vaporizers free of corrosion damage, dents, gouges, or other damage?		
III. Foundations		Yes	No and Comment
a)	Are foundations in good condition?		
b)	Are footings free of settling which might cause misalignment or piping strain?		
c)	Are containers and vaporizers free of corrosion at masonry contact area?		
d)	Are saddle pads in good condition?		
IV. Container Connections		Yes	No and Comment
a)	Have excess flow and back flow check valves been recently checked for proper operation?		
V. Tank Fittings		Yes	No and Comment
a)	Are all ACME (or other type) connectors in good condition with good gaskets and are they plugged or capped? (See NPGA Bulletin #134 "Care and Inspection of ACME Threaded Hose Couplings.")		
b)	Are all unused openings plugged or capped?		
c)	Are all fittings and hoses leak free?		

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a)	Check manufacturer's data plate. Is it securely attached and legible? For each fixed storage vessel? On installations with vaporizers, for each vaporizer?		
b)	Are the data plate(s) free of corrosion?		
d)	Are all hoses marked "for LP-Gas service" with a pressure rating of 350 psig (see NPGA Bulletins # 107-91 and #121-89)?		
e)	Are all hoses properly secured, protected, and in serviceable condition and are dust caps on delivery hoses when not in use?		
f)	Are all hoses free from cuts or abrasions that expose the reinforcing fabric and free from soft spots or bulges when under pressure and without kinks, dents or flat spots?		
VI. Gauges		Yes	No and Comment
a)	Are pressure gauges in good condition and are they suitable for 250 psig service (such as 0-400 psig)?		
b)	Are thermometers in good condition and checked for accuracy?		
c)	On installations with vaporizers having temperature controls, are they in good condition and have they been tested in accordance with manufacturer's recommendations?		
d)	Are liquid level gauging devices approved for the service involved and in good condition?		
e)	On installations with vaporizers having level control devices, are they in good condition and have they been tested in accordance with manufacturer's recommendations?		
VII. Pressure Relief Valves		Yes	No and Comment
a)	Is the relief valve data plate legible?		
b)	Do relief valves or vent stacks have protective caps or closures to prevent entry of foreign matter?		
c)	Are weep holes for moisture drainage open and is gas impingement on the container avoided?		

a)	Check manufacturer's data plate. Is it securely attached and legible? For each fixed storage vessel? On installations with vaporizers, for each vaporizer?		
b)	Are the data plate(s) free of corrosion?		
d)	Have the relief valves on containers larger than 2000 gallons and on vaporizers been tested or replaced within the last 10 years as per NFPA 58, 1998 Edition recommendation in E-2.3.2?		
e)	Does external visual inspection of the relief valve discharge indicate no corrosion or obstruction?		
VIII. Emergency Shut-off Valves		Yes	No and Comments
a)	Are valves in good condition and do they shutoff tightly?		
b)	Does the emergency shutoff control system function properly?		
c)	Are the remote shutoff controls installed in an accessible area away from the transfer area?		
d)	Are the shutoff controls clearly identified?		
e)	On installations with vaporizers having automatic shutoff controls, are they accessible, identified and been tested according to manufacturer's recommendations?		
f)	Are the emergency shutoff valves and manual transfer valves on your loading or unloading stations protected from pull away damage by a break-away-stanchion.		
IX. Presence of Combustibles		Yes	No and Comments
a)	Is the area within 10 ft. of the container(s) and vaporizers free of weeds, long grass, rags, paper, wood or other combustible debris?		
X. Pipe (for Fixed Storage Tanks and Vaporizers)		Yes	No and Comments
a)	Are all connections tight?		
b)	Are there sufficient lines for all purposes, without dual use, or are make-shift connections being used for some purposes?		
c)	Are connections labeled "liquid" or "vapor"?		

a)	Check manufacturer's data plate. Is it securely attached and legible? For each fixed storage vessel? On installations with vaporizers, for each vaporizer?		
b)	Are the data plate(s) free of corrosion?		
d)	Are there visible signs of exterior corrosion?		
XI. Valves (for Fixed Storage Tanks and Vaporizers)		Yes	No and Comments
a)	Are valves in good working order?		
b)	Do seats shut off tightly?		
c)	Is packing free of leaks?		
d)	Are necessary valve handles available at the valve location?		
XII. Hydrostatic Relief Valves (for Fixed Storage Tanks and Vaporizers)		Yes	No and Comments
a)	Are the valves in good working order and not leaking?		
b)	Are the valves fitted with protective caps?		
c)	Are the valve discharges positioned to avoid impinging gas on the tank?		
XII. Transfer Areas		Yes	No and Comments
a)	Are hoses in good condition and free of deterioration, wear, and blisters? See NPGA Bulletin #114 "Guide to Hose Inspection."		
b)	Are hoses capped or plugged when not in use?		
c)	Are hose couplings properly attached and fully seated on the hose?		
d)	Are hose couplings worn or damaged?		
e)	Are coupling gaskets in good condition?		
f)	Are correct coupling wrenches available?		
g)	Are excess flow valves operating correctly?		
h)	Are the loading and unloading risers protected from traffic?		
I)	Are chock blocks provided for rail cars?		
j)	Have your fire extinguishers been tested and/or serviced?		

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a)	Check manufacturer's data plate. Is it securely attached and legible? For each fixed storage vessel? On installations with vaporizers, for each vaporizer?		
b)	Are the data plate(s) free of corrosion?		
k)	Is adequate transfer hose storage available?		
m)	Are the written transfer instructions readily available?		
XIV. Pumps and Compressors		Yes	No and Comments
a)	Are the shafts free of leaks?		
b)	Are pumps equipped with a spring loaded by-pass valve where required?		
c)	Is the by-pass valve functioning properly?		
d)	Are drive belts or couplings protected by suitable guards?		
e)	Is the compressor crank case oil at the proper level?		
XV. Electrical Equipment		Yes	No and Comments
a)	Do all switches, etc. function properly?		
b)	Are all housings properly assembled to maintain seal?		

Inspected By:	Inspection Date:
These procedures were last reviewed or inspected by:	Date:

Name (signature)

Piece of Equipment Inspected:	Most Recent Date:

March 4, 1999



CUP Staff Report

Planning and Zoning Commission Hearing Date: April 11, 2011

Rezoning Case: P10-289

Property Owner(s): Williams Properties

Applicant(s): Jeff Williams

Legal Description: Lot 1, Block 1 of the Williams Number One Replat, within the City of Tomball, Harris County, Texas

Location: 503 East Main Street (Generally located southerly of Main Street between Howard Street and Willow Street)

Area: 0.5019 acres

Present Zoning and Use: GR-General Retail District / Welding equipment and supply sales (Professional Welding Supply)

Comp Plan Designation: Employment / Office

Proposed Use: Welding supply sales and propane sales/filling

Request: Conditional Use Permit to allow the installation/operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling.

Adjacent Zoning & Land Uses:

North: GR-General Retail and OT&MU-Old Town & Mixed Use Districts / F.M. 2920 ROW, convenience store, and office building

South: GR-General Retail and OT&MU-Old Town & Mixed Use Districts / Unimproved Howard Street ROW and vacant

East: GR-General Retail District / Harris County Flood Control District ditch and Concordia Lutheran High School

West: Old Town & Mixed Use District / Unimproved Howard Street ROW and plumbing company

BACKGROUND / PROJECT DESCRIPTION

The subject site is an approximately 21,862.20 square foot (0.5019 acres) triangular lot with approximately 140 feet of frontage along F.M. 2920 (Exhibit "G"). The property is located in the GR-General Retail District and is currently developed with an approximately 2,219 square foot building occupied by Professional Welding Supply, a welding equipment and supply company.

The site is bound by the unimproved Howard Street ROW on the west and a Harris County Flood Control District drainage ditch on the east. Concordia Lutheran High School is located to the east of the site in the GR-General Retail District, to the west is a plumbing company in the Old Town & Mixed Use District, and to the north is the F.M. 2920 ROW, a convenience store, and an office building located in the GR-General Retail and OT&MU-Old Town & Mixed Use Districts (Exhibits “A” and “B”).

In 2008, Professional Welding Supply began the process of converting the former Tomball Fire Department station at 503 East Main Street into a retail shop for welding supplies. The site was replatted in February 2009 (Exhibit “G”) and the site plans were approved by the City’s Engineering & Planning Department on April 23, 2009 as a general retail use with no outside storage permitted under the proposed plan. At that time, the plans included the construction of a seven space parking lot, as well as interior and exterior building improvements.

Between April 23 and December 8, 2009, the applicant constructed an approximately four foot tall cylinder dock/storage area enclosed with a chain link fence with privacy slats and three rows of barbed wire on the western portion of the building facing the Howard Street ROW without obtaining planning approval or City permits. The property owner was issued a “Stop Work Order” by the City’s Code Enforcement Officer on November 11, 2009 and was instructed to contact the Engineering & Planning Department in order to begin the permitting process. The property owner subsequently submitted a revised site plan in December 2009.

After reviewing the dock and outside storage area as shown on the revised site plan, City staff informed the property owner that the improvements could not be permitted as proposed because the dock was constructed over the 15 foot side building line and exceeded the maximum outside storage area permitted within the GR District, which is 5% of the total land area. It was also noted that the dock did not comply with the 2006 International Fire Code requirements for an overhead cover and the fenced in storage area blocked the egress door on the west side of the building. Additionally, the stairs and guardrail on the dock did not meet the City’s adopted building code.

After discussions with the property owner, a variance application was submitted for a reduction in the side setback for the dock and outside storage area. The owner indicated that he would reduce the size of the outside storage area to comply with the maximum 5% permitted in the GR District and that he would comply with the requirements of the Fire and Building Codes. On March 18, 2010, the Board of Adjustments approved the setback variance with a condition that the variance would automatically terminate at such time that the part of the Howard Street right-of-way adjacent to the subject site is improved and utilized for public street purposes.

A revised site plan was submitted in May 2010; however, a number of issues were not addressed including:

- The stair treads, risers, ledges, and handrails were not shown to be in conformance with the minimum standards outlined in the 2006 International Fire Code.
- An overhead cover was not shown for the dock as required per Section 3003.14 of the 2006 International Fire Code.
- The proposed site plan showed the fence being located to the north side of the egress door which will likely interfere with the stairway if alterations are not proposed for the stairway.

- Access to the cylinder dock/storage area was unclear. If vehicular access is occurring on the unpaved surface around the northwest and south sides of the outside storage area/cylinder dock, a paved access way is required and must adhere to all City codes. If no vehicular access is proposed, a 6" concrete curb is required to be constructed along the perimeter of the pavement to the north of the outside storage area (connecting to the existing curb).

As a result of the applicant's failure to address these comments, the City of Tomball has not issued site plan approval or building permits and the structures are still considered illegal.

On November 11, 2010, Jeff Williams III submitted a Conditional Use Permit application to install an above ground bulk propane tank, pump, scale, and meters to fill propane cylinders (Exhibit "D") at the subject site. The propane storage tank area will be located approximately 11 feet behind the main building, 41 feet from the Harris Flood Control District's ditch, and at least 26 feet from the unimproved Howard Street right-of-way (Exhibit "F"). The propane sales operation will include filling propane cylinders on site as well as taking pre-filled cylinders to be delivered to customer locations. The applicant is not proposing any additional driveway access to the propane tank. Instead, the bulk tank will be filled by a bobtail truck with a 100 foot hose from the existing parking lot.

According to the applicant's request letter (Exhibit "E"), "We [Professional Welding] have a Category E License Retail/Wholesale Dealer with the Railroad Commission (RRC) of Texas. Our employees are certified by the RRC in the filling & distribution of propane." Additionally, the applicant has informed City staff that, "In the 29 years that we [Professional Welding] have been in business I am not aware of any fill site like we are proposing that has exploded. The only ones that I am familiar with have occurred at residential locations when they let their bulk tank go completely empty before being refilled. Those explosions relate to the pilot light when propane is put back into the system. However, we have a Category E license with the RRC for bulk, wholesale & retail operations in the state of Texas & will be in full compliance w/all rules & regulations pertaining to a filling operation."

ANALYSIS

According to the Zoning Ordinance, "When considering applications for a conditional use permit, the City shall, on the basis of the Concept Plan and other information submitted, evaluate the impact of the conditional use on, and the compatibility of the use with, surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location." Factors for consideration include:

- 1. The proposed use at the specified location is consistent with the goals, objectives and policies contained in the adopted Comprehensive Plan;**

The Employment/Office Land Use designation in the Comprehensive Plan is intended for employment uses that are not industrially focused. These uses include corporate headquarters, regional offices, professional offices, light enclosed manufacturing or assembly facilities, office/showrooms, and small business office suites. Some retail activities are permitted in this land use to support offices and employment operations. The use of the site as a "Propane Sales Filling (Retail)" facility is generally consistent with the Employment/Office designation outlined in the Comprehensive Plan in that it will support the employment operation already established on site.

2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;

The general purpose and intent of the GR-General Retail District is to provide areas for local neighborhood shopping and service facilities for the retail sales of goods and services. The use of the site for “Propane Sales Filling (Retail)” is consistent with the GR-General Retail District description. The proposed site improvements and recommended conditions of approval will assure compatibility of the use with other uses permitted in the surrounding area.

3. The proposed use meets all supplemental standards specifically applicable to the use as set forth in this Ordinance;

The submitted concept plan generally meets the development standards applicable to the project. Should the CUP application be approved, the applicant will be required to submit a site plan to the Engineering & Planning Department for review and approval. The plans must exhibit compliance with all applicable ordinance regulations.

4. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances, includes improvements or modifications either on-site or within the public rights-of-way to mitigate development-related adverse impacts, including but not limited to:

- a. Adequate ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, and access in case of fire;
- b. Off-street parking and loading areas;
- c. Refuse and service areas;
- d. Utilities with reference to location, availability, and compatibility;
- e. Screening and buffering, features to minimize visual impacts, and/or setbacks from adjacent uses;
- f. Control of signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- g. Required yards and open space;
- h. Height and bulk of structures;
- i. Hours of operation;
- j. Exterior construction material and building design; and
- k. Roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.

The submitted concept plan generally meets the development standards applicable to the project. The proposed site improvements and recommended conditions of approval will assure compatibility of the use with other uses permitted in the surrounding area.

5. **The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.**

The partial use of the site as a “Propane Sales Filling (Retail)” facility is not anticipated to be detrimental to the public health, safety, convenience and welfare. The proposed site improvements and recommended conditions of approval will bring the site into conformance with the provisions of the Zoning Ordinance.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on April 1, 2011 and, as of the writing of this report, no public comment forms were received (Exhibit “J”).

RECOMMENDATION

That the Planning and Zoning Commission recommend approval of Zoning Case P10-289, with conditions, based on the following:

- The proposal is consistent with the general purpose and intent of the applicable zoning district regulations and Comprehensive Plan ;
- The proposal is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.

RECOMMENDED CONDITIONS OF APPROVAL

Section 37.1.A of the Zoning Ordinance allows the City to impose certain conditions on a CUP request in order to mitigate “external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood.” As such, City staff recommends the following conditions of approval:

1. The “Propane Sales Filling (Retail)” use shall not be enlarged, extended, or relocated from what is shown on the approved Concept Plan without the approval of a revised concept plan or new CUP.
2. All proposed structures shall adhere to the setback requirements of the Zoning Ordinance.
3. The “Propane Sales Filling (Retail)” use shall comply with all requirements of the adopted International Fire Code.
4. The proposed propane tank shall be screened from public view with a CMU wall and landscaping.
5. The proposed propane tank shall be installed and inspected per Texas Railroad Commission specifications.

6. The existing cylinder dock and its supporting structures (fences, stair treads, risers, ledges, handrails, covers, etc.) shall be brought into conformance with the development standards of the City of Tomball and be properly permitted.

EXHIBITS

- A. Location/Zoning Map
- B. Aerial Photo
- C. Aerial Photo w/Buffer Rings
- D. CUP Application
- E. CUP Request Letter
- F. Conceptual Site Plan
- G. Williams Number One Replat
- H. 6-3-10 Site Plan Rejection Letter
- I. Site Photos

Exhibit "A"
Location/Zoning Map

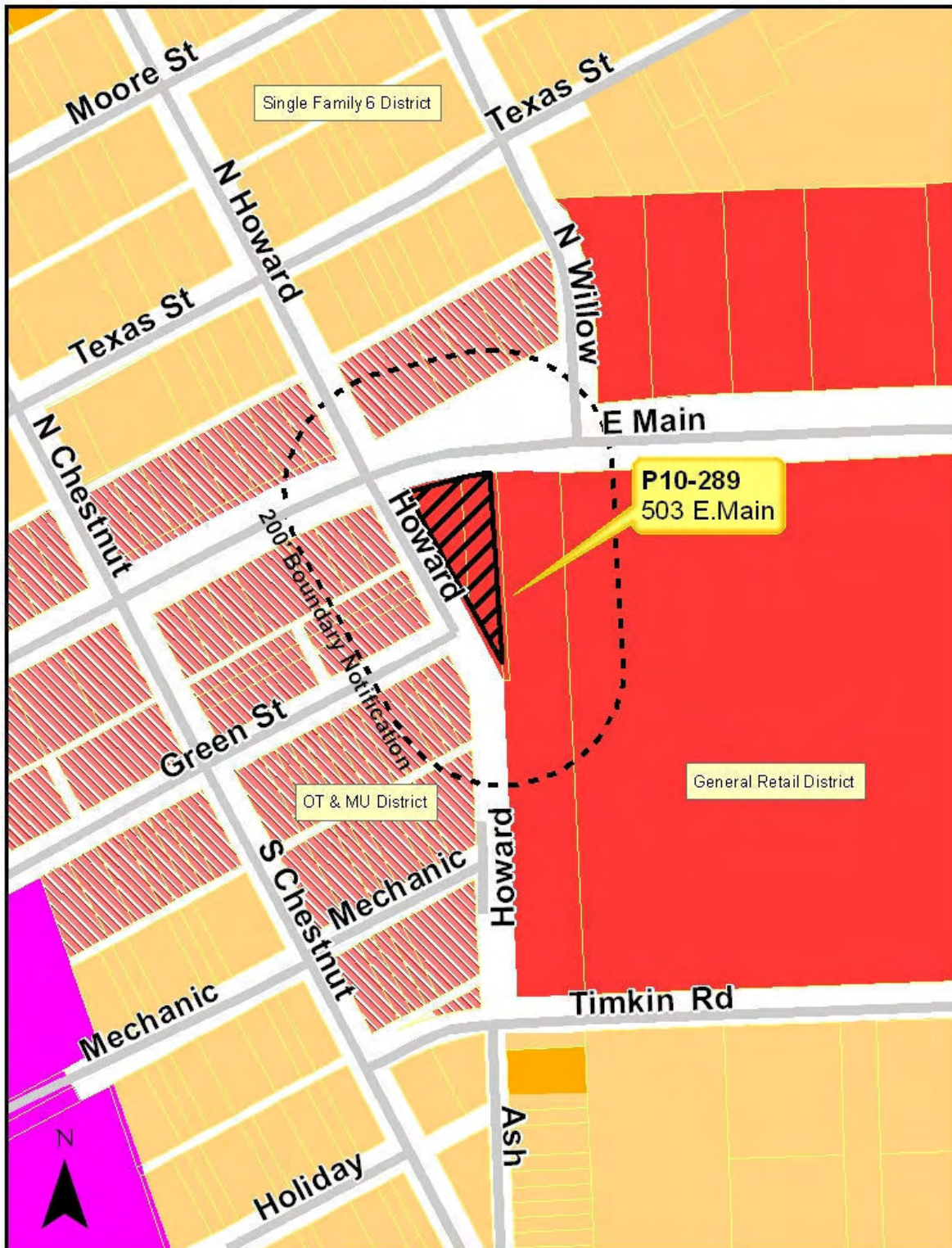


Exhibit "B"
Aerial Photo



Exhibit "C"
Aerial Photo w/Buffer Rings



Exhibit "D"
CUP Application

Revised 1/20/09



APPLICATION FOR
CONDITIONAL USE PERMIT
Engineering & Planning Department



A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions. This Section sets forth the standards used to evaluate proposed conditional uses and the procedures for approving conditional use permit (CUP) applications.

No conditional use shall be established and no building permit shall be issued for any use designated as a conditional use within any zoning district until a conditional use permit (CUP) is approved and issued in accordance with the provisions of this Section and Section 10 of The Zoning Ordinance.

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: Jeff Williams / Professional Title: President
Mailing Address: P.O. Box 19811 City: Houston State: TX
Zip: 77224
Phone: (713) 690-6888 Fax: (713) 690-2363 Email: jeffwiii@profwldgsply.com

Owner
Name: Williams Properties / Jeff Williams Title: Partner
Mailing Address: P.O. Box 19811 City: Houston State: TX
Zip: 77224
Phone: (832) 435-3337 Fax: (713) 690-2363 Email: jeffwiii@profwldgsply.com

Engineer/Surveyor (if applicable)

Name: _____ Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: () _____ Fax: () _____ Email: _____

Description of Proposed Project: Attached

Physical Location of Property: 503 E. Main Street, Tomball, TX 77375
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: Attached
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 1315260010001 Acreage: .5019

Current Use of Property: Attached

Proposed Use of Property: Attached

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 Jeff Willis, III 11/5/10
Signature of Applicant Date

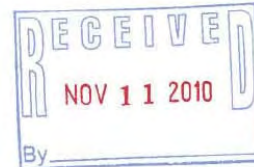
X Jeff Willis, III 11/5/10
Signature of Owner Date

Exhibit "E"
CUP Request Letter

Professional Welding Supply
503 East Main Street
Tomball, Texas 77375

November 4, 2010

City Planning & Zoning Commission
City of Tomball
401 Market Street
Tomball, Texas 77375



Dear City Planning & Zoning Commission:

This letter is submitted as part of an "Application for Conditional Use Permit." I respectfully request the City of Tomball to allow Professional Welding Supply to install a bulk propane tank, pump, scale and meters to fill propane cylinders at our facility at the address listed above.

Current Use:

Our Tomball location is currently being used as a retail outlet for walk-in customers as well as a stocking & distribution point for all customers that we service with our delivery trucks north of Beltway 8. Approximately ½ of our sales are gases and the other half are supplies. Some of the products that are stocked & sold at this location are: oxygen, nitrogen, argon, carbon dioxide, helium, acetylene, propane, abrasives, welding & cutting equipment, filler metals, safety equipment and related apparatus.

Proposed Use:

The only thing that we want to do different is to put in a bulk propane tank to fill propane cylinders on-site. This will require a stationary tank of approximately 2,000 gallons of storage capacity, pump, meter & scale. We have a Category E License Retail/Wholesale Dealer with the Railroad Commission (RRC) of Texas. Our employees are certified by the RRC in the filling & distribution of propane.

If you have any questions or comments please call me at my office (713) 690-6888 or my cell (832) 435-3337.

Best regards,

Jeff Williams, III
Owner

Conceptual Site Plan

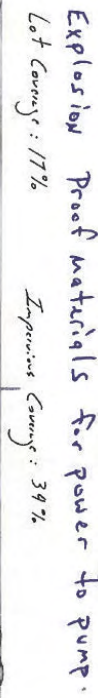


Exhibit "H"
6-3-10 Site Plan Rejection Letter



City of Tomball

GRETCHEN FAGAN
MAYOR

June 3, 2010

Jeff Williams, Jr.
P.O. Box 19811
Houston, TX 77224

RE: Professional Welding Supply (503 East Main Street, Tomball, TX) Site Plan Revision Letter

Dear Mr. Williams:

The Engineering & Planning Department and Fire Marshal's Office have reviewed the site plan you submitted on May 7, 2010 related to the construction of an outside storage area and cylinder dock located at the above referenced address. At this time, we are rejecting the request for site plan approval. The following comments need to be addressed before approval can be granted by the Engineering & Planning Department and before permits can be issued by the City of Tomball:

- "No smoking" signs must be posted in each structure or location in which smoking is prohibited per Section 310.3 ("No Smoking" signs) of the 2006 International Fire Code, "The fire code official is authorized to order the posting of 'No Smoking' signs in a conspicuous location in each structure or location in which smoking is prohibited. The content, lettering, size, color and location of required 'No Smoking' signs shall be approved."
- The stair treads and risers on the cylinder dock must be constructed in conformance with Section 1009.3 ("Stair treads and risers") of the 2006 International Fire Code, "Stair riser heights shall be 7 inches (178 mm) maximum and 4 inches (102 mm) minimum. Stair tread depths shall be 11 inches (279 mm) minimum. The riser height shall be measured vertically between the leading edges of adjacent treads. The tread depth shall be measured horizontally between the vertical plans of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. Winder treads shall have a minimum tread depth of 11 inches (279 mm) measured at a right angle to the tread's leading edge at a point 12 inches (305 mm) from the side where the treads are narrower and a minimum tread depth of 10 inches (254 mm)."
- The handrails on the cylinder dock must be constructed in conformance with Section 1012.3 ("Handrail graspability") of the 2006 International Fire Code,

401 MARKET ST. • TOMBALL, TEXAS 77375 • 281/351-5484

“Handrails with a circular cross-section shall have an outside diameter of at least 1.25 inches (32 mm) and not greater than 2 inches (51 mm) or shall provide equivalent graspability. If the handrail is not circular, it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than 6.25 inches (160 mm) with a maximum cross-section dimension of 2.25 inches (57 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).”

- Hazard identification signs must be installed per Section 2703.5 (“Hazard identification signs”) of the 2006 International Fire Code, “Unless otherwise exempted by the fire code official, visible hazard identification signs as specified in NFPA 704 for the specific material contained shall be placed on stationary containers and above-ground tanks and at entrances to locations where hazardous materials are stored, dispensed, used or handled in quantities requiring a permit and at specific entrances and locations designated by the fire code official.”
- All ledges and platforms of the cylinder dock must be constructed in conformance with Section 3003.7.3 (“Ledges, platforms and elevators”) of the 2006 International Fire Code, “Compressed gas containers, cylinders and tanks shall not be placed near elevators, unprotected platform ledges or other areas where falling would result in compressed gas containers, cylinders or tanks being allowed to drop distances exceeding one-half the height of the container, cylinder or tank.”
- An overhead cover must be installed over the location where compressed gas containers, cylinders, and tanks are stored per Section 3003.14 (Overhead cover) of the 2006 International Fire Code, “Compress gas containers, cylinders and tanks are allowed to be stored or used in the sun except in locations where extreme temperatures prevail. When extreme temperatures prevail, overhead covers shall be provided.”
- Provide exterior elevation of overhead cover calling out the overall height.
- The proposed site plan shows the fence being located to the north side of the door which will likely interfere with the stairway if alterations are not proposed for the stairway. Show on site plan how the stairs will be configured.
- Show the location of all gates on the revised site plan. The submitted site photos show a gate on the rear of the outside storage area but the site plan does not show a gate on the rear.
- If vehicular access is occurring on the unpaved surface around the northwest and south sides of the outside storage area/cylinder dock, a paved accessway is required and must adhere to all City codes. If no vehicular access is proposed, a 6” concrete curb is required to be constructed along the perimeter of the pavement to the north of the outside storage area (connecting to the existing curb).

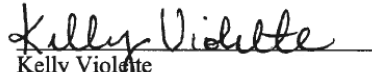
- After site plan approval is granted, you will be required to obtain all appropriate City of Tomball building permits.

The above noted comments need to be addressed before approval will be granted by the Engineering & Planning Department. While every effort has been made to make a complete and comprehensive review of the submitted plans and documents, any omission and/or deletions in this plan review does not relieve the applicant, contractors, architects, engineers, or other individuals involved in this project from their responsibility to fully comply with the applicable codes, regulations, ordinances, and federal and state laws.

If you fail to address these issues or fail to inform City staff of your substantial progress in addressing these issues by 5:00 p.m. on Tuesday, July 6, 2010, this issue will be turned over to Code Enforcement for further action.

If you have any questions, feel free to contact me at 281-290-1491.

Thank you,


Kelly Violette
City Planner

**Exhibit “I”
Site Photos**



Figure 1: Southerly view of subject site.



Figure 2: Southerly view of subject site and undeveloped Howard Street ROW.



Figure 3: Plumbing company to the west of subject site.



Figure 4: Gas station and dental office to the north of subject site.



Figure 5: Southwesterly view of undeveloped land to the south of subject site and Harris County Flood Control District ditch.



Figure 6: Harris County Flood Control District ditch and Concordia Lutheran School to the east of subject site.



Notice of Public Hearing

YOU ARE INVITED TO ATTEND a Public Hearing before the **PLANNING & ZONING COMMISSION** of the City of Tomball regarding the following item:

CASE NUMBER: P10-289

APPLICANT: Jeff Williams III of Professional Welding Supply

LOCATION: 503 East Main Street

PROPOSAL: Request by Jeff Williams III of Professional Welding Supply for a Conditional Use Permit to allow the installation/operation of a 2,000 gallon above-ground propane tank for the purpose of propane sales/filling. The property is an approximately .5019 acre site, legally described as Lot 1, Block 1 of the Williams Number One Replat, generally located southerly of Main Street between Howard Street and Willow Street at 503 East Main Street, Tomball, Texas. The site is located in the GR-General Retail District.

* * *

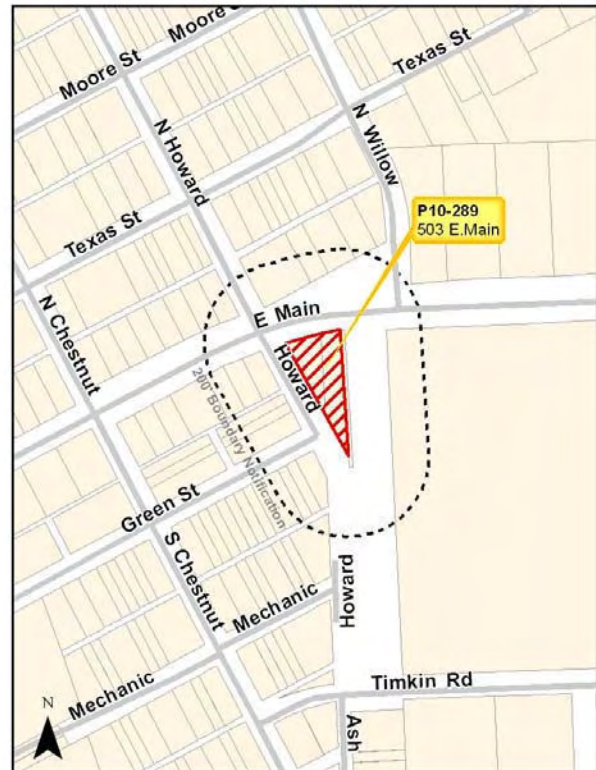
CONTACT CITY PLANNER: Kelly Violette

PHONE: (281) 290-1491

E-MAIL: kviolette@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 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, January 10, 2011, 6:00 PM**

**City Council Public Hearing:
*Monday, January 17, 2011, 7:00 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.

**NOTICE OF PUBLIC HEARINGS
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
APRIL 11, 2011
&
CITY COUNCIL
APRIL 18, 2011**



Notice is Hereby Given that Public Hearings will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, April 11, 2011, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, April 18, 2011, at 7:00 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 P10-289: Request by Jeff Williams III of Professional Welding Supply for a Conditional Use Permit to allow the installation/operation of a 1,000 gallon above-ground propane tank for the purpose of propane sales/filling. The property is an approximately .5019 acre site, legally described as Lot 1, Block 1 of the Williams Number One Replat, generally located southerly of Main Street between Howard Street and Willow Street at 503 East Main Street, Tomball, Texas. The site is located in the GR-General Retail District.

ZONING CASE P11-313: Public hearing to consider a City-initiated text amendment to the Tomball Comprehensive Zoning Ordinance (Ordinance No. 2008-01) to amend Section 34.6.E.1 ("Additional Off-Street Parking Space Requirements") to delete the off-street parking requirements in the OT & MU - Old Town & Mixed Use District for that portion of the Old Town Area bounded by Fannin Street, Houston Street, the railroad tracks, and Pine Street, and including the lots that front on Fannin Street and Houston Street adjacent to such portion.

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

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 **7th** day of **April** 2011 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.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Discussion and Possible Action to Amend the Professional Services Agreement with CLR, Inc. to Include the Design of Two Additional Parking Lots (DN and CS) on Non-City-owned Property.

Background:

The City of Tomball (City) in coordination with the Houston-Galveston Area Council (HGAC) and the Texas Department of Transportation (TxDOT) conducted a Livable Centers Downtown Plan in coordination with the FM 2920 Access Management Plan. The Access Management Plan calls for the removal of the on-street parking that is currently within the limits of downtown Tomball along FM 2920 and as such the Livable Center Downtown Plan identified five (5) potential parking lot locations that could serve to replace the parking that will be lost along FM 2920 during the implementation of the Access Management Plan. The City Council has programmed funding to move one or more of the parking lot projects forward during the current fiscal year. The Livable Centers Downtown Plan available from H-GAC depicts parcel locations for each of the 5 potential parking facilities on Page 38 of the final report (attached). In addition, Engineering and Planning Department prepared an exhibit depicting the 5 potential parking facilities noted above, plus a parking facility easterly of North Elm and a parking facility southerly of the Depot area along South Elm. Two additional parking facilities were included based on discussion at the January 17th Council meeting; the parking facilities are located at the corner of N. Magnolia and FM 2920 and the corner of S. Oak and Fannis St. The project is a currently listed 2011 budgeted CIP project.

On February 21, 2011 Council directed the Engineering and Planning Department to Negotiate and Prepare a Professional Services Contract. A project understanding and approach was requested from four engineering firms. Based on review of the submittal City staff accepted CLR, Inc. proposal and scope of work.

On May 2, 2011 Council approved the design contract for two parking lots, located on City owned property. These two lots are identified as AN and ES.

Origination:

Council Members

Recommendation:

Funding:

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

Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Dr. Hutson Request Letter
February 21st Agenda Item
Parking Lot Summary
CLR Professional Services Agreement - Executed 05.06.11
CLR Scope of Work
CLR Schedule of Fees
Proposed Parking

RODNEY K. HUTSON, MD

9431 ROSIE LN, STE 100

(281) 356-4305

rkhutson@sbcglobal.net

January 15, 2010

To: City of Tomball Mayor
City of Tomball City Council

Gretchen Fagan, Mayor
David Quinn Derek Townsend
Mark Stoll Warren Driver
Bill Webb

From: Rodney K. Hutson

Subject: City of Tomball Downtown Parking Plan

During the past six months, the City of Tomball has been involved with The Livable Center Downtown Plan. One of the major problems addressed by this plan was how to handle the need for downtown parking when TXDOT removes the parallel parking from Main Street. The total number of parallel parking spaces to be removed is 76. To replace these parking spaces, the Livable Center study proposed five sites for off-street public parking for a total of 187 new parking spaces. Four out of five of these sites are vacant land and ideally suited for public parking. However, the remaining proposed site at the corner of N. Oak Street and Commerce Street has two buildings as well as a number of large trees. The technical aspects of converting this into a viable public parking site would represent an expensive and significant problem to overcome. This is in contrast to the remaining vacant land sites, which present a more viable and less costly solution. Because of their unique prime locations, these sites may become developed and unavailable in the near future. Therefore, there is a sensitive time frame for the City to secure their use as future public parking.

I would like to present a solution to this problem. The four remaining vacant sites are owned by one individual. Since I have always said that it takes the combined efforts and cooperation of the City, land owners and businesses to solve common problems, I offer the following proposal:

1. The City of Tomball would obtain the use of land as public parking by entering into long term leases with land owners. This allows the City to eliminate expensive land acquisition costs, while still obtaining the land for use as public parking.

2. The City would then develop each site at its own expense into public parking. Although the City will incur the actual construction costs of any new parking site, this expense would be more than adequately offset by the savings achieved by not having to dedicate funds to acquire land.

Obviously the details of this arrangement will need to be addressed, but the overall concept of cooperation of land owners and the City working to solve a common problem is the most important and significant part of this arrangement. When we realize that we all have an obligation and vested interest to cooperate and work together to solve problems, and not rely on any one entity to do so, we will see our city and community prosper and grow.

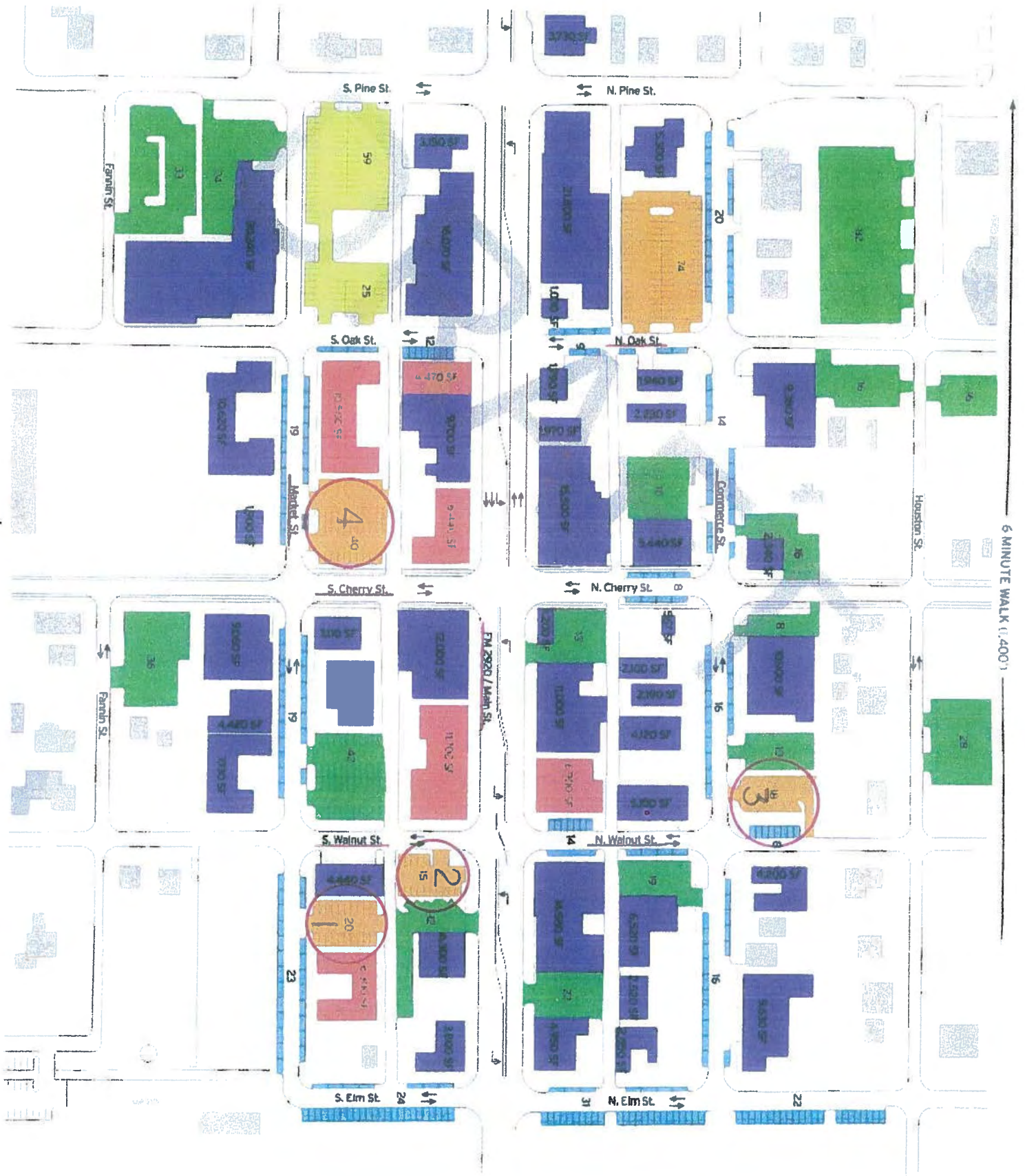
I look forward to our joint cooperation to solve a problem that confronts us all, and not just the City of Tomball.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney K. Hutson, MD". The signature is stylized with a large "R" and "H".

RODNEY K. HUTSON, MD

Enclosure: Livable Centers Proposed Downtown parking map



DEVELOPMENT LEGEND

Existing Development
128,124 Total SF

Proposed New Development
144,310 Total SF

TOTAL DEVELOPMENT

PARKING LEGEND

On-Street Parking / P
1248 Total Spaces

Existing Off-Street
184 Total Spaces

Existing Off-Street
1387 Total Spaces

Proposed Off-Street
187 Total Spaces

Parking Required by Code (1 per
2000

Regular City Council

Agenda Item

Data Sheet

Meeting Date: February 21, 2011

Topic:

Designate Downtown Parking Lot Locations and Direct Engineering and Planning Department to Negotiate and Prepare Professional Services Contract

Background:

The City of Tomball (City) in coordination with the Houston-Galveston Area Council (HGAC) and the Texas Department of Transportation (TxDOT) conducted a Livable Centers Downtown Plan in coordination with the FM 2920 Access Management Plan. The Access Management Plan calls for the removal of the on-street parking that is currently within the limits of downtown Tomball along FM 2920 and as such the Livable Center Downtown Plan identified five (5) potential parking lot locations that could serve to replace the parking that will be lost along FM 2920 during the implementation of the Access Management Plan. The City Council has programmed funding to move one or more of the parking lot projects forward during the current fiscal year. The Livable Centers Downtown Plan available from H-GAC depicts parcel locations for each of the 5 potential parking facilities on Page 38 of the final report (attached). In addition, Engineering and Planning Department prepared an exhibit depicting the 5 potential parking facilities noted above, plus a parking facility easterly of North Elm and a parking facility southerly of the Depot area along South Elm. Two additional parking facilities were included based on discussion at the January 17th Council meeting; the parking facilities are located at the corner of N. Magnolia and FM 2920 and the corner of S. Oak and Fannin St. The project is a currently listed 2011 budgeted CIP project.

At the last meeting, general discussion led us to concentrate on developing city-owned properties for public parking lots first and then possibly go to the private ownership for additional lots.

The following is additional information on several of the more viable lots:

1. Parking Lot AN along Elm Street (city owned): In further discussions with Engineering and Public Works Department, we believe, depending on final design, that the Public Works Department certainly has the capability to construct Parking Lot AN along Elm, which would considerably reduce the overall costs.
2. Parking Lot ES at the southwest corner of S. Oak @ Fannin (city owned): this parking could help the downtown area and City Hall parking.
3. Parking Lot CS next to the Barns Development on Market (privately owned): this is privately owned and could be leased or purchased. This lot would help the downtown and Depot area.
4. Parking Lot DN at northeast corner of Main @ Magnolia (privately owned): Current asking price is \$131,000, which would put a public parking lot on Main St. that would look good with landscaping, but a parking lot might not be the highest and best use of the land.

Potential conditions on lease of land:

1. 10-year lease with 10-year option to renew
2. City pay taxes and insurance on property
3. Opt-out clause for City only, not property owner
4. Owner requests review and input of design/engineering
5. Lighting—owner would pay monthly electrical and general maintenance; City would repair any damages if they occur
6. This would be a public lot of which everyone can use.

Origination:

Engineering and Planning Department

Recommendation:

The Engineering and Planning Department request City Council's designation of the parking lot locations to be considered and to direct staff to negotiate and prepare the Professional Services Contract for Council's approval.

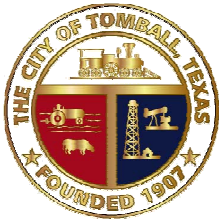
Funding:**Party(ies) responsible for placing this item on agenda:**

Engineering and Planning Department

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Proposed Public Parking



City of Tomball
Engineering and Planning Department

501 James St
Tomball, Texas 77375

Memorandum

Date: April 28, 2011
To: City Council
From: Lori Lakatos, PE, CFM
Subject: City of Tomball Downtown Parking Lot

CC: George Shackelford – City Manager
Christal Weber – Assistant City Manager

The Engineering and Planning Department have negotiated a professional services contract with CLR for the design of four downtown parking lots. Two of the parking lots to be designed are on City owned property located at N Elm and the railroad tracks, AN, and S. Oak and Fannin (South of City Hall and the Police Station), ES. The other two parking lots are on private property located at the northeast corner of FM 2920 and N. Magnolia, DN and at 106 Market Street, CS. These two properties would have to be purchased or leased for the construction of the parking facilities.

The cost for the design has been broken down into four separate lots. City owned property, AN, has a higher cost component to it, so that the remaining parking lots could be weighted. If Council decides not to design AN then some of the costs would have to be redistributed across the chosen lots. If each lot was designed as stand alone projects the overall cost would increase.

The cost of the contract includes design, construction phase services, and additional services (surveying, ESA, geotechnical, electrical, TDLR review, etc). The parking lots are estimated to be as follows:

AN - \$44,686
DN - \$29,422
CS - \$31,063
ES - \$29,500

Should Council decide to design the two City owned properties, AN and ES, the contract would be \$74,186. The two additional lots design cost would be \$60,485. The overall cost for the design of all four parking lots is \$134,671.

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO**

Downtown Parking Lots

E&P Project # 2010-10032

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

THIS AGREEMENT made on the 6th day of May, 2011 entered into, and executed by and between the City of Tomball, Texas (the "City"), a municipal corporation of the State of Texas, and CLR, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to construct two (2) parking lots identified as Parking Lots; AN (Lot 1) and ES (Lot 2) (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to land survey, plan, design, and prepare construction documents; and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to the professional engineering and professional land surveying;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional engineering services as defined in Attachment "A" attached hereto and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in Section VII.

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a professional and workmanlike manner. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or

commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City.

SECTION III OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same.

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Work is ninety-days (90) days beginning from the execution date of this Agreement. Upon written request of Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "A," up to an amount not to exceed \$74,186.00 (includes reimbursable expenses as identified in Attachment "A").

SECTION VIII TERMINATION

The City may terminate this Agreement at any time by giving written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a sworn statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, maps, studies, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Engineer at the following address:

CLR, INC.
P.O. Box 450
Waller, Texas 77484
Attn: Kyle Bertrand, P.E., Senior Vice President

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
501 James Street
Tomball, Texas 77375
Attn: Director of Engineering and Planning

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Engineer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or any public body which may be a party hereto.

SECTION XII MODIFICATIONS

This instrument, including Attachment "A," contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. To the extent there is a conflict between the provisions of this Agreement and the provisions of Attachment "A," this Agreement shall control. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the City.

SECTION XIV CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

SECTION XV PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

SECTION XVI INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Attachment "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence of performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Contractor further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

IN WITNESS WHEREOF, the City of Tomball has lawfully caused this Agreement to be executed by the City Manager of said City and attested by the City Secretary and CLR, Inc., acting by and through its duly authorized officer/representative, does now sign, execute. and deliver this instrument.

EXECUTED on this 6th day of May, 2011.

ENGINEER:



By: _____ CLR, Inc.
Name: _____ Kyle Bertrand, P.E.
Title: _____ Senior Vice-President

CITY OF TOMBALL, TEXAS



George Shackelford, City Manager

ATTEST:



Doris Speer, City Secretary

ATTACHMENT "A"
SCOPE OF SERVICES
AND
BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES



May 3, 2011

Ms. Lori Lakatos, P.E.
City of Tomball
Engineering & Planning Department
501 James Street
Tomball, Texas 77375

Re: Request for Professional Services for the
City of Tomball Downtown Parking Lots

Dear Ms. Lakatos:

This correspondence is in response to our conversation of May 2, 2011 and your request for Professional Services proposal related to the final design for two (2) parking lots in the downtown area of the City of Tomball, Texas. This proposal is presented to establish the basis for commencement of our services. Our understanding of the scope of the project is as follows:

SCOPE OF PROJECT

It is our understanding that the new parking lot locations to be designed were identified and approved by Council May 2, 2011 to include Lots AN and ES further described as follows:

Parking Lot AN (Lot 1)

Parking Lot AN, schematically is proposed to contain 23 parking spaces with a one-way drive isle located along North Elm between FM 2920 to the south and Houston Street to the north along and westerly of the existing railroad tracks. Based on HCAD records, it appears that the property is owned by the City and contains approximately 20,000 square feet of property, with overall size dimensions of 50-feet deep and 400-feet long. Based on HCAD, the actual lot is 520-feet long by 50-feet deep north of FM 2920. Aerial mapping depicts several existing parking spaces off of North Elm and immediately north of FM 2920. The depth of the lots reduces down to 25' north of the subject tract. Based on the schematic, access is anticipated to be from two driveways off of North Elm. Based on aerial mapping the property appears to be grass covered.

Parking Lot ES (Lot 2)

Parking Lot ES, schematically is proposed to contain 23 parking spaces with a two-way drive isle located at the southwesterly corner of Fannin Street and South Oak Street. This site appears to be south of the City's Police Department. Based on HCAD records, it appears that the property is owned by the City and contains approximately 15,000 square feet of property, comprised of 6 twenty-five foot lots with overall size dimensions of 100-feet deep and 150-feet wide. Based on the schematic, access is anticipated to be from South Oak and Fannin. Based on aerial mapping the property appears to be vacant.

We propose that our Scope of Basic Services include the services described as Exhibit "A". We understand that the Engineering and Planning Department will be the primary contact to provide overall project management for the Project.

Client-Supplied Information

In order for us to proceed with the services toward accomplishment of the project schedule, we will need the following information:

- ☐ Notice to Proceed (NTP)
- ☐ Executed Contract Agreement

We understand that you will furnish us in a timely manner with full information regarding special conditions or criteria for the project or special services needed, and also make available to us all pertinent existing data of which you are aware.

ENGINEERS • SURVEYORS • GIS

P.O. Box 450, Waller, Texas 77484
Phone 713-462-0993 • Fax 713-462-2732 • Toll Free 800-694-8241 • www.clri.com

Fee

We propose to provide the indicated Scope of Basic Services on a fixed fee basis in accordance with the terms in the Contract for Professional Services. We propose to provide the indicated Additional Services on a combination of lump sum and/or time and material basis, with a not to exceed basis, as noted on the Schedule of Fees. Our fees for Basic Services and the Additional Services for the complete design of the two (2) parking lots, assuming the projects would be designed, bid, and constructed in the same time frame are presented as follows:

SUMMARY SCHEDULE OF FEES

PROFESSIONAL SERVICES PHASE		LOT 1 (AN)	LOT 2 (ES)	TOTALS
BASIC SERVICES		Railroad	PD	
PHASE II - DESIGN	No. of Sheets			
Cover Sheet	1	\$500	\$0	\$500
General Notes	1	\$500	\$0	\$500
Existing Conditions & Demo Plan	4	\$500	\$500	\$1,000
Grading & Drainage Plan	4	\$4,000	\$4,000	\$8,000
Pump Station Plans and/or Mitigation Options	2	\$4,000	\$4,000	\$8,000
Drainage Calculations	1	\$1,000	\$1,000	\$2,000
Standard Details	2	\$1,000	\$0	\$1,000
Stripping Plan and Details	4	\$1,000	\$1,000	\$2,000
Bidding Phase Services		\$1,500	\$0	\$1,500
Subtotal Phase II - Design Services		\$14,000	\$10,500	\$24,500
PHASE III - CONSTRUCTION PHASE SERVICES				
Construction Phase Services		\$1,500	\$500	\$2,000
Subtotal Phase III - Construction Phase Services		\$1,500	\$500	\$2,000
TOTAL OF BASIC SERVICES		\$15,500	\$11,000	\$26,500
ADDITIONAL SERVICES				
Surveying - Topographic	Lump Sum	\$5,461	\$3,035	\$8,496
Surveying - Boundary	Lump Sum	\$2,500	\$1,520	\$4,020
Surveying - Set Property Corners	T&M NTE ²	\$350	\$350	\$700
Surveying - Control Map	T&M NTE ²	\$450	\$450	\$900
Surveying - Locate Boreholes	T&M NTE ²	\$250	\$250	\$500
Phase I ESA	T&M NTE ²	\$3,500	\$2,833	\$6,333
Geotechnical Borings and Report	T&M NTE ²	\$2,500	\$2,100	\$4,600
Geotechnical Materials Testing	T&M NTE ²	\$3,740	\$3,121	\$6,861
Electrical/Parking Lot Lighting Design	T&M NTE ²	\$1,100	\$1,500	\$2,600
TDLR Plan Submittal/Construction Review	T&M NTE ²	\$1,000	\$750	\$1,750
Reproduction	T&M NTE ²	\$2,500	\$0	\$2,500
Additional Services Subtotal Plus 10% Markup		\$25,686	\$17,500	\$43,186
SW3P Plan	T&M NTE ²	\$2,500	\$1,000	\$3,500
TCP Detail (Tomball & TxDOT)	T&M NTE ²	\$1,000	\$0	\$1,000
TOTAL OF ADDITIONAL SERVICES		\$29,186	\$18,500	\$47,686
TOTAL BASIC AND ADDITIONAL SERVICES ¹		\$44,686	\$29,500	\$74,186

1. As per the City's request, the total basic and additional services fee proposal assumes that both lots will be designed, bid, and constructed at the same time to achieve maximum design efficiency
2. Time & material and not to exceed amount (T&M NTE)
3. Assumes City will provide for advertising cost

The two (2) parking lots are proposed to be designed based on the fees presented above, assuming that both lots will be designed, bid, and constructed in one package. The total Basic and Additional Services fee for the design of the lots at the same time to be included in one package would be \$74,186, as noted above.

Additional Services

Additional Services, other than those cited above and within Exhibit "A", will be considered outside the scope of the fee proposal. CLR will perform additional services based on a negotiated scope and fee. Additional Services and reimbursable expenses will be charged at cost, plus 10%. The following items are considered Additional Services and for clarity purposes are not part of the fee quoted in the Schedule of Fees, unless noted otherwise:

ITEM	COMMENT (for basis of proposal)
Phase I – Preliminary Engineering Report	This item was eliminated as a Basic Service.
Metes and Bounds and/or Exhibit Preparation	It was assumed that any lots to be purchased will be purchased by the City based on previously platted lot information and or by metes and bounds with exhibit cost. The Surveying Additional Services includes one set of metes and bounds for each parking lot.
Floodplain Analysis	Based on a review of project locations, no property is expected to be within the floodplain and would not require floodplain analysis. Floodplain analyses cost have not been included.
Permitting	It is assumed that Engineer will not be responsible for obtaining any permits. Construction permits are expected to be issued by the City directly to the Contractor. Permitting cost have not been included. Coordination with TxDOT on Lot 2 (DN) has been included in the Schedule of Fees.
Platting	The parking lot facilities may be constructed on several lots. Based on the definition of the requirement for platting in the City's Chapter 70 of the Code of Ordinances, the parking lot improvements would not trigger the requirement for platting. Platting cost have not been included.
Structural and/or Retaining Wall Design	The Geotechnical Engineering will design the subgrade and pavement requirements. No other structural work has been assumed necessary. All storm sewer and lift station packages will include manufacturer's material tolerances. Structural design cost have not been included.
Landscaping & Irrigation Plans	Based on a discussion with E&P, landscaping and irrigation were to be provided by others and were not to be included in the design requirements. Grass sod will be provided in all areas disturbed outside the pavement areas. Landscaping & irrigation cost have not been included.
Wetlands Related Issues	No wetlands related issues are known to affect the site. Wetlands cost have not been included.
Environmental Issues	An ESA Phase I has been included as an additional service for each site location. No other environmental work has been assumed to be necessary. However, CLR notes that Parking Lot AN (Lot 1), adjacent to the railroad, may require soil sampling due to proximity to the railroad. ESA Phase I will make the final recommendations. ESA Phase II services, to determine the extent of waste and/or contamination, have not been included.
Traffic Control Plans	CLR has included in the Additional Services portion of the proposal a cost for a typical detail for traffic control plan concerns with driveway construction and connection to the adjoining street facility. In addition, TxDOT TCP for closure of the driveways associated with Lot DN (Lot 2) to FM 2920 has been included. No other TCP services have been included in this proposal.
Onsite/Offsite Utility Work	As part of the surveying services, topographic and planimetrics surveying will depict existing facilities located on the site. The fee proposal does not include onsite/offsite related facility relocations or related design services.
Oil/Gas Pipeline or Well Facilities	As part of the surveying services, topographic and planimetrics surveying will depict existing facilities located on the site. The fee proposal does not include oil/gas related facility relocations or related design services.

Project Schedule

We are prepared to strive toward the achievement of a reasonable design schedule, which may be determined appropriate for the project. Our fee is based on the project being executed in a timely manner without significant delays.

This letter proposal and the attached Contract for Professional Services and Exhibit "A" represent the entire understanding between you and us in respect to the Project and may only be modified in writing, signed by both of us. If it satisfactorily sets forth your understanding of our agreement, we would appreciate your having the documents executed by the responsible party at the City of Tomball and forwarding to us one of the enclosed copies of the Contract. On behalf of the project team, CLR, Inc., appreciates this opportunity to provide this proposal to the City of Tomball on this important project. We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kyle Bertrand', is positioned above the printed name.

Kyle Bertrand, P.E.
Senior Vice President
Enclosures
Exhibit A
2 copies of Contract

EXHIBIT “A” SCOPE OF BASIC SERVICES CITY OF TOMBALL PARKING LOTS

CLR has prepared a summary proposal in response to the City’s verbal request of April 8, 2011. Exhibit “A” has been organized for ease of reference as follows:

I. Historical Project Review and Determination of Need

II. Scope of Services

1. Basic Services
2. Additional Services
3. Compensation
4. Construction Cost
5. Project Schedule

III. Summary

I. Historical Project Review and Determination of Need

Based on CLR’s review of the City’s completed Livable Centers Downtown (LCDP) Plan, adopted in September of 2009, a parking survey and evaluation of Tomball’s Downtown was completed. In summary, the LCDP found that traditionally ample parking was not a significant issue for Downtown Tomball. However, the joint TxDOT and City of Tomball FM 2920 Access Management Study recommended the removal of existing parallel parking along Main Street in order to allow for the addition of a median with left turn channelization and wider sidewalks in an effort to improve safety and mobility in the Downtown area. The recommended removal of the existing parallel parking along Main Street or FM 2920 creates a need to replace and supplement the lost on-street parking with a comprehensive parking strategy for the Downtown area as whole.

II. SCOPE OF SERVICES REVIEW

The proposed services can be performed in accordance with the latest edition of the City of Tomball’s Engineering & Planning Department’s standard technical requirements (specifications and details), consistent with standard practice, and all Local, State, and Federal regulations. CLR will manage the project and the efforts of the project design team. Collectively, we will provide professional civil engineering, hydrology/hydraulic engineering, planimetric/topographic/boundary surveying, geotechnical engineering, environmental engineering, and other necessary services, as described below. CLR has presented the services that will be involved in the City’s proposed parking lot improvements project. A brief description of each for basis of proposal is provided as follows:

1. PHASE I, II, AND III BASIC SERVICES

Basic Services are defined to include Phase I - Preliminary Design, Phase II – Final Design, and Phase III – Construction Phase Services. As per the City’s request, Phase I Services are not included in this proposal in an effort to advance to the final design phase. A general description and review of each item pertinent to this proposal is provided as follows:

a. Phase I - Preliminary Design

The City has requested that the project advance to Phase II, Final Design, whereby plans a specifications will be prepared based on a well defined SOW and understanding of the project goals. CLR has not included cost associated with the Phase I portion of the project. A description of the Phase II – Final Design, Phase III – Construction Phase Services, and Additional Services are described as follows:

b. Phase II – Final Design

Final Design Phase Services are described as follows:

1. Upon receipt of the City's written notice to proceed, CLR shall commence preparing the project's final design. The design and the construction cost estimate will be submitted for the City's review and comment at the 50%, 70%, 90%, and bid ready stages of design.
2. CLR and the project team will specify the minimum acceptable performances and material standards associated with temporary structures or facilities determined necessary to implement the project.
3. CLR and the project team will review the results from the Additional Services and where applicable, incorporate the information into the final design. These services may include, but are not limited to survey, traffic control, geotechnical, environmental investigations, hydraulic impact studies, storm water pollution prevention, street lighting plans, and underground utility investigations.
4. CLR will endeavor to verify or otherwise reconcile the findings from the utility plan review and the topographic survey to identify potential conflicts. The final design will avoid conflicts where physically and financially feasible. Where relocation of private utilities is unavoidable, we will inform and coordinate the issues with the City as early in the design process as possible.
5. CLR and the project design team will, as necessary, incorporate the City's standard details into the final design. Should it be necessary to revise the standard details to suit project specific requirements, we will notify the City, provide reasons for the revisions and obtain the City's approval for incorporation into the plan sets. CLR will also develop additional non-standard details as necessary for the bidding and construction of the project.
6. CLR and the project team will prepare the technical specifications in accordance with the standard format adopted by the City. The Table of Contents (TOC) associated with these standard specifications will serve as a guide for organizing the Contract Documents. CLR will review the standard specifications and supplement them as necessary to suite the specific requirements and the design intent of the project. CLR will prepare additional, non-standard specifications as necessary to bid and construct the project. All supplemental and additional specifications will be subject to the City's review and approval.
7. CLR will incorporate the front-end documents provided by the City into the project's technical specifications.
8. Prior to issuing the final drawings and specifications for the City's approval, we will obtain the required signatures or approvals from other agencies, and public and private utilities which may have facilities within or otherwise impact the project, or whom may require permits or license agreements. These typically include, but are not limited to, Harris County, Harris County Flood Control District (HCFCD), Texas Department of Transportation (TxDOT), City's Floodplain Administrator, SBC, Reliant Energy, Centerpoint Energy, AT&T, railroad, pipeline, and various communication companies.

c. Phase II – Final Design Bidding Services

CLR will aid the City during the bidding phase and conduct a prebid conference. Due to our public projects experience, we understand the importance of taking an active role in communicating with the construction industry to insure that the City will receive competitive pricing from qualified contractors.

1. CLR will assist the City in conducting the Pre-bid conference, including the preparation and submission of meeting minutes (within 3 working days) and addenda to address the issues or clarifications necessary to the completion of the bidding process.
2. CLR has based the fee proposal assuming that the City will post and pay the advertising cost. Advertising cost are not a part of this fee proposal.
3. CLR will furnish a tabulation of bids received and a written recommendation of the award of the construction contract within 24-hours after the bid opening.
4. CLR will furnish a set of as-bid drawings immediately after bids are received, reflecting all addenda changes.

d. Phase III - Construction Phase Services

Construction Phase Services to be provided are described as follows:

1. CLR and pertinent responsible project team members will make periodic (one per month per work site, minimum) visits to the project site during times when the contractor is actively performing major construction activities and shall submit a written "Construction Site Observation/Status Report", as documentation. These visits may be combined with any site visit made to resolve field construction problems.
2. CLR will review and provide a written answer within 48-hours, or as otherwise directed, to the contractor's written Requests for Information (RFI).
3. CLR will prepare and submit as-built record drawings within 30-days after receipt of the contractor's redline field drawings. The fee presented in the Summary Schedule of Fees does not include field work or surveying services. The fee proposal assumes that the contractor will be required to provide final as-built redline field drawings.

2. Additional Services

A general description of each Additional Services considered for this project is provided as follows:

a. Surveying Services

Surveying Services are proposed for the complete limits of the lots, parcels, and adjacent streets and outfall points previously described in the summary table of information provided in the beginning of this proposal. The project surveyor will prepare the project planimetric and topographic survey as follows:

1. The project surveyor will provide monumentation documentation as required in accordance to City requirements.
2. The project survey will be tied to the Texas State Plane Coordination System.
3. The project surveyor will provide planimetrics, boundary, topographic, and underground utility identification survey information associated with each site.
4. Deliverables for the site topographical survey including a copy of the original survey field books and electronic files, survey control map, and survey drawing will be submitted no later than when the 70% drawings are submitted for review.
5. The geotechnical boring locations will be surveyed upon completion of the geotechnical investigation.
6. Stations and offsets within one foot of the True State Plane coordinates will be submitted to the City in an electronic file.
7. Prepare a final metes and bounds description with exhibit for each lot.
8. Where not found, set perimeter property corners for each site.

The planimetric, topographic, boundary, and existing underground utility identification for each site are surveying information that are key components of the baseline information required for plan development. All proposed improvements must fit on the site meeting the City's minimum requirements for the improvements. At a minimum,

additional parcel information appears to be required for those sites that require that the City purchase property. As a consideration, the City may elect to purchase lots based on lot number references as recorded on previously filed final plats. As an option and included as an additional service, parcel metes and bounds preparation for City acquisition have been included. Platting of the property is not expected to be an issue or required (unless the City specifically requested that the lots be combined into one single lot) because no building structures are being proposed with the improvements. Platting cost have not been included in this fee proposal. Title reports will be required for the property to adequately determine the property ownership, location, easements, and encumbrances and have been included in the surveying proposal.

b. Geotechnical Investigation Services

Geotechnical Investigation Services are proposed for the improvements associated with each parking lot. The Geotechnical Investigation will consider two borings at each site to best categorize the pavement recommendations, including subgrade preparation, base, and pavement thickness design, limited to asphalt and concrete as the alternative materials.

c. Environmental Site Assessment Services

Environmental Site Assessment (ESA) Services are proposed for each parking lot site. The proposed Additional Services includes funding for only the ESA Phase I reports for each project site. If determined necessary and as a result of the ESA Phase I findings, an ESA Phase II to determine the nature and extent of contamination to assist in the engineering design process may be required. ESA Phase II cost have not been included in this proposal.

The ESA Services for a Phase I will be in accordance to ASTM Standard Practice E1527. If necessary, the ESA Phase II will be in accordance to ASTM Standard Practice E1903. The ESA Phase I is a standard requirement for property purchases and is a reasonable attempt to identify the potential for soil and groundwater contamination, or recognized environmental conditions prior to purchase and/or soil disturbing activities. If the ESA Phase I identifies a potential problem, the ESA Phase II is conducted to determine the nature and extent of the problem. The results of the ESA Phase II would either be included in the Final Design plans or could be addressed separately.

d. Special Licenses and Permits

Special Licenses and Permits actual cost are typically reimbursed at actual cost plus the Contract markup standard.

e. Traffic Control Plan

Traffic Control Plan (TCP) Services are proposed for the improvements associated with the parking lot improvements and their localized impact during construction, primarily associated with driveway site access construction and connection to the adjoining roadway facility. All of the facilities access appear to connect to the City of Tomball controlled right-of-ways (ROW). The responsible project design team member engineer

will prepare the project's traffic control plan detail in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD).

f. Storm Water Pollution Prevention Plan

Storm Water Pollution Prevention Plan Services are proposed to address the project's proposed improvements. The responsible project design team member engineer will prepare the project's SW3P in accordance with TCEQ requirements, and City's standard details and specifications.

g. Existing Conditions Survey and Analysis

Existing Conditions Survey and Analysis Services may be required to address any existing structures or homes or businesses that occupy any of the lots. The International Building Codes require as a part of demolition practices that an asbestos/lead survey be conducted. Should this be an issue, the requirements will be confirmed based on the current building code adopted by the City of Tomball for demolition permit. Based on a driveby of the sites, no known structures exist on the sites, therefore no additional services funding is being requested for this item.

h. Street Lighting Plan

Street Lighting Plan Services are proposed to address the improvements associated with each parking lot. The responsible project design team member engineer will prepare the project's Street Lighting Photometric Plan in accordance with the City's Zoning Ordinance, and the written specifications of Centerpoint Energy. Specifically, Section 39.3.B of the Zoning Ordinance presents that to prevent nuisance situations, all parking area lighting shall be designed, shielded and operated so as not to reflect or shine on adjacent properties and in accordance with City ordinances. All streets and driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination if off-street parking or loading facilities are to be used at night.

i. Tree Protection, Mitigation, and Planting Plan

Tree Protection, Mitigation, and Planting Plan Services are not proposed as part of this proposal as an additional service. Based on discussions with City staff, the City will take responsibility for the future planting of any new trees. Based on site visits, no significant trees exist on Lots 1. City staff has requested that any impact to trees associated with Lot 2 will be minimized by CLR in the design layout. Should there be an impact to any trees on Lot 2, City staff will make the final determination for parking layout and the advancement of the final design configuration.

j. Landscape Architectural and Irrigation Services

Landscape Architectural and Irrigation Services are not included in the Contract.

k. Traffic Signal Plan

Traffic Signal Plan Services are not included in the Contract.

l. Drainage Investigation

Hydraulic Impact Services are proposed to address the storm water outfall points. The responsible project design team member engineer will prepare the project's hydraulic impact plans in accordance with existing/proposed site conditions, City of Tomball, Harris County, HCFCD, and the applicable requirements established for the project. Typically, with site improvements, there is an increase in stormwater runoff that can negatively impact the adjacent property, streams, or other outfall points. Harris County, HCFCD, and the City of Houston have adopted and established standards means and methods for site evaluations and mitigating those impacts. Individually, each site will be evaluated for those impacts and will be addressed with each parking lot design. Existing conditions will be a key consideration for each site, for example, some sites may have existing impervious areas that may be considered and result in minimizing required stormwater impacts but still meeting requirements. Each site will need to be evaluated on a case-by-case basis.

m. Registered Accessibility Specialist

Registered Accessibility Specialist (RAS) Services proposed for the project would be associated with the pedestrian route elements, including site walks, ramps, and street right-of-way crossings determined to be impacted by the project improvements. The RAS Services would include plan review and construction inspections for compliance with the Texas Architectural Act, Chapter 469 of the Texas Government Code. A budgetary number has been assumed for the cost associated with the plan project registrations, reviews, and inspections in accordance to and published under the Architectural Barriers Administrative Rule 68.80. Actual final cost will be based on the final construction estimate at the time of registration.

n. Other Additional Services & Considerations

Reproduction Services are dependent upon the bidding and advertising process requested by the City. This item has been included as a budgetary number and included as part of the contract. The City will only be billed based on the plan sets requiring reproduction cost.

Platting, as reviewed under the Surveying Services, is not expected to be an issue on this project. It has been assumed that the City will purchase any need lots by reference to previous platted information. No cost for this service has been included in the proposal.

Land acquisition responsibility can be an additional service but generally when a small number of tracts are being obtained, the City may elect to work directly with the Owners and Title Companies. No cost for this service has been included in the proposal.

Oil & gas mineral and surface interest rights that affect property development issues could include oil & gas pipelines, easements, and wells. Although not uncommon to projects in Tomball, the relocations, abandonments, and negotiations can be significant and affect project timelines and budgets. As part of the Surveying Services associated with the identified planimetrics, topographic, and boundary surveying services, CLR will review the City supplied title reports and identify any known oil & gas issues. CLR has

experience in the preparation of easements and relocation options typically required in the negotiations with the oil & gas companies, should there be an issue. No cost for this service has been included in the proposal.

3. Compensation

The professional services compensation for Phase II Final Design and Phase III Construction Phase Services are to be performed on a lump sum basis. The compensation for Additional Services are based on a lump sum and/or reimbursable basis with a cost not to exceed for each, as appropriate and as shown on the *Summary Schedule of Fees*.

4. Construction Costs

Beginning with contract negotiations, a construction cost estimate will be developed. The project cost are updated at each submittal milestone (i.e., 50%, 70%, and 100% design phases). We will immediately inform the City of any major items that would affect the cost of the project. CLR will identify cost-saving measures and will recommend solutions. Escalations in the cost of construction materials also will be monitored.

5. Project Schedule

The project will have regular in-house and client status meetings to assess project programs and allow for adjusting to insure the project is brought in on time. CLR utilizes software for project tracking to ensure project status and timeliness. CLR will develop and maintain a firmly established schedule with milestones. CLR will meet the milestones along the way to insure we meet the project goal. As part of the proposal preparation and after a discussion of the program goals, CLR will submit a schedule.

ATTACHMENT “B”

INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

OP ID DEBA

DATE (MM/DD/YYYY)

03/22/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PIA-Pathfinder/LL&D Ins Grp 1160 Dairy Ashford, Suite 220 Houston TX 77079 Phone: 281-556-9999 Fax: 281-556-9609		CONTACT NAME: PHONE (A/C, No, Ext): 281-556-9999 FAX (A/C, No): 281-556-9609 E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: CLRIN-1													
INSURED CLR, Inc. 19530 FM 362 Waller TX 77484		INSURER(S) AFFORDING COVERAGE <table border="1"><tr><td>INSURER A: Hartford Casualty Insurance Co</td><td>NAIC # 29424</td></tr><tr><td>INSURER B: National Casualty Company</td><td></td></tr><tr><td>INSURER C: Hartford Fire Insurance Co.</td><td>19682</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>		INSURER A: Hartford Casualty Insurance Co	NAIC # 29424	INSURER B: National Casualty Company		INSURER C: Hartford Fire Insurance Co.	19682	INSURER D:		INSURER E:		INSURER F:	
INSURER A: Hartford Casualty Insurance Co	NAIC # 29424														
INSURER B: National Casualty Company															
INSURER C: Hartford Fire Insurance Co.	19682														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ GENERAL LIABILITY			61UUNIT4485	03/01/11	03/01/12	EACH OCCURRENCE \$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000				
	☐ CLAIMS-MADE ☒ OCCUR		MED EXP (Any one person) \$ 10,000				
			PERSONAL & ADV INJURY \$ 1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	☐ POLICY ☒ PROJECT ☐ LOC						PRODUCTS - COMPROP AGG \$ 2,000,000
							\$
A	☒ AUTOMOBILE LIABILITY			61UUNIT4485	03/01/11	03/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ ANY AUTO		BODILY INJURY (Per person) \$				
	☐ ALL OWNED AUTOS		BODILY INJURY (Per accident) \$				
	☐ SCHEDULED AUTOS		PROPERTY DAMAGE (Per accident) \$				
	☐ HIRED AUTOS					\$	
	☐ NON-OWNED AUTOS					\$	
	☒ OTC & Collision						\$
A	☐ UMBRELLA LIAB ☒ OCCUR			61XHUV0384	03/01/11	03/01/12	EACH OCCURRENCE \$ 5,000,000
	☐ EXCESS LIAB ☐ CLAIMS-MADE		AGGREGATE \$ 5,000,000				
	DEDUCTIBLE						\$
	☒ RETENTION \$ 10,000						\$
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			61WEPR5064	03/01/11	03/01/12	☒ WC STATUTORY LIMITS ☐ OTHER
	☐ ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	E.L. EACH ACCIDENT \$ 1,000,000				
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
			E.L. DISEASE - POLICY LIMIT \$ 1,000,000				
See Additional Pages							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Policies include: 1) GL/AL- blanket Additional Insured; 2) GL/AU/WC- Blanket Waiver of Subrogation; 3) UMB is a follow form product - applies, when required by written contract, to certificate holder. Subject to policy terms, conditions, exclusions.

CERTIFICATE HOLDER**CANCELLATION**

TOMBA25 City of Tomball Attn: City Engineer 501 W. Market Street Tomball TX 77375	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

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NOTEPAD:

INSURED'S NAME CLR, Inc.

CLRIN-1
OP ID DEBAPAGE 2
DATE 03/22/11

- (A) Commercial Property 61UUNIT4485 3-1-11 to 3-1-12
Business Personal Property Limit \$100,000
Deductible: 1,000
- (B) Professional Liability ARO0003785 6-2-10 to 6-2-11
Limit: 2,000,000 per Claim / 2,000,000 Aggregate
Deductible: 25,000



April 19, 2011

Ms. Lori Lakatos, P.E.
City of Tomball
Engineering & Planning Department
501 James Street
Tomball, Texas 77375

Re: Request for Professional Services for the
City of Tomball Downtown Parking Lots

Dear Ms. Lakatos:

This correspondence is in response to our conversation of April 8, 2011 and your request for Professional Services proposal related to the final design for four (4) parking lots in the downtown area of the City of Tomball, Texas. This proposal is presented to establish the basis for commencement of our services. Our understanding of the scope of the project is as follows:

SCOPE OF PROJECT

It is our understanding that the new parking lot locations to be designed were identified by your request March 30, 2011 and included Lots AN, DN, CS, and ES further described as follows:

Parking Lot AN (Lot 1)

Parking Lot AN, schematically is proposed to contain 23 parking spaces with a one-way drive isle located along North Elm between FM 2920 to the south and Houston Street to the north along and westerly of the existing railroad tracks. Based on HCAD records, it appears that the property is owned by the City and contains approximately 20,000 square feet of property, with overall size dimensions of 50-feet deep and 400-feet long. Based on HCAD, the actual lot is 520-feet long by 50-feet deep north of FM 2920. Aerial mapping depicts several existing parking spaces off of North Elm and immediately north of FM 2920. The depth of the lots reduces down to 25' north of the subject tract. Based on the schematic, access is anticipated to be from two driveways off of North Elm. Based on aerial mapping the property appears to be grass covered.

Parking Lot DN (Lot 2)

Parking Lot DN, schematically is proposed to contain 42 parking spaces with two two-way drive isles located at the northeasterly corner of FM 2920 and North Magnolia Street. Based on HCAD records, it appears that the property is owned by Mike Hennessy and contains approximately 21,000 square feet of property, comprised of three 50-feet wide by 140-feet deep lots with overall size dimensions of 140-feet deep and 150-feet wide. Based on the schematic, access is anticipated to be from N. Magnolia. Based on aerial mapping the westerly portion of the property appears to contain several former building pad sites, indicating that there were originally structures on the site, while the easterly portion of the site appears to be nonvegetated dirt areas.

Parking Lot CS (Lot 3)

Parking Lot CS, schematically is proposed to contain 18 parking spaces with a two-way drive isle located easterly of South Walnut Street and the Harris County Tax Office and northerly of Market Street. Based on HCAD records, it appears that the property is owned by Rodney Hutson and contains approximately 20,000 square feet of property, comprised of one lot 200-feet wide and 100-feet deep. Based on aerial mapping, the site contains two main structures in the central portion of the property and there appears to be several smaller structures covered with significant large tree growth on the easterly side of the property. The westerly portion of the property appears to be grass. Based on the schematic, access is anticipated to be from Market and the alleyway.

ENGINEERS • SURVEYORS • GIS

P.O. Box 450, Waller, Texas 77484
Phone 713-462-0993 • Fax 713-462-2732 • Toll Free 800-694-8241 • www.clri.com

Parking Lot ES (Lot 4)

Parking Lot ES, schematically is proposed to contain 23 parking spaces with a two-way drive isle located at the southwesterly corner of Fannin Street and South Oak Street. This site appears to be south of the City's Police Department. Based on HCAD records, it appears that the property is owned by the City and contains approximately 15,000 square feet of property, comprised of 6 twenty-five foot lots with overall size dimensions of 100-feet deep and 150-feet wide. Based on the schematic, access is anticipated to be from South Oak and Fannin. Based on aerial mapping the property appears to be vacant.

We propose that our Scope of Basic Services include the services described as Exhibit "A". We understand that the Engineering and Planning Department will be the primary contact to provide overall project management for the Project.

Client-Supplied Information

In order for us to proceed with the services toward accomplishment of the project schedule, we will need the following information:

- ☐ Notice to Proceed (NTP)
- ☐ Executed Contract Agreement

We understand that you will furnish us in a timely manner with full information regarding special conditions or criteria for the project or special services needed, and also make available to us all pertinent existing data of which you are aware.

Fee

We propose to provide the indicated Scope of Basic Services on a fixed fee basis in accordance with the terms in the Contract for Professional Services. We propose to provide the indicated Additional Services on a combination of lump sum and/or time and material basis, with a not to exceed basis, as noted on the Schedule of Fees. Our fees for Basic Services and the Additional Services for the complete design of the four (4) parking lots, assuming the projects would be designed, bid, and constructed in the same time frame are presented as follows:

SUMMARY SCHEDULE OF FEES

<i>Assumption: Fee proposal based on assuming all 4 lots designed, bid, and constructed at the same time.</i>						
PROFESSIONAL SERVICES PHASE		LOT 1 (AN)	LOT 2 (DN)	LOT 3 (CS)	LOT 4 (ES)	TOTALS
BASIC SERVICES		Railroad	FM 2920/ Magnolia	Tax Office/ Barn(s)	PD	
PHASE II - DESIGN	No. of Sheets					
Cover Sheet	1	\$500	\$0	\$0	\$0	\$500
General Notes	1	\$500	\$0	\$0	\$0	\$500
Existing Conditions & Demo Plan	4	\$500	\$500	\$500	\$500	\$2,000
Grading & Drainage Plan	4	\$4,000	\$4,000	\$4,000	\$4,000	\$16,000
Pump Station Plans/Mitigation Options/TxDOT Coordination	2	\$4,000	\$4,000	\$6,500	\$4,000	\$18,500
Drainage Calculations	1	\$1,000	\$1,000	\$1,000	\$1,000	\$4,000
Standard Details	2	\$1,000	\$0	\$0	\$0	\$1,000
Stripping Plan and Details	4	\$1,000	\$1,000	\$1,000	\$1,000	\$4,000
Bidding Phase Services		\$1,500	\$0	\$0	\$0	\$1,500
Subtotal Phase II - Design Services		\$14,000	\$10,500	\$13,000	\$10,500	\$48,000
PHASE III - CONSTRUCTION PHASE SERVICES						
Construction Phase Services		\$1,500	\$500	\$500	\$500	\$3,000
Subtotal Phase III - Construction Phase Services		\$1,500	\$500	\$500	\$500	\$3,000
TOTAL OF BASIC SERVICES		\$15,500	\$11,000	\$13,500	\$11,000	\$51,000
ADDITIONAL SERVICES						
Surveying -Topographic	Lump Sum	\$5,461	\$2,233	\$2,257	\$3,035	\$12,986
Surveying - Boundary	Lump Sum	\$2,500	\$1,520	\$1,520	\$1,520	\$7,060
Surveying - Set Property Corners	T&M NTE ²	\$350	\$350	\$350	\$350	\$1,400
Surveying - Control Map	T&M NTE ²	\$450	\$450	\$450	\$450	\$1,800
Surveying - Locate Boreholes	T&M NTE ²	\$250	\$250	\$250	\$250	\$1,000
Phase I ESA	T&M NTE ²	\$3,500	\$2,834	\$2,833	\$2,833	\$12,000
Geotechnical Borings and Report	T&M NTE ²	\$2,500	\$2,100	\$2,100	\$2,100	\$8,800
Geotechnical Materials Testing	T&M NTE ²	\$3,740	\$3,247	\$3,247	\$3,121	\$13,355
Electrical/Parking Lot Lighting Design	T&M NTE ²	\$1,100	\$1,650	\$1,300	\$1,500	\$5,550
TDLR Plan Submittal/Construction Review	T&M NTE ²	\$1,000	\$750	\$750	\$750	\$3,250
Reproduction	T&M NTE ²	\$2,500	\$0	\$0	\$0	\$2,500
Additional Services Subtotal Plus 10% Markup		\$25,686	\$16,922	\$16,563	\$17,500	\$76,671
SW3P Plan	T&M NTE ²	\$2,500	\$1,000	\$1,000	\$1,000	\$5,500
TCP Detail (Tomball & TxDOT)	T&M NTE ²	\$1,000	\$500	\$0	\$0	\$1,500
TOTAL OF ADDITIONAL SERVICES		\$29,186	\$18,422	\$17,563	\$18,500	\$83,671
TOTAL BASIC AND ADDITIONAL SERVICES ¹		\$44,686	\$29,422	\$31,063	\$29,500	\$134,671

1. As per the City's request, the total basic and additional services fee proposal assumes that all 4 lots will be designed, bid, and constructed at the same time to achieve maximum design efficiency

2. Time & material and not to exceed amount (T&M NTE)

3. Assumes City will provide for advertising cost

The four (4) parking lots are proposed to be designed based on the fees presented above, assuming that all four lots would be designed, bid, and constructed in one package. There is an economy in design that could occur if all four lots proceed at the same time. The total Basic and Additional Services fee for the design of all four lots at the same time to be included in one package would be \$134,671.00, as noted above. Should the City elect to proceed with the design, bid, and construction based on one lot at a time, Lot 1 cited above forms the basis for the remainder of the fees. Therefore, assuming the design and construction would proceed based on the one lot at a time concept, the cost per parking lot would be \$44,686.00, for a total of \$178,745.00. The net design savings by proceeding with the overall design of the four parking would be approximately \$44,074.00.

Additional Services

Additional Services, other than those cited above and within Exhibit "A", will be considered outside the scope of the fee proposal. CLR will perform additional services based on a negotiated scope and fee. Additional Services and reimbursable expenses will be charged at cost, plus 10%. The following items are considered Additional Services and for clarity purposes are not part of the fee quoted in the Schedule of Fees, unless noted otherwise:

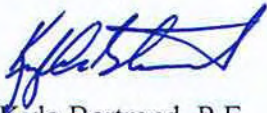
ITEM	COMMENT (for basis of proposal)
Phase I – Preliminary Engineering Report	This item was eliminated as a Basic Service.
Metes and Bounds and/or Exhibit Preparation	It was assumed that any lots to be purchased will be purchased by the City based on previously platted lot information and or by metes and bounds with exhibit cost. The Surveying Additional Services includes one set of metes and bounds for each parking lot.
Floodplain Analysis	Based on a review of project locations, no property is expected to be within the floodplain and would not require floodplain analysis. Floodplain analyses cost have not been included.
Permitting	It is assumed that Engineer will not be responsible for obtaining any permits. Construction permits are expected to be issued by the City directly to the Contractor. Permitting cost have not been included. Coordination with TxDOT on Lot 2 (DN) has been included in the Schedule of Fees.
Platting	The parking lot facilities may be constructed on several lots. Based on the definition of the requirement for platting in the City's Chapter 70 of the Code of Ordinances, the parking lot improvements would not trigger the requirement for platting. Platting cost have not been included.
Structural and/or Retaining Wall Design	The Geotechnical Engineering will design the subgrade and pavement requirements. No other structural work has been assumed necessary. All storm sewer and lift station packages will include manufacturer's material tolerances. Structural design cost have not been included.
Landscaping & Irrigation Plans	Based on a discussion with E&P, landscaping and irrigation were to be provided by others and were not to be included in the design requirements. Grass sod will be provided in all areas disturbed outside the pavement areas. Landscaping & irrigation cost have not been included.
Wetlands Related Issues	No wetlands related issues are known to affect the site. Wetlands cost have not been included.
Environmental Issues	An ESA Phase I has been included as an additional service for each site location. No other environmental work has been assumed to be necessary. However, CLR notes that Parking Lot AN (Lot 1), adjacent to the railroad, may require soil sampling due to proximity to the railroad. ESA Phase I will make the final recommendations. ESA Phase II services, to determine the extent of waste and/or contamination, have not been included.
Traffic Control Plans	CLR has included in the Additional Services portion of the proposal a cost for a typical detail for traffic control plan concerns with driveway construction and connection to the adjoining street facility. In addition, TxDOT TCP for closure of the driveways associated with Lot DN (Lot 2) to FM 2920 has been included. No other TCP services have been included in this proposal.
Onsite/Offsite Utility Work	As part of the surveying services, topographic and planimetrics surveying will depict existing facilities located on the site. The fee proposal does not include onsite/offsite related facility relocations or related design services.
Oil/Gas Pipeline or Well Facilities	As part of the surveying services, topographic and planimetrics surveying will depict existing facilities located on the site. The fee proposal does not include oil/gas related facility relocations or related design services.

Project Schedule

We are prepared to strive toward the achievement of a reasonable design schedule, which may be determined appropriate for the project. Our fee is based on the project being executed in a timely manner without significant delays.

This letter proposal and the attached Contract for Professional Services and Exhibit "A" represent the entire understanding between you and us in respect to the Project and may only be modified in writing, signed by both of us. If it satisfactorily sets forth your understanding of our agreement, we would appreciate your having the documents executed by the responsible party at the City of Tomball and forwarding to us one of the enclosed copies of the Contract. On behalf of the project team, CLR, Inc., appreciates this opportunity to provide this proposal to the City of Tomball on this important project. We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Bertrand', is written over a horizontal line.

Kyle Bertrand, P.E.
Senior Vice President

Enclosures
Exhibit A
2 copies of Contract

EXHIBIT "A"

SCOPE OF BASIC SERVICES

CITY OF TOMBALL PARKING LOTS

CLR has prepared a summary proposal in response to the City's verbal request of April 8, 2011. Exhibit "A" has been organized for ease of reference as follows:

I. Historical Project Review and Determination of Need

II. Scope of Services

1. Basic Services
2. Additional Services
3. Compensation
4. Construction Cost
5. Project Schedule

III. Summary

I. Historical Project Review and Determination of Need

Based on CLR's review of the City's completed Livable Centers Downtown (LCDP) Plan, adopted in September of 2009, a parking survey and evaluation of Tomball's Downtown was completed. In summary, the LCDP found that traditionally ample parking was not a significant issue for Downtown Tomball. However, the joint TxDOT and City of Tomball FM 2920 Access Management Study recommended the removal of existing parallel parking along Main Street in order to allow for the addition of a median with left turn channelization and wider sidewalks in an effort to improve safety and mobility in the Downtown area. The recommended removal of the existing parallel parking along Main Street or FM 2920 creates a need to replace and supplement the lost on-street parking with a comprehensive parking strategy for the Downtown area as whole.

II. SCOPE OF SERVICES REVIEW

The proposed services can be performed in accordance with the latest edition of the City of Tomball's Engineering & Planning Department's standard technical requirements (specifications and details), consistent with standard practice, and all Local, State, and Federal regulations. CLR will manage the project and the efforts of the project design team. Collectively, we will provide professional civil engineering, hydrology/hydraulic engineering, planimetric/topographic/boundary surveying, geotechnical engineering, environmental engineering, and other necessary services, as described below. CLR has presented the services that will be involved in the City's proposed parking lot improvements project. A brief description of each for basis of proposal is provided as follows:

1. PHASE I, II, AND III BASIC SERVICES

Basic Services are defined to include Phase I - Preliminary Design, Phase II – Final Design, and Phase III – Construction Phase Services. As per the City's request, Phase I Services are not included in this proposal in an effort to advance to the final design phase. A general description and review of each item pertinent to this proposal is provided as follows:

a. Phase I - Preliminary Design

The City has requested that the project advance to Phase II, Final Design, whereby plans a specifications will be prepared based on a well defined SOW and understanding of the project goals. CLR has not included cost associated with the Phase I portion of the project. A description of the Phase II – Final Design, Phase III – Construction Phase Services, and Additional Services are described as follows:

b. Phase II – Final Design

Final Design Phase Services are described as follows:

1. Upon receipt of the City's written notice to proceed, CLR shall commence preparing the project's final design. The design and the construction cost estimate will be submitted for the City's review and comment at the 50%, 70%, 90%, and bid ready stages of design.
2. CLR and the project team will specify the minimum acceptable performances and material standards associated with temporary structures or facilities determined necessary to implement the project.
3. CLR and the project team will review the results from the Additional Services and where applicable, incorporate the information into the final design. These services may include, but are not limited to survey, traffic control, geotechnical, environmental investigations, hydraulic impact studies, storm water pollution prevention, street lighting plans, and underground utility investigations.
4. CLR will endeavor to verify or otherwise reconcile the findings from the utility plan review and the topographic survey to identify potential conflicts. The final design will avoid conflicts where physically and financially feasible. Where relocation of private utilities is unavoidable, we will inform and coordinate the issues with the City as early in the design process as possible.
5. CLR and the project design team will, as necessary, incorporate the City's standard details into the final design. Should it be necessary to revise the standard details to suit project specific requirements, we will notify the City, provide reasons for the revisions and obtain the City's approval for incorporation into the plan sets. CLR will also develop additional non-standard details as necessary for the bidding and construction of the project.
6. CLR and the project team will prepare the technical specifications in accordance with the standard format adopted by the City. The Table of Contents (TOC) associated with these standard specifications will serve as a guide for organizing the Contract Documents. CLR will review the standard specifications and supplement them as necessary to suite the specific requirements and the design intent of the project. CLR will prepare additional, non-standard specifications as necessary to bid and construct the project. All supplemental and additional specifications will be subject to the City's review and approval.
7. CLR will incorporate the front-end documents provided by the City into the project's technical specifications.
8. Prior to issuing the final drawings and specifications for the City's approval, we will obtain the required signatures or approvals from other agencies, and public and private utilities which may have facilities within or otherwise impact the project, or whom may require permits or license agreements. These typically include, but are not limited to, Harris County, Harris County Flood Control District (HCFCD), Texas Department of Transportation (TxDOT), City's Floodplain Administrator, SBC, Reliant Energy, Centerpoint Energy, AT&T, railroad, pipeline, and various communication companies.

c. Phase II – Final Design Bidding Services

CLR will aid the City during the bidding phase and conduct a prebid conference. Due to our public projects experience, we understand the importance of taking an active role in communicating with the construction industry to insure that the City will receive competitive pricing from qualified contractors.

1. CLR will assist the City in conducting the Pre-bid conference, including the preparation and submission of meeting minutes (within 3 working days) and addenda to address the issues or clarifications necessary to the completion of the bidding process.
2. CLR has based the fee proposal assuming that the City will post and pay the advertising cost. Advertising cost are not a part of this fee proposal.
3. CLR will furnish a tabulation of bids received and a written recommendation of the award of the construction contract within 24-hours after the bid opening.
4. CLR will furnish a set of as-bid drawings immediately after bids are received, reflecting all addenda changes.

d. Phase III - Construction Phase Services

Construction Phase Services to be provided are described as follows:

1. CLR and pertinent responsible project team members will make periodic (one per month per work site, minimum) visits to the project site during times when the contractor is actively performing major construction activities and shall submit a written "Construction Site Observation/Status Report", as documentation. These visits may be combined with any site visit made to resolve field construction problems.
2. CLR will review and provide a written answer within 48-hours, or as otherwise directed, to the contractor's written Requests for Information (RFI).
3. CLR will prepare and submit as-built record drawings within 30-days after receipt of the contractor's redline field drawings. The fee presented in the Summary Schedule of Fees does not include field work or surveying services. The fee proposal assumes that the contractor will be required to provide final as-built redline field drawings.

2. Additional Services

A general description of each Additional Services considered for this project is provided as follows:

a. Surveying Services

Surveying Services are proposed for the complete limits of the lots, parcels, and adjacent streets and outfall points previously described in the summary table of information provided in the beginning of this proposal. The project surveyor will prepare the project planimetric and topographic survey as follows:

1. The project surveyor will provide monumentation documentation as required in accordance to City requirements.
2. The project survey will be tied to the Texas State Plane Coordination System.
3. The project surveyor will provide planimetrics, boundary, topographic, and underground utility identification survey information associated with each site.
4. Deliverables for the site topographical survey including a copy of the original survey field books and electronic files, survey control map, and survey drawing will be submitted no later than when the 70% drawings are submitted for review.
5. The geotechnical boring locations will be surveyed upon completion of the geotechnical investigation.
6. Stations and offsets within one foot of the True State Plane coordinates will be submitted to the City in an electronic file.

7. Prepare a final metes and bounds description with exhibit for each lot.
8. Where not found, set perimeter property corners for each site.

The planimetric, topographic, boundary, and existing underground utility identification for each site are surveying information that are key components of the baseline information required for plan development. All proposed improvements must fit on the site meeting the City's minimum requirements for the improvements. At a minimum, additional parcel information appears to be required for those sites that require that the City purchase property. As a consideration, the City may elect to purchase lots based on lot number references as recorded on previously filed final plats. As an option and included as an additional service, parcel metes and bounds preparation for City acquisition have been included. Platting of the property is not expected to be an issue or required (unless the City specifically requested that the lots be combined into one single lot) because no building structures are being proposed with the improvements. Platting cost have not been included in this fee proposal. Title reports will be required for the property to adequately determine the property ownership, location, easements, and encumbrances and have been included in the surveying proposal.

b. Geotechnical Investigation Services

Geotechnical Investigation Services are proposed for the improvements associated with each parking lot. The Geotechnical Investigation will consider two borings at each site to best categorize the pavement recommendations, including subgrade preparation, base, and pavement thickness design, limited to asphalt and concrete as the alternative materials.

c. Environmental Site Assessment Services

Environmental Site Assessment (ESA) Services are proposed for each parking lot site. The proposed Additional Services includes funding for only the ESA Phase I reports for each project site. If determined necessary and as a result of the ESA Phase I findings, an ESA Phase II to determine the nature and extent of contamination to assist in the engineering design process may be required. ESA Phase II cost have not been included in this proposal.

The ESA Services for a Phase I will be in accordance to ASTM Standard Practice E1527. If necessary, the ESA Phase II will be in accordance to ASTM Standard Practice E1903. The ESA Phase I is a standard requirement for property purchases and is a reasonable attempt to identify the potential for soil and groundwater contamination, or recognized environmental conditions prior to purchase and/or soil disturbing activities. If the ESA Phase I identifies a potential problem, the ESA Phase II is conducted to determine the nature and extent of the problem. The results of the ESA Phase II would either be included in the Final Design plans or could be addressed separately.

d. Special Licenses and Permits

Special Licenses and Permits actual cost are typically reimbursed at actual cost plus the Contract markup standard. The only known permit will be existing driveway closure and storm sewer connection to TxDOT's FM 2920 facility associated with Lot 2 (i.e., FM 2920/Magnolia Street).

e. Traffic Control Plan

Traffic Control Plan (TCP) Services are proposed for the improvements associated with the parking lot improvements and their localized impact during construction, primarily associated with driveway site access construction and connection to the adjoining roadway facility. All of the facilities access appear to connect to the City of Tomball controlled right-of-ways (ROW). The responsible project design team member engineer will prepare the project's traffic control plan detail in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD). A TCP will also be required for existing TxDOT controlled FM 2920 driveway closure and storm sewer connection associated with Lot DN (i.e., Lot 2, FM 2920/Magnolia Street).

f. Storm Water Pollution Prevention Plan

Storm Water Pollution Prevention Plan Services are proposed to address the project's proposed improvements. The responsible project design team member engineer will prepare the project's SW3P in accordance with TCEQ requirements, and City's standard details and specifications.

g. Existing Conditions Survey and Analysis

Existing Conditions Survey and Analysis Services may be required to address any existing structures or homes or businesses that occupy any of the lots. The International Building Codes require as a part of demolition practices that an asbestos/lead survey be conducted. Should this be an issue, the requirements will be confirmed based on the current building code adopted by the City of Tomball for demolition permit. Based on a driveby of the sites, no known structures exist on the sites, therefore no additional services funding is being requested for this item.

h. Street Lighting Plan

Street Lighting Plan Services are proposed to address the improvements associated with each parking lot. The responsible project design team member engineer will prepare the project's Street Lighting Photometric Plan in accordance with the City's Zoning Ordinance, and the written specifications of Centerpoint Energy. Specifically, Section 39.3.B of the Zoning Ordinance presents that to prevent nuisance situations, all parking area lighting shall be designed, shielded and operated so as not to reflect or shine on adjacent properties and in accordance with City ordinances. All streets and driveways shall be lighted at night with a minimum intensity of two foot-candles' illumination if off-street parking or loading facilities are to be used at night.

i. Tree Protection, Mitigation, and Planting Plan

Tree Protection, Mitigation, and Planting Plan Services are not proposed as part of this proposal as an additional service. Based on discussions with City staff, the City will take responsibility for the future planting of any new trees. Based on site visits, no significant trees exist on Lots 1, 2, and 3. City staff has requested that any impact to trees associated with Lot 4 will be minimized by CLR in the design layout. Should there be an impact to any trees on Lot 4, City staff will make the final determination for parking layout and the advancement of the final design configuration.

j. Landscape Architectural and Irrigation Services

Landscape Architectural and Irrigation Services are not included in the Contract.

k. Traffic Signal Plan

Traffic Signal Plan Services are not included in the Contract.

l. Drainage Investigation

Hydraulic Impact Services are proposed to address the storm water outfall points. The responsible project design team member engineer will prepare the project's hydraulic impact plans in accordance with existing/proposed site conditions, City of Tomball, Harris County, HCFCD, and the applicable requirements established for the project. Typically, with site improvements, there is an increase in stormwater runoff that can negatively impact the adjacent property, streams, or other outfall points. Harris County, HCFCD, and the City of Houston have adopted and established standards means and methods for site evaluations and mitigating those impacts. Individually, each site will be evaluated for those impacts and will be addressed with each parking lot design. Existing conditions will be a key consideration for each site, for example, some sites may have existing impervious areas that may be considered and result in minimizing required stormwater impacts but still meeting requirements. Each site will need to be evaluated on a case-by-case basis.

In reference to Lot 3 (CS), the City has provided a copy of an existing and proposed drainage plan for the balance of the lot. As noted in the description of Lot 3, the existing lot is a platted 200-foot wide by 100-foot deep lot. Based on the maps provided the City the lot contains several existing building structures. The City has requested that the design of the parking lot, based on the results of the hydraulic review, incorporate the additional impacts (i.e., detention) from the development into the parking lot design requirements. Based on a discussion with City staff, CLR will incorporate the remainder of the development newly created impervious areas at a 1:1 ratio for detention. The City will be responsible for providing the final proposed development plan depicting the newly created impervious areas. CLR will utilize the said drawing and newly created impervious areas to calculate the additional volume of detention to be incorporated into the parking lot design.

m. Registered Accessibility Specialist

Registered Accessibility Specialist (RAS) Services proposed for the project would be associated with the pedestrian route elements, including site walks, ramps, and street right-of-way crossings determined to be impacted by the project improvements. The RAS Services would include plan review and construction inspections for compliance with the Texas Architectural Act, Chapter 469 of the Texas Government Code. A budgetary number has been assumed for the cost associated with the plan project registrations, reviews, and inspections in accordance to and published under the Architectural Barriers Administrative Rule 68.80. Actual final cost will be based on the final construction estimate at the time of registration.

n. Other Additional Services & Considerations

Reproduction Services are dependent upon the bidding and advertising process requested by the City. This item has been included as a budgetary number and included as part of the contract. The City will only be billed based on the plan sets requiring reproduction cost.

Platting, as reviewed under the Surveying Services, is not expected to be an issue on this project. It has been assumed that the City will purchase any need lots by reference to previous platted information. No cost for this service has been included in the proposal.

Land acquisition responsibility can be an additional service but generally when a small number of tracts are being obtained, the City may elect to work directly with the Owners and Title Companies. No cost for this service has been included in the proposal.

Oil & gas mineral and surface interest rights that affect property development issues could include oil & gas pipelines, easements, and wells. Although not uncommon to projects in Tomball, the relocations, abandonments, and negotiations can be significant and affect project timelines and budgets. As part of the Surveying Services associated with the identified planimetrics, topographic, and boundary surveying services, CLR will review the City supplied title reports and identify any known oil & gas issues. CLR has experience in the preparation of easements and relocation options typically required in the negotiations with the oil & gas companies, should there be an issue. No cost for this service has been included in the proposal.

3. Compensation

The professional services compensation for Phase II Final Design and Phase III Construction Phase Services are to be performed on a lump sum basis. The compensation for Additional Services are based on a lump sum and/or reimbursable basis with a cost not to exceed for each, as appropriate and as shown on the *Summary Schedule of Fees*.

4. Construction Costs

Beginning with contract negotiations, a construction cost estimate will be developed. The project cost are updated at each submittal milestone (i.e., 50%, 70%, and 100% design phases). We will immediately inform the City of any major items that would affect the cost of the project. CLR will identify cost-saving measures and will recommend solutions. Escalations in the cost of construction materials also will be monitored.

5. Project Schedule

The project will have regular in-house and client status meetings to assess project programs and allow for adjusting to insure the project is brought in on time. CLR utilizes software for project tracking to ensure project status and timeliness. CLR will develop and maintain a firmly established schedule with milestones. CLR will meet the milestones along the way to insure we meet the project goal. As part of the proposal preparation and after a discussion of the program goals, CLR will submit a schedule.

<i>Assumption: Fee proposal based on assuming all 4 lots designed, bid, and constructed at the same time.</i>						
PROFESSIONAL SERVICES PHASE		LOT 1 (AN)	LOT 2 (DN)	LOT 3 (CS)	LOT 4 (ES)	TOTALS
BASIC SERVICES		Railroad	FM 2920/ Magnolia	Tax Office/ Barn(s)	Oak/ Fannin/ PD	
PHASE II - DESIGN		No. of Sheets				
Cover Sheet	1	\$500	\$0	\$0	\$0	\$500
General Notes	1	\$500	\$0	\$0	\$0	\$500
Existing Conditions & Demo Plan	4	\$500	\$500	\$500	\$500	\$2,000
Grading & Drainage Plan	4	\$4,000	\$4,000	\$4,000	\$4,000	\$16,000
Pump Station Plans/Mitigation Options/TxDOT Coordinati	2	\$4,000	\$4,000	\$6,500	\$4,000	\$18,500
Drainage Calculations	1	\$1,000	\$1,000	\$1,000	\$1,000	\$4,000
Standard Details	2	\$1,000	\$0	\$0	\$0	\$1,000
Stripping Plan and Details	4	\$1,000	\$1,000	\$1,000	\$1,000	\$4,000
Bidding Phase Services		\$1,500	\$0	\$0	\$0	\$1,500
Subtotal Phase II - Design Services		\$14,000	\$10,500	\$13,000	\$10,500	\$48,000
PHASE III - CONSTRUCTION PHASE SERVICES						
Construction Phase Services		\$1,500	\$500	\$500	\$500	\$3,000
Subtotal Phase III - Construction Phase Services		\$1,500	\$500	\$500	\$500	\$3,000
TOTAL OF BASIC SERVICES		\$15,500	\$11,000	\$13,500	\$11,000	\$51,000
ADDITIONAL SERVICES						
Surveying - Topographic	Lump Sum	\$5,461	\$2,233	\$2,257	\$3,035	\$12,986
Surveying - Boundary	Lump Sum	\$2,500	\$1,520	\$1,520	\$1,520	\$7,060
Surveying - Set Property Corners	T&M NTE ²	\$350	\$350	\$350	\$350	\$1,400
Surveying - Control Map	T&M NTE ²	\$450	\$450	\$450	\$450	\$1,800
Surveying - Locate Boreholes	T&M NTE ²	\$250	\$250	\$250	\$250	\$1,000
Phase I ESA	T&M NTE ²	\$3,500	\$2,834	\$2,833	\$2,833	\$12,000
Geotechnical Borings and Report	T&M NTE ²	\$2,500	\$2,100	\$2,100	\$2,100	\$8,800
Geotechnical Materials Testing	T&M NTE ²	\$3,740	\$3,247	\$3,247	\$3,121	\$13,355
Electrical/Parking Lot Lighting Design	T&M NTE ²	\$1,100	\$1,650	\$1,300	\$1,500	\$5,550
TDLR Plan Submittal/Construction Review	T&M NTE ²	\$1,000	\$750	\$750	\$750	\$3,250
Reproduction	T&M NTE ²	\$2,500	\$0	\$0	\$0	\$2,500
Additional Services Subtotal Plus 10% Markup		\$25,686	\$16,922	\$16,563	\$17,500	\$76,671
SW3P Plan	T&M NTE ²	\$2,500	\$1,000	\$1,000	\$1,000	\$5,500
TCP Detail (Tomball & TxDOT)	T&M NTE ²	\$1,000	\$500	\$0	\$0	\$1,500
TOTAL OF ADDITIONAL SERVICES		\$29,186	\$18,422	\$17,563	\$18,500	\$83,671
TOTAL BASIC AND ADDITIONAL SERVICES¹		\$44,686	\$29,422	\$31,063	\$29,500	\$134,671

1. As per the City's request, the total basic and add. services fee proposal assumes that all 4 lots will be designed, bid, and constructed at the same time to achieve maximum design efficiency.

2. Time & material and not to exceed amount (T&M NTE)

3. Assumes City will provide for advertising cost.

Cost per Lot 1 Design	\$44,686
Cost for 4 Lots assuming Lot 1 Cost	\$178,745
Cost for Design of all 4 Lots at one Time	\$134,671
Cost Savings in Designing, Bidding, and Constructing @ one Time	\$44,074

Summary of Proposed Location of Downtown Parking Lots Preliminary Costs

Parking Lot	Location	Number of Parking Spaces	Land Acquisition Cost	Site Construction Cost	Sidewalk/Street/ Alleyway Cost	Total Construction	Professional Services (20%)	Total Construction & Professional Services	Cost per Space (Land/Site/ Professional Services)	Cost per Space (Land/Site/Sidewalk/ Street/Alleyway/ Professional Services)
AN	N Elm Between W Main and Houston	23	\$ -	\$ 210,000.00	\$ 208,240.00	\$ 418,240.00	\$ 83,648.00	\$ 501,888.00	\$ 10,956.52	\$ 21,821.22
BN	NW Corner Commerce @ N Walnut	18	\$ 31,872.00	\$ 110,000.00	\$ 22,000.00	\$ 163,872.00	\$ 32,774.40	\$ 196,646.40	\$ 9,458.13	\$ 10,924.80
CN	SW Corner Commerce @ N Oak	37	\$ 194,005.00	\$ 285,000.00	\$ 12,000.00	\$ 491,005.00	\$ 98,201.00	\$ 589,206.00	\$ 15,535.30	\$ 15,924.49
DN	NE Corner N Magnolia & W Main	42	\$ 105,000.00	\$ 293,000.00	\$ 5,600.00	\$ 403,600.00	\$ 80,720.00	\$ 484,320.00	\$ 11,371.43	\$ 11,531.43
AS	NW Corner Market @ S Cherry	27	\$ 50,375.00	\$ 200,000.00	\$ 9,200.00	\$ 259,575.00	\$ 51,915.00	\$ 311,490.00	\$ 11,127.78	\$ 11,536.67
BS	SE Corner W Main @ Walnut	5	\$ 25,000.00	\$ 80,000.00	\$ 4,240.00	\$ 109,240.00	\$ 21,848.00	\$ 131,088.00	\$ 25,200.00	\$ 26,217.60
CS	West of Barnes at Depot	18	\$ 30,000.00	\$ 110,000.00	\$ 2,800.00	\$ 142,800.00	\$ 28,560.00	\$ 171,360.00	\$ 9,333.33	\$ 9,520.00
DS	SE Corner S Elm @ Fannin	54	\$ 39,200.00	\$ 345,000.00	\$ 243,200.00	\$ 627,400.00	\$ 125,480.00	\$ 752,880.00	\$ 8,537.78	\$ 13,942.22
ES	SW Corner S Oak @ Fannin	23	\$ -	\$ 245,000.00	\$ 10,000.00	\$ 255,000.00	\$ 51,000.00	\$ 306,000.00	\$ 12,782.61	\$ 13,304.35
TOTAL		247	\$ 475,452.00	\$ 1,878,000.00	\$ 517,280.00	\$ 2,870,732.00	\$ 574,146.40	\$ 3,444,878.40	\$ -	\$ -

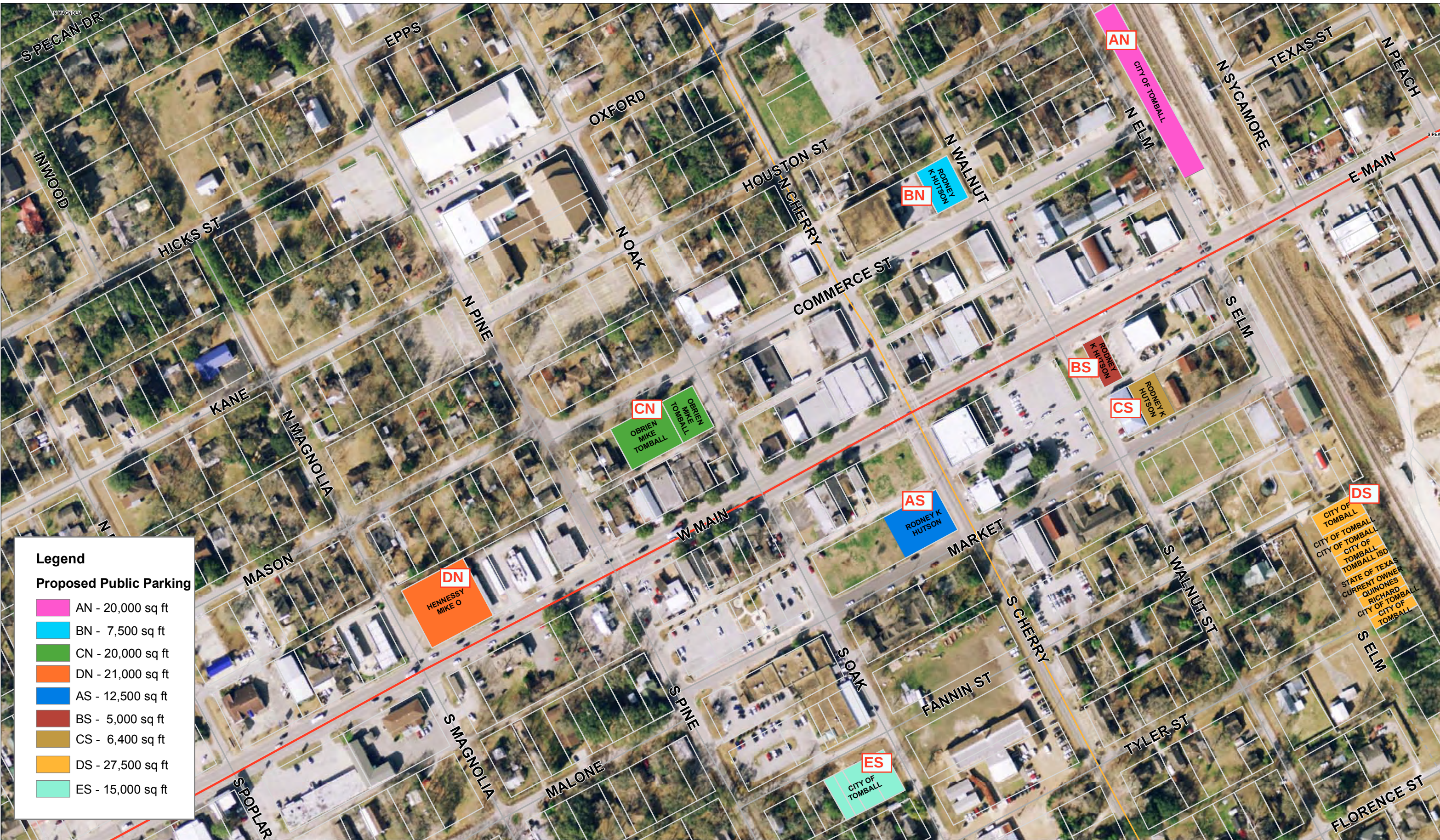
Items of Note

1. Cost are estimated by staff.
2. Cost do not include potential/unknown oil & gas related issues.
3. Cost do not include potential/unknown environmental issues.
4. Land Acquisition is based on HCAD website.
5. ADA/TAS Parking not included, but will be part of final design.
6. Trees shown in landscape locations but due to limited space shrubs may be substituted.

Parking Lot	Location	Number of Parking Spaces	Land Acquisition Cost	Site Construction Cost	Sidewalk/Street/ Alleyway Cost	Total Construction	Professional Services (20%)	Total Construction & Professional Services	Cost per Space (Land/Site/ Professional Services)	Cost per Space (Land/Site/Sidewalk/ Street/Alleyway/ Professional Services)
CS - Alt 1	West of Barnes at Depot	6	\$ 18,800.00	\$ 87,600.00	\$ 2,800.00	\$ 109,200.00	\$ 21,840.00	\$ 131,040.00	\$ 21,280.00	\$ 21,840.00
CS - Alt 2	West of Barnes at Depot	12	\$ 18,800.00	\$ 87,600.00	\$ 2,800.00	\$ 109,200.00	\$ 21,840.00	\$ 131,040.00	\$ 10,640.00	\$ 10,920.00

HCAD Based SF Cost Determination for Land Acquisition

Parking Lot	Location	Owner	HCAD Number	Real_acct.Total_Land_Area (SF)	Real_acct.Total_Market_Value	Square Footage Cost (per HCAD)
AN	Elm Between Main and Houston	CITY OF TOMBALL	440550000279	26000	\$ -	\$ -
BN	NW Corner Commerce @ Walnut	HUTSON RODNEY	352570070024	7500	\$ 31,872	\$ 4.25
CN	SW Corner Commerce @ Oak	OBRIEN MIKE	352600180019	12500	\$ 39,000	\$ 3.12
		OBRIEN MIKE J	352600180023	7500	\$ 155,005	\$ 20.67
DN	NE Corner N Magnolia & W Main	HENNESSY MIKE O	352660420008	21000	\$ 105,000	\$ 5.00
AS	NW Corner Market @ Cherry	RODNEY K HUTSON	352590140021	30000	\$ 121,000	\$ 4.03
BS	SE Corner Main @ Walnut	RODNEY K HUTSON M D P A	352560030013	5000	\$ 25,000	\$ 5.00
CS	West of Barnes at Depot	HUTSON RODNEY K MD PA	1316090010001	19998	\$ 79,992	\$ 4.00
DS	SE Corner Elm @ Fannin	CITY OF TOMBALL	352570060001	5000	\$ -	\$ -
		CITY OF TOMBALL	352570060003	2500	\$ -	\$ -
		CITY OF TOMBALL	352570060004	2500	\$ -	\$ -
		CITY OF TOMBALL	352570060005	2500	\$ -	\$ -
		TOMBALL ISD	352570060006	2500	\$ -	\$ -
		STATE OF TEXAS	352570060007	2500	\$ -	\$ -
		CURRENT OWNER	352570060008	2500	\$ 9,800	\$ 3.92
		QUINONES RICHARD	352570060009	2500	\$ 9,800	\$ 3.92
		CITY OF TOMBALL	352570060010	2500	\$ -	\$ -
		CITY OF TOMBALL	352570060011	2500	\$ -	\$ -
ES	SW Corner S Oak & Fannin	CITY OF TOMBALL	352610210023	5000	\$ -	\$ -
		CITY OF TOMBALL	352610210021	5000	\$ -	\$ -
		CITY OF TOMBALL	352610210019	2500	\$ -	\$ -
		CITY OF TOMBALL	352610210020	2500	\$ -	\$ -



Legend

Proposed Public Parking

- AN - 20,000 sq ft
- BN - 7,500 sq ft
- CN - 20,000 sq ft
- DN - 21,000 sq ft
- AS - 12,500 sq ft
- BS - 5,000 sq ft
- CS - 6,400 sq ft
- DS - 27,500 sq ft
- ES - 15,000 sq ft

Proposed Conceptual Parking Lot Layout



Lot AN (N Elm Between W Main and Houston)



Lot BN (NW Corner Commerce @ N Walnut)



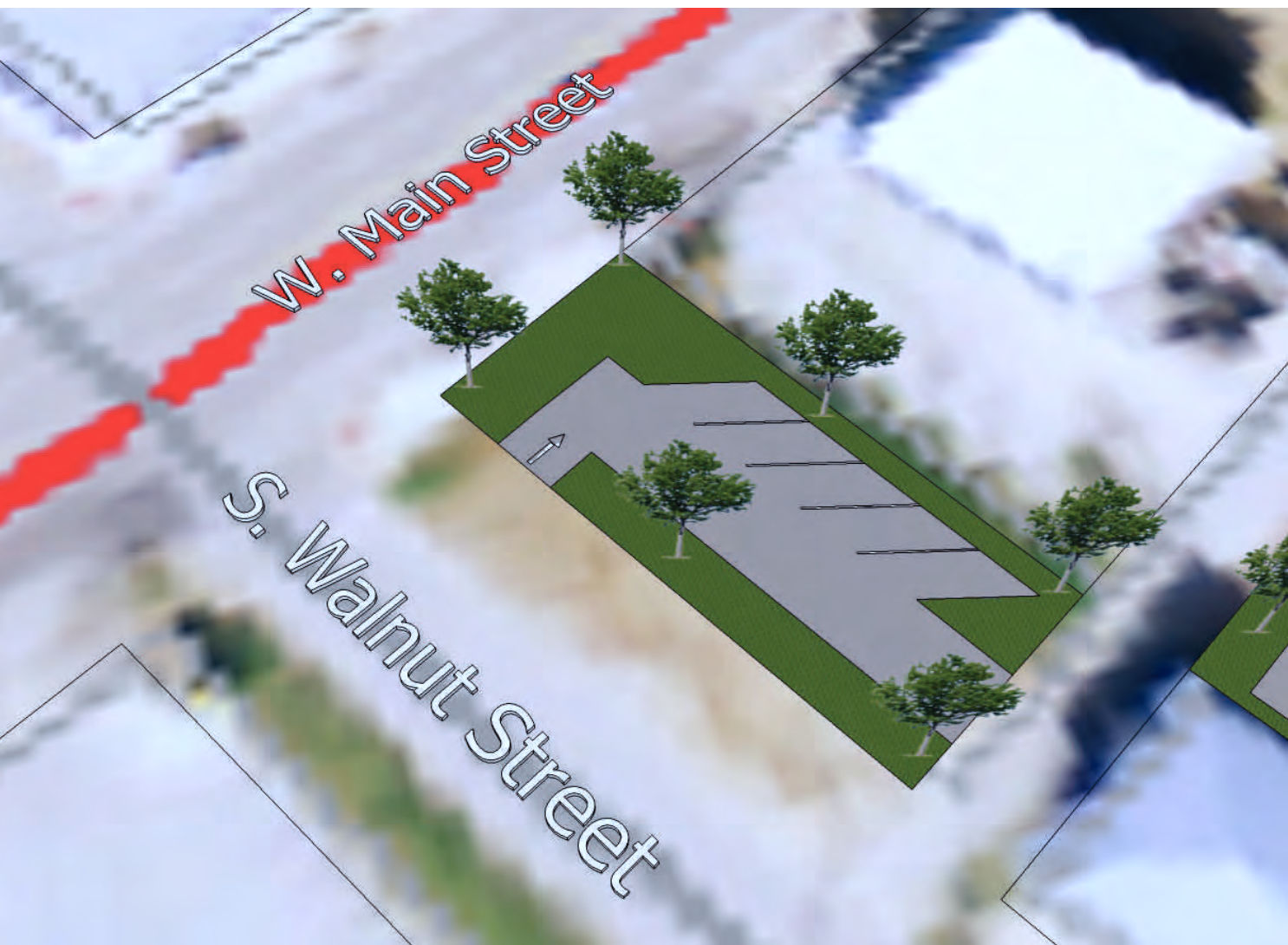
Lot CN (SW Corner Commerce @ N Oak)



Lot DN (NE Corner N Magnolia & W Main)



Lot AS (NW Corner Market @ S Cherry)



Lot BS (SE Corner W Main @ Walnut)



Lot CS (West of Barnes at Depot)



Lot DS (SE Corner S Elm @ Fannin)



Lot ES (SW Corner S Oak @ Fannin)



Lot CS—Alt 1 (West of Barnes at Depot)



Lot CS—Alt 2 (West of Barnes at Depot)

For discussion purposes only. Not for construction.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Adopt, on Second Reading, Ordinance No. 2011-08, an Ordinance of the City Council of the City of Tomball, Texas, Providing for Minor Plats; and Making other Findings and Provisions related Thereto

Background:

At the City Council meeting on December 13, 2010, Council discussed whether, under the City Charter, the City Council may use the minor plat process provided by State law. This amendment allows city staff to approve minor plats in lieu of presenting them to City Council.

A minor plat is a replat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities. Minor plats will be presented to the Planning and Zoning Commission as a non-action item for informational purposes only. City Council maintains final control through an appeal process.

On April 18, Council adopted Ordinance No. 2011-08 on first reading.

Origination:

City Council

Recommendation:

Adopt Ordinance no. 2011-08 on second reading.

Funding:

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

Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ordinance No. 2011-08_Minor Plats

City Attorney Memo re Minor Plats

ORDINANCE NO. 2011-08

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF TOMBALL, TEXAS, PROVIDING FOR MINOR PLATS;
AND MAKING OTHER FINDINGS AND PROVISIONS
RELATED THERETO.**

* * * * *

Whereas, Section 212.0045(c) of the Texas Local Government Code provides that a municipality need not require platting for every division of land otherwise within the scope of Subchapter A of Chapter 212; and

Whereas, Section 212.0065 of the Texas Local Government Code further provides that a municipality may delegate approval responsibility of certain amending plats, minor plats and replats to one or more officers or employees of the City subject to the right to appeal the disapproval of those plats; and

Whereas, Article X of the City Charter of the City provides, in part, that every owner of property in the City or its ETJ who may divide their land shall comply with Subchapter A of Chapter 212, and that the Planning Commission of the City shall be required recommend to the Council the approval or the disapproval of plats of proposed subdivisions submitted in accordance with the City's ordinances; and

Whereas, the City Council desires to provide, by ordinance, the delegation of approval of responsibility of certain plats subject to the right to appeal to the City Council; now therefore,

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

Section 1: Section 70-2. – Definitions, of the Code of Ordinances of the City of Tomball, Texas, is amended by adding, in the appropriate alphabetical position, the following definition:

“Minor Plat” means an amending plat described in Section 212.016 of the Texas Local Government Code, a replat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or a replat under Section 212.0145 that does not require the creation of any new street or the extension of municipal facilities.”

Section 2: Section 70-3 - Special provisions, of the Code of Ordinances of the City of

Tomball, Texas, is amended by amending subsection (d) thereof to read as follows:

“Sec. 70-3 (d) *Exceptions.*

(1) The provisions of this chapter shall not be construed to prohibit the issuance of permits for construction on any lot which was in existence prior to August 15, 1983, nor to prohibit the repair, maintenance or installation of any street or public utility service for, to or abutting any lot, the last recorded conveyance of which prior to August 15, 1983, was by metes and bounds, and/or any subdivision, or lot therein, recorded or unrecorded, which subdivision was in existence prior to August 15, 1983.

(2) A division of land does not include a minor plat approved in accordance with Section 70-4.”

Section 3: The Code of Ordinances of the City of Tomball, Texas, is amended by adding a new Section 70-4, Lot consolidations and minor plats, that shall read as follows:

“Sec. 70-4 – Lot consolidations and minor plats.

(a) Upon payment of the fee established by Council, a person may submit an application for a minor plat approval.

(b) The City Manager, or the City Manager’s designee(s), may approve a minor plat.

(c) After the City Manager approves a minor plat, the minor plat shall be placed on the Planning Commission’s next regular agenda as a non-action item for information purposes only.

(d) Any person may appeal the approval of a minor plat by filing a written notice of appeal within 3 working days after the Planning Commission meeting at which the minor plat approval is submitted. Upon the filing of the appeal, the minor plat shall be deemed a preliminary plat shall be placed on the City Planning Commission’s next regular agenda for consideration within the time periods specified in this Chapter.

(e) Upon expiration of the time for appeal, the City Engineer shall sign the minor plat on behalf of the City.

(f) The person to whom a minor plat is presented shall not disapprove a minor plat, but shall be required to refer any plat which such person refuses to approve to the City’s Planning Commission within the time period specified in this Chapter.”

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

Section 5. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any 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 the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 6. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed two thousand (\$2,000.00) dollars for each offense.

Section 7. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

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 18TH DAY OF APRIL 2011.

COUNCILMAN QUINN	<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 MAY 2011.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

January 17, 2011

To: George Shackelford, City Manager

From: Scott Bounds, Olson & Olson, LLP

Re: Authority of Tomball City Council to Delegate Plat Approval

Section 212.005 of the Texas Local Government Code provides that the “municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under (Subchapter A)... . Section 212.006 provides that “the municipal authority responsible for approving plats” is the municipal planning commission. It also provides that “the governing body by ordinance may require approval of the governing body in addition to that of the municipal planning commission.” Id.

In 1989, the Texas Legislature adopted Section 212.0065 that authorized city council to delegate to one or more officers or employees of the city the ability to approve certain amending plats, minor plats and replats involving four or fewer lots fronting on an exiting street and not requiring the extension of municipal facilities, and certain other replats not requiring the creation of any new street or extension of municipal facilities. The delegation was limited to the authority to approve such plats; any disapproval must be the municipal authority otherwise responsible for plat approval.

The City’s Charter grants the City, and its council, broad general powers. See Section 4.01. City Council may, except as prohibited by the Constitution and laws of the State, or as restricted by the Charter, exercise all municipal powers. Id. With regard to municipal planning, Article X of the City Charter creates the planning commission. Section 10.01. The Charter also expressly provides that every owner of land in the City or its ETJ shall comply with the subdivision regulations adopted by City Council consistent with State law. Section 10.02. The Charter further expressly grants the Planning Commission the power to “recommend to City council the approval or disapproval of plats of proposed subdivisions submitted in accordance with city ordinance as adopted or hereafter amended.”

At the City Council meeting on December 13, 2010, the City Council discussed whether, under the City Charter, the City Council may use the minor plat process provided by State law and, more broadly, whether the City Council may remove itself from the plat approval process. Section 10.01 D 2 of the City Charter that provides:

“The Commission shall have the power AND SHALL BE REQUIRED TO RECOMMEND TO THE COUNCIL THE APPROVAL or the disapproval of plats of proposed subdivisions submitted in accordance with City ordinance as adopted or hereafter amended.” (emphasis added).

In *Byars v. City of Austin*, 910 S.W.2d 520 (Tex.App.-Austin 1995), the Court was required to interpret the Austin City Charter provision “that the City Manager “shall have the power and shall be required to” [a]ppoint and remove any officer or employee of the City.” The Plaintiffs argued that only the City Manager, and not any other person delegated the authority by him, could remove an employee. The Court, in upholding the City of Austin’s practice permitting such delegation, noted that the City Manager retained the authority to control the process whether the City Manager made the decision or not, and that was sufficient to comply with the Charter. Similarly in *City of New Orleans v. Bradley*, 731 So.2d 353 (La.App. 1999), the City of New Orleans Charter provided, in part, that the Mayor “shall have the power and shall be required to sign contracts, bonds, or other instruments requiring the assent of the City.” In denying the City’s argument that the provision required that the Mayor sign all agreements, the Court found that the Mayor delegated that authority to others. In other words, although the Charter expressly required the Mayor’s signature, the Court found that the Mayor could delegate that requirement. In my opinion, the City Charter provision requiring that the City Council approve or disapprove plats does not preclude the City Council from delegating to an employee, officer or board of the City the power to approve minor plats so long as the City Council retains the authority to control the process by an appeal process.

The Tomball City Charter grants the City Council the authority (permissive not mandatory) to manage its boards, agencies, and commissions consistent with state law and the Charter. Tomball City Charter Sections 2.05, 4.01 and 4.01. With regard to the platting of property, the Charter provides that “[e]very owner ... of land, within the ... City or its ... ETJ, who may divide the same ... shall comply with all ... Ordinances of the City.” Tomball City Charter 10.02. That section specifically references Article 970a, the predecessor of Chapter 212. Since the adoption of the City Charter, the Texas Legislature has amended the Local Government Code to expressly authorize every city the power to delegate to one or more officers or employees of the city the ability to approve certain minor plats involving four or fewer lots fronting on an existing street and not requiring the extension of municipal facilities. The delegate was limited to the authority to approve plats; any disapproval must be by the municipal authority otherwise responsible for plat approval. The Texas Legislature occasionally gives guidance whether a general law is intended to be preemptive or cumulative of a municipal charter. See, e.g., Texas Local Government Code 43.022, 43.030, 104.005, 171.007, 273.009 and 306.003. In my opinion the minor plat provision is an additional grant of authority for general law cities, and the provision does not preempt or alter a city’s municipal charter related to the subject matter.

Summary

In my opinion the City Council may delegate the authority to approve or disapprove plats to others so long as the City Council maintains final control through an appeal process.

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Set June 6, 2011 as Date for City Council Workshop on Possible Revisions to Chapter 70, Plats and the Subdivision of Land

Background:

In regards to the revision of Chapter 70 – Plats and the Subdivision of Land, staff would like to update you on the status of the request at the April 18, 2011 meeting. City staff is proposing to have a workshop June 6, 2011 to discuss the options and issues that may be affected by revising Chapter 70.

City staff has been working with the City attorney to determine the best way to address Council concerns regarding the platting requirements for lots that are under one ownership and possibly have structures across existing lot lines. The City attorney drafted a revision to Chapter 70 – Plats and the Subdivision of Land to allow joinder of lots under common ownership. The draft ordinance is attached for your review.

There are issues and concerns that need to be address in order to move forward with the revision to the ordinance. Some of the issues, but not limited too, are as follows:

1. Determine the definition for a “joinder lot”;
2. Determine the area of the City that would be allowed to have joinder lots;
3. Define the removal of a structure; and
4. Potential Incentive Program (Not yet defined).

Origination:

City Council

Recommendation:

Set Workshop date at June 6, 2011 to discuss revisions to Chapter 70 - Plats and Subdivision of Land

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

Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Ordinance to Revise Chapter 70 - Plats and Subdivision of Land
City Council Memo on Joinder Lots

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 70, PLATS AND THE SUBDIVISION OF LAND, OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY AMENDING SUBSECTION (d) OF SECTION 70-3 OF ARTICLE I TO ALLOW JOINDER OF LOTS UNDER COMMON OWNERSHIP WITHOUT REQUIRING A PLAT PROVIDED THAT THE JOINDER OF LOTS DOES NOT REQUIRE THE DEDICATION OR REMOVAL OF ANY PUBLIC RIGHTS-OF-WAY, PUBLIC EASEMENTS OR PUBLIC IMPROVEMENTS; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$2,000 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * * *

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

Section 1. The Code of Ordinances of the City of Tomball is hereby amended by adding to Subsection (d) of Section 70-3, Exceptions, of Article I, Special Provisions, the language underscored below, the amended Subsection (d) to read as follows:

“Sec. 70-3. Special provisions.

* * *

(d) *Exceptions.*

- (3) A division of land does not include the merger of two or more adjoining lots or tracts of land, with common ownership, that the owner(s) wishes to merge into one lot in order to avoid the creation of a technical violation of the City’s building, subdivision and zoning regulations relating to building setback lines. This exception applies only if:
- a. the lots or tracts were under common ownership as of the effective date of this ordinance; and
 - b. the lots or tracts are located in the Old Town and Mixed Use District (OT&MU) as defined by Section 34 of the City of Tomball Zoning Ordinance; and
 - c. a structure used for residential purposes existed on the lots or tracts, as of the effective date of this ordinance, provided, however, that this exception shall not apply in the event that

- fifty-percent (50%) or more of the structure is removed or destroyed; and
- d. the joinder of lots or tracts does not require the dedication or removal of any public rights-of-way, public easements or other public improvements; and
 - e. the owner(s) agrees in writing on a form approved by the City that the merged lot may not be divided in the future unless a subdivision plat authorizing such division is approved by the City and filed of record in accordance with applicable state laws and City Ordinances governing plats and the subdivision of land. The form must also inform and declare that any subsequent purchaser will be bound by the requirements of this exception and the form shall be filed in the County Clerk's office of the County that the property is located in."

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any 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 the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$2,000.00) dollars for each offense.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

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 ____ DAY OF _____ 2011.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

SECOND READING:

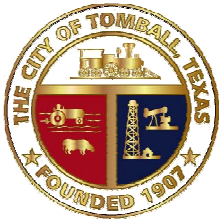
READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE ____ DAY OF _____ 2011.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DODSON	_____

ATTEST:

Gretchen Fagan, Mayor

Doris Speer, City Secretary



City of Tomball
Engineering and Planning Department

501 James St
Tomball, Texas 77375

Memorandum

Date: May 13, 2011
To: Mayor and City Council
From: Lori Lakatos, PE, CFM – Assistant City Engineer
Subject: Revisions to Chapter 70 – Plats and the Subdivision of Land

CC: George Shackelford – City Manager
Christal Kliewer Weber – Assistant City Manager
Scott Bounds – City Attorney (Olson & Olson)
Loren Smith – City Attorney (Olson & Olson)

In regards to the revision of Chapter 70 – Plats and the Subdivision of Land staff would like to update you on the status of the request at the April 18, 2011 meeting. City staff is proposing to have a workshop June 6, 2011 to discuss the options and issues that may be affected by revising Chapter 70.

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1. Determine the definition for a “joinder lot”;
2. Determine the area of the City that would be allowed to have joinder lots;
3. Define the removal of a structure; and
4. Potential Incentive Program (Not yet defined).

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Discussion and Possible Action regarding Advance Refunding of Combination Tax & Revenue Certificates of Obligation, Series 2002

Background:

Market conditions currently warrant a discussion of the potential savings that would result from refunding the maturities 2013 through 2022 on the Series 2002 Certificates of Obligation. Mr. Joe Morrow of First Southwest will be here to discuss the refunding process and the potential savings.

Origination:

Finance

Recommendation:

Staff recommends that we move forward with the refunding due to the current amount of savings that would be realized.

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

Glenn Windsor, CPA Finance Director

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Refunding Analysis Presentation

Post Refunding Schedules



Joseph Morrow, *Senior Vice President*

joe.morrow@firstsw.com

700 Milam, Suite 500

Houston, Texas 77002

Phone 713.654.8690 Fax 713.654.8658



Refunding Analysis

May 16, 2011

Tomball, Texas

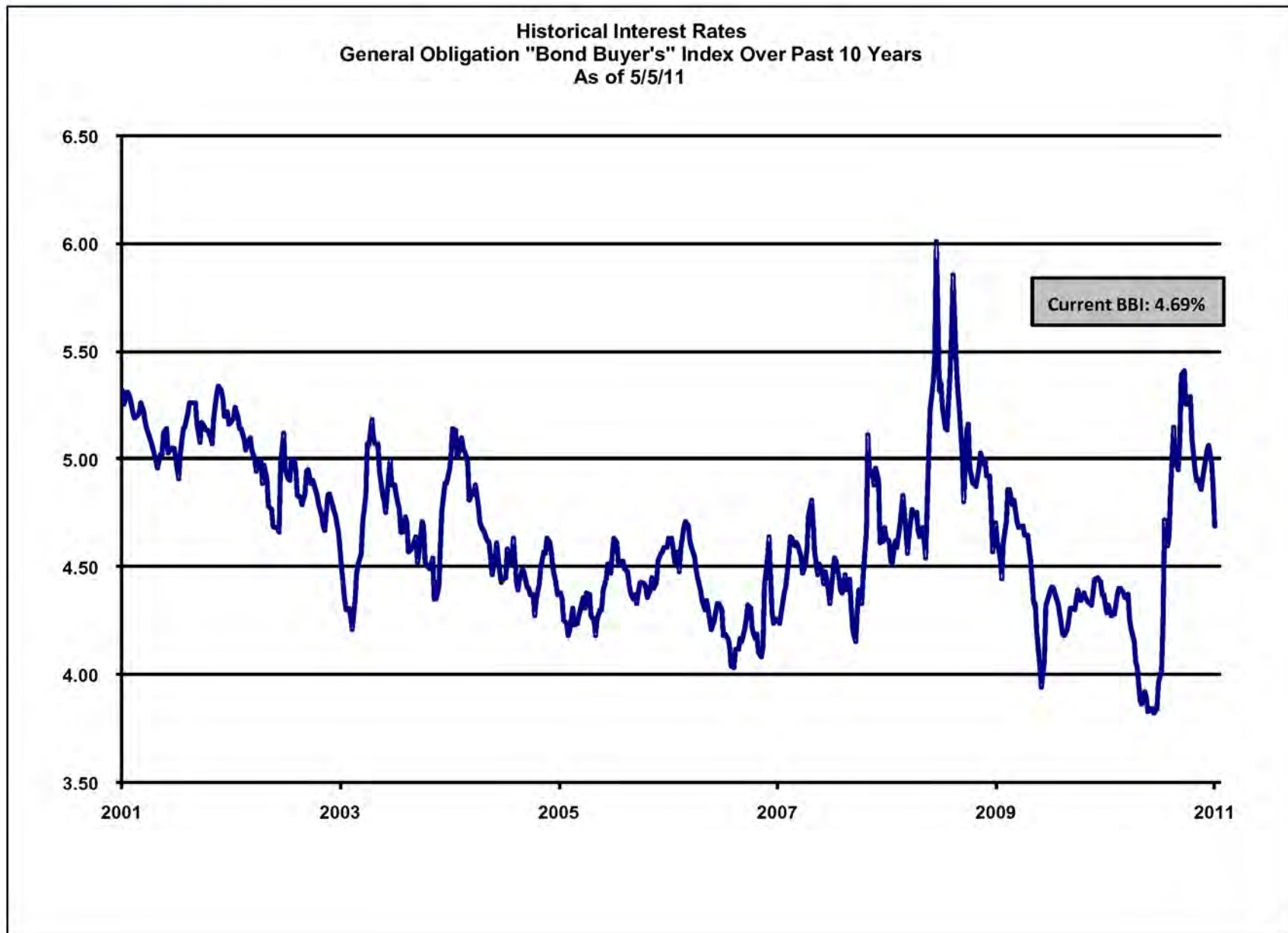
Refunding Opportunity

- **Combination Tax & Revenue Certificates of Obligation, Series 2002**
 - Maturities 2013 through 2022 callable February 15, 2012
 - 275 days remain to call date of Series 2002 Certificates (*as of 5/16/11*)

<u>Maturity Date</u>	<u>Type</u>	<u>Interest Rate</u>	<u>Par Amount</u>	<u>Call Date</u>	<u>Call Price</u>
2/15/2012	Serial	4.250%	\$ 1,090,000		100%
2/15/2013	Serial	4.400%	1,090,000	2/15/2012	100%
2/15/2014	Serial	4.500%	1,090,000	2/15/2012	100%
2/15/2015	Serial	4.500%	1,090,000	2/15/2012	100%
2/15/2016	Serial	4.625%	1,090,000	2/15/2012	100%
2/15/2017	Serial	4.750%	1,085,000	2/15/2012	100%
2/15/2018	Serial	4.750%	1,085,000	2/15/2012	100%
2/15/2019	Serial	5.000%	1,085,000	2/15/2012	100%
2/15/2020	Serial	5.000%	1,085,000	2/15/2012	100%
2/15/2021	Serial	5.000%	1,085,000	2/15/2012	100%
2/15/2022	Serial	5.000%	1,085,000	2/15/2012	100%
			<u>\$ 11,960,000</u>		

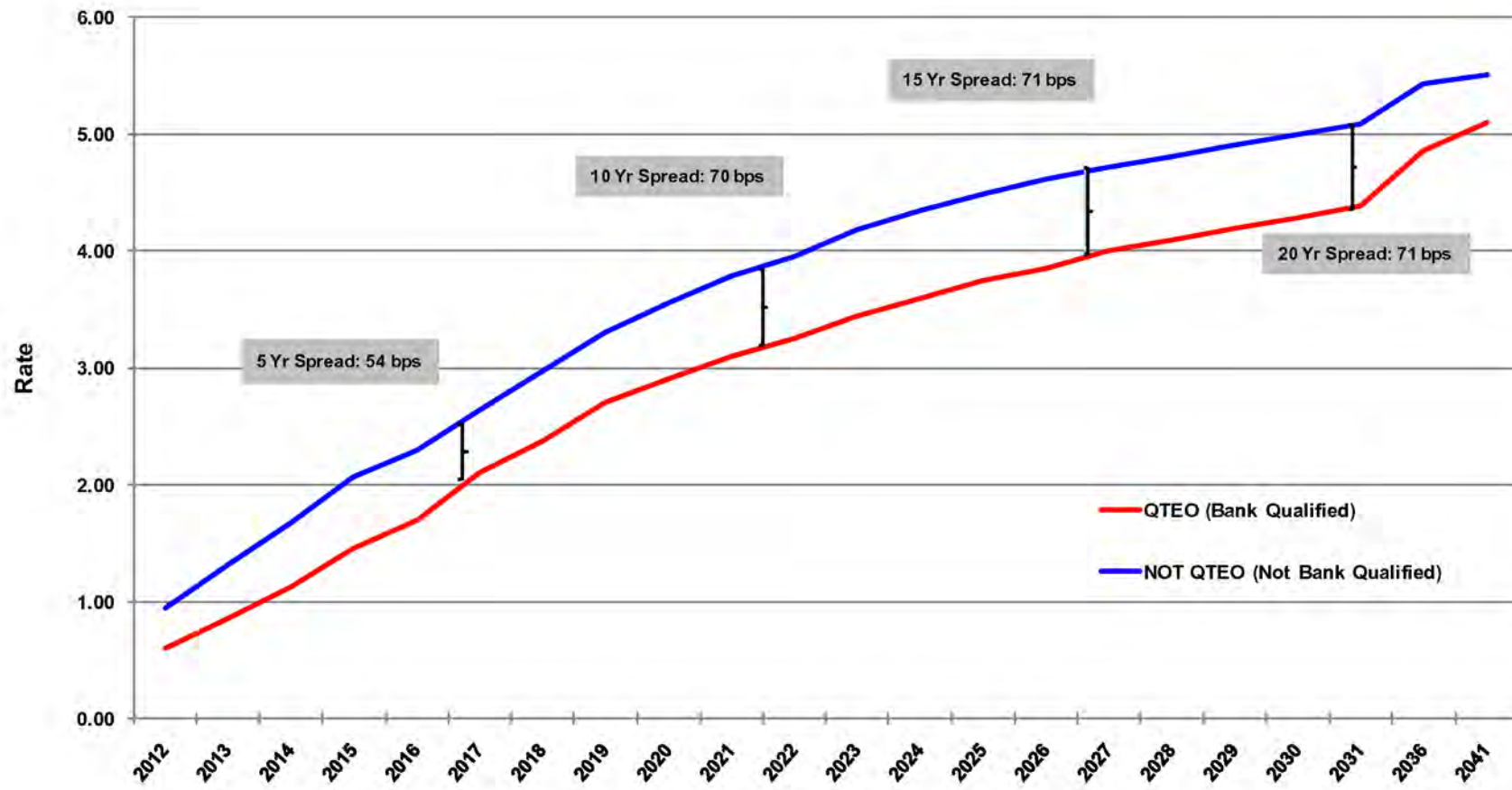
- Maturities 2013 through 2022 will be callable on 2/15/12, current market conditions warrant discussion about sale timing.

Market Conditions



TOMBALL, TX

Tax Exempt Yield Curve – BQ vs. Non-BQ Pricing



*City Insured "A" underlying as of May 6, 2011

Refunding Results – Bank Qualified Issuance*

- Maintain Bank Qualified issuance status by only refunding maturities 2015-2022
 - Tax-Exempt Fire Truck lease of \$750,000 counts against annual BQ issuance limitation in calendar year 2011

	BQ
Refunding Type	Advance
Closing Date	July 2011
Scenario	1
Par Refunded	\$ 8,690,000
Refunded Maturities	2015-2022
Savings %	7.405%
Net PV Savings	\$ 643,494
Negative Arbitrage	\$ 142,929
TIC	3.031%

*Assumes BQ, uninsured market rates as of May 10, 2011

Structure Considerations

- Non Bank Qualified vs. Bank Qualified Issuance
 - BQ rates are more favorable than Non-BQ in current market
 - BQ limitation is \$10,000,000 per calendar year
 - Refund only select callable maturities of Series 2002 in order to comply with annual limitation while taking into account the Fire Truck Lease (\$750,000)
- Timing of Sale
 - Maturities 2013-2022 are callable February 15, 2012
 - Advance refundable now
 - Approximately three weeks of preparation time required
- Market Changes Daily
 - Unable to predict future market rates

Parameter Sale

- Council delegates final pricing authority to Price Officer(s)
- Council establishes bond sale parameters:
 - Maximum Interest Rate
 - Minimum Savings Threshold for Refunding
 - Aggregate Principal Amount of Issue
 - Final Maturity Date
 - Expiration of Delegated Authority
 - *6 Months*
- Pricing Officer(s) can only approve sale if Council parameters are met
- Reason for Parameter Bond Sale = FLEXIBILITY
 - Bond issue is in “Day-to-Day” mode meaning that bonds can be priced at any time and in an interest rate environment that is advantageous rather than being locked into pricing on the date of a Council meeting.

Proposed Timetable*

May-11							Jun-11							Jul-11						
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7				1	2	3	4					1	2	
8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9
15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16
22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23
29	30	31					26	27	28	29	30			24	25	26	27	28	29	30
														31						

Completion Date	Event	Responsibility
Mon - May 16	City Council Meeting: Refunding Presentation to Council	City
Tues - May 17	Circulate Draft of Preliminary Official Statement (POS)	FA
Tues - May 24	Comments due on 1st Draft of POS	FWG
Wed - May 25	Circulate 2nd Draft of POS	FA
	Mail Credit Packages to rating agency and insurance companies	FA
Week of May 30	Rating Call	City, FA
Wed - June 1	Comments due on 2nd Draft of POS	FWG
Mon - June 6	City Council Meeting: Approve sale parameters, Select Underwriter, Adopt Ordinance Authorize preparation of Official Statement (OS) after award	City
Wed - June 8	Receive Rating	FA
Thurs - June 9	Print and Distribute POS	FA
Tues - June 14	***Potential Pricing Date*** Pricing Officer Awards Bonds to Underwriters	City
Wed - June 15	Circulate draft of OS	FA
Thurs - June 16	Submit transcript of proceedings to Attorney General	BC
Mon - June 20	Comments due on OS	FWG, UW
	Print and mail OS	FA
Tues - July 5	Circulate Closing Memo	FA
Tues - July 12	Closing	FWG, UW

*Preliminary, subject to change.

Symbol Key		
FWG	Finance Working Group	Includes the City, BC & FA
BC	Bond Counsel	Vinson & Elkins LLP
FA	Financial Advisor	First Southwest Company
UW	Underwriter	TBD

SAVINGS

City of Tomball, Texas
 General Obligation Refunding Bonds, Series 2011
 Preliminary - For Discussion Purposes Only
 FSC Desk Scale as of 5.10.11
 BQ, Uninsured, 'Aa3/AA-'
 Advanced Refunding
 Scenario 1

Date	Prior Debt Service	Prior Receipts	Prior Net Cash Flow	Refunding Debt Service	Savings	Present Value to 07/12/2011 @ 3.2127909%
09/30/2011	209,768.75	209,768.75				(611.98)
09/30/2012	419,537.50		419,537.50	356,438.61	63,098.89	60,989.54
09/30/2013	419,537.50		419,537.50	349,075.00	70,462.50	66,068.15
09/30/2014	419,537.50		419,537.50	348,075.00	71,462.50	64,909.03
09/30/2015	1,485,012.50		1,485,012.50	1,416,275.00	68,737.50	60,629.05
09/30/2016	1,435,281.25		1,435,281.25	1,363,400.00	71,881.25	61,560.75
09/30/2017	1,379,306.25		1,379,306.25	1,307,837.50	71,468.75	59,374.14
09/30/2018	1,327,768.75		1,327,768.75	1,255,125.00	72,643.75	58,554.18
09/30/2019	1,274,875.00		1,274,875.00	1,205,200.00	69,675.00	54,460.16
09/30/2020	1,220,625.00		1,220,625.00	1,148,100.00	72,525.00	54,993.88
09/30/2021	1,166,375.00		1,166,375.00	1,096,500.00	69,875.00	51,391.56
09/30/2022	1,112,125.00		1,112,125.00	1,040,400.00	71,725.00	51,175.22
	11,869,750.00	209,768.75	11,659,981.25	10,886,426.11	773,555.14	643,493.68

Savings Summary

PV of savings from cash flow	643,493.68
Net PV Savings	643,493.68

SOURCES AND USES OF FUNDS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
Preliminary - For Discussion Purposes Only
FSC Desk Scale as of 5.10.11
BQ, Uninsured, 'Aa3/AA-'
Advanced Refunding
Scenario 1

Dated Date 07/01/2011
Delivery Date 07/12/2011

Sources:

Bond Proceeds:	
Par Amount	8,670,000.00
Accrued Interest	9,165.90
Premium	391,106.00
	9,070,271.90

Other Sources of Funds:	
Transfer from Debt Service Fund	209,768.75
	9,280,040.65

Uses:

Refunding Escrow Deposits:	
Cash Deposit	10.38
SLGS Purchases	9,105,828.00
	9,105,838.38

Other Fund Deposits:	
Accrued Interest	9,165.90

Delivery Date Expenses:	
Cost of Issuance	100,000.00
Underwriter's Discount	60,690.00
	160,690.00

Other Uses of Funds:	
Additional Proceeds	4,346.37
	9,280,040.65

SUMMARY OF REFUNDING RESULTS

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
Preliminary - For Discussion Purposes Only
FSC Desk Scale as of 5.10.11
BQ, Uninsured, 'Aa3/AA-'
Advanced Refunding
Scenario 1

Dated Date	07/01/2011
Delivery Date	07/12/2011
Arbitrage yield	2.817265%
Escrow yield	0.070466%
Bond Par Amount	8,670,000.00
True Interest Cost	3.031037%
Net Interest Cost	3.117647%
Average Coupon	3.663837%
Average Life	6.947
Par amount of refunded bonds	8,690,000.00
Average coupon of refunded bonds	4.884100%
Average life of refunded bonds	7.088
PV of prior debt to 07/12/2011 @ 3.212791%	9,762,844.33
Net PV Savings	643,493.68
Percentage savings of refunded bonds	7.404991%
Percentage savings of refunding bonds	7.422072%

SUMMARY OF BONDS REFUNDED

City of Tomball, Texas
General Obligation Refunding Bonds, Series 2011
Preliminary - For Discussion Purposes Only
FSC Desk Scale as of 5.10.11
BQ, Uninsured, 'Aa3/AA-'
Advanced Refunding
Scenario 1

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Combination Tax & Revenue Certificates of Obligation, Series 2002, 2002:					
SERIAL	02/15/2015	4.500%	1,090,000.00	02/15/2012	100.000
	02/15/2016	4.625%	1,090,000.00	02/15/2012	100.000
	02/15/2017	4.750%	1,085,000.00	02/15/2012	100.000
	02/15/2018	4.750%	1,085,000.00	02/15/2012	100.000
	02/15/2019	5.000%	1,085,000.00	02/15/2012	100.000
	02/15/2020	5.000%	1,085,000.00	02/15/2012	100.000
	02/15/2021	5.000%	1,085,000.00	02/15/2012	100.000
	02/15/2022	5.000%	1,085,000.00	02/15/2012	100.000
			8,690,000.00		

BOND DEBT SERVICE

City of Tomball, Texas
 General Obligation Refunding Bonds, Series 2011
 Preliminary - For Discussion Purposes Only
 FSC Desk Scale as of 5.10.11
 BQ, Uninsured, 'Aa3/AA-'
 Advanced Refunding
 Scenario 1

Period Ending	Principal	Interest	Debt Service	Annual Debt Service
02/15/2012	20,000	186,651.11	206,651.11	
08/15/2012		149,787.50	149,787.50	356,438.61
02/15/2013	50,000	149,787.50	199,787.50	
08/15/2013		149,287.50	149,287.50	349,075.00
02/15/2014	50,000	149,287.50	199,287.50	
08/15/2014		148,787.50	148,787.50	348,075.00
02/15/2015	1,130,000	148,787.50	1,278,787.50	
08/15/2015		137,487.50	137,487.50	1,416,275.00
02/15/2016	1,105,000	137,487.50	1,242,487.50	
08/15/2016		120,912.50	120,912.50	1,363,400.00
02/15/2017	1,085,000	120,912.50	1,205,912.50	
08/15/2017		101,925.00	101,925.00	1,307,837.50
02/15/2018	1,070,000	101,925.00	1,171,925.00	
08/15/2018		83,200.00	83,200.00	1,255,125.00
02/15/2019	1,060,000	83,200.00	1,143,200.00	
08/15/2019		62,000.00	62,000.00	1,205,200.00
02/15/2020	1,045,000	62,000.00	1,107,000.00	
08/15/2020		41,100.00	41,100.00	1,148,100.00
02/15/2021	1,035,000	41,100.00	1,076,100.00	
08/15/2021		20,400.00	20,400.00	1,096,500.00
02/15/2022	1,020,000	20,400.00	1,040,400.00	1,040,400.00
	8,670,000	2,216,426.11	10,886,426.11	10,886,426.11

City of Tomball, Texas
Refunding Analysis
 Debt Service Effect - Post Series 2011 Refunding

	Series 2002			Less: 2002 Certificates (maturities 2015-2022)			Series 2002 - Post Refunding			Plus: Series 2011 Refunding Bonds*			Net Effect on Debt Service		
	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total
8/15/2011	-	281,436.25	281,436.25	-	209,768.75	209,768.75	-	71,667.50	71,667.50	-	-	-	-	71,667.50	71,667.50
2/15/2012	1,090,000.00	281,436.25	1,371,436.25	-	209,768.75	209,768.75	1,090,000.00	71,667.50	1,161,667.50	20,000.00	186,651.11	206,651.11	1,110,000.00	258,318.61	1,368,318.61
8/15/2012	-	258,273.75	258,273.75	-	209,768.75	209,768.75	-	48,505.00	48,505.00	-	149,787.50	149,787.50	-	198,292.50	198,292.50
2/15/2013	1,090,000.00	258,273.75	1,348,273.75	-	209,768.75	209,768.75	1,090,000.00	48,505.00	1,138,505.00	50,000.00	149,787.50	199,787.50	1,140,000.00	198,292.50	1,338,292.50
8/15/2013	-	234,293.75	234,293.75	-	209,768.75	209,768.75	-	24,525.00	24,525.00	-	149,287.50	149,287.50	-	173,812.50	173,812.50
2/15/2014	1,090,000.00	234,293.75	1,324,293.75	-	209,768.75	209,768.75	1,090,000.00	24,525.00	1,114,525.00	50,000.00	149,287.50	199,287.50	1,140,000.00	173,812.50	1,313,812.50
8/15/2014	-	209,768.75	209,768.75	-	209,768.75	209,768.75	-	-	-	-	148,787.50	148,787.50	-	148,787.50	148,787.50
2/15/2015	1,090,000.00	209,768.75	1,299,768.75	1,090,000.00	209,768.75	1,299,768.75	-	-	-	1,130,000.00	148,787.50	1,278,787.50	1,130,000.00	148,787.50	1,278,787.50
8/15/2015	-	185,243.75	185,243.75	-	185,243.75	185,243.75	-	-	-	-	137,487.50	137,487.50	-	137,487.50	137,487.50
2/15/2016	1,090,000.00	185,243.75	1,275,243.75	1,090,000.00	185,243.75	1,275,243.75	-	-	-	1,105,000.00	137,487.50	1,242,487.50	1,105,000.00	137,487.50	1,242,487.50
8/15/2016	-	160,037.50	160,037.50	-	160,037.50	160,037.50	-	-	-	-	120,912.50	120,912.50	-	120,912.50	120,912.50
2/15/2017	1,085,000.00	160,037.50	1,245,037.50	1,085,000.00	160,037.50	1,245,037.50	-	-	-	1,085,000.00	120,912.50	1,205,912.50	1,085,000.00	120,912.50	1,205,912.50
8/15/2017	-	134,268.75	134,268.75	-	134,268.75	134,268.75	-	-	-	-	101,925.00	101,925.00	-	101,925.00	101,925.00
2/15/2018	1,085,000.00	134,268.75	1,219,268.75	1,085,000.00	134,268.75	1,219,268.75	-	-	-	1,070,000.00	101,925.00	1,171,925.00	1,070,000.00	101,925.00	1,171,925.00
8/15/2018	-	108,500.00	108,500.00	-	108,500.00	108,500.00	-	-	-	-	83,200.00	83,200.00	-	83,200.00	83,200.00
2/15/2019	1,085,000.00	108,500.00	1,193,500.00	1,085,000.00	108,500.00	1,193,500.00	-	-	-	1,060,000.00	83,200.00	1,143,200.00	1,060,000.00	83,200.00	1,143,200.00
8/15/2019	-	81,375.00	81,375.00	-	81,375.00	81,375.00	-	-	-	-	62,000.00	62,000.00	-	62,000.00	62,000.00
2/15/2020	1,085,000.00	81,375.00	1,166,375.00	1,085,000.00	81,375.00	1,166,375.00	-	-	-	1,045,000.00	62,000.00	1,107,000.00	1,045,000.00	62,000.00	1,107,000.00
8/15/2020	-	54,250.00	54,250.00	-	54,250.00	54,250.00	-	-	-	-	41,100.00	41,100.00	-	41,100.00	41,100.00
2/15/2021	1,085,000.00	54,250.00	1,139,250.00	1,085,000.00	54,250.00	1,139,250.00	-	-	-	1,035,000.00	41,100.00	1,076,100.00	1,035,000.00	41,100.00	1,076,100.00
8/15/2021	-	27,125.00	27,125.00	-	27,125.00	27,125.00	-	-	-	-	20,400.00	20,400.00	-	20,400.00	20,400.00
2/15/2022	1,085,000.00	27,125.00	1,112,125.00	1,085,000.00	27,125.00	1,112,125.00	-	-	-	1,020,000.00	20,400.00	1,040,400.00	1,020,000.00	20,400.00	1,040,400.00
	11,960,000.00	3,469,145.00	15,429,145.00	8,690,000.00	3,179,750.00	11,869,750.00	3,270,000.00	289,395.00	3,559,395.00	8,670,000.00	2,216,426.11	10,886,426.11	11,940,000.00	2,505,821.11	14,445,821.11

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Approve Professional Services Agreement with Rydan & Associates, LLC in the Amount of \$125,000 for Engineering Services related to the Master Drainage Plan.

Background:

City Council approved and budgeted funds for the Capital Improvement Project Master Drainage Plan for \$125,000. This plan will evaluate the City's existing storm drainage network, assess existing and proposed future drainage facility needs, and identify needed improvements based on projected future system demands. The plan will utilize the land use projections provided in the Comprehensive Plan to determine projected growth.

Origination:

Engineering and Planning

Recommendation:

Engineering and Planning Department recommend approval of the professional service contract for the Master Drainage Plan.

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

Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Professional Services Agreement
Scope of Work
2007 City of Tomball Floodplain Map

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
MASTER DRAINAGE PLAN
E&P Project Number: 2011-10007**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT made on the _____ day of _____, 2011 entered into, and executed by and between the City of Tomball, Texas (the "City"), a municipal corporation of the State of Texas, and Rydan & Associates LLC. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to develop a master drainage plan for the City of Tomball (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to evaluate the City's existing storm drainage network, assess existing and proposed future drainage facility needs, and identify needed improvements based on projected future system demands, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional civil engineering and professional land surveying;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional engineering services as defined in Attachment "A" attached hereto and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in Section VII.

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a professional and workmanlike manner. It is expressly

understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City.

SECTION III OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same.

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Work is 365 (Calendar) days beginning from the execution date of this Agreement. Upon written request of Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Attachment "A," up to an amount not to exceed \$125,000 (includes reimbursables).

SECTION VIII TERMINATION

The City may terminate this Agreement at any time by giving written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a sworn statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer for such services performed under this Agreement as those services bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, maps, studies, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Engineer at the following address:

Rydan & Associates LLC
12514 Bent Pine Drive
Cypress, Texas 77429
Attn: John Laser, PE, CFM

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
501 James Street
Tomball, Texas 77375
Attn: City Engineer

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Engineer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or any public body which may be a party hereto.

SECTION XII MODIFICATIONS

This instrument, including Attachment "A," contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. To the extent there is a conflict between the provisions of this Agreement and the provisions of Attachment "A," this Agreement shall control. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the City.

SECTION XIV CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

SECTION XV PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

SECTION XVI INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Attachment "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence of performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Contractor further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

IN WITNESS WHEREOF, the City of Tomball has lawfully caused this Agreement to be executed by the City Manager of said City and attested by the City Secretary and _____, acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this _____ day of _____, 2011.

ENGINEER:

Rydan & Associates LLC

By: _____
Name: John Laser, PE, CFM
Title: Principal

CITY OF TOMBALL, TEXAS

George Shackelford, City Manager

ATTEST:

Doris Speer, City Secretary

ATTACHMENT "A"
SCOPE OF SERVICES
AND
BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

ATTACHMENT “B”

INSURANCE

RYDAN & ASSOCIATES LLC

April 27, 2011

Ms. Lori Lakatos, P.E., CFM
Acting City Engineer
City of Tomball
501 James Street
Tomball, Texas 77375

Re: City of Tomball Master Drainage Plan – Statement of Work

Dear Ms. Lakatos:

Thank you for the opportunity to provide you with this proposed statement of work for Tasks 1 and 2 of the City of Tomball Master Drainage Plan. The objective of Task 1 will be to delineate flood-prone areas within the city limits of Tomball, not currently identified as Zone AE on the FEMA FIRM, and to establish building elevation guidance for development within those areas. The need for such information is provided for in Section 38-6 (b), "*Basis for establishing flood-prone areas*", of Chapter 38, "Flood Damage Prevention" of the City of Tomball Code of Ordinances (Ordinance 2010-16). The primary product of Task 1 will be a GIS-based map of the delineated flood-prone areas along with associated elevation guidance for each area.

Task 2 is proposed to address the objectives of the Tomball Master Drainage Plan as presented in the 2010 Tomball Capital Improvements Plan and the 2009 Tomball Comprehensive Plan.

Specific work elements to be accomplished in order complete the objectives of Tasks 1 and 2 are listed for your review in Attachment "A", Scope of Work. Certificates of Insurance are included as Attachment "B".

Please do not hesitate to contact me at 281-970-8085 if you wish to discuss this subject further. Thank you for the opportunity to serve the City of Tomball.

Sincerely,

John A. Laser, PE, CFM
Principal

Attachment A

City of Tomball Master Drainage Plan, Task 1 Flood-Prone Areas Scope of Work

1. Project Startup Meeting

- Include consultant and selected City staff
 - Identify potential flood-prone areas to be delineated (areas upstream of FIS limits for M124-00-00, M125-00-00, M121-00-00, M225-00-00, and other areas to be determined)
 - Identify available existing data to provide basis for delineation
 - Discuss alternative procedures for delineating flood-prone areas
 - Determine organization for GIS mapping layers
- [Note: It is expected that the flood-prone areas to be delineated may be established prior to this meeting in order to estimate the cost of completing Task 1]

2. Review Existing Hydraulic Data for potential flood-prone areas

- Obtain and review current FIS water surface elevation profiles for studied channels
- Obtain and review existing engineering studies relevant to potential flood-prone areas
- If necessary, obtain hydraulic models for FIS channels

3. Review HCFCD Overland Flow and Ponding Data

- Obtain electronic files from HCFCD or AECOM
- Discuss methodology with Anthony Holder of AECOM
- Add layer file(s) to Tomball GIS
- Determine if and/or how information may be used to delineate flood-prone areas

4. Delineate Flood-Prone Areas

- Compile relevant data for each proposed flood-prone area
- Use 2008 LiDAR contours and other relevant information to establish perimeter of each flood-prone area
- Estimate 100-year and 500-year flood elevations for proposed flood-prone areas

5. Map Flood-Prone Areas

- Create GIS layer(s) with areas identified along with elevation data, if possible, displayed in a manner similar to the FIRM
- Add layers to the Tomball GIS. The flood-prone area layers will be compatible with the DFIRM layers for Tomball.
- Print hard copy maps (number, scale, border, and other details to be determined)

EXHIBIT A

City of Tomball Master Drainage Plan, Task 2 Drainage Plan Scope of Work

1. Project Organization Meeting (to occur concurrent with Task 1 activities)
 - Include consultant and selected City staff
 - Establish criteria for evaluating existing drainage network
 - Determine priority of drainage areas to be assessed
 - Identify available existing data to provide basis for assessment
 - Discuss potential methodologies to be employed in assessment process
 - Discuss organization for GIS mapping layers
 - Review or establish naming criteria for drainage areas and network components. The criteria should mesh with the naming convention employed by HCFCD for drainage system channels
2. Establish Existing Drainage Areas and Network
 - Obtain and review available information on Tomball area drainage network
 - Update or create drainage network GIS layers
 - Delineate existing drainage areas
3. Evaluate Existing Drainage Areas and Network
 - Assess drainage areas qualitatively based on criteria developed in Item #1
 - Assess drainage network qualitatively based on criteria developed in Item #1
 - Discuss results of network evaluation with HCFCD
 - Categorize drainage areas and network based on evaluation findings
 - Add information to storm drainage GIS
4. Assess Proposed Drainage Improvements
 - Identify and review proposed improvements to the existing drainage network
 - Evaluate potential impact of proposed improvements on qualitative assessment of existing drainage areas and network
 - Add information to storm drainage GIS
5. Assess Future Drainage System Needs
 - Identify, delineate and map potential drainage areas based on the 2009 Tomball Comprehensive Plan
 - Determine if any adjustments should be made to the 2009 Plan projections based on the 2010 Census and available information from H-GAC or others
 - Develop potential drainage system alternatives in coordination with HCFCD planning for this area of Harris County.
 - Map potential drainage system alternatives into GIS
 - Share results with stakeholders (TBD) and solicit comments

EXHIBIT A

City of Tomball Master Drainage Plan, Task 2, continued Drainage Plan Scope of Work

- Revise alternatives based on review comments and update GIS
6. Publish Report of Storm Drainage System Assessment
- Report will document purpose and methodology
 - Report will concisely present the results of the evaluation of the existing, proposed, and future needs drainage areas and network
 - Report will be supported by maps created from the GIS
 - Report will list recommendations for near-term and long-term actions based on the results of the assessment and stakeholder input

[End of Task 2]

Task 3 is recommended as a quantitative assessment of priority existing and future drainage system improvements identified during Task 2. The assessment will evaluate existing infrastructure with regard to the standards presented in the City of Tomball Stormwater Drainage Regulations. System upgrades requirements will be identified and cost estimates produced.

Based on the perceived severity of need for improvements to the existing system, it is conceivable that some Task 3 activity might occur during the duration of Task 2. Depending on the resources available and methodology selected to conduct Task 3 activities, completion of this task is indefinite but could encompass several budget cycles. The prioritization of drainage system needs to be developed within Task 2 will provide guidance for assigning quantitative assessment of selected drainage areas and network components under Task 3 in future budget periods.

Given the broad scope of the master planning effort, it is recommended that the planning process remain flexible to address the most immediate needs of the city of Tomball.

EXHIBIT A

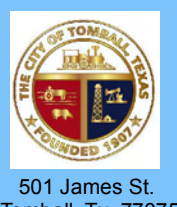
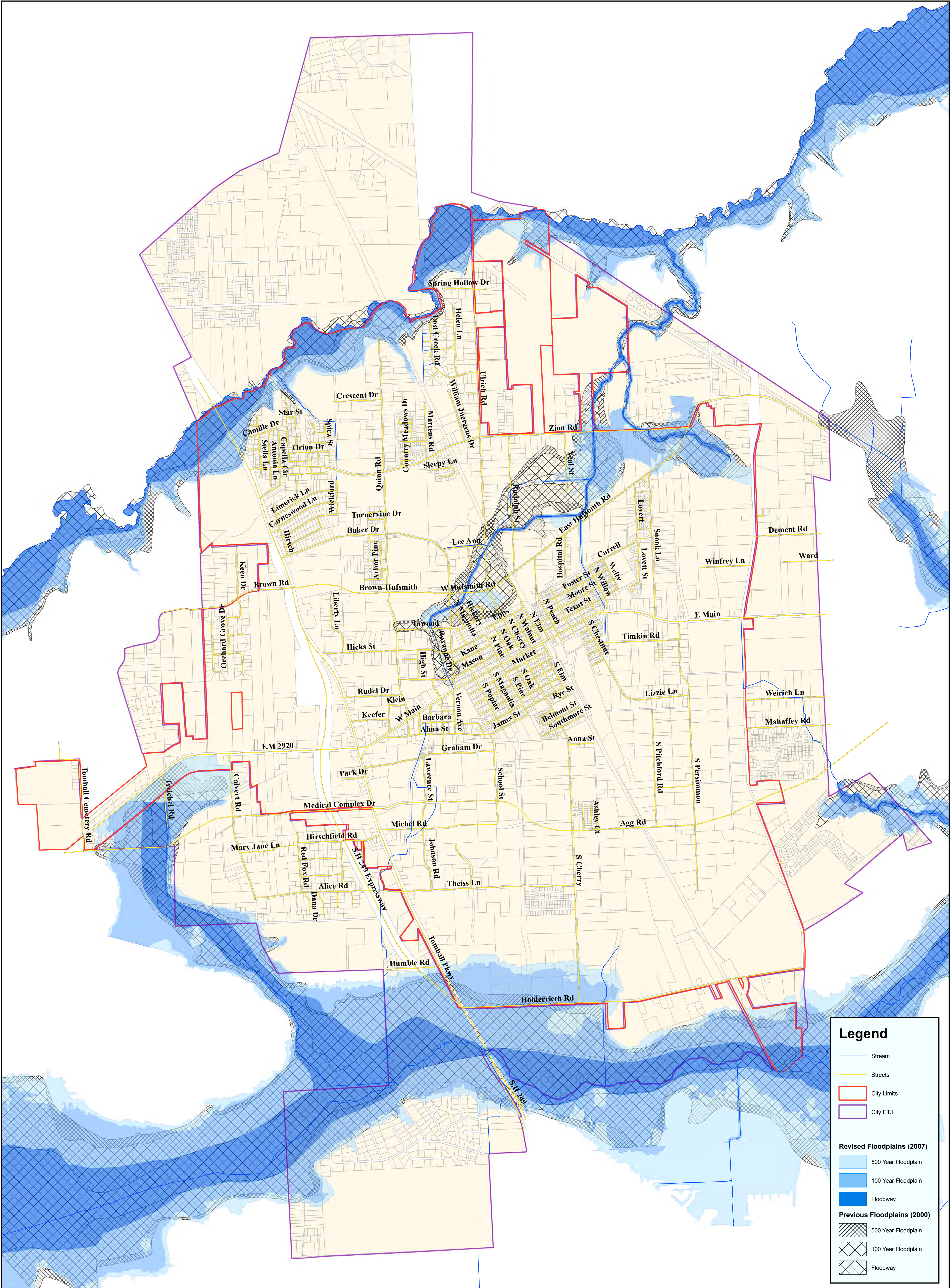
City of Tomball Master Drainage Plan Engineer's Compensation

Monthly compensation for services rendered by the Engineer will be based on hours worked and task items accomplished as supported by documentation submitted with the monthly invoice submitted to the City Engineer. The hourly rate of compensation for tasks performed by John A. Laser is \$125.00. Compensation will also include reasonable expenses, including mileage to be charged at the federally approved rate for income tax purposes, and other items approved by the City Engineer.

Any work to be subcontracted under this agreement is subject to approval of the City Engineer. Subcontractor costs are to be paid by the Engineer and billed under this agreement with a surcharge of 10% if the Subcontractor cost to reflect the administrative cost of the subcontract. Any proposed subcontract agreement will be provided to the City Engineer for review and approval prior to signature/acceptance of the agreement by the Engineer. All subcontractor invoice documentation will be provided to the City Engineer along with the Engineer's monthly invoice.

The total reimbursement to be paid under the contract for amounts billed by the Engineer, including all Subcontractor costs and any other reimbursables, shall not exceed \$125,000 as noted in Section VII of the contract document.

REVISED FEMA FLOODPLAIN



This is not an official FEMA Flood Insurance Rate Map (FIRM). This is for information purposes only and allows the user the Revised Preliminary FEMA Floodplains.

The Revised FEMA Floodplain is effective as of June 18, 2007.



0 2,000 4,000 8,000 12,000 Feet

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Approve Request to Change the Tomball Police Department's Table of Organization by Adding Two (2) Police Officer Position Authorities.

Background:

Approximately five years ago, the Tomball Police Department (TPD) terminated the Interlocal Agreement with the Tomball Independent School District (TISD) and, in doing so, ceased to provide Student Resource Officer (SRO) services at Tomball High School (THS). After this decision was made, it became evident that this was a poor decision; however, the TISD had made alternate arrangements with the Harris County Constables Office, Precinct Four (HCCO) to provide contract SRO services to the high school.

During the past three years, members of the TPD have worked tirelessly to build what has become an exceptional partnership between the TPD, HCCO, and TISD. We have worked well together, shared information, and have improved education and safety at Tomball High School. This being said, it has been fully recognized by the TPD, members of the community, and City Council that it simply made good sense for the TPD to provide SRO services to Tomball schools. To this end, TPD executive staff, have maintained to both the HCCO and TISD that if there was ever an opportunity for the TPD to once again provide SRO services at THS, we would be ready, willing, and able to do so.

Recently, the HCCO came to the TPD and explained that they would no longer be able to provide SRO services at Tomball High School. Shortly thereafter, the TISD came to us and asked if we would be willing to not only provide SRO coverage in the high school, but district-wide.

This creates an incredible opportunity for the TPD as well as TISD. By assuming SRO duties district-wide we will be able to ensure the highest levels of coordination, communication, support, and service to the students, staff, faculty, and parents of the entire TISD. In doing so, we will greatly enhance the connection between all who have any association with the TISD and the City of Tomball.

The current SRO program has consisted of one (1) officer for the past five years. In order to fully support the program district-wide it will require the addition of three (3) officers. This can be accomplished by dedicating one full-time (currently vacant) position (previously an SRO position) that will be filled by a part-time officer who will transition to full-time status, and by the addition of two (2) full-time police officer positions. This will enable the TPD to maintain current levels of community service, while providing the highest levels of service to TISD. It will also result in better community relations internally and externally, as well as better communication and intelligence gathering capabilities department-wide. This transition costs will be as follows:

Year One (Actual Cost to Expand SRO Program):

This is based on insurance coverage for one single officer, and one with family coverage. The "base" salary range is used since the two "new" officers will be hired at base pay:

\$184,476.00 Additional paid by TISD for FY11-12, verses FY10-11

-\$136,213.00 Salary and Benefits Expense (two new officers)
-\$20,000.00 Uniforms and Equipment Expense (two new officers)
-\$38,000.00 Vehicle Expense (purchase)

-\$194,213.00 Total Year One Cost (\$9,737 first year deficit)

Total SRO Program Cost Years Two-Five at Full Strength (Four Officers):

This is based on insurance coverage for two single officers, and two with family coverage. The “mid” salary range is used since officers assigned as SROs will typically have 4-8 years of service:

\$245,965.00 Total paid by TISD for four SRO Positions

-\$309,892.00 Salary and Benefits Expense
-\$20,000.00 Uniforms and Equipment Expense (four existing officers)
-\$6,500.00 Vehicle Expense (amortized for future vehicle replacement)
-\$90,427.00 Total Cost Per Year (half this cost is built into current budget)

Of the total cost, half is currently is built into the FY10-11 budget, thus making the adjusted cost to maintain a district-wide SRO Program an additional \$45,214.00 per year. It should be noted that by enhancing the SRO program as recommended, the city will realize the benefit of all four officers during an unusual occurrence/crisis situations, as well as 312 days (30%) of dedicated police officer service to the city.

Origination:

Robert S. Hauck, Chief of Police

Recommendation:

It is recommended that the City Council approve a change to the Tomball Police Department's Table of Organization by adding two additional full-time police officer positions.

Funding: Yes

Account Number: 100-121-6003

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

Robert S. Hauck, Chief of Police

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

FY11-12 Supplemental Request and Officer Pay

CITY OF TOMBALL		Supplemental Request Name:	Police Officer Positions
SUPPLEMENTAL PROGRAM REQUEST		Priority Number:	One
FOR FISCAL YEAR:	2012	Department Number:	121
DEPARTMENT NAME:		Account Number:	100-121-6003
Police Department			

DESCRIPTION OF SUPPLEMENTAL PROGRAM: *(PLEASE INCLUDE ACCOUNT NUMBER)*
Add two additional police officer positions to the Tomball Police Department's Table of Organization. These two positions will fill the gap experienced due to the assumption of responsibility for admistration of the Tomball Independent School District (TISD) Student Resource Officer (SRO) Program.

GOALS OF SUPPLEMENTAL PROGRAM:
Add two police officer positions to due to the assumption of TISD SRO Program. This will enable us to maintain our current levels of community service, while providing the highest levels of quality service to the students, faculty, staff, and parents of the TISD. It will also result in better community relations internally and externally, as well as better communication and intelligence gathering capabilities department-wide. This will be beneficial to both the TISD and the City, fact that the TISD contract will pay for three officers (salary and benefits) at approximately 70% time (total revenue of \$184,476), while the TPD will only add two new officers for those selected to fill the SRO positions, and one will result from the dedicaiton of a currently vacant postion. The first year expense to the city will be approximately \$136,213 (salary and benefits). This expense will increase to \$154,946 in approximately six years based on historical average pay/cost of living raises.

ALTERNATIVES IF NOT FUNDED:
If not funded the TPD will only be able to support a portion of the TISD Schools and the TISD will be forced to either create their own ISD Police department, in which case the TPD will be removed from all schools; or the TISD will contract all or some of the remaining schools to another law enforcement agency.

SUPPLEMENTAL PROGRAM REQUIREMENTS:
Once in place the complete four-officer SRO program will cost the city approximately \$90,427.00 per year, with have of that incorporated in the current budget, thus the adjusted cost will be approximately 45,214.00 per year. It should be noted that by enhancing the SRO program as recommended, the city will realize the benefit of all four officers during an unusual occurrence/crisis situation, as well as 312 (30%) days of dedicated police officer service to the city.

FINANCIAL:

	Recurring	Non-Recur.	Total
Revenues:	\$ 184,476	\$ -	\$ 184,476
Cost:	\$ 136,213	\$ 58,000	\$ 194,213
Net Cost:	\$ (48,263)	\$ 58,000	\$ 9,737

Please save with a new name and submit via email by May 9th.

SUPPLEMENTAL PROGRAM CHANGE REQUEST - PAGE 2																														
FOR FISCAL YEAR:	2012	Supplemental Request Name:	Police Officer Positions																											
Priority Number:	One	Department Number:	121																											
REVENUES: <table style="width: 100%; margin-left: 400px;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;">Recurring</th> <th style="text-align: right;">Non-Recur.</th> <th style="text-align: right;">Total</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: right;">\$ 184,476</td> <td></td> <td style="text-align: right;">\$ 184,476</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$ -</td> </tr> <tr> <td style="text-align: right;">Total</td> <td style="text-align: right;">\$ 184,476</td> <td style="text-align: right;">\$ -</td> <td style="text-align: right;">\$ 184,476</td> </tr> </tbody> </table>								Recurring	Non-Recur.	Total		\$ 184,476		\$ 184,476				\$ -				\$ -				\$ -	Total	\$ 184,476	\$ -	\$ 184,476
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PERSONNEL REQUIREMENTS:		Only fill in green colored blocks		One Person	Add'l People Same Rate	Total all People																								
Salary :	Rate/Hour:		Hours (annual)**:	-	\$ -	\$ -																								
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(Full Time Position = 2080 annual hours)				\$ -	\$ -	\$ -																								
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Longevity :	Per Month	x	\$5	\$ -	\$ -	\$ -																								
FICA Taxes :	Annual Salary	x	0.0765	\$ -	\$ -	\$ -																								
Health & Dental Ins.:	Annually	x		\$ -	\$ -	\$ -																								
Number of ADDITIONAL People at the same hourly rate and the same annual hours:																														
Annual Total:				\$ -	\$ -	\$ -																								
** Hours less than 2080 annually will be considered part-time (no benefits).																														
OPERATIONAL COSTS:																														
Description:	Account Number:			Recurring	Non-Recur.	Total																								
Salary	100-121-6003			86,362.00	-	\$ 86,362.00																								
TMRS	100-121-6022			12,886.00	-	\$ 12,886.00																								
FICA/MED/SS	100-121-66021			6,606.00	-	\$ 6,606.00																								
Health Insurance	100-121-6024			27,513.00	-	\$ 27,513.00																								
WC/Unemploy Tax	100-121-6025			2,846.00	-	\$ 2,846.00																								
Uniforms and Equip	100-121-6026			-	20,000.00	\$ 20,000.00																								
SRO Vehicles	100-121-6106			-	38,000.00	\$ 38,000.00																								
Total				#####	\$58,000.00	\$194,213.00																								
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Description:	Account Number:			Recurring	Non-Recur.	Total																								
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Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Approve the 2011-2012 Interlocal Agreement between the City of Tomball and the Tomball Independent School District (TISD), affording the Tomball Police Department the ability to assign a Student Resource Officers (SRO) to TISD Campuses.

Background:

The purpose of this Interlocal Agreement is to insure that adequate services are provided to TISD as well as to define the scope of the duties and responsibilities of all interested parties. The officers assigned to TISD under this agreement will function as a SRO at Tomball High School, Tomball Memorial High School, Tomball Junior High School, and Willow Wood Junior High School, as well as teach a drug prevention program to students at the intermediate level.

The agreement is good for the duration of the 2011-2012 school year and will be renegotiated each year thereafter. This is the renewal of the 2009-2010 agreement that expired at the end of the past school year.

The costs associated with these SRO positions are reimbursed to the City as a 70% work equivalent (187 days) to cover the regular school year. Total payment to City of Tomball from TISD for the coming year will be \$245,965.00.

Origination:

Robert S. Hauck, Chief of Police

Recommendation:

It is recommended that the City of Tomball enter into this Interlocal Agreement with the Tomball Independent School District.

Funding: Yes

Account Number: 100-121-6003

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

Robert S. Hauck, Chief of Police

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

SRO ILA

INTERLOCAL AGREEMENT

(Student Resource Officer)

1. PARTIES

1.1. The Parties to this Agreement are City of Tomball (“City”), a body corporate and politic under the laws of the State of Texas, and TOMBALL INDEPENDENT SCHOOL DISTRICT (“the Contractor”).

2. PURPOSE

2.1. The Contractor wants the Chief of Police of the City of Tomball, Texas, to authorize and direct four (4) law enforcement officers to each devote 187 days of their working time, “working time” being defined as eight (8) hours per day, to the Contractor. The law enforcement officer referenced above will be referred to collectively as “extra officers” whether one or more.

3. TERM OF THE AGREEMENT

3.1. The term of this Agreement begins on August, 1, 2011, and ends on July 31, 2012, unless terminated sooner in accordance with Section 7.

4. CITY’S RIGHTS AND OBLIGATIONS

4.1. City agrees to authorize the Chief of Police to appoint the extra officer effective at the beginning of the contract term, so as to enable (but not require) the Chief of Police to appoint the extra officer to devote 187 days of his/her working time to Tomball Independent School District facilities (“the area”). As used herein, the phrase “working time devoted to the area” means the usual or normal hours that extra officer is required to work in any calendar month and does not include any extra or overtime work. The time the extra officer is on duty within the area, the time the extra officer is in court in connection with cases arising out of events occurring within the area, the time the extra officer spends preparing reports and documents pertaining to events occurring in the area, the time the extra officer spends in making preparations to provide law enforcement in the area, the time the extra officer spends transporting persons arrested in the area to jail, the time the extra officer spends investigating crimes or possible crimes committed in the area, are deemed working time devoted to the area. The activities listed above are explanatory and the meaning of “working time devoted to the area” is not limited to those activities.

4.2. Contractor understands and agrees that if the Chief of Police appoints the extra officer to the area, the Chief of Police retains the control and supervision of the extra officer to the same extent as he does other officers.

4.3. The extra officer assigned in accordance with this Agreement shall perform the duties as assigned by the Contractor, subject to the control and supervision of the Chief of Police and the City of Tomball. The rules, regulations, procedures, and policies of the City shall govern the performance of duties rendered pursuant to this agreement.

4.4 The Contractor shall provide an office, a networked computer, and general office supplies needed for the extra officers to perform their Student Resource Officer duties. The Chief of Police shall supply all equipment necessary to perform police functions and services.

5. CONTRACTOR'S PAYMENT OBLIGATION

5.1. The Contractor agrees to pay the City of Tomball the sum of TWO HUNDRED FORTY FIVE THOUSAND NINE HUNDRED SIXTY FIVE DOLLARS (\$245,965.00) to contract police services, or to be used by the City of Tomball for the purpose of supplementing the cost to the City for supplying the law enforcement services, including salaries and any additional expenses the City may incur in providing the services for a period of 187 days beginning the 20th day of August, 2011. Contractor must make payments on the total sum in installments, which are due and payable, without demand, on or before the following dates in the amounts set forth:

Nine (9) payments of \$27,329.44, due on the 20th of each month, first payment due September 20, 2011.

5.2. If the term of this Agreement is terminated at any time other than at the end of a semester, payments under this Contract shall be prorated.

5.3. Contractor understands and agrees that if the City does not receive the payments within thirty (30) days of the date due, the City is authorized to terminate this Agreement without further notice. Further, City's failure to make demand for payments due is not a waiver of Contractor's obligation to make timely payments.

6. CITY'S PREROGATIVE TO APPOINT EXTRA OFFICERS

6.1. Contractor understands and agrees that this Agreement is not intended (nor shall it be construed) to obligate the Chief of Police in any manner whatsoever to assign the extra officer to devote any portion of his/her working time to the area. However, if for any reason the extra officer does not devote substantially 187 days of his/her full-time equivalent working time to the area during the term of this Agreement, then the Contractor is obligated to pay the City only a proportionate part of the total sum identified above. If the amount paid by the Contractor to City of Tomball exceeds the proportionate part, the Contractor is entitled to a refund from City of Tomball of the excess amount paid.

7. TERMINATION AND DEFAULT

7.1. Prior to the expiration of the term, either Party is authorized to terminate this Agreement without cause by giving to the other party at least thirty (30) days advance written notice of its intention to do so, specifying therein the effective date of such termination.

8. NOTICE

8.1. Any notice permitted or required to be given to City of Tomball hereunder may be given by registered or certified United States Mail, postage prepaid, return receipt requested, addressed to:

Tomball Police Department
Attn: Chief of Police
400 Fannin Street
Tomball, Texas 77375

Any notice permitted or required to be given to Contractor hereunder may be given by registered mail or certified United States Mail, postage prepaid, return receipt requested, addressed to:

Tomball Independent School District
Attn: Superintendent
221 West Main Street
Tomball, Texas 77375-5595.

Notice shall be deemed given upon deposit of the notice in the United States Mail as aforesaid.

8.2. Either Party may designate a different address by giving at least ten (10) days written notice in the manner provided above.

9. MISCELLANEOUS

9.1. The terms and provisions of this Contract constitute the entire Agreement between the City and the Contractor, and no modification of this Contract is effective unless in writing and executed by both parties.

SIGNED in duplicate originals this _____ day of _____ 2011.

APPROVED AS TO FORM:

City of Tomball

ATTEST:

By:
Doris Speer
City Secretary

By:
Gretchen Fagan
Mayor

Tomball Independent School District

ATTEST:

By:
Kit Pfeiffer
Director of Administrative Services

By:
John Neubauer
Superintendent

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Interlocal Agreement between the City of Tomball and the Tomball Independent School District, affording the Tomball Police Department the ability to provide police services on a contractual basis for specialized events occurring before, during and after the normal campus hours.

Background:

The purpose of this Interlocal Agreement is to ensure that clear and concise guidelines are established and set in place to address the specific and individual needs of the Tomball Independent School District (TISD) pertaining to event security. The Interlocal Agreement affords the officers of the Tomball Police Department the ability to provide police related services for specialized events occurring before, during, and after normal campus hours.

This Interlocal Agreement covers the 2011-2012 school year and sets the payment terms. Full-time officers are paid directly by the TISD, and part-time officer pay is reimbursed to the City. All mileage costs are fully reimbursed to the City.

This is a renewal of the 2010-2011 agreement.

Origination:

Robert S. Hauck

Recommendation:

It is recommended that the City of Tomball enter into this Interlocal Agreement with the Tomball Independent School District.

Funding: Yes

Account Number: 100-121-6108

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Ofcr and Veh ILA

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Executive Session: The City Council and the Tomball Economic Development Corporation 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

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

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

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

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

Regular City Council

Agenda Item

Data Sheet

Meeting Date: May 16, 2011

Topic:

Consideration and Possible Action to Direct the City Manager to Make an offer on Approximately 120 Acres of Land Generally Located at the Northwest Corner of Hufsmith-Kohrville and Holderrieth Roads, Tomball, TX, 77375, for Purposes of Projects related to the Creation or Retention of Primary Jobs subject to Tomball Economic Development Corporation Financing and Preparation of a Memorandum of Understanding regarding the Tomball Economic Development Corporation Designation of such Project

Background:

The established policy of the Tomball Economic Development Corporation is to endeavor to attract industry, create and retain primary jobs, and enhance the growth of the City of Tomball. As such, the Tomball Economic Development Corporation Board of Directors desires to work with the City of Tomball to develop projects that meet such policy and thereby enhance the economic stability and growth of the City.

Origination:

Tomball Economic Development Corporation

Recommendation:

Approval of the request to authorize the City Manager to make an offer on approximately 97.5 acres of land generally located at the northwest corner of Hufsmith-Kohrville and Holderrieth Roads.

Funding:

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

Kelly Violette, Executive Director, Tomball Economic Development Corporation

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	