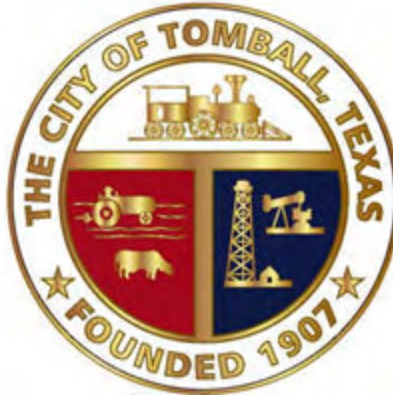


**NOTICE OF REGULAR CITY COUNCIL MEETING  
CITY OF TOMBALL, TEXAS**



**MONDAY, DECEMBER 20, 2010**

**7:00 P.M.**

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 20, 2010 at 7:00 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 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 Kenny Rodgers, Anointed Faith Family Church

3.0 Pledges to U.S. and Texas Flags

- Led by Members of the Tomball High School Student Council

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

5.0 Presentations:

- Proclamation proclaiming Monday, December 20, 2010 as ***“Tomball High School Junior Varsity Red Team Football Day”***

6.0 Reports and Announcements

- December 23-24, 2010 – **Christmas Holiday – City offices will be closed**
- December 31, 2010 – **New Year’s Day Holiday – City offices will be closed**
- January 8, 2011 – **2nd Saturday at the Depot – 5:00 p.m.**
- January 25, 2011 – **2nd Annual Boards and Commission Recruitment Reception – 5:30 p.m.-7:00 p.m.**
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
  - Mark McClure - Update on Quinn Road Sidewalks

7.0 Approve the Minutes of the following Meetings:

- December 6, 2010 Regular City Council Meeting
- December 13, 2010 Special Tomball City Council and Tomball Planning and Zoning Commission Meeting

8.0 Old Business:

- 8.1 Discussion and Possible Action regarding Chapter 54, Peddlers and Solicitors, of the Code of Ordinances of the City of Tomball, Texas

9.0 New Business:

- 9.1 Approve, as a Project of the Corporation, an Agreement with the City of Tomball to Make Direct Incentives to, or Expenditures for, the Expansion and Development of Medical Complex Drive in the City of Tomball. The Estimated Amount of Expenditures for such Project is \$850,000.
- 9.2 Approve, as a Project of the Corporation, an Agreement with the City of Tomball to Make Direct Incentives to, or Expenditures for, the Improvements to MLK Park Located on Chestnut Street in the City of Tomball. The Estimated Amount of Expenditures for such Project is an Amount not to Exceed \$6,500.
- 9.3 Approve, as a Project of the TEDC, an Agreement with Hole Specialists Inc. to Make Direct Incentives to, or Expenditures for, the Creation or Retention of Primary Jobs and that are found by the Board of Directors to be Required or Suitable for the Development, Retention, or Expansion of Manufacturing and Industrial Facilities: to wit: Hole Specialists Inc.’s Expansion and Development of its Manufacturing Facility located at 27950 Commercial Park Road, Tomball, Texas. The Estimated Amount of Expenditures for such Project is \$75,000.

- 9.4 Approve a Grant Funding Amendment to the Albers Properties, LP - TEDC Agreement, which was approved by the TEDC Board at its Regular Board Meeting on December 1, 2009
- 9.5 Executive Session: The City Council will meet in Executive Session, with the Tomball Economic Development Corporation, as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purpose(s):
- Section 551.072 Deliberation regarding the Purchase of Real Property where Deliberation in Open Session would have a Detrimental Effect on the Position of the City in its Negotiations.
- 9.6 Approve Request from the Klein Family to Abandon a Portion of Klein Road and to Authorize the City Manager to provide a Letter from the City of Tomball to the Veterans Administration, Expressing the City's Willingness to Abandon and Close a Portion of Klein Road
- 9.7 Approve Resolution No. 2010-23, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 5, 2011
- 9.8 Appoint Member to Fill Vacancy and Complete Unexpired Term on Planning and Zoning Commission
- 9.9 Approve Professional Services Agreement with Partners for Strategic Action (PSA) for the Preparation of a Downtown Specific Plan (DSP) in an Amount not to exceed \$177,400.00.
- 9.10 Approve Professional Services Agreement with Kimley-Horn and Associates, Inc. in the Amount of \$20,000 for Consulting Services related to the Feasibility Study of the Capital Improvements Project titled, Parking - Three Downtown Parking Lots.
- 9.11 Approve **FOUR CORNERS SUBDIVISION FINAL PLAT**: Being a subdivision of 15.7493 acres of land including a partial replat of reserve "E" of Tomball Park, Vol. 335, Pg. 109 M.R.H.C. and being out of the John M. Hooper Survey, Abstract No. 375 in Tomball, Harris County, Texas.
- 9.12 Approve **PARTIAL REPLAT OF TOMBALL REGIONAL HOSPITAL NO. 1**; 12.8478 acres located in the William Hurd Survey, A-378, Harris County, Texas, City of Tomball, Texas; Being a Replat out of Tomball Regional Hospital Reserve "A", Block 4, Vol. 424, Pg. 128, M.R.H.C.T.
- 9.13 Approve Maintenance Agreement for North Star Estates Soldier Pile Improvements in the Public Right of Way of the J133-00-00, Ditch M, with Partners in Building, L.P.

9.14 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):

- Section 551.071 Consultation with Attorney regarding the following matters:
  - A. Demands related to a slope failure at 31422 Rigel Court
  - B. Status of land acquisition for lift station from Peter Hildreth
  - C. Possible civil action to enforce ordinance regarding construction of building and use of land at 30702 State Highway 249

9.15 Authorize City Attorney to Initiate Civil Action to Enforce City Ordinance regarding Construction of Building and Use of Land at 30702 State Highway 249

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 17th day of December 2010 by 4:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer

City Secretary, TRMC

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

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

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### Topic:

- Proclamation proclaiming Monday, December 20, 2010 as *“Tomball High School Junior Varsity Red Team Football Day”*

#### Background:

#### Origination:

Councilman Stoll

#### Recommendation:

N/A

#### Funding:

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

City Secretary

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

#### ATTACHMENTS:

Proclamation - THS JV Red Team Football Day

Office of the Mayor  
Tomball, Texas

# Proclamation



- WHEREAS,** the 2010 football season will be remembered as the year that **the Tomball High School Junior Varsity Red Football Team won the District 13-5A Championship;** and
- WHEREAS,** the **THS Junior Varsity Red Cougars** finished 5-2 in league play to tie Klein Oak for first place, claiming the title due to their victory against the Klein Oak JV Black Panthers; and
- WHEREAS,** the **Tomball High School JV Red Cougars** defeated Klein Oak (26-20), Klein (41-28), and Klein Forest (28-0) to finish the season; and
- WHEREAS,** **Tomball Independent School District** and the **City of Tomball** wish to honor the sportsmanship and tenacity exhibited by the members of the **Tomball High School Junior Varsity Red Team**, as well as the guidance and leadership of their parents, managers, coaches, trainers, officials, referees, and teachers; and
- WHEREAS,** **Tomball Independent School District** and the **City of Tomball** wish to congratulate the members of the **Tomball High School Junior Varsity Red Football Team**, along with the managers, coaches, trainers, officials, parents, referees, and countless others who have worked together to make this a successful football season;

**NOW, THEREFORE, I, GRETCHEN FAGAN, Mayor** of the City of Tomball, do hereby proclaim Monday, December 20, 2010 as:

**“TOMBALL HIGH SCHOOL  
JUNIOR VARSITY RED TEAM FOOTBALL DAY”**



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

ATTEST:

DATE:

*Dani Spurr*

*December 14, 2010*

# Regular City Council

## Agenda Item

## Data Sheet

Meeting Date: December 20, 2010

### Topic:

- December 23-24, 2010 – **Christmas Holiday – City offices will be closed**
- December 31, 2010 – **New Year's Day Holiday – City offices will be closed**
- January 8, 2011 – **2nd Saturday at the Depot – 5:00 p.m.**
- January 25, 2011 – **2nd Annual Boards and Commission Recruitment Reception – 5:30 p.m.-7:00 p.m.**
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
  - Mark McClure - Update on Quinn Road Sidewalks

### Background:

### Origination:

Various

### Recommendation:

N/A

### Funding:

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

City Secretary

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

### ATTACHMENTS:

Annual Board and Commission Recruitment Reception

# ALL ABOARD!

FREE REGISTRATION & FOOD

*Please join us for our 2nd Annual Boards and Commissions Recruitment Reception. Come meet and greet current Board members and register to be a potential member of a Tomball Board!*

*Date: Tuesday, January 25, 2011*

*Time: 5:30—7:30 P.M.*

*Location: Tomball Community Center  
221 Market St.*

*Be sure not to miss your opportunity to  
“Get on a Board” or Commission and serve on  
your community “train”!*



ONE TICKET PER PASSENGER

# Regular City Council Agenda Item Data Sheet

Meeting Date: December 20, 2010

**Topic:**

Approve the Minutes of the following Meetings:

- December 6, 2010 Regular City Council Meeting
- December 13, 2010 Special Tomball City Council and Tomball Planning and Zoning Commission Meeting

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

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

**ATTACHMENTS:**

Draft Minutes - 12/6/2010 Regular Council Meeting

Draft Minutes - 12/13/2010 Special Joint Council and Planning and Zoning

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



**MONDAY, DECEMBER 6, 2010**

**7:00 P.M.**

**1.0 Call to Order**

The 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 Klierer  
City Secretary – Doris Speer  
City Attorney – Scott Bounds  
Finance Director – Glenn Windsor  
Fire Chief – Randy Parr  
Police Chief – Robert Hauck  
Director of Engineering and Planning – Mark McClure  
City Planner – Kelly Violette  
Assistant to City Manager – Shawn Cox

**draft**

- 2.0** The invocation was led by Pastor Larry Trendell, Youth Minister, ChristBridge Fellowship Church
- 3.0** Pledges to the U. S. and Texas flags were led by Cooper Cason and Robert Tirso, members of the THS Student Council.

4.0 The following public comments were received.

- |                                                   |                                                                                                                                                           |
|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lamar Barr<br>14100 Medical Complex Dr., 77377    | - Expressed his enthusiasm for in interest in serving on the newly created Tourism Advisory Committee                                                     |
| Beverly Leday<br>503 Garrett Drive, 77354         | - Expressed her enthusiasm for in interest in serving on the newly created Tourism Advisory Committee                                                     |
| Ron Tocci<br>27004 Decker Prairie-Rosehill, 77355 | - Expressed his enthusiasm for in interest in serving on the newly created Tourism Advisory Committee                                                     |
| Rodney Hutson<br>9431 Rosie Lane, 77355           | - Expressed his enthusiasm for in interest in serving on the newly created Tourism Advisory Committee; will probably require more than quarterly meetings |
| Ken Shuman<br>611 Clayton St., 77375              | - Expressed his enthusiasm for in interest in serving on the newly created Tourism Advisory Committee                                                     |
| Jeffie Cappadonna<br>12727 Zion Road, 77375       | - Expressed her enthusiasm for in interest in serving on the newly created Tourism Advisory Committee                                                     |
| Holly Cook<br>12303 Westlock Dr., 77377           | - Expressed her enthusiasm for in interest in serving on the newly created Tourism Advisory Committee                                                     |
| Mary Harvey<br>405 S. Walnut                      | - Could not attend; email expressing her interest in serving on the newly created Tourism Advisory Committee was read into the record                     |
| Bruce Hillegeist<br>29201 Quinn, 77375            | - Introduced Jade Gilbo, 2011 Miss Tomball, to City Council                                                                                               |
| Jade Gilbo<br>2011 Miss Tomball                   | - Thanked everyone for their support during the upcoming year.                                                                                            |

5.0 Presentations:

- Mayor Fagan presented a proclamation proclaiming Monday, December 6, 2010 as “***We Believe – Tomball High School Cougar Football Team Day***” to Coach Tommy Kaiser
- Mayor Fagan presented the Certificate of Achievement for Excellence in Financial Reporting to the Finance Department, awarded by the Government Finance Officers Association to the City of Tomball for its Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2009 to Glenn Windsor, on behalf of the Finance Department.

6.0 Reports and Announcements:

- December 11, 2010 – **2<sup>nd</sup> Saturday at the Depot – 5:00 p.m. – Unveiling of the Beckendorf Statue (Farmer)**
- December 11-12, 2010 – **German Christmas Market**
- December 13, 2010 - Special Joint City Council and Planning and Zoning Commission Meeting - 6:00 p.m., City Hall
- December 23-24, 2010 – **Christmas Holiday** – City offices will be closed
- December 31, 2010 – **New Year's Day Holiday** – City offices will be closed
- **Walk Tomball!** (Every Saturday at 9:00 a.m. at the Depot)
- Reports by City staff and members of Council about items of community interest on which no action will be taken
  - ♦ George Shackelford provided an update on Proposed 2011 MS 150 Bike Ride for the Multiple Sclerosis Association.

7.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the minutes of the November 15, 2010 Regular City Council Meeting.

Motion carried unanimously.

8.0 Old Business

8.1 Rob Hauck presented an overview of the proposed Ordinance. Motion was made by Councilman Townsend, second by Councilman Dodson, to adopt, on Second Reading, Ordinance No. 2010-24, an Ordinance Amending Chapter 42, "Heath and Sanitation", of the Code of Ordinances of the City of Tomball, Texas, by Adding a New Article VI. "Prohibited Smoking Paraphernalia and Smoking Products", Providing for Severability; Establishing a Penalty up to \$200 per Offense; and Providing an Effective Date. 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.

8.2 Rob Hauck presented an overview of the proposed Ordinance Motion was made by Councilman Townsend, second by Councilman Stoll, to adopt, on Second Reading, Ordinance No. 2010-25, an Ordinance Amending Chapter 78, Traffic and Vehicles, of the Code of Ordinances of the City Council of the City of Tomball, Texas, by Adding a New Section 78-73, "Use of Certain Wireless Communication Devices While Driving

Prohibited”; Regulating the Use of Wireless Communication Devices while Operating Motor Vehicles; Providing a Penalty in an Amount Not to Exceed \$200 for Each Violation Hereof; and Providing for Severability; and Making Other Provisions and Findings Related Thereto. 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 recommendations regarding appointments for each position on the newly created Tourism Advisory Committee. Motion was made by Councilman Dodson, second by Councilman Brown, to appoint Ken Shuman, Mary Harvey, Jeffie Cappadonna, Holly Cook, Beverly Leday, Rodney Hutson, Kevin Lala, Lamar Barr, and Ronald Tocci to Positions 1 through 9 on the Tourism Advisory Committee, as presented and recommended by Mayor Fagan.

Motion carried unanimously.

- 9.2 Craig Bogner, Tomball Rotary, presented an overview of the proposed request from the Rotary to sell beer and wine during the annual Tomball Rotary Fish Fry in Juergens Park. Motion was made by Councilman Stoll, second by Councilman Dodson to approve the request from Tomball Rotary Club to allow the sale of beer and wine in Juergens Park during the 40th Annual Tomball Rotary Fish Fry, to be held in April 2011, providing that a temporary T.A.B.C. permit is obtained and City requirements are met. Vote was as follows:

|                     |            |
|---------------------|------------|
| 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> |

Motion carried, 4 votes Aye, 1 vote Nay.

- 9.3 George Shackelford introduced Dan Dompier, who presented the proposed Brandt Exploration Property Development Plan at Hufsmith-Kohrville Road and Proposed Medical Complex Drive. No action necessary.

- 9.4 Randy Parr presented an overview of the proposed Interlocal Agreement. Motion was made by Councilman Townsend, second by Councilman Brown, to approve renewal of the Interlocal Agreement for Fire Protection Services between the City of Tomball and Harris County Emergency Services District No. 15.

Motion carried unanimously.

- 9.5 George Shackelford presented an overview of the proposed information technology contract. Motion was made by Councilman Dodson, second by Councilman Townsend, to approve renewal of the Consulting Services Agreement with Waypoint Business Solutions, LLC, for Turn-key Outsourcing of Information Technology Services for the City of Tomball.

Motion carried unanimously.

- 9.6 Doris Speer provided information regarding possible changes to Chapter 54, Peddlers and Solicitors. Council requested additional information regarding more stringent restrictions to the hours of solicitation and adding a requirement for a copy of each vendor's sales tax certificate. City attorney and staff will provide additional information regarding Council requests. No action taken.

- 9.6 Executive Session: The City Council recessed at 8:30 p.m. to meet in Executive Session, as Authorized by Title 5, Chapter 551, Government Code, the Texas Open Meetings Act, for the Following Purposes:

Section 551.071 Consultation with Attorney regarding the following matters:

- A. Possible civil action to enforce ordinance regarding construction of building and use of land at 30702 State Highway 249;
- B. Pending litigation including: Kallus v. City, G. Singh Enterprises v. City, Kucharski v. City, and Cloud v. City; and
- C. Status of land acquisition for lift station from P. Hildreth.

Councilman Dodson advised the Mayor and Council that he would recuse himself from discussion and/or action regarding Items A. and C. during the Executive Session, due to a conflict of interest and that he had filed an Affidavit of Conflict of Interest with the City Secretary regarding the Executive Session.

Upon reconvening into Regular session at 9:18 p.m., no action was taken.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 20th day of December 2010.

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Doris Speer, TRMC  
City Secretary

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Gretchen Fagan  
Mayor

**MINUTES OF SPECIAL CITY COUNCIL AND  
TOMBALL PLANNING AND ZONING COMMISSION MEETING  
CITY OF TOMBALL, TEXAS**

**MONDAY, DECEMBER 13, 2010**



**6:15 P.M.**

**1.0 Call to Order**

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

Councilman Stoll  
Councilman Brown  
Councilman Townsend  
Councilman Dodson

Councilmembers absent:

Councilman Quinn

Planning and Zoning Commission members present:

Chair – Lori Wallace  
Vice Chair – Tom Crofoot  
Commissioner – Mary Harvey  
Commissioner – John Mottershaw (left at 7:00 p.m. to catch plane)  
Commissioner – Barbara Tague

Others present:

City Manager – George Shackelford  
City Secretary – Doris Speer  
City Attorney – Scott Bounds  
Finance Director – Glenn Windsor  
Director of Engineering and Planning – Mark McClure  
City Planner – Kelly Violette  
Assistant City Engineer – Lori Lakatos  
Assistant City Planner – Rodney Schmidt  
Director of Public Works – David Kauffman

**Draft**

Building Official – David Allen  
Code Enforcement Officer – Daniel Toombs  
Fire Marshal – Doug Sanguedolce  
Fire Inspector – Tommy Nicholson  
E&P Administrative Assistant – Brandy Pate

2.0 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 Commission discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.)*

3.0 Presentations:

- Meg Belmontes, of the Brick Industry Association, provided a presentation regarding masonry planning policies.

4.0 Workshop Session:

4.1 The Tomball City Council and the Tomball Planning and Zoning Commission members entered into a Workshop session for the following purposes:

A. Discussion of the Development Review Process and current codes

Mark McClure and Kelly Violette provided information regarding the City's development personnel, current development review processes, land-use regulations, current codes, and permitting and inspection processes.

Discussion was held regarding building across property lines, building set backs, boundary line adjustments, survey requirements, and associated costs to replat land. Council requested recommendations from the City Attorney and City staff regarding options to streamline the platting process, to provide a minor replatting process, and to facilitate development of property. Kelly Violette advised Council that a revised platting process for the Downtown Tomball area will be included in the scope of work for the Downtown Specific Plan proposal.

Mayor Fagan called a recess at 7:40 p.m.; upon reconvening into regular session at 7:49 p.m., the following workshop continued:

Discussion was held regarding factors that determine when a plat or replat is required for development of property, master plans and platting requirements for larger, more complicated developments, drainage concerns, application

and submittal processes for platting and zoning, approval of plats by the Planning and Zoning Commission versus City Council, recording and/or documenting meetings between City staff and developers, City staff's goals of assisting developers in meeting the code requirements, and the permitting processes.

The time being 8:45 p.m., no discussion was held regarding the Building Inspector and Fire Marshal departments processes and procedures; these reports will be presented to Council at a future date.

- B. No discussion was held regarding the review of Roles and Responsibilities of the Development Review Committee; this item will be considered at a future joint workshop.
- C. No discussion was held regarding the Zoning Ordinance (Ordinance 2008-01); this item will be considered at a future joint workshop:
  - 1. Discussion of possible changes to the Zoning Ordinance
  - 2. Discussion of Downtown Specific Plan Proposal

The Downtown Specific Plan proposal will be considered at a Special Joint Meeting of the City Council and the Planning and Zoning Commission on Monday, December 20, 2010, at 5:00 p.m.

5.0 Motion was made by Councilman Dodson, second by Councilman Townsend to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 20th day of December 2010.

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Doris Speer, TRMC  
City Secretary

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Gretchen Fagan  
Mayor

# Regular City Council

## Agenda Item

Meeting Date: December 20, 2010

## Data Sheet

### **Topic:**

Discussion and Possible Action regarding Chapter 54, Peddlers and Solicitors, of the Code of Ordinances of the City of Tomball, Texas

### **Background:**

City Council requested that an item be placed on the agenda to allow discussion and possible action regarding amendments to Tomball's Code of Ordinances, Chapter 54, Peddlers and Solicitors. On December 6, Council requested additional information regarding more stringent restrictions to the hours of solicitation and the City's authority to require a copy of each vendor's sales tax certificate.

Cities' regulations must be 'reasonable', must differentiate between the persons and practices involved and the constitutional rights that may be affected (freedom of speech and/or religion, a solicitor's Commerce Clause protections under the U. S. Constitution, and the homeowner's privacy and property rights), and "may not, broadly speaking, unreasonably discriminate against persons, infringe on personal fundamental rights, or interfere with interstate commerce when regulating street vending" (A.G. Opinion JC-0145 (1999), attached). Scott Bounds' email regarding door-to-door solicitation and "Green River" ordinances is also attached.

Tomball's current ordinance requires solicitors to leave the premises if requested to do so, prohibits solicitors from entering any private property with a posted sign stating "No Peddlers Allowed" or "No Solicitations Allowed", and limits hours of solicitation to between 8:00 a.m. and 9:00 p.m., except by specific appointment with or an invitation from the prospective customer. Individual property owners or tenants may prohibit solicitation on their properties by invoking his/her individual personal right to privacy. It is unlawful to engage in business as a peddler within the City without first obtaining a permit to do so; interstate vendors must register with the City Secretary. The City cannot collect license fees from solicitors who take orders in one state for goods to be delivered in the future from another state. Upon completion of the application process, the City Secretary's office issues individual permits to each vendor, with a photo of the individual on the permit, to aid citizens in verifying a peddler's identity and authorization to go door-to-door.

Possible changes to Chapter 54 include:

1. Adding to Section 54-32 or 54-33 a requirement that the applicant provide "a copy of the applicant's Texas sales tax permit, if applicable."
2. Council may choose to restrict the hours of solicitation from 9:00 a.m. to 7:00 p.m. or 8:00 p.m. on weekday evenings, possibly allowing solicitation from 9:00 a.m. to 9:00 p.m. on the weekends, and realizing that this time limitation may be successfully challenged in court as a violation of the First and Fourteenth Amendments to the U. S. Constitution (12/15/2010 email from Scott Bounds).
3. As a tie-in to the Zoning ordinance, deleting the following language in Section 54.1: "and also means and includes any person transacting a temporary business within the city at an established place of business" and adding a requirement that a person or persons transacting a temporary business within the city at an established place of business (for instance, in Lowe's or HEB's parking lot, not going door-to-door), must obtain a permit from the City's zoning administrator approving the site. The zoning administrator shall require the person/persons to establish the temporary business in a zoning district that permits such use and to submit a site plan in accordance with Section 12 of the Zoning Ordinance to ensure that the proposed use meets the City's zoning regulations and that the proposed use does not place the established place of business in non-compliance with the City's zoning regulations. If the zoning administrator rejects the application, no permit will be issued.

Summary

In general, cities may attempt to control the 'nuisance' aspects of a particular type of business but may not outlaw the activity completely. Cities' regulations should seek to protect residents' privacy rights in their homes and on their property and to protect residents from fraud and other crimes, without impacting other individuals' (solicitors/peddlers) constitutional rights. Tomball's ordinance appears to balance the rights of its citizens against the rights of individuals involved in door-to-door solicitations by restricting hours of solicitation, prohibiting solicitors from entering posted properties, and requiring solicitors to obtain, carry, and produce their permit and to leave private property upon request.

**Origination:**

City Council request.

**Recommendation:**

N/A

**Funding:**

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

City Secretary

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

**ATTACHMENTS:**

Chapter 54 - Peddlers and Solicitors

Email from Scott Bounds re Hours of Solicitation

Attorney General Opinion JC-0145

Email from Scott Bounds re Door-to-Door Solicitation 11-15-2010

Lani Williams\_Paper re Regulation of Evening Solicitation

## Chapter 54

### PEDDLERS AND SOLICITORS\*

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\* **Cross References:** Offenses and miscellaneous provisions, ch. 50.

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### ARTICLE I.

#### IN GENERAL

##### Sec. 54-1. Definitions.

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

*Peddler* means any person, whether a resident of this city or not, traveling from house to house, or from street to street, for the purpose of selling or soliciting for sale, goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and also means and includes any person transacting a temporary business within the city at an established place of business. The word "peddler" includes the terms "solicitor," "transient or itinerant merchant or vendor," or "transient or itinerant photographer."

(Code 1978, § 17-1)

**Cross References:** Definitions generally, § 1-2.

#### **Sec. 54-2. Exceptions to chapter.**

The provisions of this chapter shall not apply to the following:

- (1) Sales made to dealers or permanent merchants by commercial travelers selling in the usual course of business.
- (2) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law.
- (3) Bona fide residents of the state selling fruits, vegetables, dressed meats, fowl or farm products which were produced on land within the state, owned or controlled by such vendor.
- (4) Solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity within this city.

(Code 1978, § 17-2)

#### **Sec. 54-3. Refusing to leave.**

Any peddler who enters upon premises owned, leased or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises, shall be deemed guilty of criminal trespass and may be punished as provided in V.T.C.A., Penal Code § 30.05.

(Code 1978, § 17-3)

#### **Sec. 54-4. Use of public places.**

It shall be unlawful for any peddler to sell or solicit or take orders for or offer to sell or take orders for or display any goods, wares, merchandise, photographs, newspapers or magazines on any public square, park, street, road, highway or alley within the city without having first obtained a special events permit as provided in section 54-45.

(Code 1978, § 17-4)

#### **Sec. 54-5. Entrance to premises restricted.**

It shall be unlawful for any peddler to enter upon any private premises when the same are posted with a sign stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

(Code 1978, § 17-5)

#### **Sec. 54-6. Hours of operation.**

It shall be unlawful for any peddler to engage in the business of peddling within the city between the hours of 9:00 p.m. and 8:00 a.m. the following morning, except by specific appointment with or invitation from the prospective customer.

(Code 1978, § 17-6)

### **Sec. 54-7. Soliciting at intersections.**

(a) *Prohibition.* It shall be unlawful for any person to solicit funds, to advertise, or to distribute any item, either on foot or in automobiles, for any cause whatsoever, at any intersection or crossing of streets within the city limits, where, in the opinion of the police chief, such solicitation or distribution would cause the blocking of traffic so as to create a traffic hazard.

(b) *Exceptions.* If, in the opinion of the police chief, it would not create a traffic hazard for solicitation of funds and advertising at an intersection of streets within the city, the person desiring to solicit funds or to advertise, or to distribute any item at such intersections, shall first make an application for permission to do so by making the application at the city hall. The application shall set forth the name of the organization, the location of the intersection where such solicitation shall transpire and the length of time the proposed solicitation shall take place, not to exceed 48 consecutive hours. If the solicitation is to be done by a person under the age of 18 no such permit shall be issued unless such person shall have proper adult supervision as to be determined by the police chief. Any permit for the solicitation of funds shall be acquired prior to any actual solicitation and any such permit shall be good for one such solicitation period only and any further solicitation shall require an additional permit. Such permit should be signed by the police chief.  
(Code 1978, § 17-7)

### **Sec. 54-8. Misrepresentation.**

It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.  
(Code 1978, § 17-8)

### **Secs. 54-9--54-30. Reserved.**

## **ARTICLE II.**

### **PERMIT\***

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\* **Cross References:** Businesses generally, ch. 18.

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### **Sec. 54-31. Required.**

It shall be unlawful to engage in business as a peddler within this city without first obtaining a permit to do so unless such person is lawfully engaged in interstate commerce, in which case, such peddler shall obtain a license prior to engaging in business as a peddler within this city and such license shall be obtained by registering with the city secretary and providing information under oath to the city secretary. Prior to the issuance of the license to the peddler engaged in interstate commerce, the city secretary shall obtain all of the following information and any other information deemed pertinent and necessary by the city secretary. The information to be obtained shall be as follows:

- (1) Date of registration;

- (2) Name of registrant;
  - (3) Driver's license number;
  - (4) Date of birth;
  - (5) Social security number;
  - (6) Home address;
  - (7) Local address (if any);
  - (8) Name of the person represented, or through which orders to be solicited are cleared;
  - (9) Nature of items or services to be sold or solicited;
  - (10) Will payment or deposit be received in advance of final delivery;
  - (11) Has registrant ever been convicted of a felony of any nature or any other crime of moral turpitude in this state or any other state; if so, give place, date, and crime of which convicted; and
  - (12) Facts showing explicitly that the registrant is engaged in interstate commerce.
- (Code 1978, § 17-20)

**Sec. 54-32. Application.**

The application for a permit required by the provisions of this article shall state or contain the following:

- (1) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any state or federal law or municipal ordinance or code; the nature of the offense; the punishment or penalty assessed therefor, if previously convicted; and the place of conviction.
- (2) A written certificate of a practicing physician in the county, dated not more than five days prior to the date of filing the application, certifying that the physician has examined the applicant and has found him to be free of infectious, contagious or communicable diseases.
- (3) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.
- (4) The period of time the applicant wishes to engage in business within this city.
- (5) The local and permanent address of the applicant.
- (6) The local and permanent address and the name of the person, if any, that the applicant represents.

(7) The kind of goods, wares, merchandise or services in which the applicant wishes to engage in such business within the city.

(8) The last five cities or towns wherein the applicant has worked before coming to this city.

(9) Such other relevant information as may be required for the investigation of the applicant.

(Code 1978, § 17-21)

#### **Sec. 54-33. Driver's license.**

At the time of filing his application for a permit or a license required by this article, the applicant shall present his driver's license, if he has one, to the city secretary.

(Code 1978, § 17-22)

#### **Sec. 54-34. False information.**

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit or a license required by this article.

(Code 1978, § 17-23)

#### **Sec. 54-35. Fingerprints, photographs.**

At the time of making application for a permit required by this article, the applicant shall submit to fingerprinting and photographing by the chief of police.

(Code 1978, § 17-24)

#### **Sec. 54-36. Bond required.**

The application for a permit required by the provisions of this article shall be accompanied by a bond in the penal sum of \$1,000.00 signed by the applicant and signed, as surety, by some surety company authorized to do business in this state, conditioned for the final delivery of goods, wares, merchandise or services in accordance with the terms of any order obtained prior to delivery and also conditioned to indemnify any and all purchasers or customers for any and all defects in material or workmanship that may exist in the article sold by the principal of such bond, at the time of delivery, and that may be discovered by such purchaser or customer within 30 days after delivery, and which bond shall be for the use and benefit of all persons that may make any purchase or give any order to the principal on such bond, or to an agent or employee of such principal.

(Code 1978, § 17-25)

#### **Sec. 54-37. Fee.**

Before any permit shall be issued under the provisions of this article, the applicant therefor shall pay a fee, based upon the duration he desires to engage in business in the city, as follows:

(1) Per day . . . . . \$ 5.00

(2) Per week . . . . . 10.00

(3) Per month . . . . . 25.00

(4) Per three months . . . . . 50.00

(5) Per six months . . . . . 75.00

(6) Per 12 months . . . . . 100.00

(Code 1978, § 17-26)

**Sec. 54-38. Service of process.**

Before any permit shall be issued under this article, there shall also be filed with the city secretary an instrument in writing, signed by the applicant under oath, nominating and appointing the city secretary his true and lawful agent, with full power and authority to acknowledge service of notice of process for and on behalf of such applicant, and service of summons in any action brought upon the applicant's bond shall be deemed made when served on the city secretary.

(Code 1978, § 17-27)

**Sec. 54-39. Issuance.**

No permit or license shall be issued under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this chapter.

(Code 1978, § 17-28)

**Sec. 54-40. Limitation.**

No peddler's permit or license shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit or license whether acting for himself or as an agent or representative of another.

(Code 1978, § 17-29)

**Sec. 54-41. Contents of permit.**

Each permit or license issued under the provisions of this article shall be signed by the city secretary; shall be dated as of the date of its issuance; and shall state the duration or term of such permit or license on the face thereof. Any permit or license not dated and signed as herein provided, or which was issued in violation of this section, shall be void.

(Code 1978, § 17-30)

**Sec. 54-42. Display.**

Every peddler having a permit or license issued under the provisions of this article and doing business within the city shall display his permit or license upon the request of any person and failure to do so shall be deemed a misdemeanor.

(Code 1978, § 17-31)

#### **Sec. 54-43. Duration.**

Every permit or license issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit or license be issued for a period of time in excess of 12 months.

(Code 1978, § 17-32)

#### **Sec. 54-44. Revocation.**

Any permit or license issued under the provisions of this article may be revoked for the violation by the permittee or licensee of any applicable provision of this Code, state law or city ordinance. Upon such revocation, such permit or license shall immediately be surrendered to the city secretary and failure to do so shall be a misdemeanor.

(Code 1978, § 17-33)

#### **Sec. 54-45. Special event permit.**

(a) Special event means an activity which makes a significant contribution to the cultural, economic, or social welfare of the city.

(b) Notwithstanding other provisions of this Code, the city secretary may issue a special event permit to enable the holder to sell or distribute services or goods on public property during special events.

(c) A special event permit shall be issued for one day only. Events lasting more than one day shall require a separate permit for each day. An applicant or his agent shall be issued no more than five special event permits during any 12-month period. The time and location for which the permit is in effect shall be transcribed on the permit.

(d) An applicant for a special event permit shall file with the city secretary a written application upon a form provided for that purpose.

(e) An applicant for, or the holder of, a special event permit shall pay as a fee for the permit, which fee shall be used as rental for the use of public property, the sum of \$25.00 per day.

(f) After inspection or investigation, the city secretary shall approve or deny an application for a special event permit. If such application is approved, the city secretary shall issue a special event permit which shall state on its face the name of the person to whom it is granted and the expiration date. The city secretary shall designate on such permit the location or locations in which the special event permit holder is allowed to do business.

(g) The holder of a special event permit who fails to comply with the ordinances of the city or who violates any applicable laws, ordinances, or regulations of the city shall have the special event permit immediately revoked and such holder shall immediately return such special event permit to the city secretary.

(h) Except for the permitting requirements, the applicant for a special event permit and/or the holder

of a special event permit shall comply with all of the sections of this chapter.  
(Code 1978, § 17-34)

## Doris Speer

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**From:** Scott Bounds [SBounds@OlsonOlson.com]

**Sent:** Monday, December 13, 2010 6:49 PM

**To:** Doris Speer

**Cc:** Scott Bounds

**Subject:** hours of solicitation

Solicitors will argue that the most productive hours of canvassing are from 5:30 or 6:00 p.m. until 9:00 p.m. on weekday evenings, since the greatest number of people are home during those hours. One court has upheld a 6:00 pm restriction. *Westfall v. Board of Commissioners of Clayton County*, 477 F.Supp. 862 (ND GA 1979) (upheld an ordinance which prohibited soliciting and canvassing of private residences except between the hours of 9:00 a.m. and 6:00 p.m.) That court rested its decision in part on its finding that the plaintiffs were allowed to solicit during the weekend, and that public solicitation of those away from their homes on weekdays was available to the plaintiffs.

Other courts have, however, courts have struck down time limitations before 9:00 pm. See *City of Watseka v. Illinois Public Action Council*, 479 U.S. 1048, 107 S.Ct. 919 (US. 1987) (memo opinion affirming Court of Appeals for the Seventh Circuit decision that a city ordinance limiting door-to-door soliciting to the hours between 9 a.m. and 5 p.m., Monday through Saturday, violated the First and Fourteenth Amendments to the United States Constitution. 796 F.2d 1547 (1986)).

From Am Jur Peddlers Section 9:

The interpretation of the requirement that an ordinance be narrowly tailored to serve the government's legitimate interest has led to a split in the courts regarding the proper standard to apply to restrictions on the hours of door-to-door solicitation.[\[FN1\]](#) The position has been taken in one federal circuit that the requirement that an ordinance be narrowly tailored is merely a part of the second inquiry on the manner in which the regulation serves the government interest rather than a separate requirement, and therefore, a content neutral hours restriction on door-to-door solicitation or canvassing that serves a legitimate governmental interest need only leave open ample alternative channels for communication in order to be valid.[\[FN2\]](#)

Some courts have taken the position, however, that the analysis of whether a regulation is narrowly tailored requires a showing that there is both a significant relationship between the regulation and the governmental interest and that less restrictive alternatives are inadequate to protect the governmental interest.[\[FN3\]](#) This "least restrictive means" approach does not abrogate the requirement of ample alternative means, but rather adds the requirement that the means used in the regulation constitute the least restrictive alternative for achievement of the governmental interest.[\[FN4\]](#) In cases applying the "least restrictive means" approach, alternatives such as requiring a canvasser or solicitor to apply for a permit and provide identification, the enforcement of existing penal laws, the enforcement of trespass laws after a homeowner has indicated that a peddler is not welcome, and the requirement that solicitors obey "No Solicitation" signs, are often cited as less intrusive means of achieving legitimate governmental interests in crime prevention and protection of residents' privacy.[\[FN5\]](#)



Office of the Attorney General - State of Texas  
John Cornyn

November 16, 1999

The Honorable Bob Turner  
Chair, Committee on Public Safety  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

**Opinion No. JC-0145**

Re: Authority of a municipality to  
regulate or prohibit street vendors  
([RQ-0070-JC](#))

Dear Representative Turner:

On behalf of the City of Camp Wood, you request an opinion from this office with respect to a city's authority to regulate or prohibit street vendors. You inform us that the city desires a ruling on the legality of a city ordinance on vendor permits, and you specifically ask us the following questions:

Is it legal for a city to pass a city ordinance that restricts street vendors from selling in a city without a permit? If not, what restrictions can they impose?

May a city pass a city ordinance that requires a vendor to construct a permanent building with restrooms and parking?

May a city impose the above restrictions on a street vendor if he or she is state licensed and has a state tax number?

May a city pass a city ordinance that restricts a vendor from selling on private property?

Letter from Honorable Bob Turner, Chair, Committee on Public Safety, Texas House of Representatives, to Elizabeth Robinson, Office of the Attorney General (May 20, 1999) (on file with Opinion Committee) [hereinafter "Request Letter"]. You state: "Basically, I would like an opinion . . . as to what a city can do in regards to vendors on public and private property." *Id.* We limit our discussion and answers in this opinion to the general law relating to itinerant vendor regulation insofar as a Type A general-law city is concerned, keeping in mind the issues with which your questions apparently are concerned. We cannot in the opinion process determine the legality of any city ordinance regulating street vending or of any particular restriction on street vending.

**Municipal Authority**

The scope of a city's authority in general is determined by its organization as a

home-rule city or a general-law city. Unlike a home-rule city that possesses all powers not denied to it by statutes or the constitution so long as the city has incorporated those powers in its home-rule charter, a general-law city possesses only those powers expressly given to it by statutes or those necessarily implied therefrom. *See* Tex. Att'y Gen. Op. No. [JM-169](#) (1984) at 1-2; Tex. Att'y Gen. LO-90-14, at 1. The City of Camp Wood, we understand, is a Type A general-law city.<sup>(1)</sup>

A Type A city has the general authority to prohibit or regulate the sale of all or certain merchandise on all or certain parts of its city streets and sidewalks by ordinance based on its statutory authority to pass ordinances or police regulations, control streets and public places, and prohibit or regulate hawkers and peddlers. Section 51.001(1) of the Local Government Code, applicable to all cities, authorizes a city to adopt an ordinance, rule, or police regulation that is for good government, peace, or order of the municipality or for the trade and commerce of the municipality. *See* Tex. Loc. Gov't Code Ann. § 51.001(1) (Vernon 1999). Section 215.028 of the Local Government Code specifically authorizes a Type A city to designate and regulate market places, *see id.* § 215.028, and section 215.031 authorizes such a city to license, suppress, prevent, or otherwise regulate hawkers, peddlers, and pawnbrokers, *see id.* § 215.031. Further, section 311.002 of the Transportation Code gives all general-law cities exclusive control over their streets and alleys. *See* Tex. Transp. Code Ann. § 311.002 (Vernon 1999).

A Type A city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets and other public places by itinerant vendors. Under its statutory powers to pass ordinances and police regulations for good government, control streets and public grounds, and to control and regulate market places and hawkers and peddlers, in *Ex parte Hogg*, 156 S.W. 931 (Tex. Crim. App. 1913), the Court of Criminal Appeals held that the City of Weatherford could pass an ordinance prohibiting peddlers from selling articles in all or a portion of the city's public streets and squares. *See Hogg*, 156 S.W. at 932-33. Significantly, the court emphasized that the ordinance did not prohibit persons from following the occupation of peddling, but simply denied them the right to follow that occupation in the public streets and squares of the city. *See id.* at 933. Furthermore, the court said the ordinance did not discriminate against peddlers, but merely classified peddlers in a different category than other merchants, "which is perfectly proper and legitimate." *Id.* A long line of Texas cases have followed *Hogg*. *See, e.g., Ex parte Killam*, 162 S.W.2d 426 (Tex. Crim. App. 1942); *City of Waco v. O'Neal*, 33 S.W.2d 205 (Tex. Civ. App.-Waco 1930, writ ref'd) (upholding City of Waco's ordinance prohibiting barter and sale of farm products based on city's statutory and special charter powers to control its city streets and other public property) (and cases cited therein); *see also* Annotation, *Authorization, Prohibition, or Regulation by Municipality of the Sale of Merchandise on Streets or Highways, or Their Use for Such Purpose* 14 A.L.R. 3d 896, 908-09 (1967) (discussing Texas cases).

You ask whether a Type A city may pass an ordinance that (1) requires a

vendor to construct a permanent building with restrooms and parking and (2) that restricts a vendor from selling on private property. *See* Request Letter, *supra*, at 1. First, we conclude that a city may not require street vendors to construct permanent buildings with restrooms and parking facilities because that would be, in our opinion, tantamount to prohibiting the occupation of street vending. Second, to the extent you ask whether a city may generally restrict the sale of goods on private property, we conclude in the negative given that a city's authority to regulate itinerant vendors extends to city streets and other public places, excluding, by definition, private property.

We note that because of the particular items sold or the particular area involved, a city under its zoning authority might be able to require that the items be sold in a permanent structure or restrict sales from private property. *See, e.g.*, Tex. Loc. Gov't Code Ann. §§ 211.003(a)(5) (Vernon 1999) (city may regulate location and use of buildings, other structures, and land for business, industrial, residential, or other purposes); 211.005 (governing body may divide city into districts and regulate construction and use of buildings, other structures, or land). A city might also be able to restrict sales from private property under its authority to abate nuisances. *See id.* § 217.002 (Type A city's authority to abate nuisance). We do not, however, understand you to ask about particular sales or regulating in particular areas.

### **Licensing Authority**

You also ask whether a Type A general-law city may pass an ordinance that restricts street vendors from selling in a city without a permit.<sup>(2)</sup> We conclude in the affirmative.

A Type A city has the authority to require vendors to obtain a license as a condition to selling merchandise on its city streets. It is expressly authorized to license, tax, suppress, prevent, or otherwise regulate hawkers and peddlers. *Id.* § 215.031(1), (2). *But see Houston Credit Sales Co. v. City of Trinity*, 269 S.W.2d 579, 581 (Tex. Civ. App.-Waco 1954, writ ref'd n.r.e.) (questioning whether "hawkers and peddlers" includes itinerant vendors, specifically door-to-door salesmen of household goods). The city's governing body may direct the manner of issuing a license and set the fees to be paid for the licenses, but the license may not be for more than a year. *See* Tex. Loc. Gov't Code Ann. § 215.033 (Vernon 1999); *see also* Tex. Tax Code Ann. § 302.101(b) (Vernon 1992) (license required by Type A city may not extend to more than one establishment or apply to more than one occupation, business, or calling).

Although you do not ask, we understand that the City of Camp Wood is concerned about the amount it may charge for a vendor permit.<sup>(3)</sup> A city may charge an amount reasonably necessary to cover its administrative and regulatory costs or reasonably related to its legitimate licensing objective. *See* Tex. Loc. Gov't Code Ann. § 215.033 (Vernon 1999); *Houston v. Harris County Outdoor Adver. Ass'n*, 879 S.W.2d 322, 326-27 (Tex. App.-Houston [14th Dist.] 1994, writ denied); *Houston Credit Sales*, 269 S.W.2d at 581.

A Type A general-law city may charge a reasonable license fee for the primary

purpose of regulation. *See Harris County Outdoor Adver.*, 879 S.W.2d at 326 (if primary purpose of exaction is regulation, then it is a license fee). A reasonable license fee "*cannot be excessive nor more than reasonably necessary to cover the cost of granting the license and of exercising proper police regulation, or it must bear some reasonable relationship to the legitimate object of the licensing ordinance.*" *Id.* at 326-27 (emphasis in original); *see also Johnson v. City of Austin*, 674 S.W.2d 894, 897 (Tex. App.-Austin 1984, no writ) ("A 'license' has the purpose of regulation under the police power.").

The authority under section 215.031 to suppress or prevent hawkers and peddlers does not allow a city to charge fees that are so excessive as to preclude an itinerant vendor from engaging in that occupation, although what is excessive depends on the particular facts and circumstances. For instance, in *Houston Credit Sales*, the court concluded that an annual "licensing" vendor fee of \$1200, irrespective of whether characterized as a tax or license fee, was so large and excessive as to render the ordinance imposing it invalid. "[S]uch oppressive exaction by a town of less than 2,500 population," the court said, "is manifestly prohibitive and confiscatory in its application to the business of appellants." *Houston Credit Sales*, 269 S.W.2d at 581. The trial court had found that the vendor -- a door-to-door salesperson of household goods -- collected approximately \$22 per week in the city. The court rejected the city's argument that because the city had the statutory power, under the predecessor provision to section 215.031, to prohibit the activity of peddling and hawking, it had the power to do anything less than that in the way of regulation. *See id.*

Notwithstanding the section 215.031 authority to license, *tax*, suppress, prevent, or otherwise regulate hawkers and peddlers, a city is not authorized to levy an occupation tax on street vendors, given that the state does not levy such tax. *See* Tex. Const. art. VIII, § 1(f) (implicitly prohibiting city from levying occupation tax where no such tax is levied by state); *Ex parte Stevenson*, 169 S.W.2d 175 (Tex. Crim. App. 1943) (invalidating city ordinance levying city occupation tax given 1931 repeal of state occupation tax on foot peddlers). In contrast to license fees, an occupation tax is designed primarily to raise revenues. *See Harris County Outdoor Adver.*, 879 S.W.2d at 326 (if primary purpose of exaction to raise revenue, then it is occupation tax).

### **Going on Private Property**

You next ask whether a Type A general-law city may pass an ordinance that restricts a vendor from selling on private property. To the extent your question concerns vendors going to private residences to sell goods, we conclude that a city may regulate but not prohibit such activity.

Again, notwithstanding the broad statutory authority to "license, tax, suppress, prevent, or otherwise regulate hawkers and peddlers" discussed above, a city may *regulate* but not *prohibit* the going in and on private property by persons to sell merchandise. *See Ex parte Luehr*, 266 S.W.2d 375 (Tex. Crim. App. 1954); *Ex parte Faulkner*, 158 S.W.2d 525 (Tex. Crim. App. 1942); *Houston Credit Sales*, 269 S.W.2d 579. In other words, a city may impose conditions,

selectively restrict, or prohibit certain solicitations based on considerations related to the city's regulatory objective; it cannot simply prohibit all such solicitations regardless of such considerations. *See Faulkner*, 158 S.W.2d at 527.

In *Faulkner*, the court, while acknowledging a city's power to prohibit hawkers and peddlers, and solicitors on its city streets and other public places, invalidated as going beyond that authority an ordinance prohibiting any uninvited person from going in and upon private residences to solicit the sale of goods or sell any goods as a nuisance. *See id.* at 526-27. The court questioned that a city could justifiably determine that all goods presented or sold in this manner should not be so sold or are always a nuisance. Although the court did not expressly delineate what it meant by "regulation" and "prohibition," its statement regarding a city's appropriate authority is telling:

It is sufficient that the municipality be given the power to establish an available agency with facilities for looking into the merits of all goods to be sold and the responsibility and methods of the parties selling them, and, therefore, be able to say whether or not they should be permitted to operate within the bounds of such municipality.

*Id.* at 527; *see also Luehr*, 266 S.W.2d at 377 (city without authority to prohibit solicitors going in and on private residences without regard to goods sold and responsibility and method of parties). The *Faulkner* court concluded that although the legislature has delegated to a municipality the authority to regulate, "we are . . . unable to find that our legislature has, or may, delegate to the municipality the right to prohibit solicitors from going in and upon private property for the purpose of selling their wares." *Faulkner*, 158 S.W.2d at 527. The *Faulkner* court did not discuss the predecessor to section 215.031 of the Local Government Code. But the court in *Houston Credit Sales*, following *Faulkner*, specifically stated that a city could regulate but not prohibit the going in and upon private residences notwithstanding the statutory authority to "license, tax and regulate or suppress and prevent hawkers, peddlers." *Houston Credit Sales*, 269 S.W.2d at 581.

### **State Law Preemption**

Lastly, you ask whether a Type A general-law city may impose restrictions on a street vendor if he or she is state licensed and has a state tax number. We conclude that it depends on the authorizing or licensing state statute.

A city may not adopt an ordinance regulating a business activity that is in conflict with a state statute. *See Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993) (city ordinance that attempts to regulate subject matter preempted by state statute is unenforceable to extent it conflicts with statute); *Utter v. State*, 571 S.W.2d 934, 936 (Tex. Crim. App. [Panel Op.] 1978) (generally discussing cases dealing with city's authority to regulate and license buses, taxis, taxi drivers, or ambulances also regulated or licensed by state). Thus, when a state statute provides that a person holding an operator's, commercial operator's, or chauffeur's license from the state shall not

be required to obtain any other license to operate a motor vehicle, a city may not license those drivers. *See Reed v. City of Waco*, 223 S.W.2d 247 (Tex. Civ. App.-Waco 1949, writ ref'd); *City of Corpus Christi v. Gilley*, 458 S.W.2d 124 (Tex. Civ. App.-Corpus Christi 1970, writ ref'd n.r.e.).

No statute specifically authorizes or licenses "street vending." But, if the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. *See Combined Am. Ins. Co. v. City of Hillsboro*, 421 S.W.2d 488 (Tex. Civ. App.-Waco 1967, writ ref'd n.r.e.). For instance, in *Combined American Insurance*, the court held invalid an ordinance as it related to insurance sales by a state licensed insurance company and its state licensed salesmen prohibiting any person from going house-to-house or from place-to-place in the city to sell goods unless the person had obtained a license from the city and paid the required license fees. *See Combined Am. Ins.*, 421 S.W.2d at 491. The court stated that the insurance company had complied with the relevant state insurance licensing laws, had been issued a certificate of authority from the State Board of Insurance evidencing such compliance, and that the company was accordingly "authorized to transact the business of life, health and accident insurance in the State of Texas, and that the City of Hillsboro . . . [is] without authority to interfere with it in the soliciting of its business." *Id.*

Although you do not specify, the City of Camp Wood is apparently concerned that it may be precluded from licensing street vendors who have a sales tax permit from the state.<sup>(4)</sup> A person engaged in the business of making sales of taxable items subject to the sales and use tax under chapter 151 of the Tax Code must obtain a permit from the Comptroller of Public Accounts for each place of business in the state. *See* Tex. Tax Code Ann. §§ 151.008 (Vernon 1992) (defining "Seller" and "Retailer"); 151.201 (issuance of sales tax permits); 151.202 (application for permit). This permit simply allows the seller to collect the sales tax on the items sold, which is required to be remitted to the Comptroller. *See, e.g., id.* §§ 151.052 (collection by seller of tax as part of sale price), 151.251 (applicant for permit must file adequate security for taxes due); *id.* § 151.401 (Vernon Supp. 1999) (taxes imposed payable to Comptroller).

The sales tax permit provisions do not license or authorize street vending and, therefore, cannot present a conflict with a city ordinance regulating by permit such activity. *See Utter*, 571 S.W.2d at 936 (city's power to regulate by requiring permit for operation of wrecker not limited since no conflicting statute found); *see also City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990) ("[T]he mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted. When there is no conflict between a state law and a city ordinance, the ordinance is not void.").

In short, if the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from regulating that activity by requiring a permit as a condition of engaging in it within the city. Issuance of a sales tax permit to a vendor, however, is not such

state authorization or license as to preclude a city from requiring the vendor to obtain a permit in order to sell in the city.

### **Constitutional Limits**

In addition to the parameters discussed above, a city's authority to adopt an ordinance regulating street vending is subject to state and federal constitutional constraints. We limit our discussion to those most commonly addressed by the courts in this context.

An ordinance regulating street vending must comport with the equal protection provisions of the state (article I, section 3) and federal (Equal Protection Clause of the Fourteenth Amendment) constitutions. It may, consistently with these provisions, reasonably classify persons according to their business and apply different rules to different classes -- as long as persons in the same class are treated the same -- to further legitimate purposes of the city. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *Hixon v. State*, 523 S.W.2d 711 (Tex. Crim. App. 1975); *Rucker v. State*, 342 S.W.2d 325 (Tex. Crim. App. 1961); *Houston Chronicle Publ'g Co. v. City of Houston*, 620 S.W.2d 833, 838 (Tex. App.-Houston [14th Dist.] 1981, no writ). For example, in *City of New Orleans v. Dukes*, the United States Supreme Court upheld a City of New Orleans ordinance prohibiting all vendors from selling food from pushcarts in the French Quarter, except those that had "continuously operated the same business . . . for eight or more years prior to January 1, 1972," *Dukes*, 427 U.S. at 298, stating: "The city's classification rationally furthers the purpose which . . . the city had identified as its objective in enacting the provision, that is, as a means 'to preserve the appearance and custom valued by the Quarter's residents and attractive to tourists.'" *Id.* at 304 (citation omitted). Allowing the continued operation of some vendors, the Court continued, was not an arbitrary or irrational method of achieving the city's purpose because the city could rationally choose to initially eliminate only recent vendors rather than all vendors; reasonably determine that newer businesses were less likely to have built up substantial reliance on continued operation; and that the vendors excepted under the grandfather clause who had operated for over twenty years had themselves become part of the distinctive part of the charm of the French Quarter. *Id.* at 305; *see also Hixon*, 523 S.W.2d 711 (upholding city ordinance prohibiting sale of all merchandise on city streets except flowers and ice cream).

But an ordinance regulating street vending may not, as a general matter, impinge on fundamental personal rights or classify persons based on inherently suspect distinction such as race, religion, or alienage. *See Dukes*, 427 U.S. at 303. A different test is applied by the courts under the equal protection analysis when a regulatory ordinance's classification affects fundamental rights such as the rights of free speech and free press. If such rights are affected, the classification becomes suspect, and the city must show that the classification is necessary to promote a compelling interest. *See Houston Chronicle Publ'g Co.*, 620 S.W.2d at 838 (citing *Dunn v. Blumstein*, 405 U.S. 330 (1972)). For example, in *Houston Chronicle Publishing Co.* the court struck down an ordinance that prohibited the sale of newspapers to any occupant of a motor

vehicle on a city street or other public place, but allowed such sales of frozen desserts and flowers. The court observed that the three classes of street vendors established by the ordinance -- those selling flowers, those selling frozen desserts, and those selling newspapers -- were similarly situated as sellers of merchandise on the city's streets and sidewalks. *See Houston Chronicle Publ'g Co.*, 620 S.W.2d at 838. The reasons offered by the city, the court concluded, for the differential treatment of newspaper vendors were insufficient to justify the selective exclusion of newspaper vendors from the city streets: "While traffic control and vendor safety are compelling interests, access to the street cannot be denied on those bases to those who would there exercise fundamental rights, yet allowed to those involved in purely commercial endeavors." *Id.*

Further, a regulatory ordinance affecting fundamental rights such as those of free speech or free press may violate the First Amendment of the United States or article I, section 8 of the Texas Constitution, as well as the due process clause of the Fourteenth Amendment of the United States or article I, section 19 of the Texas Constitution. If a regulation impinges on First and Fourteenth Amendment rights, the city must show the validity of its asserted interest *and* the absence of less intrusive alternatives to achieving that interest. *See id.* at 836-37. For instance, the court in *Houston Chronicle Publishing Co.* also invalidated the City of Houston ordinance prohibiting newspaper sales to motor vehicle occupants as violating those rights, stating: "The . . . ordinance is unreasonably restrictive. While the ends are permissible [preventing traffic hazard and congestion], [in] the means of achieving those ends the ordinance sweep[s] too broadly, unnecessarily invading appellant's protected freedom." *Id.* at 837.

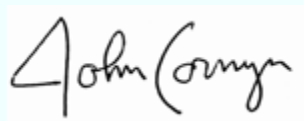
Lastly, an ordinance regulating street vending may not interfere with interstate commerce. A regulatory ordinance violates the Commerce Clause of the federal constitution (article I, section 8) if it (1) affirmatively discriminates against out-of-state merchants, or (2) regulates evenhandedly but incidentally burdens interstate commerce and the burden is clearly excessive in relation to the local benefits. *See Hispanic Taco Vendors v. City of Pasco*, 994 F.2d 676, 678-79 (9th Cir. 1993). In *Hispanic Taco Vendors v. City of Pasco*, the court upheld a city ordinance that imposed licensing fees on street vendors, made the licenses nontransferable, banned sales from vacant lots, and imposed setback requirements against the contention, among others, that it imposed unreasonable burdens on interstate commerce. *See id.* at 677. The court determined the burden on interstate commerce -- decreased sales of out-of-state products to the vendors' state assuming the vendors went out of business -- to be slight and not clearly excessive in relation to the benefits to the city in adopting the ordinance, *i.e.*, "reduction in urban blight, the potential development of vacant lots with permanent structures, and a heightened ability to police the vendors' operations." *Id.* at 679.

In short, a city may not, broadly speaking, unreasonably discriminate against persons, infringe on personal fundamental rights, or interfere with interstate commerce when regulating street vending.

## S U M M A R Y

A Type A general-law city may not prohibit the occupation or business of street vending, but it may, in general, prohibit or reasonably regulate by ordinance the sale of merchandise on its city streets, sidewalks, and other public places. It may also require by ordinance that a vendor obtain a permit as a condition to selling merchandise in the city and charge a reasonable fee. The city may regulate but not prohibit street vendors from going on private residences to sell their goods. If the state has authorized or licensed a particular occupation or activity that is the subject of street vending, a city might be precluded from requiring a permit as a condition of engaging in that activity within the city. Issuance of a sales tax permit to a vendor, however, is not such state authorization or license as to preclude the city from requiring a city permit. An ordinance regulating street vending may not, broadly speaking, unreasonably discriminate against persons subject to the ordinance, infringe on personal fundamental rights, or interfere with interstate commerce.

Yours very truly,



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## Footnotes

1. Telephone Conversation with Honorable Jim Blakeney, Mayor, City of Camp Wood (Aug. 22, 1999). A Type A general-law municipality is one that has incorporated as a Type A under subchapter A of chapter 6 of the Local Government Code, has changed to a Type A under subchapter B of chapter 6, or operated under chapters 1 through 10 of title 28 of the Revised Civil Statutes

immediately preceding September 1, 1987. *See* Tex. Loc. Gov't Code Ann. § 5.001 (Vernon 1999).

2. The terms "license" and "permit" are essentially the same, although legally "license" ordinarily refers to the privilege of conducting a continuing activity while "permit" ordinarily refers to an activity of limited duration on whose completion the privilege expires. *See Johnson v. City of Austin*, 674 S.W.2d 894, 897 (Tex. App.-Austin 1984, no writ).

3. Telephone Conversation with Honorable Jim Blakeney, Mayor, City of Camp Wood (Aug. 22, 1999).

4. *See supra* note 3.

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**From:** Scott Bounds [mailto:SBounds@OlsonOlson.com]  
**Sent:** Monday, November 15, 2010 7:12 PM  
**To:** George Shackelford  
**Cc:** Scott Bounds  
**Subject:** Door to door solicitation.

Municipal ordinances which prohibit solicitors, peddlers, and itinerant merchants from calling on private residences for the purpose of peddling or soliciting without the request or the invitation of the occupant are sometimes referred to as "Green River" ordinances (from the case of *Town of Green River, Wyoming v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933)). "Green River" ordinances entirely prohibit and declare the practice of uninvited house-to-house canvassing to be a nuisance and misdemeanor punishable by fine and imprisonment (Rhyne, *The Law of Local Government Operations*, pp 495-496). Such ordinances have been upheld in the past by the United States Supreme Court. These types of ordinances have been ruled unconstitutional when they prohibit religious or noncommercial door-to-door solicitation. The U.S. Supreme Court on June 17, 2002 by a vote of 8-1, invalidated a Stratton, Ohio ordinance that required canvassers to register and obtain a permit from the mayor's office before going door-to-door promoting any cause (*Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*). The Court held that the ordinance violated the First Amendment as it applied to religious proselytizing, anonymous political speech, and the distribution of handbills. See MRSC Web Page, [U.S. Supreme Court Says No Permit Required to Solicit for Religious Reasons](#).

Other decisions include *Breard v. Alexandria*, 341 U.S. 622, 95 L.Ed 1233, 71 S.Ct. 920 (1951). The Breard decision was decided at a time when "commercial speech" was thought to be outside the protection of the First Amendment. More recent Supreme Court Decisions question the analysis of the Breard case and suggest that a complete ban on door-to-door solicitation would be found unconstitutional today. See also McQuillin, *Municipal Corporations*, Â§24.378 (3rd Ed.).

Even though the 1951 United States Supreme Court decision has not been expressly overruled, more recent cases suggest that a total prohibition of door-to-door solicitation would be unconstitutional and unenforceable. In *Project 80's Inc. v. City of Pocatello*, 942 F.2d 635 (9th Cir. 1991), a city ordinance prohibiting door-to-door solicitation unless the homeowner places a "solicitors welcome" sign on the house was ruled an unconstitutional infringement of free commercial speech. The court concluded that the ordinance did not provide the least restrictive alternative available to accomplish the legitimate governmental interests of protecting residential privacy and preventing crime. The Federal Court decision invalidating the Cities of Pocatello and Idaho Falls' ordinances was the second time the Court had invalidated the ordinances. The 1991 decision was the result of a remand order by the United States Supreme Court of the earlier 1988 decision in *Project 80's Inc. v. City of Pocatello*, 876 F.2d 711 (9th Cir. 1991), vacated and remanded, *City of Idaho Falls v. Project 80's Inc.*, 493 U.S. 1013, 110 S.Ct. 709, 107 L.Ed.2d 730 (1990). Similar decisions have been reached by the Ohio Court of Appeals in *City of Tiffin v. Boor*, 109 Ohio App. 3d 337, 672 NE2d 200 (Ohio Ap. 1996), the Oregon Supreme Court in *City of Hillsboro v. Purcell*, 306 Or 547, 761 P.2d 510 (Ore., 1988) and an Illinois Federal District Court in *Green v. Village of Schaumburg*, 676 F.Supp. 870 (ND Ill., 1988).



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### REGULATION OF EVENING SOLICITATION/CANVASSING

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Regulating peddlers, solicitors, canvassers, and panhandlers is fraught with constitutional pitfalls. Common sources of litigation include code provisions dealing with the manner of the solicitation (e.g., aggressive panhandling, whether permits and identification are required); the place of the solicitation (e.g., streets, sidewalks, parks), and the time during which these activities can occur (e.g., between the hours of 9:00 a.m. and 9:00 p.m.). While there are many reported opinion on these and other solicitation topics, this article deals only with the regulation of evening solicitation in residential areas.

Some municipalities prohibit solicitation as early as after 5:00 p.m. More commonly, some municipalities prohibit solicitation after 7:00 p.m. Unfortunately, it is *highly unlikely* that prohibiting evening solicitation earlier than 9:00 p.m. is constitutional. To survive a constitutional challenge, a city would have to supply two kinds of information. First, a city should collect crime data and statistics regarding in-home assaults, burglaries, and robberies, and correlate these by hour. State-wide statistics can be helpful, but ultimately a city must show the existence of a problem within its borders during the time that solicitation is prohibited. In addition, numerous and specific affidavits from citizens attesting to the intrusion and apprehension caused by solicitors after the desired pre-9:00 p.m. hour may be necessary to support any claim that the citizens of the city desire not to be bothered after a certain hour. Even with such affidavits, the court might inquire why the posting of “no soliciting” or similar signs could not protect individual residents adequately. If citizens are finding such notices are being violated routinely, cities should be prepared to provide evidence in the form of affidavits

#### **The Cases**

In general, municipalities have the power to regulate the activities of solicitors within their borders to lessen the opportunities for crime against residents and their property. A municipality also may regulate activities in the interest of preventing undue annoyance of its residents. *See, e.g., Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976); *Kovacs v. Cooper*, 336 U.S. 77 (1949); *Citizens for a Better Environment v. Village of Olympia Fields*, 511 F. Supp. 104 (N.D. Ill. 1980); *Connecticut Citizens Action Group v. Town of Southington*, 508 F. Supp. 43 (D. Conn.1980).

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The Supreme Court has never specifically considered the constitutionality of time-of-day restrictions on door-to-door solicitation. Three courts of appeal have considered the question, with two finding prohibitions before 9:00 to be unconstitutional and one court of appeal producing two opinions with opposite results. The courts also differ with respect to the tests which they apply. The Eighth Circuit in *ACORN v. City of Frontenac*, 714 F.2d 813, 817 (8th Cir.1983), invalidating an hours provision, held that where regulations infringe on First Amendment freedoms, the government has the burden of proving that its objectives could not be achieved by *less restrictive means*. The Seventh Circuit in *City of Watseka v. Illinois Public Action Council*, 796 F. 1547 (7th Cir. 1986), *aff'd without opinion*, 479 U.S. 1048, *reh. denied*, 480 U.S. 926 (1987), and *Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248 (7th Cir. 1985), invalidated prohibitions on solicitation before the 9:00 p.m. hour as not being justified by the evidence produced by the local governments..

The Third Circuit, in upholding an hours restriction, rejected the *Frontenac* “less restrictive alternative” standard in favor of a more generous approach – whether ample alternative means of communication remained open. *See, Pennsylvania Alliance for Jobs and Energy v. Council of the Borough of Munhall*, 743 F.2d 182 (3d Cir.1984), (“time, place, and manner restrictions are reasonable if they are imposed ‘without reference to the content of the regulated speech, ... serve a significant governmental interest, and ... leave open ample alternative channels of communication....”). However, two years later the Third Circuit invalidated a very similar ordinance because the city failed to produce adequate evidence to support the need for the restriction on First Amendment activity. *See, New Jersey Citizen Action v. Edison*, 797 F.2d 1250 (3d Cir.1986).

### **Why 9:00 p.m.?**

There is nothing magical about 9:00 p.m. as the cut-off time for solicitation. It is simply the time courts have latched onto as being an appropriate time for the reasonable restriction of solicitation without the need for further supporting evidence. Groups that solicit often provide data that most of their contributions are collected between 5:00 and 9:00 p.m. and that the 8:00 pm. to 9:00 p.m. hour is one of the most profitable.

On the other hand, why not 10:00 p.m. instead of 9:00 p.m.? While not addressed specifically in any opinion, the principle that municipalities can protect the safety and privacy of their residents seems sufficient in its own right to support a prohibition on solicitation after 9:00 p.m.

### **Why not sunset?**

A restriction which prohibits solicitation to within a period shortly after the setting of the sun, on the theory that activities after dark cause greater apprehension in residents, might seem like a good alternative. However, several cases disapprove of prohibitions related to the setting of the sun and at least one case has specifically found the term “sunset” to be

vague. *See, West Virginia Citizens Action Group v. Daley*, 324 S.E.2d 713 (W.Va.1984). This is because “sunset” varies from day to day and its precise time can only be determined through mathematical calculations. As such, “sunset” is especially susceptible to interpretation by government officials and leads to “unfettered discretion” as to when sunset has occurred.

### **Why is this relevant to me today?**

City attorneys, council members, mayors, and the like may wonder why they should be concerned about this issue when so many pressing issues exist. Certainly, changes can be made to ordinances after a lawsuit has been filed, and if a city has not yet been sued, there may seem to be little need to change an ordinance immediately. And there is no guarantee that the city won’t be sued regardless of what the ordinance says. But, it is worth noting that there exist organizations which are actively looking for plaintiffs to sue government over charitable solicitation regulations.

In 2005, American Charities for Reasonable Fundraising Regulation, Inc. (“ACFRFR”) posted a call for plaintiffs to sue the State of Alabama regarding its requirement that nonprofit fundraising consultants register with the state. They are currently seeking plaintiffs after successfully challenging registration requirements in Pinellas County, Florida. ACFRFR also plans to file other suits “when it serves the overall interests of the nonprofit community . . . .” The “main ACFRFR agenda . . . is to eliminate the most egregious, unnecessary, excessive and burdensome state and local regulations of charitable fundraising.” *See*, <http://www.charity-reg.org/qanda.htm>. Why give such organizations a reason to come to town? If the city is already engaged in revising ordinances, perhaps today is a good time to make a small change to something which is constitutionally defensible.

### **Cases that have invalidated solicitation hours restrictions**

*Association of Community Organizations for Reform NOW v. City of Frontenac*, 714 F.2d 813 (8<sup>th</sup> Cir. 1983) (ordinance prohibiting solicitation after 6:00 p.m. enjoined from enforcement between 6:00 p.m. and 9:00 p.m. on weekdays because it was not the least restrictive alternative, cessation at 6:00 on Sat. and prohibition on Sunday and legal holidays seems to have survived)

*City of Watseka v. Illinois Public Action Council*, 796 F. 1547 (7<sup>th</sup> Cir. 1986), *aff’d without opinion*, 479 U.S. 1048, *reh. denied*, 480 U.S. 926, (1987) (prohibition on solicitation after 5 p.m. Monday through Saturday unconstitutional) - Watseka passed the ordinance for the following reasons 1) in response to citizen complaints that solicitors, specifically solicitors calling at hours other than 9 a.m. to 5 p.m., violated the quiet and peace of the citizens’ homes; 2) because solicitors had sought admittance to residences at hours other than between 9 a.m. to 5 p.m. “for illegal purposes or acts;” 3) because a substantial number of the residents home in the evening between 6 p.m. and 9 p.m. were elderly and feared evening crime; 4) because crime is more prevalent after 5 p.m.; and 6)

because solicitors coming door-to-door after 5 p.m. disturbed the enjoyment of Watseka residents' dinner hour. While Watseka submitted a copy of the ordinance preamble and several affidavits to support its position, the court found this evidence insufficient to support the ordinance's constitutionality. The affidavits were from the mayor, three persons "involved in law enforcement," a member of the Chamber of Commerce, and the person who oversaw the senior citizens' center. According to the court, a city must produce more than a few conclusory affidavits of city leaders which primarily contain unsubstantiated opinions and allegations. The only crime statistics submitted by Watseka were statewide, and no effort was made to tie them either to Watseka's own interests or to solicitation in general. In addition, most of the evidence concerned crime "after dark," and for a substantial portion of the year it is not dark between the hours of 5 p.m. and 9 p.m. A better solution for the purposes of protecting residents was a provision of the ordinance which allowed Watseka residents to protect themselves from all solicitors at all times simply by posting "no soliciting" or "no trespassing" signs.

*Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248 (7th Cir. 1985) (city provided insufficient evidence to uphold time of day restriction prohibiting solicitation after 8:00 pm) ("Defendants must show that the ordinance relates with specificity to one or more legitimate governmental interests and does not intrude upon the rights of free speech.")

*New Jersey Citizen Action v. Edison*, 797 F.2d 1250 (3d Cir.1986), *cert. denied* 479 U.S. 1103 (1987), (ordinance provisions prohibiting solicitation after 5:00 or 6:00 p.m. or after sunset unconstitutional)

*New Jersey Environmental Federation v. Wayne Township*, 310 F. Supp.2d 681 (D.N.J. 2004) (unamended ordinance provision prohibited solicitation except between 10:00 a.m. and dusk, Monday through Sunday; amended version prohibited solicitation later than ½ hour after sunset; even the amended version was unconstitutional because in winter solicitors would be unable to solicit past 5:30 in the evening, making solicitation unfeasible for plaintiff which relied on financial contributions in order to fulfill its advocacy mission)

*Ohio Citizen Action v. City Of Mentor-On-The-Lake*, 272 F. Supp.2d 671 (N.D. Ohio 2003) (City's ordinance was overbroad and under-inclusive in addressing compelling governmental interest of promoting public safety.) Only some door-to-door activities were prohibited after 5:00 p.m., which was "hours before nightfall during much of the year." "Recognized" organizations could solicit until 8:00 p.m. or ½ hour after sunset. Regulations were not restricted to those areas which were poorly lit or without sidewalks, and was not restricted to foot traffic, and there were other less restrictive means, such as improving lighting and adding sidewalks, by which the city could address its public safety concerns. This case makes clear the need to treat solicitors equally. The city made an exception for certain kinds of solicitors including newspaper and diaper delivery

services. The court noted the disturbance caused by these solicitors is as burdensome as that caused by others. Further, the case focuses significantly on the city's purported safety argument – poorly lit streets and sidewalks – and the need to protect solicitors. While an original argument, the court seized on other avenues for ensuring solicitor safety such as improving lighting conditions on public streets.

*Association Of Community Organizations For Reform Now v. City Of Dearborn*, 696 F. Supp. 268 (E.D. Mich. 1998) (in preliminary injunction case, ordinance prohibiting solicitation after 7:00 p.m. likely unconstitutional) (“This Court finds that Dearborn’s 7:00 p.m. canvass restriction will not likely leave sufficient alternative avenues of communication open to plaintiffs. . . . In addition, the Court is extremely doubtful that the 7:00 p.m. canvass restriction is narrowly tailored to promote Dearborn's interests in crime prevention and the tranquility of its residents. Although it is conceivable that a hearing on the merits will demonstrate otherwise, it seems probable that canvassing between the hours of 7:00 p.m. and 9:00 p.m. will not significantly increase the incidence of burglary or other evening crime in Dearborn.”)

*People v. Nassau/Suffolk Neighborhood Network Inc.*, 574 N.Y.S.2d 243 (Justice Court 1991) (ordinance allowing only between 9:00 a.m. and 5:00 p.m. unconstitutional) – “There is no showing that all of the Village residents demand freedom from all forms of solicitation. Yet, the impact of the present time restriction would effectively preclude defendant and others from exercising their rights of free speech at the homes of those residents who might be interested in receiving canvassers and who might be potential contributors.” This is an excellent observation by the trial court – certainly if a city wanted to bolster its position that citizens are annoyed by solicitors after a certain hour, it would be crucial to have in the record numerous instances of complaints and testimony from citizens regarding the intrusive nature of solicitors. With respect to the prohibition on weekend solicitation, the court stated “Protection of Village residents against crime cannot justify that portion of the local law that precludes canvassing or soliciting at any time on a Saturday or Sunday. There is no evidence that crime is somehow greater during the 9:00 A.M. to 5:00 P.M. hours on weekends than on weekdays. Accordingly, there is insufficient evidence to support a prevention of crime basis for sustaining the outright ban on soliciting on weekends.” The court also criticized the city for failing to produce crime statistics correlating the time of day with home burglaries and assaults experienced in the village. This was particularly critical as one of the bases for passing the ordinance was ostensibly the crime suffered by village residents.

Additional cases invalidating time of day restrictions:

*Massachusetts Fair Share, Inc. v. Town of Rockland*, 610 F. Supp. 682 (D.C. Mass. 1985) (prohibiting solicitation and canvassing after “sunset” and “daylight hours” unduly intruded upon First Amendment rights)

*New York Community Action Network v. Town of Hempstead*, 601 F. Supp. 1066 (E.D.N.Y. 1984) (prohibition on soliciting ½ hour before sunset or 7:00 p.m., whichever is earlier, is unconstitutional because the town failed to prove it was the least restrictive means for regulating First Amendment activity)

*Connecticut Citizens Action Group v. Town of Southington*, 508 F. Supp. 43 (D.Conn. 1980) (invalidating ordinance which restricted canvassing and solicitation to the hours of 8:00 a.m. to 6:00 p.m.)

*West Virginia Citizens Action Group v. Daley*, 324 S.E.2d 713 (W.Va. 1984) (failure to define term “sunset” in ordinance rendered the ordinance unconstitutionally vague)

*Alternatives for California Women, Inc. v. County of Contra Costa*, 145 Cal.App.3d 436, 449-51, 193 Cal.Rptr. 384, 392-93 (Cal. Ct. App. 1983) (invalidating county ordinance which prohibited solicitation between “sunset and sunrise”)

### **Cases upholding solicitation hours restrictions**

*Pennsylvania Alliance for Jobs & Energy v. Council of Munhall*, 743 F.2d 182, 185 (3d Cir. 1984) (prohibition on solicitation after 5:00 p.m. Monday through Saturday upheld, towns provided adequate proof of link between crime and after dark soliciting) (criticized by *Watseka*, 796 F. 1547, and called into question by *New Jersey Citizen Action v. Edison*, 797 F.2d 1250 (3d Cir.1986), *cert. denied* 479 U.S. 1103 (1987)).

*Westfall v. Board of Commissioners of Clayton County*, 477 F. Supp. 862, 865 (N.D. Ga. 1979) (upholding ordinance which prohibited soliciting and canvassing of private residences except between the hours of 9:00 a.m. and 6:00 p.m. on the theory that the plaintiffs were allowed to solicit during the weekend, and that public solicitation of those away from their homes on weekdays was available to the plaintiffs) (this holding has been criticized by *Citizens for a Better Environment v. Village of Olympia Fields*, 511 F. Supp. 104 (N.D. Ill. 1980), *Association of Community Organizations for Reform NOW v. City of Frontenac*, 714 F.2d 813 (8<sup>th</sup> Cir. 1983) as not comporting with the constitutional principles of free speech elucidated by the Supreme Court.

*McMurdie v. Doult*, 468 F. Supp. 766, 776 (N.D. Ohio 1979) (approving restriction of solicitation to between the hours of 9:00 a.m. to 6:00 p.m. without discussion)

### **Examples of Texas Codes with Hours Regulations**

#### **Longview**

Sec. 67-3. Prohibited conduct.

No person, personally, by agent, or as the agent of another, may engage in, transact, or conduct the business or occupation of door-to-door soliciting, temporary outdoor vending, or charitable, political, or religious soliciting as herein defined, and:

(a) Make physical contact with the person being solicited unless that person grants permission;

(b) Misrepresent the affiliation of the vendor;

(c) Continue to sell to an individual once that individual gives notice to the vendor that they do not wish to be solicited by that vendor. Notice includes but is not limited to verbal communication that the individual does not wish to be solicited, or a sign or signs prominently displayed on or near the entrance to the business or residence conspicuously stating "NO SOLICITORS", "NO SOLICITING", or similar language of notice.

(d) Vend, sell, or solicit at a private residence at any time other than between the hours of **9:00 a.m. to 8:00 p.m.**, or such other hours posted by the occupant unless a prior invitation from the occupant has been received;

(e) Enter a private residence under false pretenses; or

(f) Remain in a private residence or on the premises thereof after the owner or occupant has requested such person to leave.

(Ord. No. 3192, § 3, 2-13-03) (emphasis added)

### **Flower Mound**

Sec. 18-261. Regulations.

(a) Every solicitor shall identify himself as a solicitor upon approaching a citizen at a residence and explain his purpose, whether it be direct sales, solicitation of orders, or the demonstration of goods or merchandise, or any combination of such purposes.

(b) Solicitors shall conduct solicitation activities only on Monday through Saturday. **Solicitors shall not conduct solicitation activities (i) before 9:00 a.m. or (ii) after 5:00 p.m. or sunset on any day, whichever is earlier.** "Sunset" means the time of day identified by the National Weather Service as the time for sunset on that day in the town. No solicitation, including solicitation or fundraising activities by any institution or group organized for a political, religious or charitable purpose, or individuals engaging in such activities on behalf of any such institution or group, shall be permitted between sunset and 9:00 a.m. the following day.

(c) Solicitors shall not engage in solicitation activities at any time on a Sunday, New Year's Day, July 4th, Labor Day, Thanksgiving Day, Christmas Eve Day or Christmas Day.

(d) Subsections (b) and (c) of this section shall not apply to a visit on the premises as a result of a request or an appointment made by the occupant.

(e) All solicitation, including solicitation or fundraising activities by any institution or group organized for a political, religious or charitable purpose, or individuals engaging in

such activities on behalf of any such institution or group, is strictly prohibited on premises with a posted notice indicating that any or all solicitors are not welcome or invited onto the premises.

(f) No person engaged as a solicitor shall remain or linger at a residence after having been verbally informed by the resident that they are not welcome.

(g) Persons engaged in delivering handbills or circulars door to door and who do not engage in home solicitation activities, may do so from 9:00 a.m. to sunset of any day excluding those listed in subsection (c) of this section.

(h) No solicitor, or any person working on his behalf, shall shout, make any outcry, blow a horn or whistle, ring a bell, or use any sound device, including any loud-speaking radio or sound amplifying system, upon any of the streets, avenues, alleys, parks or other public places of the town, or upon any private premises of the town where sound of sufficient volume is emitted or produced there from to be capable to be plainly heard upon the streets, avenues, alleys, parks or other places, for the purpose of attracting attention to the location or to any goods, wares or merchandise which any person permitted pursuant to this article proposes to sell. This subsection also prohibits the use of any audio device for the purpose of attracting customers to retail establishments or merchants.

(Code 1989, ch. 4, § 2.11; Ord. No. 03-03, §§ 5, 6, 1-23-2003) (Emphasis added)

## **Tyler**

Sec. 4-51. Solicitations permitted only during certain hours.

No person shall go upon any residential premises and ring the doorbell, rap or knock upon the door, or create any sound in a manner calculated to attract the attention of the occupant of the residence for the purpose of engaging in or attempting to engage in a charitable solicitation or home solicitation transaction, prior to 9:00 a.m. or after **8:00 p.m. of any day Monday through Saturday**, or at any time on a Sunday or Federal or State holiday. This section shall not apply to a visit to the premises as a result of a request by the occupant. (Ord. 0-97-71; 12/17/97) (Emphasis added)

# Regular City Council

## Agenda Item

Meeting Date: December 20, 2010

## Data Sheet

### Topic:

Approve, as a Project of the Corporation, an Agreement with the City of Tomball to Make Direct Incentives to, or Expenditures for, the Expansion and Development of Medical Complex Drive in the City of Tomball. The Estimated Amount of Expenditures for such Project is \$850,000.

### Background:

Grant funding expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project." At its regular meeting on December 7, 2010, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with the City of Tomball for the expansion and development of Medical Complex Drive. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

### Origination:

Tomball Economic Development Corporation Board of Directors

### Recommendation:

Approval, as a Project of the TEDC, a performance agreement with the City of Tomball for the expansion and development of Medical Complex Drive in the amount of \$850,000

### Funding: Yes

Account Number: Grant Funds Available

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

Betty Reinbeck

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

### ATTACHMENTS:

Expansion of Medical Complex Drive

Request Letter

Agreement



**TO:** Board of Directors  
Tomball Economic Development Corporation

**FROM:** Betty Reinbeck  
Executive Director

**MEETING DATE:** December 7, 2010

**SUBJECT:** Expansion of Medical Complex Drive

In the Tomball Economic Development Corporation (TEDC) 2010-2011 fiscal year budget, a line item was approved for Medical Complex Drive Expansion in the amount of \$850,000.

George Shackelford, City Manager, has formally requested TEDC funding of that amount for preliminary design and land acquisition for certain portions of Medical Complex Drive. His request letter is included with this agenda item.

In order for the city to expend any funds from this budget line item, the TEDC will need to approve, as a Project of the Corporation, a Letter of Agreement with the City of Tomball. Such letter was prepared by our legal counsel, Bill Olson, and is enclosed.

This is an eligible project under the legislation that governs Type B sales tax corporations. If you approve this project, it will go to the city council for final approval by resolution. A public hearing on the project will be held at a date and time to be determined.



# City of Tomball

*Gretchen Fagan  
Mayor*

*George Shackelford  
City Manager*

November 22, 2010

Mrs. Betty Reinbeck  
Tomball Economic Development Corporation  
P.O. Box 820  
Tomball TX 77377

RE: City of Tomball request for funding of projects

Dear Betty:

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for the following projects:

1. Medical Complex Drive
  - a. Segment 2 commences at Calvert Road and continues easterly to SH 249 Business.
  - b. Segment 3 commences at SH 249 Business and continues easterly to South Cherry Street
  - c. Segment 4 commences at Cherry Street and continues easterly to South Persimmon.
  - d. Segment 5 commences at South Persimmon and continues easterly to FM 2920.

The City would request \$850,000 for preliminary design and land acquisition for certain portions of Medical Complex Drive.

2. MLK Park
  - a. The city is currently undertaking minor improvements to MLK Park located on Chestnut Street which is inside the city limits and is relatively close to Chestnut Business Park, a TEDC approved and funded project with Albers Properties, LP. Additional playground equipment and landscaping is currently in the plans. The City would request an amount not to exceed \$6,500 for additional playground equipment which will enhance the surrounding neighborhoods.

We thank the Board of Directors and staff of the TEDC for their continued service and for their interest in encouraging additional growth in the City of Tomball and the entire region.

Respectfully submitted,

George T. Shackelford  
City Manager

December 7, 2010

The Honorable Mayor and City Council  
City of Tomball  
401 West Market Street  
Tomball, Texas 77375

Re: Letter of Agreement for Funding for preliminary design and land acquisition for the Medical Complex Drive Improvement Project

Dear Mayor and Councilmembers:

The Tomball Economic Development Corporation ("TEDC") agrees to fund a portion of the preliminary design and land acquisition cost of the following segments of the Medical Complex Drive Improvement Project ("the Project") in an amount not to exceed \$850,000.00:

1. Segment 2 – commencing at Calvert Road and continuing easterly to SH 249 Business;
2. Segment 3 – commencing at SH 249 Business and continuing easterly to South Cherry Street;
3. Segment 4 – commencing at Cherry Street and continuing easterly to South Persimmon; and,
4. Segment 5 – commencing at South Persimmon and continuing easterly to FM 2920.

The TEDC's agreement to fund such portion of the Project cost is subject to the agreement of the City of Tomball (the "City") to comply with the following conditions:

- (1) The TEDC agrees to contribute to the City the costs incurred for design and land acquisition necessary for construction of the Project, up to \$850,000.
- (2) The City may request the funds for the Project when it enters into a contract for the design of the Project and/or when the City enters into a contract for acquisition of land for the Project.
- (3) The funds shall be deposited in a separate city account and shall not be commingled with any other city funds.
- (4) The funds shall only be used to pay all or a portion of the TEDC's share of the cost of the Project.
- (5) The City shall keep a complete and accurate accounting of each expenditure of the funds and make such records available to the TEDC.
- (6) In the event the total amount of the funds transferred by the TEDC to the City under this Letter of Agreement are not used to pay the TEDC's share of costs of the Project, upon completion of the Project, the City shall remit the remaining funds to the TEDC.

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City's agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC's Treasurer will be directed to transfer the funds as provided above.

Yours very truly,

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

Name: \_\_\_\_\_  
President, Board of Directors

The Honorable Mayor and City Council  
City of Tomball  
December 7, 2010  
Page 3

AGREED AND ACCEPTED:

City of Tomball, Texas

\_\_\_\_\_  
By: Gretchen Fagan  
Mayor

Attest:

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

# Regular City Council

## Agenda Item

Meeting Date: December 20, 2010

## Data Sheet

### Topic:

Approve, as a Project of the Corporation, an Agreement with the City of Tomball to Make Direct Incentives to, or Expenditures for, the Improvements to MLK Park Located on Chestnut Street in the City of Tomball. The Estimated Amount of Expenditures for such Project is an Amount not to Exceed \$6,500.

### Background:

Grant funding expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project." At its regular meeting on December 7, 2010, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with the City of Tomball for improvements to MLK Park, a public park. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

### Origination:

Tomball Economic Development Corporation Board of Directors

### Recommendation:

Approval, as a Project of the TEDC, a performance agreement with the City of Tomball for improvements to MLK Park, a public park, in an amount not to exceed \$6,500

### Funding: Yes

Account Number: Grant Funds Available, Approved by TEDC Board, 12/7/2010

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

Betty Reinbeck

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

### ATTACHMENTS:

Cover Memo  
Request Letter  
Agreement



**TO:** Board of Directors  
Tomball Economic Development Corporation

**FROM:** Betty Reinbeck  
Executive Director

**MEETING DATE:** December 7, 2010

**SUBJECT:** MLK Park Improvement Project

George Shackelford, City Manager, has formally requested TEDC funding in an amount not to exceed \$6,500.00 as assistance with the city's minor improvement project at MLK Park. Mr. Shackelford's letter is included with this agenda item.

MLK Park is located on Chestnut Street, inside the city limits. It is relatively close to Chestnut Business Park, a TEDC approved and funded project with Albers Properties, LP.

In order for the city to expend any Tomball Economic Development Corporation (TEDC) funds, the TEDC will need to approve, as a Project of the Corporation, a Letter of Agreement with the City of Tomball. Such letter was prepared by our legal counsel, Bill Olson, and is enclosed.

This is an eligible project under the legislation that governs Type B sales tax corporations. If you approve this project, it will go to the city council for final approval by resolution. A public hearing on the project will be held at a date and time to be determined.



# City of Tomball

*Gretchen Fagan  
Mayor*

*George Shackelford  
City Manager*

November 22, 2010

Mrs. Betty Reinbeck  
Tomball Economic Development Corporation  
P.O. Box 820  
Tomball TX 77377

RE: City of Tomball request for funding of projects

Dear Betty:

The City of Tomball would like to request financial assistance from the Tomball Economic Development Corporation for the following projects:

1. Medical Complex Drive
  - a. Segment 2 commences at Calvert Road and continues easterly to SH 249 Business.
  - b. Segment 3 commences at SH 249 Business and continues easterly to South Cherry Street
  - c. Segment 4 commences at Cherry Street and continues easterly to South Persimmon.
  - d. Segment 5 commences at South Persimmon and continues easterly to FM 2920.

The City would request \$850,000 for preliminary design and land acquisition for certain portions of Medical Complex Drive.

2. MLK Park
  - a. The city is currently undertaking minor improvements to MLK Park located on Chestnut Street which is inside the city limits and is relatively close to Chestnut Business Park, a TEDC approved and funded project with Albers Properties, LP. Additional playground equipment and landscaping is currently in the plans. The City would request an amount not to exceed \$6,500 for additional playground equipment which will enhance the surrounding neighborhoods.

We thank the Board of Directors and staff of the TEDC for their continued service and for their interest in encouraging additional growth in the City of Tomball and the entire region.

Respectfully submitted,

George T. Shackelford  
City Manager

December 7, 2010

The Honorable Mayor and City Council  
City of Tomball  
401 West Market Street  
Tomball, Texas 77375

Re: Letter of Agreement for Funding of improvements to MLK Park.

Dear Mayor and Councilmembers:

The Tomball Economic Development Corporation ("TEDC") agrees to fund the acquisition of additional playground equipment for MLK Park (the "Project") in an amount not to exceed \$6,500.00, subject to agreement of the City of Tomball (the "City") to comply with the following conditions:

- (1) The City may request the funds for the Project when it enters into a contract for the acquisition and/or installation of the playground equipment for the Project or when the City incurs expenses related to acquisition and/or installation of the playground equipment for the Project.
- (2) The funds shall be deposited in a separate city account and shall not be commingled with any other city funds.
- (3) The funds shall only be used to pay all or a portion of the TEDC's share of the cost of the Project.
- (4) The City shall keep a complete and accurate accounting of each expenditure of the funds and make such records available to the TEDC.
- (5) In the event the total amount of the funds transferred by the TEDC to the City under this Letter of Agreement are not used to pay the TEDC's share of costs of the Project, upon completion of the Project, the City shall remit the remaining funds to the TEDC.

The Honorable Mayor and City Council  
City of Tomball  
December 7, 2010  
Page 2

If the above terms and conditions are acceptable to the City, please have an authorized officer of the City sign below acknowledging the City's agreement and return this Letter of Agreement to the undersigned. Upon receipt of this signed Letter of Agreement, the TEDC's Treasurer will be directed to transfer the funds as provided above.

Yours very truly,

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

Name: \_\_\_\_\_  
President, Board of Directors

AGREED AND ACCEPTED:

City of Tomball, Texas

\_\_\_\_\_  
By: Gretchen Fagan  
Mayor

Attest:

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

# Regular City Council

## Agenda Item

Meeting Date: December 20, 2010

## Data Sheet

### Topic:

Approve, as a Project of the TEDC, an Agreement with Hole Specialists Inc. to Make Direct Incentives to, or Expenditures for, the Creation or Retention of Primary Jobs and that are found by the Board of Directors to be Required or Suitable for the Development, Retention, or Expansion of Manufacturing and Industrial Facilities: to wit: Hole Specialists Inc.'s Expansion and Development of its Manufacturing Facility located at 27950 Commercial Park Road, Tomball, Texas. The Estimated Amount of Expenditures for such Project is \$75,000.

### Background:

Grant funding expenditures of the Tomball Economic Development Corporation (TEDC) sales tax revenue must first be approved as a "Project." At its regular meeting on December 7, 2010, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, an agreement with Hole Specialists Inc. for the expansion of its facility at 27950 Commercial Park Road. The City Council of Tomball has final approval authority over all projects and agreements of the TEDC.

### Origination:

Tomball Economic Development Corporation Board of Directors

### Recommendation:

Approval, as a Project of the TEDC, a performance agreement with Hole Specialists Inc.

### Funding: Yes

Account Number: Grant Funds Available, Approved by TEDC Board, 12/7/2010

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

Betty Reinbeck

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

### ATTACHMENTS:

Cover Memo

Request Letter

Agreement

Economic Impact Model

Texas Government Code Section 2264.01 Certification



**TO:** Board of Directors  
Tomball Economic Development Corporation

**FROM:** Betty Reinbeck  
Executive Director

**MEETING DATE:** December 7, 2010

**SUBJECT:** Hole Specialists Inc. Expansion Project

Hole Specialists Inc. is planning to expand its manufacturing facility, which has been in operation at 27950 Commercial Park Road in Tomball for nine (9) years. They have been in business since 1993.

Hole Specialists Inc. is a specialty machine shop focusing on Precision Drilling and Honing but intend to expand the size of its facility and services offered to add more machining operations, including Lathe Turning and Pull Boring, as well as increasing its honing capabilities.

Hole Specialists Inc. will need to expand the size of its warehouse space by 12,500 – 25,000 square feet and also increase the concrete area of the driveway to provide for truck turn around space.

The additional warehouse space will be used to increase the number of machines, which in turn will provide an estimated 15-25 new employment positions.

I put a grant amount of \$75,000 in the proposed agreement, which is \$3,000 per each new employment position created, up to a maximum of twenty-five (25) jobs.

Hole Specialists Inc. is a valuable asset to the Tomball business community, and the City of Tomball is fortunate to have a company, such as this, that continues to grow and expand and add employment opportunities for Tomball area residents.



November 10, 2010

Ms. Betty Reinbeck  
Tomball Economic Development Corporation  
P. O. Box 820 Tomball, TX 77377-0820

Dear Ms. Reinbeck:

Hole Specialists, Inc. located at 27950 Commercial Park Rd is planning to expand operations and increase facility size and would appreciate grant funding assistance from the Tomball Economic Development Corporation with this project.

Hole Specialists, Inc. has been in business since 1993, located in Tomball for 9 years and currently employs 33 people. Our NAICS code is 333512. We are a specialty machine shop focusing on Precision Drilling and Honing but intend to expand the size of our facility and services offered to add more machining operations including Lathe Turning and Pull Boring as well as increase our honing capabilities. In order to grow our business and facilitate the necessary equipment and machines, Hole Specialists, Inc. will need to expand the size of our warehouse space by 12,500 – 25,000 sf and also increase concrete area for the drive to provide for truck turn around. The additional space will be used to increase the number of machines which in turn will provide an estimated 15- 25 new employment positions ranging on a pay scale of \$14.00 - \$18.00 per hour with overtime available as needed. We are currently housed in a 30,000 sf shop with an additional 5,000 sf of office space. The property location is LT 7 BLK 3 Tomball Industrial Park on 13.73 acres and is valued at \$1,290,000.00 with a current equipment value of \$4,000,000.00 and an expected value increase of \$2,000,000.00 in equipment. Our projected start date is January 1, 2011 with a completion date of May 31, 2011. The new addition and building modification improvements necessary to accommodate our growth are estimated at \$1,000,000.00.

Included are proposed plans for the building expansion or additional building, as we are still reviewing proposals and bids to decide if we will expand the current building or build an additional building.

Thank you in advance, I appreciate the consideration.

Respectfully,

Larry A Robinson

President/Owner

**27950 COMMERCIAL PARK ROAD • TOMBALL, TEXAS 77375 • (281) 290-7770 • FAX: (281) 290-7797**

## AGREEMENT

THE STATE OF TEXAS           §  
                                          §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HARRIS         §

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and **Hole Specialists Inc.** (the “Company”), 27950 Commercial Park Road, Tomball, Texas 77375.

### WITNESSETH:

**WHEREAS**, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

**WHEREAS**, the Company owns a 13.73 acre tract of land within the City, located at 27950 Commercial Park Road, Tomball, Texas 77375 (the “Property”), and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

**WHEREAS**, the Company, proposes to expand its current operation at the Property, and as part of the process, plans to expend funds to construct a 12,500 – 25,000 square foot warehouse facility and make other capital improvements (the “Improvements”), more particularly described in Exhibit “B” attached hereto and made a part hereof; and

**WHEREAS**, the Company also proposes to maintain the current thirty-three (33) jobs at the Property and create twenty-five (25) new employment positions at the Property in conjunction with the expansion of its business operations at the Property; and

**WHEREAS**, the TEDC agrees to provide to the Company the sum of Seventy-Five Thousand Dollars (\$75,000.00) to assist in the construction of the Improvements and the addition of the twenty-five (25) new employees at the Property; and

**WHEREAS**, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions; and

**WHEREAS**, this expenditure is found by the Board of Directors of the TEDC to be suitable for the expansion of the business operations at the property, to promote and develop new business enterprises on the Property, and in furtherance of the creation and retention of primary jobs;

**NOW, THEREFORE**, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1.

The Company covenants and agrees that it will construct the Improvements and operate and maintain the proposed business on the property for a term of at least five (5) years, and will for such term, except as provided by paragraph 4 hereof, maintain thirty-three (33) employees and create twenty-five (25) new jobs on the Property at the prevailing wage.

2.

The Company also covenants and agrees that construction of the Improvements, the addition of the twenty-five (25) new employees, and obtaining all necessary occupancy permits from the City shall occur within twelve (12) months from the Effective Date of this Agreement. Extensions of these deadlines, due to any extenuating circumstance or uncontrollable delay, may be granted at the sole discretion of the Board of Directors of the TEDC.

3.

The Company 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.

4.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company the sum of Seventy-Five Thousand Dollars (\$75,000.00) to fund a portion of the cost of the Improvements and the addition of the twenty-five (25) new employees to the Company's business operations on the property. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include: (a) a copy of the City's occupancy permit for the Improvements to the Property; (b) proof that the Company has added the number of employees indicated above to its business operations on the Property, as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service Form 941; (c) a copy of a letter from the City acknowledging that all necessary plats, plans, and specifications have been received, reviewed, and approved; (d) certification that the Improvements have been constructed in accordance with the approved plans and specifications; and, (e) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid and any and all liens and claims regarding such work have been released.

. In the event the number of jobs originally projected is not met, the amount of the funding provided to the Company by the TEDC will be reduced on a pro rata basis to reflect the actual number of jobs at the time of the request for disbursement of funds.

5.

It is understood and agreed by the parties that, in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC the full amount paid to the Company by the TEDC, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90-day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation.

The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such funds.

6.

This Agreement shall inure to the benefit of and be binding upon the TEDC and the Company, and upon the Company's successors and assigns, affiliates, and subsidiaries, and shall remain in force whether the Company sells, assigns, or in any other manner disposes of, either voluntarily or by operation of law, all or any part of the Property and the agreements herein contained shall be held to be covenants running with the Property for so long as this Agreement, or any extension thereof, remains in effect.

7.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City: Tomball Economic Development Corporation  
401 W. Market Street  
Tomball, Texas 77375  
Attn: President, Board of Directors

If to Company: Hole Specialists Inc.  
27950 Commercial Park Road  
Tomball, Texas 77375  
Attn: Larry A. Robinson, President/Owner

8.

This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

9.

Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the parties hereto.

10.

The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

11.

This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

12.

In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by the parties on this \_\_\_\_\_ day of \_\_\_\_\_ 2011 (the "Effective Date").

**HOLE SPECIALISTS INC.**

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

Name: Larry A. Robinson

Title: President/Owner

ATTEST:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**

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

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

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

Name: James D. Geer

Title: Secretary, Board of Directors

### ACKNOWLEDGMENT

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2011, by Larry A. Robinson, the President/Owner of Hole Specialists Inc. for and on behalf of  
said company.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)

### ACKNOWLEDGMENT

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_  
2011, by Gretchen Fagan, President of the Board of Directors of the Tomball Economic  
Development Corporation, for and on behalf of said Corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

(SEAL)

## **Exhibit “A”**

### **Legal Description of Property**

Lot 7 Block 3 Tomball Industrial Park – a 13.73 acre tract located at 27950 Commercial Park Road, Tomball, Texas

DRAFT

## **EXHIBIT “B”**

### **Improvements**

The addition of a 12,500-25,000 square foot warehouse space and increased concrete for the driveway to provide for truck turn around

Additional equipment to be purchased with an estimated value of \$2,000,000

**HOLE SPECIALISTS INC.**  
**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**  
**CITY OF TOMBALL ECONOMIC IMPACT MODEL**

**Average Annual Wage Assessment:**

| Number of Employees                             |    | Average<br>Hourly<br>Wage | Average<br>Weekly<br>Wages | Total Annual<br>Wages<br>(52 wks.per Yr.) |
|-------------------------------------------------|----|---------------------------|----------------------------|-------------------------------------------|
| Existing:                                       | 33 |                           |                            |                                           |
| Prospective:                                    | 25 |                           |                            |                                           |
| TOTAL:                                          | 58 | 16.00                     | 37,120                     | 1,930,240                                 |
| Federal Income and FICA Taxes at 28% deducted   |    |                           |                            | 540,467                                   |
| Fixed payments for rent, insurance, etc. at 25% |    |                           |                            | 482,560                                   |
| Net Disposable Annual Income                    |    |                           |                            | 907,213                                   |

**Total Return to Local Government by Annual Payroll:**

|                                                                                                                         |        |
|-------------------------------------------------------------------------------------------------------------------------|--------|
| Local Sales Tax Rate of 2% on Fixed Payments:                                                                           | 9,651  |
| Average Multiplier effect of the Dollar turning over 3.5 times to<br>Calculate the Total Annual Local Sales Tax Impact: | 33,779 |

**Annual Sales Tax Impact:**

| Value of Retail Sales | Sales Tax |
|-----------------------|-----------|
| 0                     | 2.00%     |
|                       | 0         |

**Estimated Property Tax Impact:**

| Value of Property<br>and Improvements                            | Tomball<br>Tax Rate<br>(per \$100) |         |
|------------------------------------------------------------------|------------------------------------|---------|
| 8,290,000                                                        | 0.25146                            | 20,846  |
| Annual Economic Impact of Manufacturing and Maintenance Facility |                                    | 54,625  |
| Economic Impact over a Five Year Period                          |                                    | 273,124 |



#### ECONOMIC DEVELOPMENT ASSISTANCE APPLICATION

Initials of Company Official: LAR

#### Texas Government Code Section 2264.01 Certification

Company certifies that Company, or a branch, division, or department of Company, does not and will not knowingly employ an undocumented worker. If, after receiving a public subsidy, Company or a branch, division, or department of Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company shall repay the amount of the public subsidy paid by TEDC to Company with interest at the rate of 18% per annum, not later than the 120 days after the date that Company receives a notification of such a violation.

The company's representative that is authorized to enter into a binding agreement with TEDC is:

Name: LARRY A ROBINSON Title: PRESIDENT

LARobinson  
Signature of Company Representative

PRESIDENT  
Title

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### Topic:

Approve a Grant Funding Amendment to the Albers Properties, LP - TEDC Agreement, which was approved by the TEDC Board at its Regular Board Meeting on December 1, 2009

#### Background:

Dean Albers and Dan Schaub of Albers Properties, LP have requested that we amend the agreement between the Tomball Economic Development Corporation (TEDC) and Albers Properties, LP, which was approved by the TEDC Board of Directors on December 1, 2009, and by the Tomball City Council on 1<sup>st</sup> reading on December 7, 2009, and on 2<sup>nd</sup> reading on December 21, 2009.

Since one of the requested amendments involves the expenditure of grant funds, final approval of such expenditure would need to be made by the City Council. The amendment would increase the grant funding amount by \$108,000, for a total amount of grant funding of \$433,000, to help offset the increased cost estimates for the storm drainage system and the roadway.

#### Origination:

Tomball Economic Development Corporation Board of Directors

#### Recommendation:

Approval of the grant funding amendment to the Albers Property, LP - TEDC agreement for additional funding in the amount of \$108,000

#### Funding: Yes

Account Number: Grant Funds Available

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

Betty Reinbeck

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

#### ATTACHMENTS:

Cover Memo

Request Letter

Request Letter

Proposal

Estimated Infrastructure Costs

Agreement



**TO:** Board of Directors  
Tomball Economic Development Corporation

**FROM:** Betty Reinbeck  
Executive Director

**MEETING DATE:** December 7, 2010

**SUBJECT:** Albers Properties, LP - Chestnut Business Park  
Amendments to Agreement

Dean Albers and Dan Schaub of Albers Properties, LP have requested that we amend the agreement between the Tomball Economic Development Corporation (TEDC) and Albers Properties, LP, which was approved by the TEDC Board of Directors on December 1, 2009, and by the Tomball City Council on 1<sup>st</sup> reading on December 7, 2009, and on 2<sup>nd</sup> reading on December 21, 2009.

Please see the attached letters from Mr. Albers and Mr. Schaub dated September 20, 2010 and October 12, 2009.

Albers Properties, LP is asking for two amendments:

1. to increase the grant funding amount by \$108,000, for a total amount of grant funding of \$433,000, to help offset the increased cost estimates for the storm drainage system and the roadway; and,
2. to change the requirement in Section (2), page 3, that “the construction of the Improvements on the Property, including the construction of the Infrastructure Improvements, must commence within 180 days from the date of this Agreement.” They would like to have you amend the agreement to extend the deadline by an additional 180 days.

They have completed the construction of the two buildings and the infrastructure work for Phase I but would like to have tenant(s) for at least one of the buildings before starting on Phase II. The detention pond that will serve the entire development has been completed.

The enclosed “Proposal” from Longhorn Builders is only for the roadway and storm drainage system.

- The numbers in red on page one are for the storm drainage system, which totals \$97,905.
- The number in red on page two is for the curbs, which are being required by the city.
- The “General Conditions” costs are not included in the requested grant funding amount.
- Other costs that are included in the proposal for permit fees, tap fees, striping, stop signs, street signs, and fire hydrants will be deducted from the actual invoices that are sent to TEDC staff when funding of the grant is requested by Albers Properties, LP. Please let us know if you see other costs that you think should not be funded.

# **Chestnut Business Park**

**Tomball, Texas**

September 20, 2010

Dear Betty Rhinebeck & the TEDC Board of Directors,

On behalf of Albers Properties, I am writing to request additional support and an increase in funding assistance from TEDC for our Chestnut Business Park development and completion efforts.

Last year, TEDC graciously awarded us funding for the project. Now, as a result of additional requests from the City of Tomball, we are required to add the following components to our development:

- Curbs and gutters to roadways
- Storm drains
- Sidewalks to all finished sites
- Sidewalks as new buildings are added

These additions are estimated to cost \$185,000. This is an unexpected additional expense for our project, so we are requesting that TEDC please consider increasing the grant money available to us. A copy of the estimate for this additional work is enclosed for your convenience, as is a copy of our original grant request letter to TEDC dated October 2009.

We are still working towards our original completion dates for all buildings within the park, dependent upon funding. Leasing and sales within the park are taking longer than anticipated, but our continued knowledge of business operations and potential in the community keeps us confident that expanding the building facility offerings in Tomball will allow professional growth opportunities for current and future business owners, as well as expand the employment opportunities for residents.

We appreciate your continued support and interest in our project. Thank you in advance for considering Chestnut Business Park for additional grant funding. We welcome any questions you may have. For local response to your inquiries, please contact Dan Schaub at 713-822-8095.

Best Regards,

---

Dean Albers, CEO  
Albers Properties, LP  
PO Box 2458  
Granbury, TX 76048  
619-884-2276 or 817-573-6405

---

Dan Schaub  
21514 Fones Road  
Tomball, TX 77377  
713-822-8095

Chestnut Business Park – NAICS code: \_\_\_\_\_

## **Chestnut Business Park**

**Tomball, Texas**

October 12, 2009

Dear TEDC Board of Directors,

On behalf of Albers Properties, I am writing to request for support and funding assistance from TEDC for Phase II of our Chestnut Business Park development and completion efforts. This project is being lead by Dean Albers, CEO of Albers Properties, and Dan Schaub.

Our vision for Chestnut Business Park is to offer members of and employers in the Tomball community a premiere business property that is ideal for offices, warehouses, showrooms, machine shops, athletic gyms, and other such business types. Patrons will be able to rent or own their individual suites within the park, allowing customizable build-outs of each suite.

We are developing Chestnut Business Park two buildings at a time and are planning to develop 12 buildings total, eight 9,000 square foot suites and four 6,250 square foot suites. The business park is to be located on easily accessible 16-acres, with the first four buildings facing Chestnut Street (street addresses 525, 611, 623, and 711), and the remaining buildings (Phase II) facing the future Chestnut Business Park Drive (street addresses 410, 411, 420, 421, 510, 511, 520, and 521) in Tomball. All buildings can also be accessed from Timkin Drive, which is the back street of the property. In total, the land consists of 13 lots, three blocks.

Phase I of the project, which includes the land development, the retention pond, and construction of the first four buildings, is already underway, and should be complete by the third quarter of 2010.

We are seeking grant funding for Phase II of our project. Phase II will include development of the roadway for Chestnut Business Park Drive and construction of the remaining eight buildings. Current financial estimates for this project, including capital improvements, are as follows:

- o Value of the land = \$900,000
- o Land clearing = \$90,000
- o Engineering, Surveying, Platting & Construction Phase Services = \$75,462
- o Architect = \$32,000
- o Building = \$350,000 each (x 12 buildings = \$4,200,000)
- o Earthwork – Detention Pond Area = \$208,243.50
- o Lift Station = \$35,000
- o Site Work = \$40,000/building (x 12 buildings = \$480,000)
- o Storm Drainage System = \$6,000
- o Water Distribution = \$61,000
- o Sanitary Sewer = \$32,600
- o Gas Distribution = \$25,500
- o Roadway = \$124,000

Depending on the funding available, it is our goal to have the entire business park completed no later than the fourth quarter of 2011.

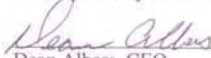
Dean has been a frequent visitor to Tomball for more than 16 years. I have been a member of the Tomball community for 17 years and a business owner each of those years, first with Tri-County Barns and currently with TCPS, Inc.

Based on our knowledge of business operation and potential in the community, we are confident that expanding the building facility offerings in Tomball will not only allow professional growth opportunities for current and future business owners, but also expand the employment opportunities for residents, youth and adults, of Tomball and the surrounding areas. Exact financial contributions and employment opportunities to the Tomball community are unknown, as it would be dependent upon the business types who become residents of the business park.

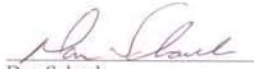
For further assistance in your consideration efforts, we are enclosing site and construction plans and the property deed information for your review.

We welcome any questions you may have about Chestnut Business Park, our vision for this project, or current involvements. For local response to your inquiries, please contact Dan Schaub at 713-822-8095. It is with sincere gratitude that we submit the request for grant funding assistance from TEDC.

Thank you for your consideration,



Dean Albers, CEO  
Albers Properties, LP  
PO Box 2458  
Granbury, TX 76048  
817-573-6405



Dan Schaub  
21514 Fones Road  
Tomball, TX 77377  
713-822-8095

Chestnut Business Park – NAICS code: \_\_\_\_\_

# LONGHORN BUILDERS

Division of LQC, Inc.

18275 Shaw Road ~ Cypress, Texas 77429

Phone: 281-357-1465 ~ Fax: 281-357-1469

E-mail: longhornbuilders@prodigy.net

www.longhornbuilders.com

October 8, 2010

Dean Albers and Dan Schaub  
Albers Properties  
P.O. Box 24580  
Grandbury, Texas 76048

Ph: 713-822-8095

Fax: 281-516-7012

RE: Chestnut Business Park Project  
623 & 711 S. Chestnut Street  
Tomball, Texas 77375

We are pleased to provide you with the following proposal for your review:

## PROPOSAL

Revised 11/10/10

### SITEWORK

**\$282,320.00**

- Mobilization
- Install silt fencing and inlet barriers per plans
- Install 30' x 50' construction entrance
- Strip roadway 5" deep and stockpile on site
- Proof-roll roadway for soft spots
- Cut/balance to sub-grade and compact
- Stabilize with Trueblend, 6" deep, mix and compact to 95%
- Lab testing for gradation/depth for roadway
- Fine-grade and compact roadway for concrete
- (4) B-B inlets for 24" RCP **10,667.00**
- (1) Type C inlet 36" x 36" **1,777.77**
- (2) Type C inlet 48" x 48" **4,222.25**
- 645 l.f. of 24" RCP with 12" stabilized sand around pipe - out of road **39,416.67**
- 75 l.f. of 24" RCP with 12" stabilized sand around pipe, and to 12" below sub-grade across road per C.O.T. **5,583.00**
- 335 l.f. of 36" RCP with 12" stabilized sand around pipe - out of road **33,127.78**
- Install SET's on (2) entrance culverts per C.O.T. established grades **3,111.11**
- Install 2,100 s.f. of rip-rap at pond inflow
- Install fireline - one road bore (no casing included), 4 fire hydrants, testing/permit/inspections, tie-in to City-provided tap
- Install 2" gas line - road bore with casing and tracer wire, testing and inspections - City to tap mains

- Install sanitary sewer with 2 crossovers and manholes – (3) coming off of Timken
- Gas and water taps
- Striping
- Stop signs and street signs
- Hydromulch

### **CONCRETE**

**\$117,930.00**

- Form, pour and finish approximately 37,800 s.f. of 6" paving with #4 rebar, 24" o.c.e.w.
- Form, pour and finish approximately 2,600 l.f. of 6" curb **11,700.00**
- Form, pour and finish approximately 150 s.f. of sidewalk

### **GENERAL CONDITIONS**

**\$5,000.00**

- Dumpster
- Porta Can
- Supervision

### **TOTAL PROJECT**

**\$405,250.00**

Thank you for the opportunity to present this proposal. We look forward to serving you.

Sincerely,

*Billy Powers*

713-545-8846

**Albers Properties, LP – Chestnut Business Park**

**Estimated Infrastructure Costs**

|                                 | <u>Approved 12/1/2009</u> | <u>Requested 12/7/2010</u> |
|---------------------------------|---------------------------|----------------------------|
| Earthwork – Detention Pond Area | \$ 208,244                | \$ 208,244                 |
| Lift Station                    | 35,000                    | 35,000                     |
| Site Work for 8 Buildings       | 320,000                   | 320,000                    |
| <b>Storm Drainage System</b>    | <b>6,000</b>              | <b>97,905</b>              |
| Water Distribution System       | 61,000                    | 61,000                     |
| Sanitary Sewer System           | 32,600                    | 32,600                     |
| Gas Distribution System         | 25,500                    | 25,500                     |
| <b>Roadway</b>                  | <b><u>124,000</u></b>     | <b><u>302,345</u></b>      |
| TOTAL                           | \$812,344                 | \$1,082,594                |
| Forty Percent of Total:         | \$325,000                 | \$ 433,000                 |

**Additional Requested Funds: \$108,000**

**Total Amount of Grant Funding: \$433,000**

## AGREEMENT

THE STATE OF TEXAS           §  
                                          §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HARRIS         §

This Agreement (the "Agreement") is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the "TEDC"), and **Albers Properties, LP** (the "Company"), P. O. Box 2458, Granbury, TX 76048.

### WITNESSETH:

**WHEREAS**, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the "City"), and thereby enhance the economic stability and growth of the City; and

**WHEREAS**, the Company proposes to develop a 16-acre tract of land within the City, located at Chestnut Street and Timkin Road, Tomball, Texas 77375 (the "Property"), more particularly described in Exhibit "A," attached hereto and made a part hereof; and

**WHEREAS**, such development shall include the construction of six (6), 9,000 square-foot office/warehouse buildings and two (2) 6,250 square-foot office/warehouse buildings (the "Improvements"), more particularly described in Exhibit "B," attached hereto and made a part hereof; and

**WHEREAS**, the TEDC agrees to provide to the Company the sum of Three Hundred Twenty-Five Thousand Dollars (\$325,000), or an amount equal to actual construction costs if

TOMBALL EDC/Albers Properties, LP

Construction of the Improvements on the Property, including construction of the Infrastructure Improvements, must commence within 180 days from the date of this Agreement (the "Start Date"), and the Company shall notify the TEDC of such Start Date. The construction of the Improvements to the Property, including construction of the Infrastructure Improvements, shall be completed, and all necessary occupancy permits from the City shall be obtained within five (5) years of the Effective Date of this agreement. Extensions of these deadlines due to extenuating circumstances or uncontrollable delay may be granted by the Board of Directors of the TEDC at its sole discretion.

3.

The Company further represents and agrees that the Improvements described in Paragraph 1 hereof will be occupied and maintained for a term of at least five (5) years.

4.

The Company further covenants and agrees that the Company or any owner or leasee of the Improvements 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 under the law to be employed in that manner in the United States.

5.

In consideration of the Company's representations, promises, and covenants, TEDC agrees to reimburse the Company for the actual cost of the Infrastructure Improvements up to the amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000), or an amount equal to actual construction costs if less than the sum stated above. The TEDC agrees to reimburse the

-3-

Exhibit C

Description of Infrastructure Improvements

- Earthwork – Detention Pond Area
- Lift Station
- Site Work
- Storm Drainage System
- Water Distribution System
- Sanitary Sewer System
- Gas Distribution System
- Roadway

-12-

TOMBALL, EDC/ALBERS PROPERTIES, LP

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

**Topic:**

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

- Section 551.072 Deliberation regarding the Purchase of Real Property where Deliberation in Open Session would have a Detrimental Effect on the Position of the City in its Negotiations.

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

City Manager

**Recommendation:**

N/A

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

City Secretary

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

# Regular City Council

## Agenda Item

## Data Sheet

Meeting Date: December 20, 2010

### Topic:

Approve Request from the Klein Family to Abandon a Portion of Klein Road and to Authorize the City Manager to provide a Letter from the City of Tomball to the Veterans Administration, Expressing the City's Willingness to Abandon and Close a Portion of Klein Road

### Background:

The Klein Family has received an invitation to submit the Klein Supermarket Retail Center property to the Veterans Administration for consideration as a potential site for the new VA clinic proposed for Tomball.

Part of the submittal must include a letter from the City of Tomball indicating the City's willingness to consider abandoning and closing the portion of Klein Road between Tracts A and B so the VA can create and utilize a single tract.

Klein Road connects Buvinghausen Street and Quinn Road; however, these two streets are also connected by Rudel Road, approximately 300 ft. away. The primary use of Klein Road was to provide access for delivery vehicles to the supermarket and is now used as a shortcut between Buvinghausen and Quinn.

A portion of Klein Road extends east beyond Tracts A and B to Quinn Road and provides additional access to the Chamber of Commerce building on Quinn Road. Closing Klein Road entirely could create a traffic-flow problem for the Chamber of Commerce and the TEDC parking lot; retaining that portion of Klein Road would not interfere with the VA's use of Tracts A and B.

### Origination:

Lori Klein Quinn, on behalf of the Klein Family

### Recommendation:

N/A

### Funding:

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

City Secretary

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

### ATTACHMENTS:

Email from Lori Klein Quinn

VA Advertisement

Klein Property Brochure

Klein\_GTACC\_TEDC\_map

**From:** Lori Klein [mailto:loriklein@sbcglobal.net]  
**Sent:** Wednesday, December 15, 2010 12:28 AM  
**To:** George Shackelford  
**Cc:** lklein@kleinwealthmgmt.com  
**Subject:** Klein Road

George,

We just received an invitation to submit our property to the VA for a clinic in Tomball. The VA had been out last month to look at several properties submitted including the 9th ? floor of the hospital. The request for resubmission must be back to them in 30days. Part of what they requested is the citys willingness to close Klein road so the VA can have contiguous parking and /or another entrance to the building. This road only goes behind the grocery store. The family is fine with this. The VA requested a letter from the city indicating their willingness to consider this or approval from the city on closing the road if the VA does want to utilize the old grocery store for the clinic.

What are the steps which need to be done? Do we need to address council Monday night? We just received the request Monday.

Please reply to all so will also go to my office email. My numbers are 713-254-0579, 281-370-0300.

Thanks, Lori Klein Quinn

## DEPARTMENT OF VETERANS AFFAIRS (VA) DESIRES TO LEASE SPACE

VA desires to lease up to 28,753 net usable square feet (approximately 33,000 rentable sq. ft.) of space for use as a community-based outpatient clinic within the following delineated area in the city of Tomball, Texas.

North: Beginning at the intersection of Hicks Street and Tomball Parkway, proceed east on Hicks Street to North Pine; continue south on North Pine to Oxford Street, continue East on Oxford Street to North Cherry Street.

East: Proceed south on North Cherry Street (which becomes South Cherry Street) to Theis Lane.

South: Proceed west on Theis Lane to Tomball Parkway.

West: Proceed north on Tomball Parkway to Hicks Street.

Offered space must be on no more than one (1) floor. Offered space may not be the result of a build-to-suit, however, expansion of an existing building to meet the requirement may be considered. If a multi-story building is offered, a minimum of two (2) elevators must be provided. Offers must provide a parking structure and/or surface parking lot capable of accommodating at least 200 dedicated, standard sized, parking spaces, with a minimum of 10% of these spaces ADA accessible, plus any additional parking required by code. Parking must be on-site and contiguous to the offered space (not secondary to any other parking lot, parking /structure, building, or separated by any public road. At the time of initial response to a Solicitation for Offers (SFO), property owners/developers must provide written proof of a) ownership or non-contingent control of that portion of the property which is to serve as VA parking, and b) building permits or such other authorization as may be required by local government to construct and deliver said parking.

Special consideration will be given for buildings that: are located in close proximity to existing hospitals with Intensive Care Units, amenities and services; can provide parking as stated which can accommodate larger vehicles; and have high visibility and direct access from major arterial roadways. Existing buildings that can meet VA's requirements will be considered for a lease term of up to 20 years.

Brokers or legal representatives submitting property must show written acknowledgement and permission to represent the property. Property owners and developers must provide written proof of ownership or non-contingent control of property at the time of submission of initial bids. The following information shall be provided along with the expression of interest: (1) Site plan depicting the building, (2) a block or floor plan of the proposed space for offer, (3) identification on site plan demonstrating location of parking to be dedicated for VA's use, (4) ingress/egress to street(s); (5) evidence of proper zoning for medical use; (6) evidence that the property lies outside the 100-year floodplain; (7) distance to nearest hospital with ICU service; (8) distance to nearest first responders (Fire Dept/ER); (9) distance to area eateries; (10) distance to other area amenities; (11) distance to two nearest pharmacies; (12) an aerial photograph.

A market survey of qualifying offered properties will be conducted by VA staff and broker consultant. Interested Offerors (owners, developers, brokers, or their legal representatives) should submit information concerning their properties in writing, via e-mail, or via fax not later than 5:00 P.M. PST, Friday, December 24, 2010.

Carpenter/Robbins Commercial Real Estate, Inc.  
Agent for the Department of Veterans Affairs  
3160 Crow Canyon Road, Suite 200  
San Ramon, CA 94583  
Attn: Shamm Kelly  
Phone: (415) 225-7171

Fax: (925) 866-1306  
E-mail: skelly@crcrc.com

Net usable square feet does not include such areas as stairs, elevators, mechanical and utility rooms, ducts, shafts, vestibules and public corridors, and public toilets required by local code.

The Government will pay no more than the appraised fair market rental value for the building.

RESPONDENTS ARE ADVISED THAT VA ASSUMES NO RESPONSIBILITY TO PURCHASE A SITE OR AWARD A LEASE BASED UPON RESPONSES TO THIS ADVERTISEMENT.

FOR SALE

Klein  
Supermarket  
Retail  
Center

1200 - 1226 West Main, Tomball, Texas 77375



Size and Location

**Tract A:** ±4.7879 Acres Northeast corner of W. Main (FM 2920) and Buvinghausen Lane with frontage on Klein Drive.

| <u>Improvements</u> | <u>Size</u>            | <u>Location</u> | <u>Latest Use</u>          |
|---------------------|------------------------|-----------------|----------------------------|
| Klein Supermarket   | ±41,975 Sq. Ft.        | 1200 W. Main    | Grocery Store (now vacant) |
| Building A          | ±11,723 Sq. Ft.        | 1226 W. Main    | Library (now Vacant)       |
| Building B          | ± 13,571 Sq. Ft.       | 1222 W. Main    | Arts & Crafts Retail Mall  |
| The Nook            | ± 1,056 Sq. Ft.        | 1218 W. Main    | Restaurant                 |
| Total Sq. Ft.       | <u>±68,325 Sq. Ft.</u> |                 |                            |

**Tract B:** ±1.818 Acres Vacant Land across Klein Drive to the North from Tract A, with additional frontage on Buvinghausen.

### Asking Price

\$4,963,739 for all ±6.6059 Acres and the ±68,325 Sq. Ft. of Improvements.

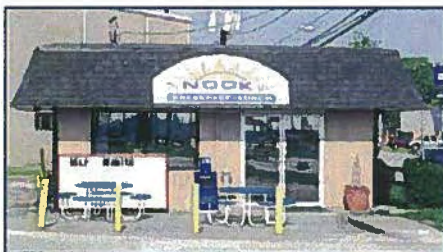
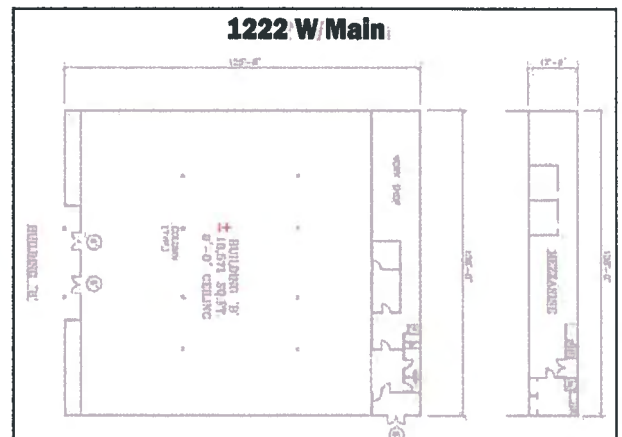
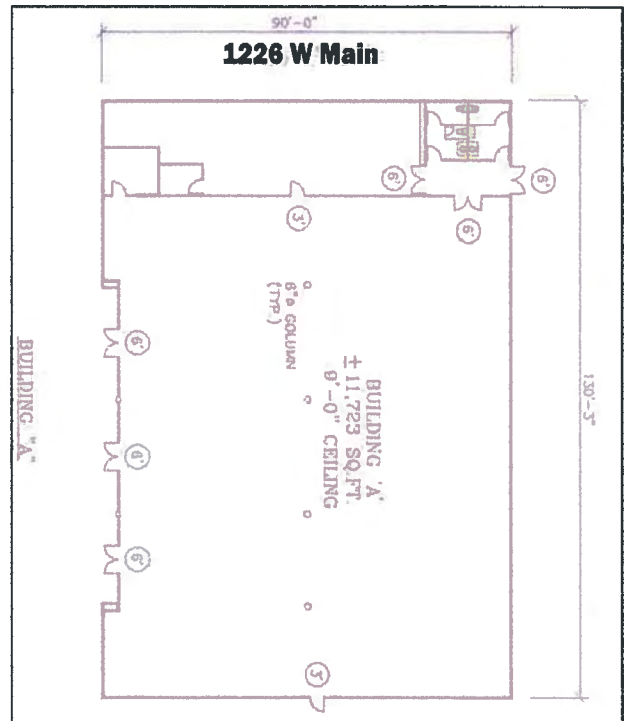
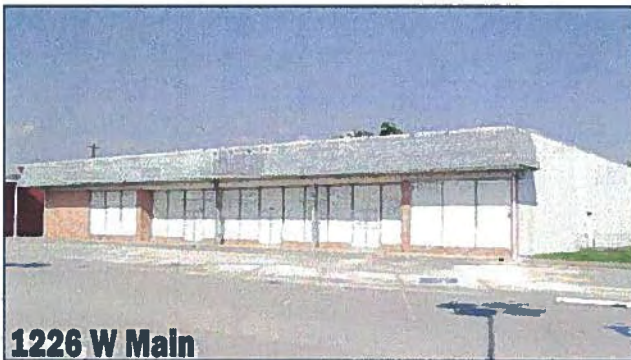
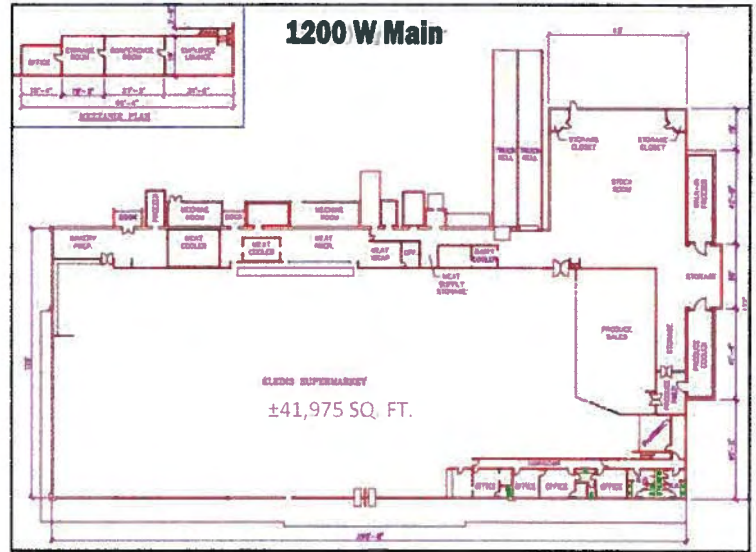
### Property Summary

- Unparalleled property availability on Main Street in Tomball, just east of SH 249 Business; **Key Map 288 K, L, G & F.**
- Locally well known "Landmark" location.
- Zoning designation of "Commercial District".
- Water and Sanitary Sewer provided by City of Tomball.
- 100% Surface Control; No Oil & Gas Issues preventing use.

**FOR SALE**

**Klein  
Supermarket  
Retail  
Center**

**1200 - 1226 West Main, Tomball, Texas 77375**



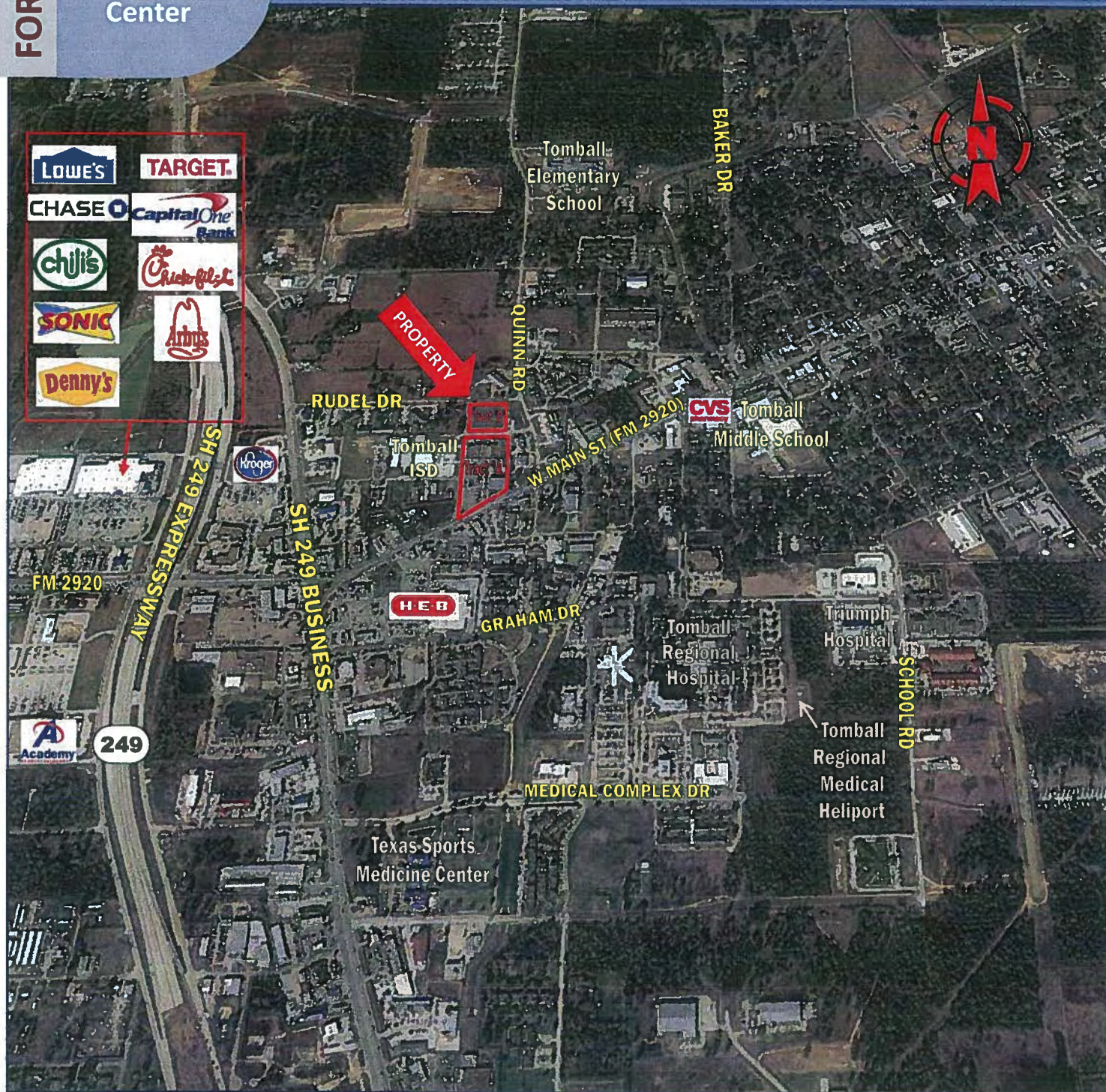
**Klein  
Supermarket  
Retail  
Center**

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**FOR SALE**

Klein  
Supermarket  
Retail  
Center

**1200 - 1226 West Main, Tomball, Texas 77375**



Contact Us

**Tom Condon, Jr.**  
Senior Vice President  
BETZ Commercial Brokerage, Inc.  
**832.678.4023**  
[tcondon@betzcompanies.com](mailto:tcondon@betzcompanies.com)

**BETZ**  
COMPANIES

10940 W. Sam Houston Pkwy N.  
Suite 300  
Houston, Texas 77064  
281.873.8156 Fax  
[www.betzcompanies.com](http://www.betzcompanies.com)

Information furnished regarding this property, while based on data supplied by the owners and from other sources deemed reliable, is not in any way warranted by Betz Commercial Brokerage, Inc. The information is provided subject to omissions, prior sale, withdrawal without notice or change in price.

# Betz Commercial Brokerage, Inc.

Approved by the Texas Real Estate Commission for Voluntary Use

***Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.***

## Information About Brokerage Services

**B**efore working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

### IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

### IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

### IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License

Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

Real estate licensee asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

\_\_\_\_\_  
Buyer, Seller, Landlord or Tenant

\_\_\_\_\_  
Date

Texas Real Estate Brokers and Salespersons are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or complaint regarding a real estate licensee, you should contact TREC at P.O. Box 12188, Austin, Texas 78711-2188 or 512-465-3960.

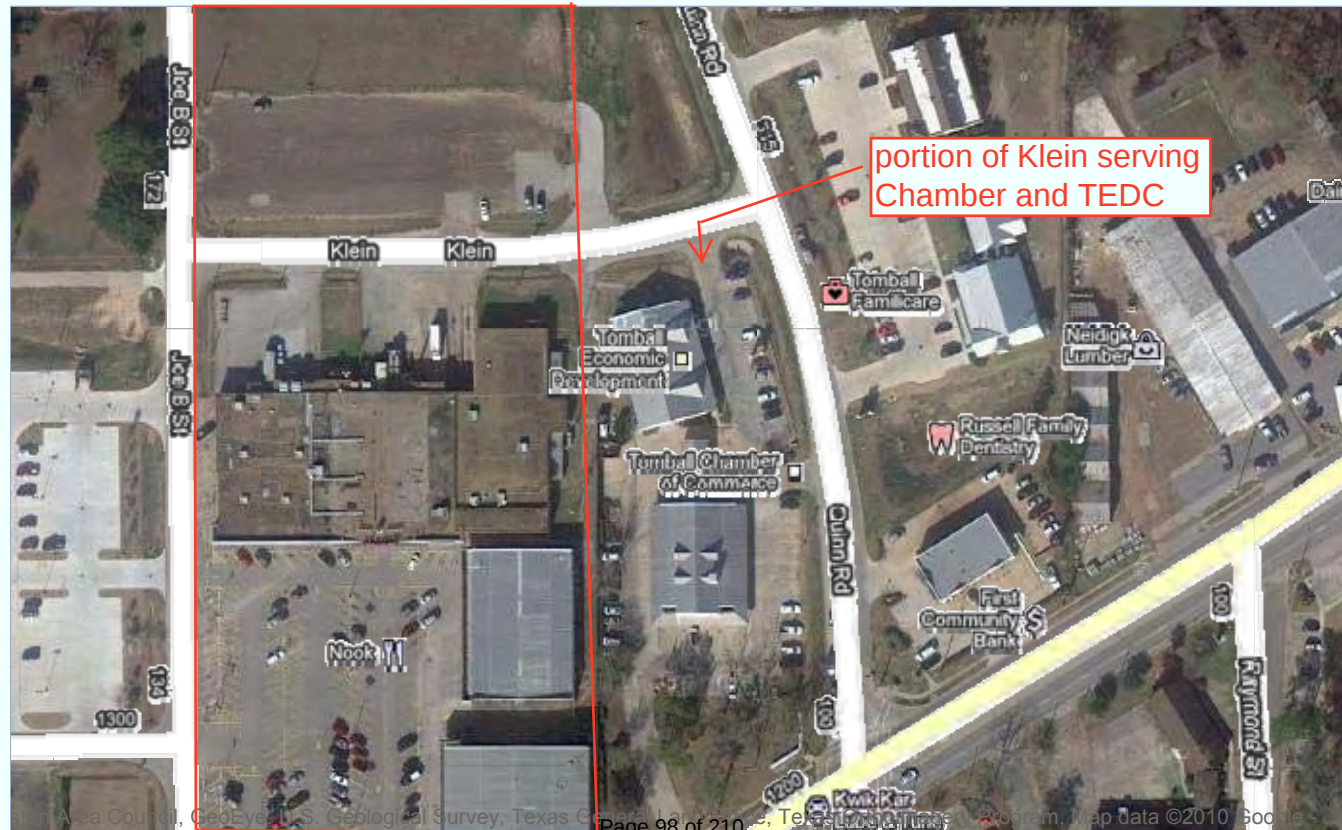
**THE BETZ  
COMPANIES**



TREC No. OP-K  
Page 1 of 1

(TAR-2501) 1/1/96

10940 W Sam Houston Pkwy N Ste 300 Houston, TX 77064 • 281.873.4444 • 281.873.8156 fax • betzcompanies.com



# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### **Topic:**

Approve Resolution No. 2010-23, a Resolution of the City Council of the City of Tomball, Texas, Supporting the Annual Baseball Parade, to be held in Tomball on Saturday, March 5, 2011

#### **Background:**

The Tomball Sports Association is requesting a resolution expressing the City's support of the annual baseball parade, which will be held on Saturday, March 5, 2011. This resolution is required for submission of TSA's Traffic Control Plan to the Texas Department of Transportation.

The parade will begin at the intersection of Buvinhausen and Main Streets (FM 2920) and will continue east on Main Street, turning north on North Cherry Street, and finishing at the Little League Park in the Wayne Stovall Sports Complex.

As information regarding the cost of City-provided support services, this is considered a short, simple event, using a 'rolling barricade', and costs are approximately 15% of a normal parade event. The estimated cost for the Public Works Department is \$225 and for the Police Department is \$500 for personnel to manage the parade. In addition, the Fire Department takes one or two vehicles out of service to use in the parade as the "rolling barricade," either the tanker and the tower or the tower and the old city pumper. A minimum of two firefighters accompany each vehicle; the estimated total cost of personnel and fuel is \$250.

#### **Origination:**

Tomball Sports Association

#### **Recommendation:**

Approval of Resolution No. 2010-23

#### **Funding:**

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

City Secretary

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

#### **ATTACHMENTS:**

TSA Request Letter

Resolution No. 2010-23



---

**TOMBALL SPORTS ASSOCIATION**

Tomball Little League  
PO BOX 1084  
Tomball, TX 77377

November 30, 2010

Honorable Gretchen Fagan  
Mayor  
City of Tomball  
401 Market Street  
Tomball, Texas 77375

Dear Mayor Fagan,

This letter is a request for the Tomball City Council to approve a resolution in favor of Tomball Sports Association's Annual Opening Day Parade, to kick off the Spring 2011 baseball season. The parade will be held in Tomball city limits, on Saturday, March 5, 2010, at 9:00am. The parade starts at the intersection of Buvinghausen and Main Street (FM2920) and will continue east on Main Street (FM2920) to turn north onto Cherry Street and finish at the Wayne Stovall Little League baseball park.

We appreciate the City of Tomball's past and ongoing support of our Little League Baseball program. Please contact me with any questions.

Sincerely,

Jennifer Longoria-Walker  
Tomball Sports Association  
Parent Auxiliary Director  
Home: 281.290.6956

cc: Lt. Anthony Soloman, Tomball Police Department  
David Kauffman, Director of Public Works

**RESOLUTION NO. 2010-23**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF TOMBALL, TEXAS, SUPPORTING THE  
ANNUAL BASEBALL PARADE, TO BE HELD IN  
TOMBALL ON SATURDAY, MARCH 5, 2011.**

\* \* \* \* \*

**WHEREAS** the Tomball Sports Association will undertake its Annual Baseball Parade to kick off the Spring 2011 baseball season, to be held in the City of Tomball at 9:00 a.m. on Saturday, March 5, 2011; and

**WHEREAS** the purpose of the Annual Baseball Parade is to celebrate the beginning of the baseball season and provide an event for our community and the children who enjoy sports; and

**WHEREAS** it is a chance for Tomball area merchants and business people to come out and encourage our young people by attending the Annual Baseball Parade; and

**WHEREAS** the Annual Baseball Parade will begin at the intersection of Buvinghausen and Main Streets (FM 2920) and will continue east on Main Street (FM 2920), turning north on North Cherry Street, and finishing at the Little League Park, located in the Wayne Stovall Sports Complex; and

**WHEREAS** the Tomball Sports Association desires and requests the support and endorsement of the City of Tomball in this community-wide effort;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Tomball and its governing body endorses and supports the efforts of the Tomball Sports Association in promoting and undertaking the Annual Baseball Parade and pledge to encourage this effort to celebrate the beginning of baseball season;

**PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL  
HELD ON THE 20<sup>TH</sup> DAY OF DECEMBER 2010.**

\_\_\_\_\_  
GRETCHEN FAGAN, Mayor

ATTEST:

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

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

**Topic:**

Appoint Member to Fill Vacancy and Complete Unexpired Term on Planning and Zoning Commission

**Background:**

On December 6, 2010, Council appointed members to the Tourism Advisory Committee. Mary Harvey was appointed to Position 3, resulting in her automatic resignation from the Planning and Zoning Commission.

Council is asked to make an appointment to the vacated position on the Planning and Zoning Commission; the term of this position will expire June 1, 2012.

The following individuals (shown in alphabetical order) have expressed an interest in serving on the Planning and Zoning Commission, have applications on file, and are not currently serving on another City board:

Field Hudgens  
James Kendler  
Roy P. Lackey  
Judith Wilson.

I would like to recommend the appointment of Field Hudgens to this unexpired term. He has recently relocated his business to the city and now has more time to devote to our community. Nominations from Council will also be received.

Copies of applications from those interested in serving on the Planning and Zoning Commission are attached for your consideration.

**Origination:**

Mayor Fagan

**Recommendation:**

Appointment of Field Hudgens to unexpired term on the Planning and Zoning Commission.

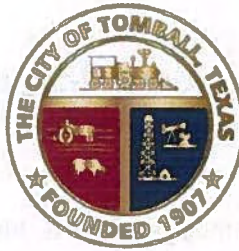
**Funding:****Party(ies) responsible for placing this item on agenda:**

City Secretary

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

**ATTACHMENTS:**

Field Hudgens Application  
James Kendler Application  
Roy P. Lackey Application  
Judith Wilson Application



## CITY OF TOMBALL

2009

### APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

As an Applicant for a City Board, Commission, or Committee, your application will be available to the public. You will be contacted before any action is taken on your appointment to confirm your continued interest in serving. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2009 applications expire on December 31, 2009; a new application will be required in 2010.

Please Type or Print Clearly:

Date: 2/24/09

Name: Field Hudgens

Phone: 281-255-2996

Address: 717 Barbara St.

(Home)  
713-977-8686  
(Work)

I have lived in Tomball 8 years.

I am ☒ am not ☐ a U.S. Citizen

Occupation: ATTORNEY, Hoover Slovacek LLP

www.hoover Slovacek.com

Professional and/or Community Activities: VP/Commissioner Emergency Services District  
No. 8, Texas BAC Foundation, GTACC,

Additional Pertinent Information/References: \_\_\_\_\_

**Applications for the following Council-appointed Board, Commissions, and Committees will be kept on file in the City Secretary's office (281-290-1002) for one year.**

If you are interested in serving on more than one board, please indicate your preference by numbering each board in order of preference (i.e., 1, 2, 3, etc.)

**Advisory Boards & Commissions**

- ( ) Parks, Recreation & Beautification Advisory Board  
( ) Impact Fee Advisory Board

**Decision-Making Boards and Commissions**

- ( ) Building Standards Board  
(4) Planning Commission  
( ) Electrical Board  
( ) Technical Airport Advisory Committee  
(3) Board of Adjustments

**Separate Legal Entities**

- (1) Tomball Economic Development Corporation  
  
(2) Tomball Hospital Board

**Meeting Information**

Second Tuesday each month, 5 p.m.  
As needed, second Monday in month, 6 p.m.

**Meeting Information**

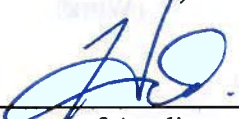
As needed, 5 p.m.  
Second Monday each month, 6 p.m.  
First Tuesday after third Monday, 7:30 p.m.  
To Be Announced; Evenings  
To Be Announced; Evenings

**Meeting Information**

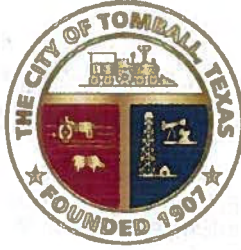
First Wednesday of January, April, July & October, 9 a.m. (special meetings may be called)  
Fourth Wednesday each month, 4 p.m.

\*\*\*\*\*

**I AM INTERESTED IN SERVING ON THE ABOVE-INDICATED BOARDS, COMMISSIONS, AND COMMITTEES.**

  
\_\_\_\_\_  
Signature of Applicant

Please return this application to: City Secretary  
City of Tomball  
401 Market Street  
Tomball, TX 77375



## CITY OF TOMBALL

2009

### APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

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Please Type or Print Clearly:

Date: 2/23/09

Name: JAMES KENDLER

Phone: 281-516-3334  
(Home)

Address: 14215 Spring Pines Dr

(Work)

I have lived in Tomball 5 years.

I am ☒ am not ☐ a U.S. Citizen

Occupation: Retired and I work part time for O'Reilly  
Auto Parts.

Professional and/or Community Activities: Vice President of the Spring Pines  
Home Owners Association. Previously was a member of the  
Spring Pines Estates Architectural Committee.

Additional Pertinent Information/References: Norman & Martha Huebner: Neighbor & Friend  
Randy PARR: Neighbor & Friend

**Applications for the following Council-appointed Board, Commissions, and Committees will be kept on file in the City Secretary's office (281-290-1002) for one year.**

If you are interested in serving on more than one board, please indicate your preference by numbering each board in order of preference (i.e., 1, 2, 3, etc.)

**Advisory Boards & Commissions**

- ( ) Parks, Recreation & Beautification Advisory Board  
( ) Impact Fee Advisory Board

**Decision-Making Boards and Commissions**

- ( ) Building Standards Board  
☒ Planning Commission  
( ) Electrical Board  
( ) Technical Airport Advisory Committee  
( ) Board of Adjustments

**Separate Legal Entities**

- ☒ Tomball Economic Development Corporation  
  
( ) Tomball Hospital Board

**Meeting Information**

Second Tuesday each month, 5 p.m.  
As needed, second Monday in  
month, 6 p.m.

**Meeting Information**

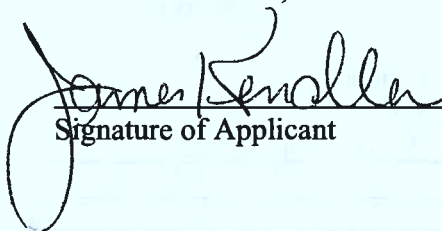
As needed, 5 p.m.  
Second Monday each month, 6 p.m.  
First Tuesday after third Monday, 7:30 p.m.  
To Be Announced; Evenings  
To Be Announced; Evenings

**Meeting Information**

First Wednesday of January, April, July &  
October, 9 a.m. (special meetings may  
be called)  
Fourth Wednesday each month, 4 p.m.

\*\*\*\*\*

**I AM INTERESTED IN SERVING ON THE ABOVE-INDICATED BOARDS, COMMISSIONS, AND COMMITTEES.**

  
\_\_\_\_\_  
Signature of Applicant

Please return this application to: City Secretary  
City of Tomball  
401 Market Street  
Tomball, TX 77375

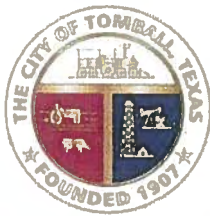
*From the Desk  
Of  
Jim Kendler*

**A Resume Summery**

James Kendler  
14215 Spring Pines Dr  
Tomball Texas 77375  
281 516 3334

I am by training and education an engineer and a manager. I have a BS in Electrical Engineering and many hours of management and business training. My career has been focused on the computer industry where my experience has been in new product development, system design and application development. I have extensive experience in managing large groups and large complex multi-national development projects. I have international experience involving project management and contract negotiation. In addition, I have managed my own small business for several years, and have had to meet a payroll, that focused on providing to small businesses Networked Computer Applications. This business was partially funded by an SBA supported loan. In the early years of my retirement I taught computer science courses at local community colleges.

February 23, 2009



## CITY OF TOMBALL

### APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

As an Applicant for a City Board, Commission, or Committee, your application will be available to the public. You will be contacted before any action is taken on your appointment to confirm your continued interest in serving. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings (typically, three meetings) in any twelve consecutive months or absent from more than three consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. Applications will be kept on file for two years and will expire at the end of two years; for instance, an application dated in 2010 will expire in 2012.

Please Type of Print Clearly:

Date: February 1, 2009

Name: Roy P. Lackey

Phone: 281-642-2563  
(Home)

Address: 31530 Capella Circle

Phone: 281-642-2563  
(Work)

City/State/Zip: Tomball, Texas 77375

Email: Roy@AESTexas.net

I have lived in Tomball 15 years.

I am X am not      a U.S. Citizen

Occupation: SELF EMPLOYED ELECTRICAL POWER CONSULTANT AND  
SPECIALIZING IN POWER QUALITY, STANDBY ELECTRICAL GENERATION,  
LIGHTNING & SURGE PROTECTION

Professional and/or Community Activities: MEMBER CHAMBER OF COMMERCE  
LEGISLATIVE & TRANSPORTATION COMMITTEE

Additional Pertinent Information/References: 30YR DIRECTOR OF 2 MUNICIPAL  
UTILITY DISTRICTS IN HARRIS COUNTY, ENGINEERING & OPERATION EXPERIENCE  
FOR A WATER & SEWAGE TREATMENT SYSTEM THAT IS LARGER THAN TOMBALL  
BY CAPACITY.

**Applications for the following Council-appointed Boards, Commissions, and Committees will be kept on file in the City Secretary's office (281-290-1002) for two years.**

If you are interested in serving on more than one board, please indicate your preference by numbering in order of preference (i.e., 1, 2, 3, etc.)

Decision-Making Boards and Commissions

Meeting Information

(1) Planning & Zoning Commission

Second Monday each month, 6 p.m.

( ) Board of Adjustments

To Be Announced; Evenings

Separate Legal Entities

Meeting Information

(2) Tomball Economic Development Corporation

Fourth Tuesday of the Second Month of Each Quarter, 5:30 p.m. (special meetings may be called)

(3) Tomball Hospital Board

Fourth Wednesday each month, 4 p.m.

\*\*\*\*\*

**I AM INTERESTED IN SERVING ON THE ABOVE-INDICATED BOARDS, COMMISSIONS, AND COMMITTEES.**

  
\_\_\_\_\_  
Signature of Applicant

Please return this application to:

City Secretary  
City of Tomball  
401 Market Street  
Tomball, TX 77375

Judith L. Wilson  
506 N. Pecan Dr.  
Tomball, TX 77375  
(281) 351-9151  
(832) 439-1072

July 31, 2009

Doris Speer, City Secretary  
City of Tomball

Dear Doris:

Please accept the revised application for Council-appointed Boards,  
Commissions, and Committees.

Thank you,



Judy

Judith L. Wilson  
506 N. Pecan Dr.  
Tomball, Texas 77375

June 5, 2009

Tomball City Council Members  
Fax No. 281-351-6256

Dear City Council Members:

As a native Houstonian who grew up on the north side of Houston, I have always considered Tomball, to be a part of "my" community. There are many reasons why I love living and working here and that love for our city motivates me to offer my services to our community as a member of the following:

Impact Fee Advisory Board  
Planning & Zoning Commission  
Tomball Economic Development Corporation

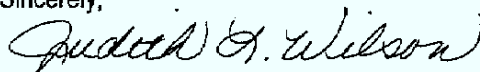
I would like to take this opportunity to tell you why I feel that I am qualified to serve the City of Tomball. I started my family after graduation from Sam Houston High School in Houston, TX, and went to work as a Directory Assistance Operator for Southwestern Bell Telephone Co, now AT&T. I held various positions over my career and lived in Austin, Victoria, Midland, Odessa, Corpus Christi, San Antonio and Houston. While working full time as a manager, I utilized the company tuition plan and graduated Magna Cum Laude from The University of Texas with a BA in Psychology with a Business minor. This was accomplished in four years as a wife and mother. I also earned a Texas Real Estate Broker's license, which is now inactive.

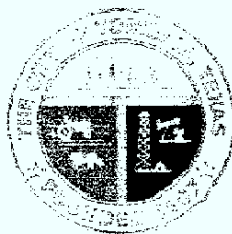
My most recent work experience while in the corporate world included various positions in the Real Estate Management Division for AT&T. Texas was divided into thirds and I was responsible for the acquisition of land/buildings/leases for one third of the state. After the real estate was acquired for administrative or equipment needs, I was responsible for the ongoing maintenance of the real estate assets. This included both short and long range planning, budget management for capital improvement projects and ongoing maintenance, contract administration, the supervision of unionized workers and staff managers, and interaction with the PUC of Texas. I also learned the operations of different departments in order to perform numerous internal audits. Since my early retirement from AT&T, I have been a small business owner in Tomball where I own and manage a small business park and partner with a builder/remodeler in the residential construction business.

I have one grown son who is married and lives in the Dallas, TX, area. I am also the grandmother of eight year old boy/girl twins with special needs. I am a member of the First Baptist Church of Buffalo, TX, and I am an active member of several lineage societies. I am the chairman of the Service for Veterans committee of one of the societies where I work to donate items to the Michael E. DeBakey Veterans Medical Center, and I am a chapter officer over ways and means in another group. I support the Greater Tomball Area Chamber of Commerce and am hopeful that I will be able to become more active in matters involving the development and well being of Tomball. I work daily with the citizens of Tomball and would like to utilize my passion for people by filling one of your appointed positions to the above.

If you have any questions, please do not hesitate to contact me at (281) 351-9151, or (832) 439-1072.

Sincerely,





## CITY OF TOMBALL

2009

### APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

As an Applicant for a City Board, Commission, or Committee, your application will be available to the public. You will be contacted before any action is taken on your appointment to confirm your continued interest in serving. All appointments are made by the Tomball City Council. Incumbents whose terms expire are automatically considered for reappointment unless they indicate non-interest or have been appointed to two (2) consecutive terms. A member who is absent for more than 25% of called meetings in any twelve consecutive months or absent from more than two consecutive meetings, for other than medical reasons, will be automatically removed from service. Applicant must be a citizen of the United States and must reside within the city limits of Tomball unless otherwise stated in the position announcement. 2009 applications expire on December 31, 2009; a new application will be required in 2010.

Please Type or Print Clearly:

Date: 6/5/09

Name: JUDITH L. (JUDY) WILSON

Phone: 281 351 9151

Address: 506 N. PECAN DR.

(Home)  
832 439 1072  
(Work)

Email: JUDITH L. WILSON

I have lived in Tomball 10 years.

I am X am not     a U.S. Citizen

Occupation: I AM A MINORITY FEMALE BUSINESS OWNER OF THE SILVERWOOD BUS. PARK WITH WORK EXPERIENCE AT SUB/AT&T AS AN INTERNAL AUDITOR & AREA MGR.-ARCHITECTURE RESPONSIBLE FOR CAPITAL/MTC. BUDGETS SHORT/LONG RANGE PLANNING, REAL ESTATE ASSET MANAGEMENT, CONTRACT ADMIN. & SUPERVISION/MANAGEMENT OF BOTH UNION WORKERS & STAFF MGRS. I GRADUATED MAGNA CUM LAUDE FROM UT WITH A B.A. IN PSYCHOLOGY WITH A MINOR IN BUSINESS.

Professional and/or Community Activities: GREATER TOMBALL AREA CHAMBER OF COMMERCE, DAUGHTERS OF THE REPUBLIC OF TEXAS CHAPTER OFFICER FOR WAYS & MEANS, DAR CHAPTER CHAIRMAN OF THE SERVICE FOR VETERANS COMMITTEE.

Additional Pertinent Information/References: I AM A MEMBER OF THE FIRST BAPTIST CHURCH OF BUFFALO TX WHERE I HAVE FAMILY AND HAVE OWNED A SECOND HOME. I AM THE MOTHER OF A GROWN SON & THE GRANDMOTHER OF 8 YR. OLD BOY/GIRL TWINS WITH SPECIAL NEEDS.

**Applications for the following Council-appointed Board, Commissions, and Committees will be kept on file in the City Secretary's office (281-290-1002) for one year.**

If you are interested in serving on more than one board, please indicate your preference by numbering each board in order of preference (i.e., 1, 2, 3, etc.)

Advisory Boards & Commissions

7. ☒ Parks, Recreation & Beautification Advisory Board  
4. ☒ Impact Fee Advisory Board

Meeting Information

Second Tuesday each month, 5 p.m.  
As needed, second Monday in month, 6 p.m.

Decision-Making Boards and Commissions

6. ☒ Building Standards Board  
1. ☒ Planning & Zoning Commission  
8. ☒ Electrical Board  
5. ☒ Board of Adjustments

Meeting Information

As needed, 5 p.m.  
Second Monday each month, 6 p.m.  
First Tuesday after third Monday, 7:30 p.m.  
To Be Announced; Evenings

Separate Legal Entities

2. ☒ Tomball Economic Development Corporation  
3. ☒ Tomball Hospital Board

Meeting Information

First Wednesday of January, April, July & October, 9 a.m. (special meetings may be called)  
Fourth Wednesday each month, 4 p.m.

\*\*\*\*\*

**I AM INTERESTED IN SERVING ON THE ABOVE-INDICATED BOARDS, COMMISSIONS, AND COMMITTEES.**

*Judith G. Wilson*  
Signature of Applicant

Please return this application to: City Secretary  
City of Tomball  
401 Market Street  
Tomball, TX 77375

# Regular City Council

## Agenda Item

Meeting Date: December 20, 2010

## Data Sheet

### **Topic:**

Approve Professional Services Agreement with Partners for Strategic Action (PSA) for the Preparation of a Downtown Specific Plan (DSP) in an Amount not to exceed \$177,400.00.

### **Background:**

On November 1, 2010, Council approved Ordinance No. 2010-22 (Budget Amendment 1 for FY 2010-2011), which included \$178,000 for funding to develop a Downtown Specific Plan and Zone as directed in Council's adopted 2010-2015 Strategic Plan. The Downtown Specific Plan is intended to address the unique characteristics of downtown and encourage/facilitate development and improvements that help realize the community's vision for Downtown.

The Tomball Downtown Specific Plan will create a new Downtown land use zone and zoning sub-districts for significant areas of the Downtown core. The Plan will provide customized development standards and land use charts for each of the individual districts within the Downtown Specific Plan zone. It will provide a streamlined, user-friendly format, whereby, in one document, zoning, economic development, infrastructure, and architectural design parameters for the Downtown will be contained.

The Downtown Specific Plan will address the following:

- Downtown vision, goals and objectives
- Downtown design plan
- Design standards (text and graphics)
- Land uses identified and special use areas/districts
- Historic definition, standards and historically-significant buildings
- Aesthetics, architectural features, signage
- Regulatory framework
- Infrastructure needs and capital improvements
- Multimodal circulation plan and regulations
- Streetscape guidelines and regulations

The Tomball Downtown Specific Plan is an important first step in the implementation of the City of Tomball 2010 Strategic Plan, Tomball Comprehensive Plan and Livable Centers Downtown Plan. The City Council has identified the downtown as a priority focus area for the next five years and identified the Specific Plan as an important project to complete. The Comprehensive Plan provides the broad vision for the community and identified the importance of positioning downtown Tomball as an economic hub and community destination while preserving its historic character and neighborhoods. The Downtown Specific Plan process will further define this vision by creating an effective planning tool and regulatory document that will be used to determine appropriate development and redevelopment within the downtown area.

The process will include extensive public involvement through a variety of workshops, design charrette's, public meetings and a Downtown Tomball Advisory Committee appointed by Council.

### **Origination:**

City of Tomball 2010 Strategic Plan, Tomball Comprehensive Plan and Livable Centers Downtown Plan.

### **Recommendation:**

Staff recommends approval of the professional services agreement with Partners for Strategic Action (PSA, Inc.) for an amount not to exceed \$177,400.

**Funding: Yes**

Account Number: 100-156-6304

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

Kelly Violette, City Planner

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

**ATTACHMENTS:**

- Project Overview
- Professional Services Agreement
- Scope of Work

# Downtown Specific Plan (DSP)

# What is a Specific Plan?

## A Specific Plan:

- Creates a special set of detailed development standards and land use regulations that apply to a particular geographic area.
- Is similar in nature to a zoning ordinance because it deals with implementation through the use of development regulations.
- Is a regulatory tool to address the unique characteristics of an area by focusing regulations and standards on the goals and vision of a defined area.
- Provides a mechanism to target implementation measures toward a specific planning area while preserving and enhancing areas of historical or architectural significance.
- Is a tool for implementing the City's Comprehensive Plan.

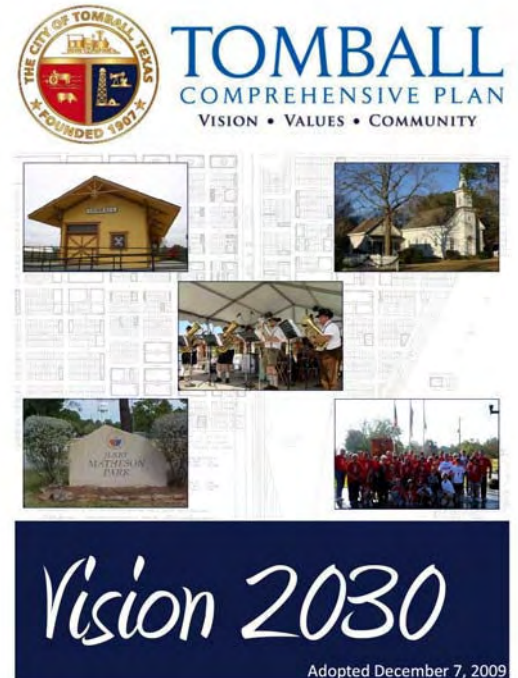
# Why a Downtown Specific Plan?

- Identified in Comprehensive Plan (Adopted 12/7/2009)

## Chapter 3: Vision

### A Vibrant Downtown and Heart of the Community

Tomball's vibrant Downtown is a special place that is the pride of local residents and the gem of our community. Careful revitalization of Downtown Tomball has supported local businesses and attracted residents and visitors alike, bringing growth, prosperity, and vitality to the historic heart of our community. Downtown is recognized as one of Tomball's great civic spaces that has grown and changed over time while maintaining the community's hometown feel.



# Comprehensive Plan Implementation Strategy

## **Short Term Strategies (0-3 Years): Develop Old Town Specific Area Plan**

### **Action LUD 5.1.11: “Develop a Downtown Specific Area Plan and Zone”**

- Direct land use planning and development
- Explore an appropriate mix of land use intensities
- Examine the area’s long-term economic viability
- Establish development standards and design criteria for new development/redevelopment (i.e. setbacks, lot size, signage, building facades, parking, landscaping, etc.)
- Create an implementation program (CIP & funding strategy)

### **Objective LUD 3.3: Protect the integrity of Downtown Tomball neighborhoods.**

### **Action EO 1.5.1: Develop a Downtown Specific Area Plan that includes commercial, employment, and residential components and expanded and improved pedestrian access.**

# Why a Downtown Specific Plan?

- **Recommended in Livable Centers Downtown Plan (Adopted September 21, 2009)**

## City of Tomball Implementation Steps

Develop a Downtown Specific Plan (DSP) to incorporate the *Tomball Livable Centers Study* recommendations into the Zoning Ordinance to establish development standards for the

- Downtown area
- Parking regulations
- Loading area requirements
- Streetscape improvements (i.e. sidewalks, alleys, pedestrian connectors, street furnishings, landscaping, etc.)



# Why a Downtown Specific Plan?

- Identified in City's Strategic Plan 2010-2015  
(Adopted August 16, 2010)

## Focus Area: Building Our Economy

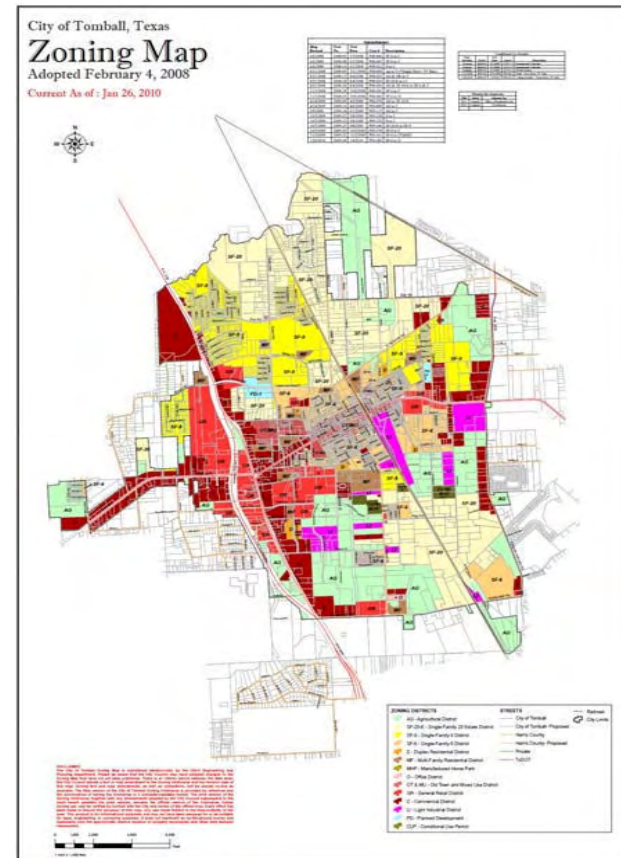
- GOAL: Implement economic development strategies to increase revenues to the City, diversify the tax base, create quality employment and housing opportunities, grow local businesses, and maximize the community's economic assets.
- Strategic Initiative: "Ensure the downtown is positioned for success."
  - Action Strategy: "Complete the specific plan and zoning for downtown."



# Zoning Ordinance Issues

- **OT/MU District**

- Failed to differentiate land uses and transitions within the Old Town Area.
- OT/MU used as a catch all for land use designation.
- Does not adequately address unique conditions within Downtown.
- Does not address standards for historically significant buildings/sites.
- Design standards are vague and subjective.
- Not consistent with the Comprehensive Plan.



# Scope of DSP

# Geographic Boundaries of DSP

Boundaries consistent with Comprehensive Plan's Old Town  
land use designation



# Purpose of Tomball DSP

- To facilitate and encourage development and improvements that help realize the community's vision for Downtown.
- To address the unique characteristics of Downtown: lot sizes, land use patterns, historically significant properties, architectural styles, parking, pedestrian facilities, infrastructure needs, etc.
- To identify and address impediments to Downtown development.
- To develop economic development strategies for the Downtown.

# DSP Objectives

- Develop Downtown Specific Plan Zone and special land use districts within that zone (i.e. commercial core, museum area, residential areas).
- Develop graphic and text based design standards which establish a consistent design and aesthetic theme.
- Develop land use charts for each zoning district within the DSP zone.
- Provide a program of implementation measures including regulations, programs, capital improvement projects, cost estimates, and financing measures necessary to accomplish public improvements.



# DSP Proposal

# Phase 1 – Background and Analysis

**Purpose: Kickoff the Tomball Downtown Specific Plan process.**

- Task 1.1: Project Start-Up
- Task 1.2: Existing Conditions and Downtown Research
- Task 1.3: Defining Historic
- Task 1.4: Council/P&Z Commission Joint Workshop #1
- Task 1.5: Meeting #1 with Downtown Tomball Advisory Committee
- Task 1.6: Study Area Tour



# Phase 2 – Tomball Downtown Specific Framework

**Purpose: Create the framework for the development of the Tomball Downtown Specific Plan.**

- Task 2.1: Goals and Objectives
- Task 2.2: Downtown Tomball Specific Plan Charrette
- Task 2.3: Tomball Downtown Specific Plan Framework



# Phase 3 – Tomball Downtown Specific Plan

Purpose: Develop the Draft Tomball Downtown Specific Plan and implementation strategies including regulations, phasing, capital projects and potential financing options.

- Task 3.1: Development of Specific Plan
- Task 3.2: Regulatory Framework
- Task 3.3: Tomball Downtown CIP
- Task 3.4: E.D. Implementation Program
- Task 3.5: Specific Plan Implementation
- Task 3.6: DTAC Meeting #3
- Task 3.7: Staff Planning Session
- Task 3.8: Public Workshop
- Task 3.9: City Council/P&Z Commission Joint Workshop #3

# Phase 4 – Tomball Downtown Specific Plan

Purpose: Produce the Tomball Downtown Specific Plan for review by City of Tomball Staff, Property Owners, DTAC, City Officials and the general public.

- Task 4.1: Prepare the PMT Draft
- Task 4.2: Incorporate Staff Comments
- Task 4.3: Prepare DTAC Draft (#2)
- Task 4.4: DTAC Meeting #4
- Task 4.5: Prepare “Final” Specific Plan (Draft #3) for Approval



# Phase 5 – Public Hearings

Purpose: Conduct three public hearings and receive approval of the Tomball Downtown Specific Plan.

- Task 5.1: Joint Planning Commission Public Hearing and City Council Public Hearing #1
  - Task 5.2: City Council Public Hearing #2
  - Task 5.3: City Council Second Reading/Plan Adoption
- 
- In conjunction with the final adoption of the DSP, the City will initiate rezonings of the properties identified in the DSP project area.

# Proposed Budget

|               | <b>Task 1</b> | <b>Task 2</b> | <b>Task 3</b> | <b>Task 4</b> | <b>Task 5</b> | <b>Totals</b>  |
|---------------|---------------|---------------|---------------|---------------|---------------|----------------|
| PSA, Inc.     | 21,500        | 16,500        | 50,000        | 21,000        | 8,000         | 117,000        |
| Kimley Horn   | 9,000         | 4,000         | 24,000        | 3,000         | 0             | 40,000         |
| Reimbursables | 2,000         | 2,800         | 2,000         | 1,500         | 2,100         | 10,400         |
| Contingency   | -             | -             | -             | -             | -             | 10,000         |
| <b>Totals</b> | <b>32,500</b> | <b>23,300</b> | <b>76,000</b> | <b>25,500</b> | <b>10,100</b> | <b>177,400</b> |

- Budget Assumptions
  - Staff will maintain the project website as part of the Tomball website. The budget includes the development and distribution of periodic (up to 5) project e-newsletters
  - PSA will attend two Public Hearings in Task 5
  - The City will provide appropriate meeting space for public and internal planning sessions
  - Refreshment costs for public meetings have not been included
  - Printing Costs have not been included in budget and will be negotiated as part of contracting
  - Reimbursable travel costs are based upon standard rates as of June 1, 2010
  - A \$10,000 contingency budget is included to address any unforeseen circumstances that may need to be addressed
  - Project scope to be approved by City prior to initiating work

## **PROFESSIONAL SERVICES AGREEMENT**

**THE STATE OF TEXAS**

**§**

**COUNTY OF HARRIS**

**§**

**§**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Partners for Strategic Action, Inc ("PSA").

### **WITNESSETH:**

WHEREAS, PSA represents that it is capable of providing and qualified to provide professional services to the City and PSA desires to perform the same;

NOW, THEREFORE, the City and PSA in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

#### **1.**

### **SCOPE OF AGREEMENT**

PSA agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, 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 PSA compensation as stated in the sections to follow.

#### **2.**

### **CHARACTER AND EXTENT OF SERVICES**

PSA shall do all things necessary to render the services and perform the Scope of Work in a professional and workmanlike manner. It is expressly understood and agreed that PSA is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that PSA 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 Exhibit "A" without prior written authorization from the City.

#### **3.**

### **OWNERSHIP OF WORK PRODUCT**

PSA agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by PSA 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.

**4.**  
**TIME FOR PERFORMANCE**

The time for performance is as estimated to be complete in two-hundred-seventy days (270) and is detailed in Exhibit A attached hereto. Upon written request of PSA, 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 PSA has no control.

**5.**  
**COMPLIANCE AND STANDARDS**

PSA 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 PSA's performance.

**6.**  
**INDEMNIFICATION**

PSA shall and does hereby agree to indemnify, defend, and hold harmless the City, its officers, agents, and employees from any and all damages, loss or liability of any kind whatsoever, by reason of death or injury to property or third persons caused by the negligent act or omission of PSA, its officers, agents, employees, invitees or other persons for whom it is legally liable, with regard to the performance of this Agreement, and PSA will, at its cost and expense, defend, pay on behalf of, and protect the City and its officers, agents, and employees against any and all such claims and demands. Such indemnity shall apply where the suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney fees arise in whole or in part from the negligence of PSA.

**7.**  
**COMPENSATION**

For and in consideration of the services rendered by PSA pursuant to this Agreement, the City shall pay PSA only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$177,400.00, (not to exceed amount includes reimbursable expenses).

**8.**  
**INSURANCE**

PSA shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting there from, and claims of errors and omissions.

**9.**  
**TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to PSA. Upon receipt of such notice, PSA 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, PSA shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay PSA that proportion of the prescribed charges which the services actually 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 maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

**10.**  
**ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to PSA at the following address:

C/O Curt Dunham, AICP, CEO  
Partners for Strategic Action, Inc ("PSA")  
13771 Fountain Hills Blvd, Suite 360  
Fountain Hills, AZ 85268

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

Attn. Director of Engineering & Planning  
City of Tomball  
501 James Street  
Tomball, Texas 77375

**11.**  
**LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, PSA has been advised by the City and PSA 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 PSA may become entitled to hereunder and the total sum that the City shall become liable to pay to PSA hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**12.**  
**SUCCESSORS AND ASSIGNS**

The City and PSA bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor PSA shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**13.**  
**DISCLOSURE OF INFORMATION**

PSA shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**14.**  
**MODIFICATIONS**

This instrument, including Exhibits A and B, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. 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.

**15.**  
**ADDITIONAL SERVICES**

If authorized in writing by the City, PSA shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the Scope of Work, as defined in Exhibit "A." These Additional

Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**16.**  
**CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, PSA shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**17.**  
**PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with PSA's standard invoicing practices and will be submitted to the City by PSA at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**18.**  
**MISCELLANEOUS PROVISIONS**

A. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

B. This Agreement is for sole benefit of the City and PSA, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and PSA, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on the \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**ATTEST:**

**CITY OF TOMBALL, TEXAS**

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

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

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

**EXHIBIT "A"**  
**SCOPE OF WORK**  
**AND**  
**BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES**

**EXHIBIT "B"**

**INSURANCE**

## **Tomball Downtown Specific Plan PSA Team Proposal and Budget**

June 26, 2010

### **Specific Area Plans**

A specific area plan is a tool for the systematic implementation of the Comprehensive Plan. It is intended to establish a link between the policy framework outlined in the Comprehensive Plan and the development and land use regulations for a defined area.

Specific area plans are utilized to fully address issues or take advantage of unique opportunities or conditions in a specific geographic area. A specific area plan is a regulatory tool, like zoning; however a specific area plan goes a step further than traditional zoning regulations. Whereas zoning creates districts and standards to regulate the use of land, a specific plan implements the Comprehensive Plan by providing a special set of detailed development standards that will direct the development within the particular area based on the community's desired long-term vision. Such standards may include, but are not limited to, additional land use restrictions, building façade standards, historic preservation, signage, landscaping and screening standards, parking regulations, etc. A specific plan provides greater flexibility than traditional zoning in implementing Comprehensive Plan policies, and facilitates better implementation through the inclusion of financing, infrastructure, phasing, and other relevant information in the specific plan document.

### **PSA Team Philosophy**

When thinking about Tomball's downtown development or redevelopment there are five broad areas that need to be addressed. They include:

**Design:** Successful downtown areas are focused on the human scale or pedestrian environment first, accented by the built environment around. This is critical for Tomball to ensure that the area's walkability and pedestrian connections are addressed. All five senses must be addressed to ensure that the downtown is a pleasing place to come. Additionally, thoughtful attention must be given to all design elements of the downtown's appearance: buildings, signage, window or store displays, graphics, and public areas.

**Infrastructure:** A fundamental component to Tomball's downtown success is ensuring that infrastructure needs are addressed and an effective capital improvement strategy is identified.

**Organization/Governance:** Success requires broad public/private involvement and an implementation structure dedicated to achieving results. Typically, both public and private sectors must share in downtown revitalization; their efforts must reinforce each other through an effective organizational base. Ensuring that the necessary regulatory tools are developed to implement the strategies identified to make Tomball's downtown a success is also critical to this project.

**Image:** Marketing an enticing image of downtown to shoppers, retailers, investors, and potential visitors is critical. Image promotion extends from the overall sense of place in the downtown, to the quality of individual stores to special events, joint sales and tourism development programs that identify downtown as the center of activities, goods, and services. A discussion about downtown image and potential strategies will be identified as part of the implementation strategy.

**Economic Restructuring:** Positioning Tomball's downtown effectively from a business investment standpoint is critical to its long-term sustainability. This planning effort must examine market possibilities and build an economic development strategy based on the most promising options. Successful downtowns are those that have found their niche within the overall community or regional economy.

The following project scope is intended to address the various components of successful downtowns listed above.

## **Project Purpose Statement**

The Tomball Downtown Specific Plan translates planning into regulatory guidance necessary for effective implementation. This is a critical step in ensuring the implementation of the *City of Tomball 2010 Strategic Plan*, *Tomball Comprehensive Plan* and *Livable Centers Downtown Plan*. The City Council has identified the downtown as a priority focus area for the next five years and identified the specific plan as an important project to complete. "Specific Plan" is a misnomer when in fact it is a regulatory document with the authority of zoning to address the unique development constraints of Downtown Tomball. The Comprehensive Plan provides the broad vision for the community and identified the importance of positioning downtown Tomball as an economic hub and community destination while preserving its historic character and neighborhoods. The specific plan process will further define this vision by creating an effective tool and regulatory document that will be used to determine appropriate development and redevelopment within downtown area. The Specific Plan will combine zoning regulations, a capital improvement program, development standards, design guidelines, and other regulations/policies tailored to meet the unique needs of the downtown.

## Proposed Scope of Work

The following is the PSA Team's proposed Scope of Work to complete the Tomball Downtown Specific Plan. It is intended to show our understanding of the steps required to meet the objectives of the project.

### Phase 1 – BACKGROUND AND ANALYSIS

Purpose: Kickoff the Tomball Downtown Specific Plan process.

#### Task 1.1 Project Start-Up

The Project Management Team (PMT) that includes key consultant team members and the City's project manager and staff will have a conference call to discuss the Scope of Work, Public Involvement and Communications Plan, and Project Schedule. At this first meeting various "start-up" decisions will be made. The PMT meeting will occur during all trips by PSA to Tomball as well as by telephone when needed. *NOTE: the PMT meetings are not specifically identified below and are intended to be held regularly.*

Additionally this task includes the following activities:

- Data Collection – City and property owners will provide all technical background studies developed for the study area to date.
- Mapping – City will provide electronic base map files; format for mapping will be determined.

#### Task 1.2 Study Area's Existing Conditions and Downtown Research

The following inventory, analysis and research will be conducted by the Project Team and presented in Working Paper #1:

- Review of Existing Plans and Data - Review and summarize key points of all existing studies, plans, data, and pertinent information impacting the Downtown Tomball project area.
- Downtown Redevelopment Research – Provide a literature review summarizing trends in downtown and city center design and development.
- Downtown/City Center Case Studies – Present three case studies of successful downtowns and summarize the mix of uses (office, retail, residential, hospitality, public spaces, sports, and entertainment) and economic potential.

- Market Research – Evaluate the demographic and economic trends affecting residential and commercial development in the region.
- Circulation Inventory and Traffic Forecast – Analyze existing roadway characteristics and roadway classifications within the study area; any traffic forecast for the future and long term traffic conditions will be summarized.
- Infrastructure Inventory and Assessment – Working closely with staff, conduct a comprehensive assessment of existing infrastructure, determination of infrastructure challenges and identification of planned projects.

### **Water**

The City has contracted with SPI to prepare a water model of the downtown area. This information will be included in the existing conditions analysis.

### **Wastewater**

The City's wastewater treatment plant (WWTP) serving the project area is at approximately 54% of capacity, therefore no WWTP expansion will be necessary. Through use of the City's GIS system, an analysis of existing sanitary sewer lines will be included in the existing conditions analysis.

### **Drainage**

A review of current drainage issues will be included in the existing conditions analysis. However, some of the existing conditions and issues are already "givens." The project area is split into two distinct drainage boundaries. The north drainage boundary drains to Boggs Gully and the south drainage area flows to the M121 drainage basin(s). Boggs Gully has no regional detention, therefore a 100-year outfall system(s) and new subregional detention basin will be required. The M121 drainage basin(s) currently provides detention for its portion of the project area; therefore a new 100-year outfall system(s) will be required.

### **Gas**

It is the Project Team's understanding that no additional trunk (transmission) lines will be required, nor will analysis of the existing trunk lines be needed. The existing conditions analysis will include preparing a one-line drawing showing the existing

gas facilities and areas requiring extension and/or interconnections. Areas in need of connections to unserved parcels will be identified along with how they can be connected to eliminate service gaps.

- Downtown Area Assessment - Building upon work completed in the *Livable Centers Downtown Plan*, complete an assessment (data, photos, land use and a general visual inspection of building conditions) for the entire study area.
- Multimodal Connectivity - Identify streets, rights-of-way and connectivity issues including parking lots, sidewalks and alleys.

### **Task 1.3 Defining Historic**

This task involves identifying Tomball's key architectural eras through data, photos and assessment to help craft a historic architectural definition/standard for Tomball.

### ***PSA Trip #1 – Two Days in Tomball***

#### **Task 1.4 Council/P&Z Commission Joint Workshop #1 (Friday)**

Conduct a joint workshop with the City Council and P&Z Commission to discuss project expectations, goals and existing conditions.

#### **Task 1.5 Meeting #1 with Downtown Tomball Advisory Committee (DTAC) – (Friday)**

Activities and discussion will include:

- Project Expectations
- Project Approach and Schedule
- Background Information Reviewed (Livable Centers Downtown Plan)
- Present initial findings from Working Paper #1
- Discussion of project constraints and opportunities
- Interactive Design Workshop - This interactive event will include a visual preference survey, visioning exercise, and architectural and design theme activities.

#### **Task 1.6 Study Area Tour (Saturday)**

Conduct on-site tour of the project with staff, downtown stakeholders and citizens as part of the Walk Tomball event. Following the walk, the Project Team will lead a discussion about the experience over coffee.

### **Phase 1 - Products**

- Final Scope of Work and Schedule
- Public Involvement and Communications Plan

- Working Paper #1 – Existing Conditions and Downtown Research
- Meeting agendas, materials and summary notes

## Phase 2 – TOMBALL DOWNTOWN SPECIFIC PLAN FRAMEWORK

**Purpose:** Create the framework for the development of the Tomball Downtown Specific Plan.

### Task 2.1 Goals and Objectives

Based on the research, review of previous studies and the comprehensive plan, and formal/informal discussions, the Project Team will develop a preliminary list of Tomball Downtown goals and objectives for review at the Downtown Tomball Specific Plan Charrette. As the planning process evolves, the goals and objectives will be fine-tuned and then finalized as an element of the final document.

### PSA Trip #2 – Four Days in Tomball

#### Task 2.2 Downtown Tomball Specific Plan Charrette (Day 1)

The purpose of the  $\frac{1}{2}$  day charrette is to provide a wide array of opportunities for the public and stakeholders to “roll up their sleeves” and participate in creating Tomball Downtown Specific Plan and design concepts. Event participants will complete a visual preference survey to determine their “likes and dislikes” regarding various components of design, architectural themes, streetscape, and land uses. This event will be coordinated with a Tomball 2<sup>nd</sup> Saturday at the Depot event that typically attracts a lot of resident involvement.

**DTAC Meeting #2 (Day 2)** – The DTAC will participate in a  $\frac{1}{2}$  day workshop to discuss the following items:

- Review Project to Date
- Results from Visual Preference Survey
- Determine common themes and divergent ideas
- Ideas/Recommendations for developing Downtown Specific Plan

**Council/P&Z Commission Joint Workshop#2 (Day 2)** - Conduct a joint workshop with the City Council and P&Z Commission to discuss charrette results and receive input on recommendations to the Downtown Specific Plan.

#### Task 2.3 Tomball Downtown Specific Plan Framework

Develop Working Paper #2 which provides the results of the charrette and presents the framework for the Tomball Downtown Specific Plan.

## **Phase 2 - Products**

- Working Paper #2 – Specific Plan Framework
- Meeting agendas, materials and summary notes

## **Phase 3 – TOMBALL DOWNTOWN SPECIFIC PLAN**

**Purpose:** Develop the Draft Tomball Downtown Specific Plan including regulations, phasing, capital projects and potential financing options.

### **Task 3.1 Development of Tomball Downtown Specific Plan**

The Project Team will develop the Tomball Downtown Specific Plan. The Specific Plan will be developed utilizing the goals/objectives developed, input received and research completed. The Specific Plan will include graphics with text explaining the mix of uses and Plan components. The regulatory document will include a discussion of the following:

- Downtown vision, goals and objectives
- Downtown design plan
- Design guidelines (text and graphics)
- Land uses identified and special use areas/districts (up to three)
- Historic definition, standards and historically-significant buildings
- Aesthetics, architectural features, signage
- Regulatory framework
- Infrastructure needs and capital improvements
- Multimodal circulation plan and regulations
- Streetscape guidelines and regulations

### **Task 3.2 Regulatory Framework**

Develop regulatory language to ensure that Tomball Downtown develops in an appropriate fashion according to design standards.

### **Task 3.3 Tomball Downtown Capital Improvement Plan (CIP)**

Develop a CIP and Financing Plan for the Downtown that will identify a list of projects, estimated costs, timeframe for implementation and project priorities.

For all utilities, preliminary cost estimates will be prepared for the proposed construction of the CIP projects. Estimates will be based on the Project Team's experience in the construction industry and will use construction costs for similar types of work.

### **Water**

Based on the revised land use designations, the Project Team will calculate estimated water demands for the project area and provide

that information to SPI to incorporate into the water analysis. The City's water demand tables will be used in performing this analysis. Following SPI's analysis, the Project Team will incorporate the proposed waterline sizes into an one-line drawing.

### **Wastewater**

Based on proposed land uses, a one-line (plan view) drawing will be prepared showing the existing sewer lines, existing sewer lines to be replaced (due to undersized lines or horizontal conflicts with proposed storm or water alignment), and proposed sewer lines within the ROW according to the typical roadway section. No analysis of existing lines outside the subject area (for potential up-sizing) will be included.

### **Drainage**

As mentioned previously, there are two distinct drainage areas within the project area. Based on proposed land uses, the Project Team will perform the following tasks for each of the two areas.

#### ***Northern Drainage Area***

The Project Team will size storm sewer lines within the project area and from the project area to the proposed detention basin. This will also include preliminary design of a downtown internal storm sewer system and a 100-yr storm conveyance route(s) from the subject area to the proposed detention pond. To the extent possible, the drainage system in downtown area will be designed for 2-yr flow in the storm sewer and 100-yr sheet flow within the existing rights-of-way.

The recommendations will include a limited review of aerial topography to better understand the 'low' areas along the 100-yr conveyance alignment which may prevent water from sheet-flowing north to the detention pond. The Project Team will prepare a one-line storm sewer drawing identifying the 100-yr points of entry into the storm sewer system.

A recommendation for the proposed detention pond's size will be made to include preparing a preliminary layout of the proposed detention pond *based on City and Flood Control criteria*. It is also the Project Team's understanding that the City wishes for this pond to incorporate an amenity feature. Given the design volume of the pond, the pond's site boundary provided by City, and City's input into the amenity features affecting design (side slopes, water surface area, beam width, etc), the Project Team will develop a preliminary pond layout indicating top of bank,

approximate depth, required storage volume, and approximate outfall size into Boggs Gully.

### ***Southern Drainage Area***

Alternative alignments for proposed storm sewers will be developed including a review of parcel boundaries and aerial photographs to assist to City in identifying alternatives for the proposed storm sewer(s) alignment to M121. The extent of this effort is not clear at this point.

Similar to the recommendations made for the northern drainage area, the size of the storm sewer lines from the project area to the M121 channels will be determined, except outfall will be to M121 drainage basin. The storm sewer system(s) design will also incorporate off-site drainage areas between the southern drainage area and M121. To the extent possible, the drainage system in the downtown area will require either a 2-year storm event for the underground system with the ROW conveying the balance of the 100-year event, or, the underground system will contain the entire 100-year event.

### **Gas**

Based on proposed land uses, 2" and 4" distribution lines within the project area will be identified. System design is not required but areas un-served will be identified for improved system interconnection.

### **Roadways, Pedestrian Facilities, and Parking**

Based on proposed land uses, basic roadway, pedestrian facilities and parking improvements will be identified and included in the CIP. Street types and alleyways will be identified and appropriate improvements (e.g., curb and gutter vs. open ditch) will be identified.

## **Task 3.4 Economic Development Implementation Program**

Develop a full range of strategies for implementation of the Tomball Downtown Specific Plan. The list of strategies might include strengthening the building façade program, implementing joint marketing opportunities, types of business to target for infill development, organizational recommendations, etc.

## **Task 3.5 Tomball Downtown Specific Plan Implementation**

Develop Working Paper #3 which provides the implementation program for the Tomball Downtown Specific Plan. Working Paper #3 will include the regulatory framework, CIP and economic development implementation.

### ***PSA Trip #3 – Two Days in Tomball***

#### **Task 3.6 DTAC Meeting #3 (Day 1)**

The purpose of this meeting is to discuss the Draft Tomball Downtown Specific Plan.

#### **Task 3.7 Staff Planning Session (Day 1)**

The purpose of this planning session is to review and discuss the CIP and Implementation Plan.

#### **Task 3.8 Public Workshop (Day 1)**

The purpose of this workshop is to receive input on the DRAFT Tomball Downtown Specific Plan. The Project Team will present the specific plan and the various components (land use, traffic, economic, infrastructure, multimodal circulation and regulatory guidance).

#### **Task 3.9 City Council/P&Z Commission Joint Workshop #3 (Day 2)**

The purpose of this workshop is to bring the City Council and P&Z Commission up-to-date on the project and receive input on the Draft Tomball Downtown Specific Plan. The Project Team will present the specific plan and the various components (land use, traffic, economic, infrastructure, multimodal circulation and regulatory guidance).

### **Phase 3 - Products**

- Draft Tomball Downtown Specific Plan
- Meeting agendas, materials, and summary notes
- Working Paper #3 – Implementation Program

### **Phase 4 – TOMBALL DOWNTOWN SPECIFIC PLAN**

**Purpose:** Produce the Tomball Downtown Specific Plan for review by City of Tomball Staff, Property Owners, DTAC, City Officials and the general public.

#### **Task 4.1 Prepare the PMT Draft (#1) Tomball Downtown Specific Plan**

Compile all information, studies, and design into a single user-friendly report. The report will be prepared and transmitted to City Staff for their review and modification.

#### **Task 4.2 Incorporate Staff Comments**

All staff comments will be reviewed and collaboratively addressed in order to include in a revised Draft Tomball Downtown Specific Plan for DTAC review.

**Task 4.3 Prepare DTAC Draft (#2) Tomball Downtown Specific Plan**

The Project Team will prepare the Specific Plan for review by the DTAC.

***PSA Trip #4 – One day in Tomball*****Task 4.4 DTAC Meeting #4**

The purpose of this meeting is to discuss the following:

- Project Update
- Review DTAC Draft Tomball Downtown Specific Plan
- Discuss Public Review Process

**Task 4.5 Prepare “Final” Specific Plan (Draft #3) for Approval**

Produce an electronic copy of the Final Draft that incorporates all modifications recommended from the DTAC and PMT.

**Phase 4 – Products**

- Meeting agendas, materials, and summary notes
- Tomball Downtown Specific Plan Drafts (DTAC, PMT and Final Public Hearing Downtown Specific Plan)

**Phase 5 – PUBLIC HEARINGS**

Purpose: Conduct three public hearings and receive approval of the Tomball Downtown Specific Plan.

***PSA Trip #5 – One day in Tomball*****Task 5.1 Joint Planning Commission Public Hearing and City Council Public Hearing #1**

Present the Final Specific Plan and downtown rezoning to the Commission and City Council.

***PSA Trip #6 – One day in Tomball*****Task 5.2 City Council Public Hearing #2**

Present the Final Specific Plan, rezoning, summary of comments received, facilitate the City Council discussion, receive public comments, and receive final approval.

**Task 5.3 City Council Second Reading/Plan Adoption**

Staff will attend and present the Final Specific Plan and rezoning for adoption.

**Phase 5 – Products**



The Project Team will provide an electronic copy of the final Tomball Downtown Specific Plan (text and graphics) in PDF and Microsoft Word format.

## Proposed Budget

|               | <b>Task 1</b> | <b>Task 2</b> | <b>Task 3</b> | <b>Task 4</b> | <b>Task 5</b> | <b>Totals</b>  |
|---------------|---------------|---------------|---------------|---------------|---------------|----------------|
| PSA, Inc.     | 21,500        | 16,500        | 50,000        | 21,000        | 8,000         | 117,000        |
| Kimley Horn   | 9,000         | 4,000         | 24,000        | 3,000         | 0             | 40,000         |
| Reimbursables | 2,000         | 2,800         | 2,000         | 1,500         | 2,100         | 10,400         |
| Contingency   | -             | -             | -             | -             | -             | 10,000         |
| <b>Totals</b> | <b>32,500</b> | <b>23,300</b> | <b>76,000</b> | <b>25,500</b> | <b>10,100</b> | <b>177,400</b> |

### Budget Assumptions

- Staff will maintain the project website as part of the Tomball website. The budget includes the development and distribution of periodic (up to 5) project e-newsletters
- PSA will attend two Public Hearings in Task 5
- The City will provide appropriate meeting space for public and internal planning sessions
- Refreshment costs for public meetings have not been included
- Printing Costs have not been included in budget and will be negotiated as part of contracting
- Reimbursable travel costs are based upon standard rates as of June 1, 2010
- A \$10,000 contingency budget is included to address any unforeseen circumstances that may need to be addressed
- Project scope to be approved by City prior to initiating work

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### **Topic:**

Approve Professional Services Agreement with Kimley-Horn and Associates, Inc. in the Amount of \$20,000 for Consulting Services related to the Feasibility Study of the Capital Improvements Project titled, Parking - Three Downtown Parking Lots.

#### **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, however, the City wants to ensure that the monies are allocated to the appropriate parking facilities in an order to be determined via a Parking Lot Feasibility Analysis. 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). Exhibit A to the Contract provides a detailed scope of work. Based on the results of the feasibility study of the 5 lots, a recommendation will be presented to Council to advance the final design on 3 of the lots. The project is a current listed 2011 budgeted CIP project.

Note: We are in contact with Kimley-Horn to shorten the time-frame to a 30-day time around in lieu of the 90-day time frame stated in the agreement.

#### **Origination:**

Engineering and Planning Department

#### **Recommendation:**

Engineering and Planning Department recommend approval.

#### **Funding: Yes**

Account Number: 100-154-6409

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

Engineering and Planning Department

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

#### **ATTACHMENTS:**

Livable Centers Recommended Parking Layout

Contract12-13-10

Exhibit A

Kimley-Horn Rate Schedule



## RECOMMENDED LAYOUT

The recommended layout of parking development has been created as a guide accommodating future public parking needs in conjunction with redevelopment (as shown in figure 4.8).

An important design criterion was to minimize the instances of multiple small parking lots serving individual properties occurring off Main Street. In contrast, consolidated public parking lots would be distributed behind the Main Street corridor. This, coupled with the additional development, would help to create an aesthetically pleasing view along Main Street in which the building facades are the dominant feature as opposed to parking lots. Parking, whenever possible, should be located on the other side of the alley, as shown in the layout.

Another goal of this layout was to ensure the parking capacity for Downtown Tomball was adequate now and in the future, especially in light of the Main Street on-street parking replacement. Currently there are 818 parking spaces in the downtown, the recommended plan of 919 spaces meets and exceeds the necessary parking requirements associated with the present and future development scene depicted.

This layout is only a recommendation and not the only alternative layout possible for private development. It is, however, one that best accommodates the needs of the Downtown area while still having the desired balance of parking and development.



Figure 4.8

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
Parking Lot Feasibility Study**

**THE STATE OF TEXAS           §  
                                             §  
COUNTY OF HARRIS         §**

THIS AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ entered into, and executed by and between the City of Tomball, Texas (the "City"), a municipal corporation of the State of Texas, and Kimley-Horn and Associates, Inc. ("Engineer").

**WITNESSETH:**

WHEREAS, the City desires to prepare a Feasibility Study including Concept Site Plans for five subject parking areas in the downtown area (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to prepare a Feasibility Study, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to the preparation of the Feasibility Study;

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 \$20,000.00 (includes reimbursable expenses).

## **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:

Kimley-Horn and Associates, Inc.  
12012 Wickchester Lane, Suite 500  
Houston, Texas 77079  
Attn: Joe Willhite

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.

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 Kimley-Horn and Associates, Inc., acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ENGINEER:**

**Kimley-Horn and Associates, Inc.**

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

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

**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**

## **EXHIBIT A SCOPE OF WORK**

### **Project Understanding**

The City of Tomball (City) in coordination with the Houston-Galveston Area Council (H-GAC) 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, however, the City wants to ensure that the monies are allocated to the appropriate parking facilities in an order to be determined via a Parking Lot Feasibility Analysis. 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. This document serves as the basis for the Scope of Services described below.

The consultant will utilize readily available HCAD mapping / City utility block maps, City available oil / gas mapping, City provided aerial mapping. Landscaping will be in accordance with Section 40 of the City's Zoning Ordinance and the Landscape Recommendations outlined in the Livable Centers Downtown Plan. Pavement options will include concrete with curb and gutter and asphalt with concrete curb and gutter. In addition, the analysis will include a discussion on permeable pavement options and the feasibility of such. Storm drainage assumed design in accordance to an inlet and RCP collection system routed to a detention facility that may require underground storage and lift stations. Lighting will be in considered for planning and budgeting purposes in accordance with Section 39 of the City's Zoning Ordinance and will provide a minimum 2 foot candles illumination.

Field surveying, geotechnical investigation, and photometric analysis are not part of this design phase, but will be part of the final design proposal.

## **Scope of Services**

### ***Task 1 – Concept Site Planning***

***\$7,500***

Kimley-Horn and Associates, Inc. (KHA) KHA will prepare Concept Site Plans for the five (5) subject parking areas, based on the GIS property boundary information provided to by the Client and the title work obtained by KHA. This site plans will be conceptual, and used as the basis for better understanding the potential number of parking spaces which each lot can provide and for preparing an opinion of probable cost. The budget for this task assumes preparation of one (1) site plan per parking lot and a Kick-Off meeting to be held with staff for a total projected effort of 65 hours. Additional effort or revisions based on Client comments will be billed on an hourly basis as an additional service in excess of the budget amount above. The concept plan will include:

- Parking spaces, drive aisles, driveways
- Detention areas
- Landscape areas
- Light poles

### ***Task 2 – Opinion of Probable Cost***

***\$5,000***

Based on the Concept Site Plans, KHA will prepare an Opinion of Probable Cost for the five (5) subject parking areas. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. One (1) meeting with City staff during the completion of this task is anticipated. We have projected our total effort for this task to be 40 hours. Additional effort or revisions based on Client comments will be billed on an hourly basis as an additional service in excess of the budget amount above. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client can be provided as Additional Services.

### ***Task 3 – Analysis Summary***

***\$3,500***

KHA will prepare a summary of our analysis, outlining items such as the availability of the properties in question, the suitability of the property for design of a parking facility, economies of scale associated with the development of one or more lots, consistency with recently adopted plans such as the Comprehensive Plan, and cost effectiveness. The budget allocation for this task includes 1 meeting with City Staff and 1 presentation to City Council at the Close of the project. We have projected our total effort for this task to be 30 hours. Additional effort or revisions based on Client comments will be billed on an hourly basis as an additional service in excess of the budget amount above.

***Task 4 – Project Expenses***

***\$4,000***

KHA will obtain a current title commitment with documents supporting relevant items, for use in depicting the easements and encumbrances on the Concept Site Plans. The expenses associated with obtaining these documents are anticipated to be \$3,000.

The fee for this task is also intended to capture project expenses such as express delivery services, mileage, plotting, etc. These expenses will be billed at 1.15 times cost as they are incurred. The budget noted above is an estimate only. Expenses will be billed as incurred and KHA shall inform the Client prior to exceeding the estimate given above. All permitting, application, and similar project fees will be paid directly by the Client.

**Additional Services**

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests, will be considered additional services and will be performed at our then current hourly rates.

**Kimley-Horn and Associates, Inc.**

**Standard Rate Schedule**

(Hourly Rate)

|                                             |                |
|---------------------------------------------|----------------|
| Senior Engineer I / Senior Professional I   | \$220 - \$250  |
| Senior Engineer II / Senior Professional II | \$190 - \$230  |
| Engineer / Professional                     | \$145 - \$190  |
| CAD Technician                              | \$130 - \$145  |
| Designer                                    | \$100 - \$155  |
| Analyst                                     | \$125 - \$150  |
| Support Staff /Technician                   | \$ 60 - \$ 105 |

*Effective January 1, 2010*

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### Topic:

Approve **FOUR CORNERS SUBDIVISION FINAL PLAT**: Being a subdivision of 15.7493 acres of land including a partial replat of reserve "E" of Tomball Park, Vol. 335, Pg. 109 M.R.H.C. and being out of the John M. Hooper Survey, Abstract No. 375 in Tomball, Harris County, Texas.

#### Background:

The Planning and Zoning Commission approved the Four Corner Subdivision Replat with contingencies on October 11, 2010. Comments have been addressed and the plat is being presented to City Council for approval consideration.

#### Origination:

Engineering and Planning Department

#### Recommendation:

Engineering and Planning Department recommends approval.

#### Funding:

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

Engineering and Planning Department

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

#### ATTACHMENTS:

Four Corners Subdivision Final Plat

Page 171 of 210

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### Topic:

Approve **PARTIAL REPLAT OF TOMBALL REGIONAL HOSPITAL NO. 1**; 12.8478 acres located in the William Hurd Survey, A-378, Harris County, Texas, City of Tomball, Texas; Being a Replat out of Tomball Regional Hospital Reserve "A", Block 4, Vol. 424, Pg. 128, M.R.H.C.T.

#### Background:

The Planning and Zoning Commission approved the Partial Replat of Tomball Regional Hospital No. 1 with contingencies on October 11, 2010. Comments have been addressed and the plat is being presented to City Council for approval consideration.

#### Origination:

Engineering and Planning Department

#### Recommendation:

Engineering and Planning Department recommend approval.

#### Funding:

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

Engineering and Planning Department

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

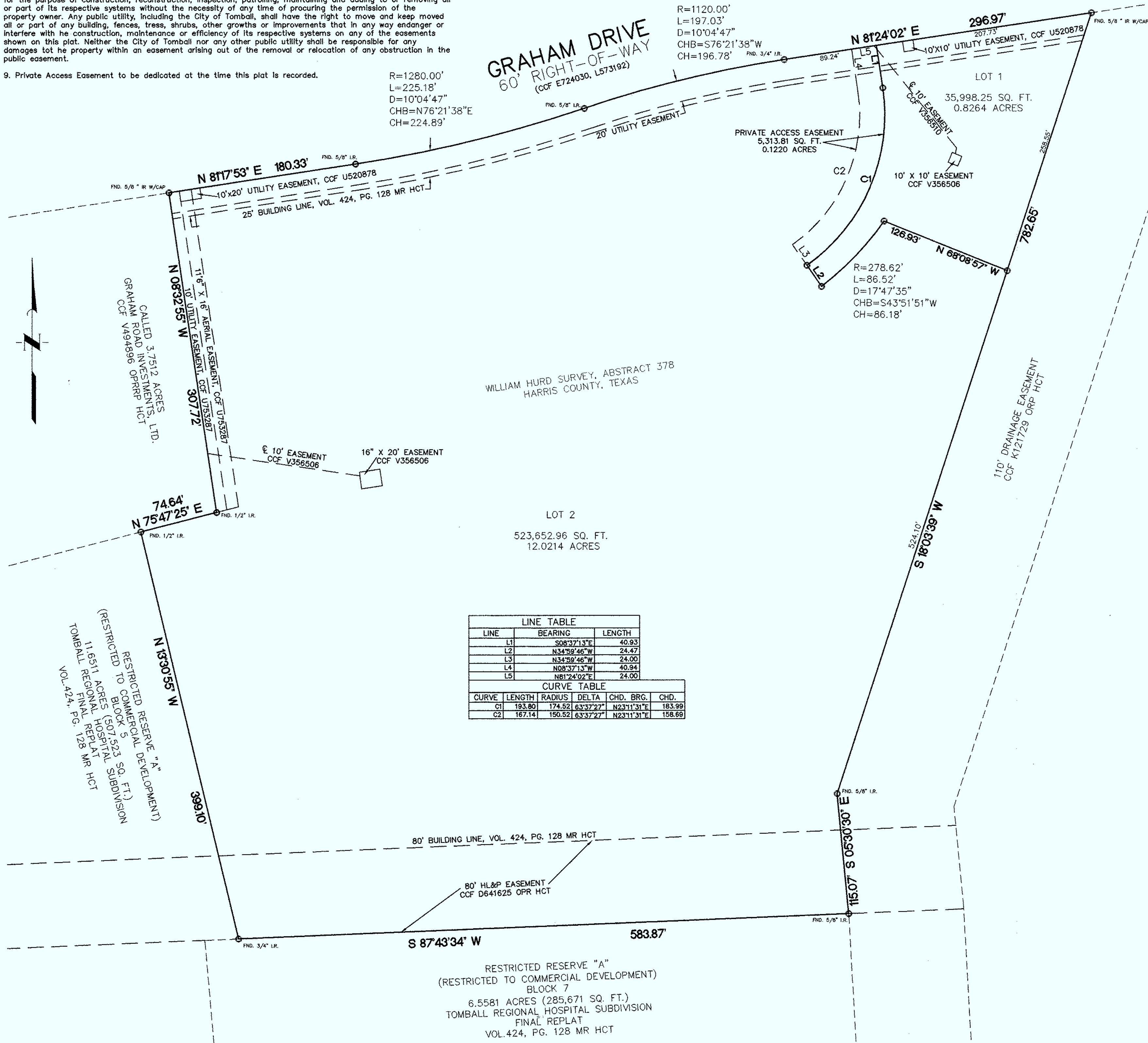
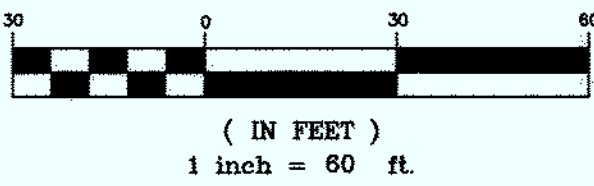
#### ATTACHMENTS:

Partial Replat of Tomball Regional Hospital No. 1

GENERAL NOTES:

- All corners are set 5/8 inch iron rods w/cap unless otherwise shown or noted.
- All oil/gas pipelines or pipeline easements with ownership through the subdivision have been shown.
- All oil/gas wells with ownership (plugged, abandoned, and/or active) through the subdivision have been shown.
- No building or structure shall be constructed across any pipelines, building lines, and/or easements. Building setback lines will be required adjacent to oil/gas pipelines. The setbacks at a minimum should be 15 feet off centerline of low pressure gas line, and 30 feet off centerline of high pressure gas lines.
- This plat does not attempt to amend or remove any valid covenants or restrictions.
- The building lines shown on this plat shall be in addition to, and shall not limit or replace, any building lines required by the City of Tomball Code of Ordinances at the time of the development of the property.
- According to FEMA Firm Panel No. 48201C0210L, effective date of June 18, 2007, this property is in Zone "X" and is not in the 0.2% Annual Chance Flood Plain.
- Public easement denoted on this plat are hereby dedicated to the public forever. Any public utility, including City of Tomball, shall have the right of all times, of ingress and egress to and from and upon said easements for the purpose of construction, reconstruction, inspection, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity of any time of procuring the permission of the property owner. Any public utility, including the City of Tomball, shall have the right to move and keep moved all or part of any building, fences, trees, shrubs, other growths or improvements that in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of the easements shown on this plat. Neither the City of Tomball nor any other public utility shall be responsible for any damages to the property within an easement arising out of the removal or relocation of any obstruction in the public easement.
- Private Access Easement to be dedicated at the time this plat is recorded.

GRAPHIC SCALE



| LINE TABLE |             |        |  |  |  |
|------------|-------------|--------|--|--|--|
| LINE       | BEARING     | LENGTH |  |  |  |
| L1         | S08°37'13"E | 40.93  |  |  |  |
| L2         | N34°59'46"W | 24.00  |  |  |  |
| L3         | N08°37'13"W | 40.94  |  |  |  |
| L4         | N81°24'02"E | 296.97 |  |  |  |
| L5         | S05°30'30"E | 115.07 |  |  |  |

| CURVE TABLE |        |        |           |             |        |
|-------------|--------|--------|-----------|-------------|--------|
| CURVE       | LENGTH | RADIUS | DELTA     | CHD. BRG.   | CHD.   |
| C1          | 193.80 | 174.52 | 63°37'27" | N23°11'31"E | 183.99 |
| C2          | 167.14 | 150.52 | 63°37'27" | N23°11'31"E | 158.69 |

STATE OF TEXAS  
COUNTY OF HARRIS

WE, Tomball Hospital Authority, acting by and through Keith Barber, Executive Vice President/COO/CFD being officers of Tomball Hospital Authority Owners of the 12.85 acre tract described in the above and foregoing plat of Partial Replat of Tomball Regional Hospital No. 1, do hereby make and establish said subdivision and development plat of said property according to all liens, dedications, restrictions and notations on said maps or plat and hereby dedicate to the use of the public forever, all streets (except those streets designated as private streets, or permanent access easements), alleys, parks, water courses, drains, easements and public places shown thereon for the purpose and considerations therein expressed; and do hereby bind ourselves, our heirs, successors and assigns to warrant and forever defend the title on the land so dedicated.

FURTHER, owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes forever an unobstructed aerial easements, five (5) feet in width from a plane twenty (20) feet above the ground level upward, located adjacent to all public utility easements shown hereon.

FURTHER, owners do hereby covenant and agree that all of the property within the boundaries of this plat shall be restricted to provide that drainage structures under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater and in no instance have a drainage opening of less than one and three quarters square feet (18-inch diameter) with culverts or bridges to be provided for all private driveways or walkways crossing such drainage facilities.

FURTHER, Owners do hereby dedicate to the public a strip of land fifteen (15) feet wide on each side of the center line of any and all bays, creeks, gullies, ravines, draws, sloughs, or other natural drainage courses located in said plat, as easements for drainage purposes, giving the City of Houston, Harris County, or any other governmental agency, the right to enter upon said easement at any times for the purpose of construction and maintenance of drainage facilities and structures.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat and adjacent to any drainage easement, ditch, gully, creek or natural drainage way is hereby restricted to keep such drainage ways and easements clear of fences, buildings, planting and other obstructions to the operations and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly into this easement except by means of an approved drainage structure.

IN TESTIMONY WHEREOF, Tomball Hospital Authority has caused these presents to be signed by Keith Barber, Executive Vice President/COO/CFD and its common seal hereunto affixed this 11 day of November, 2010.

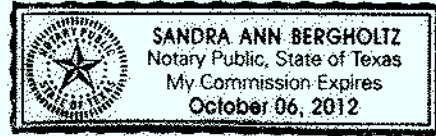
By: Keith Barber  
Keith Barber, Executive Vice President/COO/CFD  
Tomball Hospital Authority

Attest: Patricia Clark  
Patricia Clark, Legal Assistant/Construction Coordinator  
Tomball Hospital Authority

BEFORE ME, the undersigned authority, on this day personally appeared Keith Barber, Executive Vice President/COO/CFD, known to me to be the persons whose name is subscribed to the foregoing instrument and acknowledgment to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11 day of November, 2010

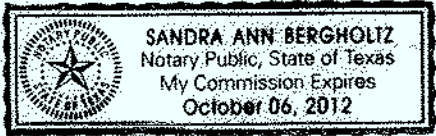
Sandra Ann Bergholtz  
Notary Public in and for the State of Texas  
Print name: SANDRA ANN BERGHOLTZ  
My Commission expires: 10-06-2012



BEFORE ME, the undersigned authority, on this day personally appeared Patricia Clark, Legal Assistant/Construction Coordinator, known to me to be the persons whose name is subscribed to the foregoing instrument and acknowledgment to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11 day of November, 2010

Sandra Ann Bergholtz  
Notary Public in and for the State of Texas  
Print name: SANDRA ANN BERGHOLTZ  
My Commission expires: 10-06-2012



We, The City Manager and Director of Engineering and Planning for the City of Tomball, do hereby certify that this plat complies with the City of Tomball, do hereby certify that this plat complies with the City of Tomball Ordinance.

By: George Shackelford, City Manager

By: Mark McClure, P.E. Director of Engineering & Planning

This is to certify that the City accepts the Planning & Zoning Commission's authorized approval and acceptance of all dedicated public easements in conformance with the laws of the State of Texas the ordinance of the City of Tomball as shown hereon and authorized the recording of this plat this \_\_\_\_\_ day of \_\_\_\_\_, 2010

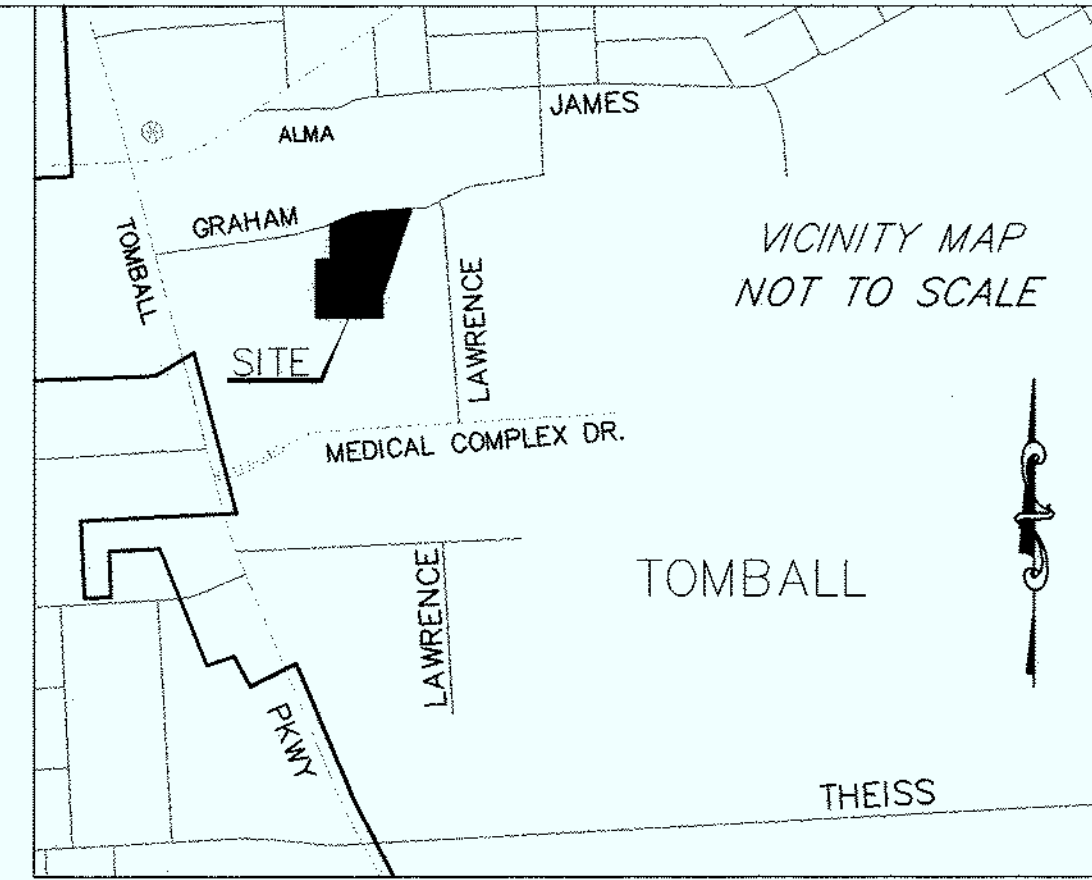
By: Gretchen Fagan, Mayor

By: Doris Speer, City Secretary

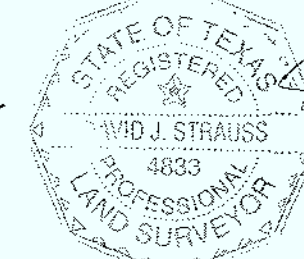
This is to certify that the Planning & Zoning Commission of the City of Tomball, Texas, has approved this plat and subdivision of Partial Replat of Tomball Regional Hospital No. 1 in conformance with the laws of the State of Texas and the ordinances of the City of Tomball as shown hereon and authorized the recording of this plat this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

By: Lori Wallace, Chairman

By: Tom Crofoot, Vice Chairman



I, David Strauss, am registered under the laws of the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that lot corners have been marked with iron rods having an outside diameter of not less than five-eighths inch (5/8"); that all boundary corners, angle points, points of curvature, and other points of reference have been marked with iron (or other suitable permanent metal) pipes or rods having an outside diameter of not less than three-quarter inch (3/4") and a length of not less than three feet (3'); and that the plat boundary corners have been tied to the nearest survey corner.



David Strauss  
David Strauss - Registered Professional Land Surveyor  
Texas Registration No. 4533

I, Beverly B. Kaufman, County Clerk of Harris County, Texas, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on \_\_\_\_\_, 2010, at \_\_\_\_\_ o'clock, and duly recorded on \_\_\_\_\_ of the Map Records of Harris County for said county.

Witness my hand and seal of office, at Houston, the day and date last above written.

Beverly B. Kaufman  
Clerk of the County Court  
Harris County, Texas

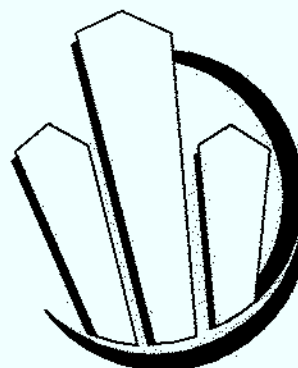
By: \_\_\_\_\_  
Deputy

REPLAT  
PARTIAL REPLAT OF TOMBALL  
REGIONAL HOSPITAL No. 1

12.8478 ACRES (559,651.21 SQ. FT.)  
LOCATED IN THE  
WILLIAM HURD SURVEY, A-378  
HARRIS COUNTY, TEXAS  
CITY OF TOMBALL, TEXAS  
BEING A REPLAT OUT OF  
TOMBALL REGIONAL HOSPITAL  
RESERVE "A", BLOCK 4  
VOL. 424, PG. 128 MR HCT  
1 BLOCK 2 LOTS  
NOVEMBER 2010

REASON FOR REPLAT: TO CREATE  
A MEDICAL OFFICE SUBDIVISION

SURVEYOR:



OWNER/DEVELOPER:  
TOMBALL HOSPITAL AUTHORITY  
605 HOLDERRIETH BLVD.  
TOMBALL, TX 77375  
TELEPHONE NO. 281-401-7062

TOWN & COUNTRY SURVEYORS, LLC  
25307 NORTH FREEWAY, SUITE 100  
THE WOODLANDS, TX 77380  
(281) 465-8730  
FAX (281) 465-8731

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### Topic:

Approve Maintenance Agreement for North Star Estates Soldier Pile Improvements in the Public Right of Way of the J133-00-00, Ditch M, with Partners in Building, L.P.

#### Background:

Staff requests Council to authorize the Mayor to execute the Maintenance Agreement for the North Star Estates Soldier Pile Improvements, to be installed by Partners in Building, L.P. within the Public right-of-way (ROW) known as the J133-00-00, Ditch M adjacent to Section 5 of the North Star Estates. Preliminary design plans and a permit application by Hayward Baker Inc. have been attached for informational purposes. Staff is in the permit process of plan review.

#### Origination:

Engineering and Planning Department

#### Recommendation:

Engineering and Planning Department recommend approval.

#### Funding:

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

Engineering and Planning Department

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

#### ATTACHMENTS:

PIBNorthStarEstatesSection5MaintAgrmt12-13-10

Design Plans 12-13-10

Retaining Wall Design Brief

Permit Application

## MAINTENANCE AGREEMENT FOR IMPROVEMENTS IN THE PUBLIC RIGHT OF WAY

THIS AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between Partners in Builders, L.P. ("Developer"), and the CITY OF TOMBALL, TEXAS, a home rule municipal corporation of the State of Texas.

WITNESSETH:

### Recitals

Developer was the owner and developer of certain real property in the City of Tomball, Texas, known as *North Star Estates, Section Five*.

Pursuant to the development of *North Star Estates, Section Five*, Developer wishes to place additional improvements in the public right-of-way.

In accordance with plans prepared by Hayward Baker Inc. ("Engineer") dated, \_\_\_\_\_, ("Plans"), Developer will install a North Star Estates Soldier Pile Wall within the right-of-way of *J 133-00-00, Ditch M* ("Creek").

Developer and the City of Tomball enter into this agreement to provide for the installation and maintenance of such North Star Estates Soldier Pile Wall.

### Agreement

In consideration of the mutual promises, benefits and covenants contained herein, the receipt and sufficiency of which are acknowledged by each of the parties hereto, the parties hereto agree as follows:

**1. Plans.** Developer has caused Engineer to prepare Plans, which have been approved by the City of Tomball. All changes and revisions to the Plans shall, as they are prepared and prior to construction, be submitted to and subject to the written approval of the City Engineer.

**2. Improvements.** Developer shall have the right to install the North Star Estates Soldier Pile Wall contemplated by the Plans in accordance with the Plans. The Developer shall be responsible for the installation and maintenance of the North Star Estates Soldier Pile Wall.

**3. Maintenance.** Developer guarantees and warrants the public improvements that constitute the North Star Estates Soldier Pile Wall, and agrees to remedy any defects in the North Star Estates Soldier Pile Wall arising from faulty or defective materials or construction of the North Star Estates Soldier Pile Wall occurring within one (1) year after the completion of the construction to the North Star Estates Soldier Pile Wall. If at any time within one year of the date of completion of construction of the North Star Estates Soldier Pile Wall, the City Engineer determines that any maintenance is required of Developer within the right-of-way of the Creek, the City Engineer will give Developer written notice stating in reasonable detail the required maintenance work. Thereafter, Developer shall, at its own expense, promptly perform such maintenance work. If such maintenance work is not completed within sixty (60) days from receipt of such notice, or if within such sixty (60) day time period the work is not, in the sole opinion of the City Engineer, being diligently pursued and continues not to be diligently pursued to completion (unless prevented or delayed because of adverse or unfavorable weather conditions, or in the event of an emergency requiring that maintenance work be performed immediately in the sole opinion of the City Engineer, then the City of Tomball may but is not required to perform maintenance work, and the City Engineer or his designee shall notify Developer of the amount of all costs incurred in performing such work. Developer hereby agrees to fully reimburse the City of Tomball for the cost of such maintenance work. The foregoing shall not be deemed to prevent Developer from disputing whether such work is the responsibility of Developer under the terms of this Agreement.

**4. Miscellaneous.** This Agreement shall be binding upon successors and assigns of the rights and obligations of Developer as provided herein, but it is not intended to and shall not be a covenant running with any real estate now or hereafter owned by Developer or its successors and/or assigns. No obligations imposed on Developer or its successors and assigns by this Agreement shall constitute a lien or otherwise encumber the title to any such real estate, it being intended that all obligations of Developer provided herein are personal to Developer and the successors and assigns of the Developer's rights and obligations contained herein.

**5. Termination.** This Agreement shall terminate and be of no further force or effect upon the discontinuance and abandonment of the North Star Estates Soldier Pile Wall with the right-of-way of the Creek in accordance with procedures approved by the City, which approval shall not be unreasonably withheld.

**6. Notices.** All notices required, permitted, or given pursuant to or in connection with this Agreement shall be sufficient if in writing and delivered in person or mailed by certified mail, return receipt requested, to the following persons at the following addresses:

Developer:     *Partners in Building, L.P.*  
                  17361 Village Green Drive  
                  Houston, Texas 77040

Attention:     Director of Engineering and Planning (City Engineer)  
                  City of Tomball  
                  501 James Street  
                  Tomball, Texas 77375

or to such other addresses of which notice shall have been pursuant to this paragraph. Notices shall be deemed given upon mailing.

The obligations of Developer shall neither be assigned nor transferred to any successor or assign of Developer until such time as Developer and such successor or assign shall have each notified the City Engineer, in writing, of the name and address or a person duly authorized to receive notice on behalf of the successor or assign pursuant to this Agreement.

If the name or address of any person authorized to receive notification pursuant to this Agreement changes, each party to this Agreement covenants that such party shall immediately notify, in writing, by the above-described procedure, each other party to this Agreement of such change.

**7. Complete Agreement.** This Agreement contains the entire understanding of the parties, and no amendment or modification shall be binding unless in writing and signed by all parties hereto.

**8. Waiver.** The failure of the City of Tomball or Developer, their successors and assigns, to exercise, or to delay in exercising any right under this Agreement in the event of default, shall not be deemed to be and shall not constitute a waiver with respect to any subsequent default.

**9. Paragraph Headings.** The paragraph headings contained in this Agreement are intended for convenient reference only, and shall not be construed to affect the meaning or construction of any provisions of this Agreement.

**10. Successors and Assigns.** Whenever used in this Agreement, "successors and assigns" means the successors and assigns of Developer to its rights and obligations under this Agreement to its rights and obligations under this Agreement, and does not refer to any other successors and assigns of Developer.

**11. Jurisdiction.** This agreement shall be governed by the laws of the Texas, and all disputes shall be resolved in the courts of Harris County, Texas.

**12. No third party beneficiaries.** This agreement only inures to the benefit of, and may only be enforced by, the Parties and their legal assignees. No other person or entity shall have any right, title, or interest under the agreement or otherwise be deemed to be a third-party beneficiary of this agreement.

**13. Indemnification; Insurance and Bonds.**

Developer shall defend and indemnify the City of Tomball from any and all claims, suits or liens based upon or alleged to be based upon the non-payment of labor, tools, materials, equipment, supplies, transportation and management costs incurred by Developer in performing this Agreement.

Developer shall provide the City of Tomball with a performance and payment bond in accordance with Chapter 2253, Texas Government Code.

Each party shall provide its own insurance to insure for the risks that might arise out of this agreement as each party deems appropriate.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

**CITY OF TOMBALL**

---

Gretchen Fagan  
Mayor

ATTEST:

**Developer:**

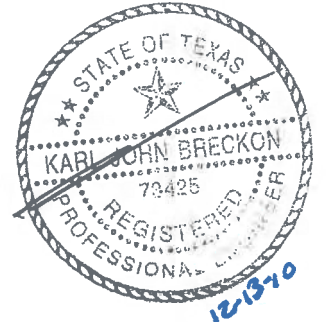
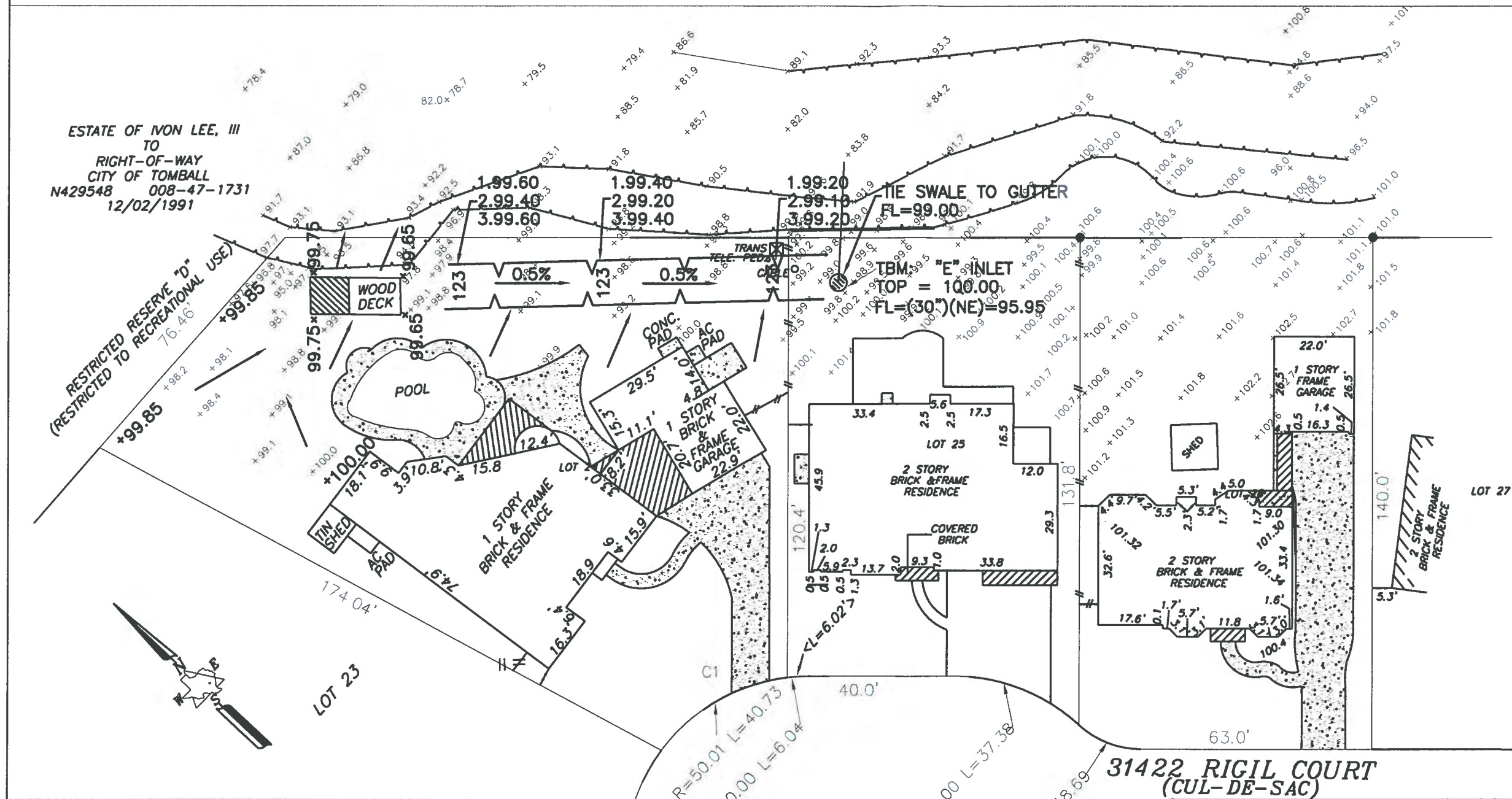
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Doris Speer, City Secretary

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*Authorized Signature, Name, and Title:*

## Drainage Plan



|                       |          |
|-----------------------|----------|
| REVISION              | DATE     |
| Rev 0 - Initial Issue | 12-08-10 |

SEE PLAN FOR SWALE ELEV.

1 2 3

TYPICAL SECTION AT SWALE

SEE PLAN FOR FLOW LINE ELEVATION - MIN SLOPE 0.15%

DRAWN BY: J.M.M  
DRAWING SCALE: 1" = 30'

XX.XX=PROPOSED ELEVATIONS  
+ =EXISTING ELEVATIONS

1. ALL EXCAVATED SOIL FROM THE FOUNDATION SHALL BE REMOVED FROM THE CONSTRUCTION SITE PRIOR TO THE START OF FRAMING AND MAY NOT BE USED AS FILL DIRT UNLESS SPECIFICALLY CALLED FOR ON PLANS.
2. CONSTRUCTION SITE IS TO MAINTAINED FREE OF ANY OPEN TRENCHES, PITS HOLES OR OTHER EXCAVATIONS THAT MAY HOLD WATER AND AT NO TIME MAY RUNOFF FROM CONSTRUCTION SITE TRAVERSE NEIGHBORING PROPERTY.
3. RUNOFF SHALL BE FILTERED TO PREVENT SAND, MUD AND DIRT OF ANY KIND FROM ENTERING CITY STORM DRAINAGE SYSTEM.
4. POSITIVE DRAINAGE TO A CITY DRAINAGE FACILITY MUST BE MAINTAINED AT ALL TIMES.
5. CONTRACTOR SHALL CONTACT ALL PERTINENT UTILITY COMPANIES 48 HOURS (MINIMUM) PRIOR TO EXCAVATION IN AREA.
6. ALL DAMAGE TO CITY FACILITIES SHALL BE REPAIRED OR REPLACED TO THE SATISFACTION OF THE CITY AT NO COST TO THE CITY

### ELEVATION INFORMATION

BM:  
ASSUMED 100 ON TOP OF "E" INLET

## FLOOD INFORMATION

F.I.R.M. NO. 48201C PANEL 0210L  
REVISED DATE 8-18-2007 ZONE: "X"

## PROPERTY INFORMATION

LOT: 24,25,26  
BLOCK: 1  
SUBDIVISION: NORTH STAR ESTATE, SEC. 5  
RECORDING: FILM CODE NO. 449090  
MAP RECORDS OF HARRIS COUNTY, TEXAS

**BEC**  
ENGINEERING, LP

10401 Westoffice Dr.  
HOUSTON, TEXAS 77042  
TEL 281.664.8440  
FAX. 281.664.8457  
TEXAS ENG. FIRM#F005242



**Global Surveyors, Inc.**

Formerly Residential Land Surveyors, Inc  
An affiliate of Tri-Tech Surveying Company, L.P.

**WWW.SURVEYINGCOMPANY.COM**  
10401 Westoffice Drive Phone: (713) 667-0800  
Houston, Texas 77042 Fax: (713) 667-5848

# NORTH STARS ESTATES

## SOLDIER PILE WALL

GENERAL NOTES

1. THE SOIL PARAMETERS FROM THE GEOTECHNICAL REPORT PREPARED BY GETECH ENGINEERING AND TESTING HAVE BEEN USED IN THE SOLDIER PILE AND LAGGING WALL DESIGN.
2. THE WALL HAS BEEN DESIGNED TO A FACTOR OF SAFETY OF 1.5 FOR LONG TERM, 1.3 FOR SHORT TERM, AND 1.25 FOR RAPID DRAW DOWN.
3. SOLDIER PILE AND LAGGING REVISIONS MAY BE MADE DURING CONSTRUCTION. REVISIONS WILL BE SUBMITTED ON AS-BUILT DRAWINGS.
4. OBSTRUCTIONS – DRILLING THROUGH OBSTRUCTIONS IS NOT INCLUDED IN THIS PRICE. IF DRILLING OBSTRUCTIONS (FOUNDATIONS, FILL, BOULDERS, ABANDONED UTILITIES, ETC.) ARE ENCOUNTERED, HBI WILL PERFORM ADDITIONAL WORK REQUIRED AT NEGOTIATED PRICING.
5. DEWATERING – GROUNDWATER CONTROL IS THE CONTRACTOR'S RESPONSIBILITY. DEWATERING IS REQUIRED TO PERFORM LAGGING IF GROUNDWATER IS ENCOUNTERED.
6. VIBRATIONS – IF REQUIRED, ADDITIONAL PROTECTION OF THE EXISTING STRUCTURES/UTILITIES WILL BE PROVIDED BY OTHERS. HBI HAS NOT BEEN PROVIDED ANY INFORMATION ON THE DESIGN OR CONSTRUCTION OF THE EXISTING STRUCTURES.
7. MONITORING – ANY CRACK SURVEYS (PRE OR POST CONSTRUCTION), INSTRUMENTATION, SURVEYING, ETC. TO MONITOR THE ADJACENT STRUCTURES WILL BE PROVIDED BY OTHERS.
8. DRAINAGE – CONTRACTOR SHALL INSTALL AND MAINTAIN DRAINAGE MEASURES TO DRAIN WATER AWAY FROM THE TOP AND BOTTOM OF THE WALL FOR THE DURATION OF THE WALL LIFE. THIS MAY BE ACCOMPLISHED BY GRADING, SWALES, BERMS, SAND BAGGING, ETC.
9. WORKING LIFTS – HBI'S PROPOSAL IS BASED ON THE CONTRACTOR PROVIDING A FLAT WORKING BOTTOM FOR EACH LIFT OF LAGGING.
10. FALL PROTECTION – CONTRACTOR WILL INSTALL AND MAINTAIN TEMPORARY AND/OR PERMANENT FALL PROTECTION FOR THE GRADE SEPARATION AT THE TOP OF THE RETAINING WALLS.

MATERIAL SPECIFICATIONS:

1. SOLDIER PILE STEEL SHALL CONFROM TO ASTM A572 GRADE 50 KSI.
2. SOIL MIX FOR THE SOLDIER PILES SHALL HAVE A MINIMUM UNCONFINED COMPRESSIVE STRENGTH OF 100 PSI @ 28 DAYS.
3. LAGGING SHALL BE HARDWOOD TREATED.

TABLE OF CONTENTS:

- S1.0
- COVER SHEET/NOTES/PILE TABLE
- S2.0
- SOLDIER PILE WALL PLAN
- S3.0
- SOLDIER PILE WALL PROFILE
- S3.1
- SECTIONS

| SOLDIER<br>PILE NO. | STATION | SOLDIER<br>PILE SIZE | TOP OF<br>PILE<br>ELEV. (FT) | EXPOSED<br>LAGGING<br>BOTTOM<br>ELEV. (FT) | BOTTOM<br>OF PILE<br>ELEV. (FT) | EXPOSED<br>HEIGHT<br>(FT) | TOTAL<br>PILE<br>LENGTH<br>(FT) | PILE TOE<br>LENGTH<br>(FT) |
|---------------------|---------|----------------------|------------------------------|--------------------------------------------|---------------------------------|---------------------------|---------------------------------|----------------------------|
| 1                   | 6.92    | HP14x73              | 98.00                        | 95.67                                      | 63.00                           | 2.33                      | 35.00                           | 32.67                      |
| 2                   | 12.92   | HP14x73              | 98.00                        | 93.82                                      | 63.00                           | 4.18                      | 35.00                           | 30.82                      |
| 3                   | 18.92   | HP14x73              | 98.05                        | 92.00                                      | 63.05                           | 6.05                      | 35.00                           | 28.95                      |
| 4                   | 24.92   | HP14x73              | 98.11                        | 92.00                                      | 63.11                           | 6.11                      | 35.00                           | 28.89                      |
| 5                   | 30.92   | HP14x73              | 98.17                        | 92.00                                      | 63.17                           | 6.17                      | 35.00                           | 28.83                      |
| 6                   | 36.92   | HP14x73              | 98.22                        | 92.00                                      | 63.22                           | 6.22                      | 35.00                           | 28.78                      |
| 7                   | 42.92   | HP14x73              | 98.28                        | 92.00                                      | 63.28                           | 6.28                      | 35.00                           | 28.72                      |
| 8                   | 48.92   | HP14x73              | 98.34                        | 92.00                                      | 63.34                           | 6.34                      | 35.00                           | 28.66                      |
| 9                   | 54.92   | HP14x73              | 98.40                        | 92.00                                      | 63.40                           | 6.40                      | 35.00                           | 28.60                      |
| 10                  | 60.92   | HP14x73              | 98.45                        | 92.00                                      | 63.45                           | 6.45                      | 35.00                           | 28.55                      |
| 11                  | 66.92   | HP14x73              | 98.51                        | 92.00                                      | 63.51                           | 6.51                      | 35.00                           | 28.49                      |
| 12                  | 72.92   | HP14x73              | 98.57                        | 92.00                                      | 63.57                           | 6.57                      | 35.00                           | 28.43                      |
| 13                  | 78.92   | HP14x73              | 98.63                        | 92.00                                      | 63.63                           | 6.63                      | 35.00                           | 28.37                      |
| 14                  | 84.92   | HP14x73              | 98.68                        | 92.00                                      | 63.68                           | 6.68                      | 35.00                           | 28.32                      |
| 15                  | 90.92   | HP14x73              | 98.74                        | 92.00                                      | 63.74                           | 6.74                      | 35.00                           | 28.26                      |
| 16                  | 96.92   | HP14x73              | 98.80                        | 92.00                                      | 63.80                           | 6.80                      | 35.00                           | 28.20                      |
| 17                  | 102.92  | HP14x73              | 98.85                        | 92.00                                      | 63.85                           | 6.85                      | 35.00                           | 28.15                      |
| 18                  | 108.92  | HP14x73              | 98.91                        | 92.00                                      | 63.91                           | 6.91                      | 35.00                           | 28.09                      |
| 19                  | 114.92  | HP14x73              | 98.97                        | 92.00                                      | 63.97                           | 6.97                      | 35.00                           | 28.03                      |
| 20                  | 120.92  | HP14x73              | 99.03                        | 92.00                                      | 64.03                           | 7.03                      | 35.00                           | 27.97                      |
| 21                  | 126.92  | HP14x73              | 99.08                        | 92.00                                      | 64.08                           | 7.08                      | 35.00                           | 27.92                      |
| 22                  | 132.92  | HP14x73              | 99.14                        | 92.00                                      | 64.14                           | 7.14                      | 35.00                           | 27.86                      |
| 23                  | 138.92  | HP14x73              | 99.20                        | 92.00                                      | 64.20                           | 7.20                      | 35.00                           | 27.80                      |
| 24                  | 144.92  | HP14x73              | 99.26                        | 92.00                                      | 64.26                           | 7.26                      | 35.00                           | 27.74                      |
| 25                  | 150.92  | HP14x73              | 99.31                        | 92.00                                      | 64.31                           | 7.31                      | 35.00                           | 27.69                      |
| 26                  | 156.92  | HP14x73              | 99.37                        | 92.00                                      | 64.37                           | 7.37                      | 35.00                           | 27.63                      |
| 27                  | 162.92  | HP14x73              | 99.43                        | 92.00                                      | 64.43                           | 7.43                      | 35.00                           | 27.57                      |
| 28                  | 168.92  | HP14x73              | 99.48                        | 92.00                                      | 64.48                           | 7.48                      | 35.00                           | 27.52                      |
| 29                  | 174.92  | HP14x73              | 99.54                        | 92.00                                      | 64.54                           | 7.54                      | 35.00                           | 27.46                      |
| 30                  | 180.92  | HP14x73              | 99.60                        | 92.00                                      | 64.60                           | 7.60                      | 35.00                           | 27.40                      |
| 31                  | 186.92  | HP14x73              | 99.66                        | 92.00                                      | 64.66                           | 7.66                      | 35.00                           | 27.34                      |
| 32                  | 192.92  | HP14x73              | 99.71                        | 92.00                                      | 64.71                           | 7.71                      | 35.00                           | 27.29                      |
| 33                  | 198.92  | HP14x73              | 99.77                        | 92.00                                      | 64.77                           | 7.77                      | 35.00                           | 27.23                      |
| 34                  | 204.92  | HP14x73              | 99.83                        | 92.00                                      | 64.83                           | 7.83                      | 35.00                           | 27.17                      |
| 35                  | 210.92  | HP14x73              | 99.89                        | 92.00                                      | 64.89                           | 7.89                      | 35.00                           | 27.11                      |
| 36                  | 216.92  | HP14x73              | 99.94                        | 94.87                                      | 64.94                           | 5.07                      | 35.00                           | 29.93                      |
| 37                  | 222.92  | HP14x73              | 100.00                       | 96.94                                      | 65.00                           | 3.06                      | 35.00                           | 31.94                      |

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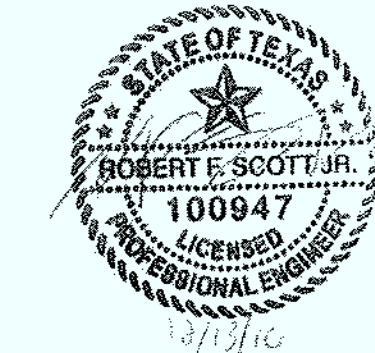
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REVISIONS

NOTES

PROJECT NAME

PROJECT ADDRESS  
CITY, STATE

PROJECT NUMBER ISSUE DATE  
JOB # XX/XX/10

SHEET NUMBER

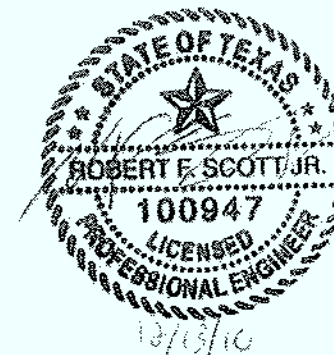
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11/17/10  
Global Surveyors Inc.



REVISIONS

SOLDIER PILE WALL  
PLAN

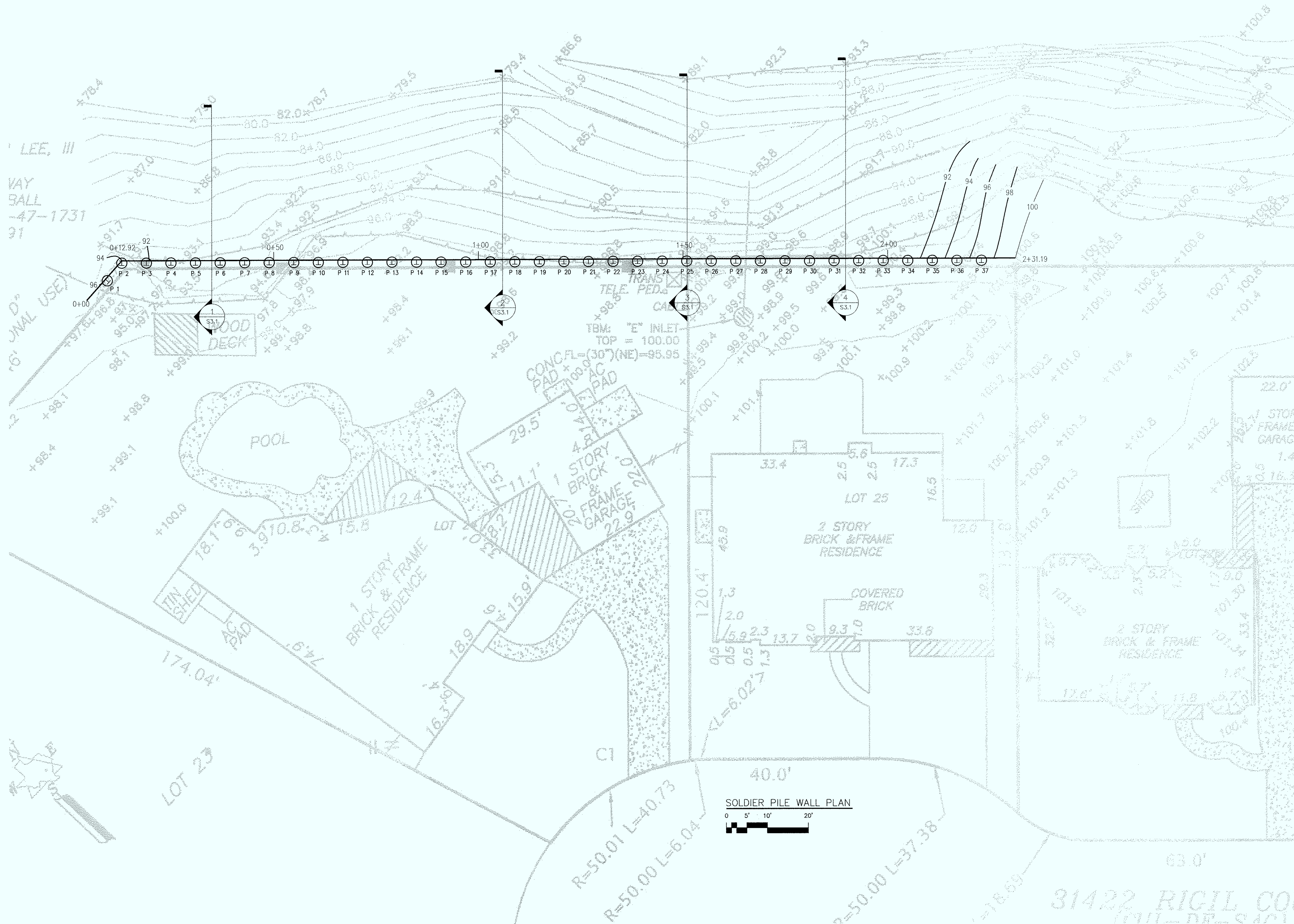
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PROJECT NUMBER ISSUE DATE  
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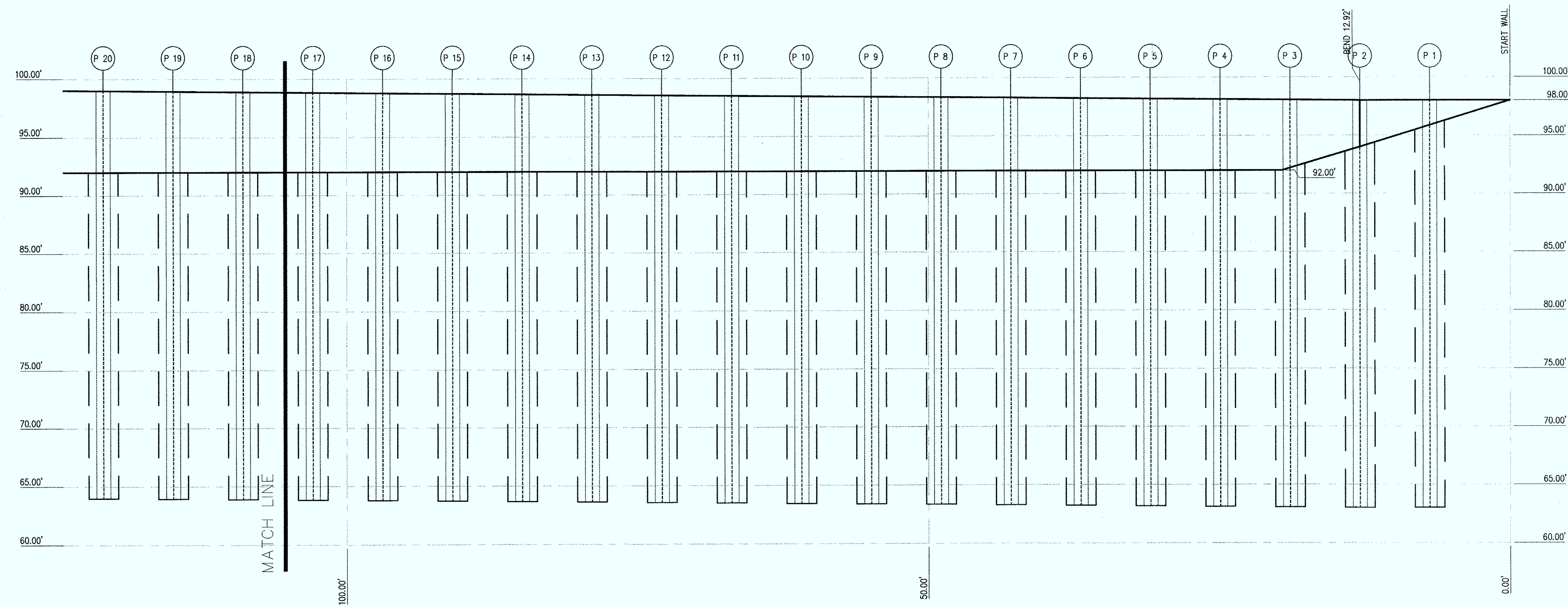
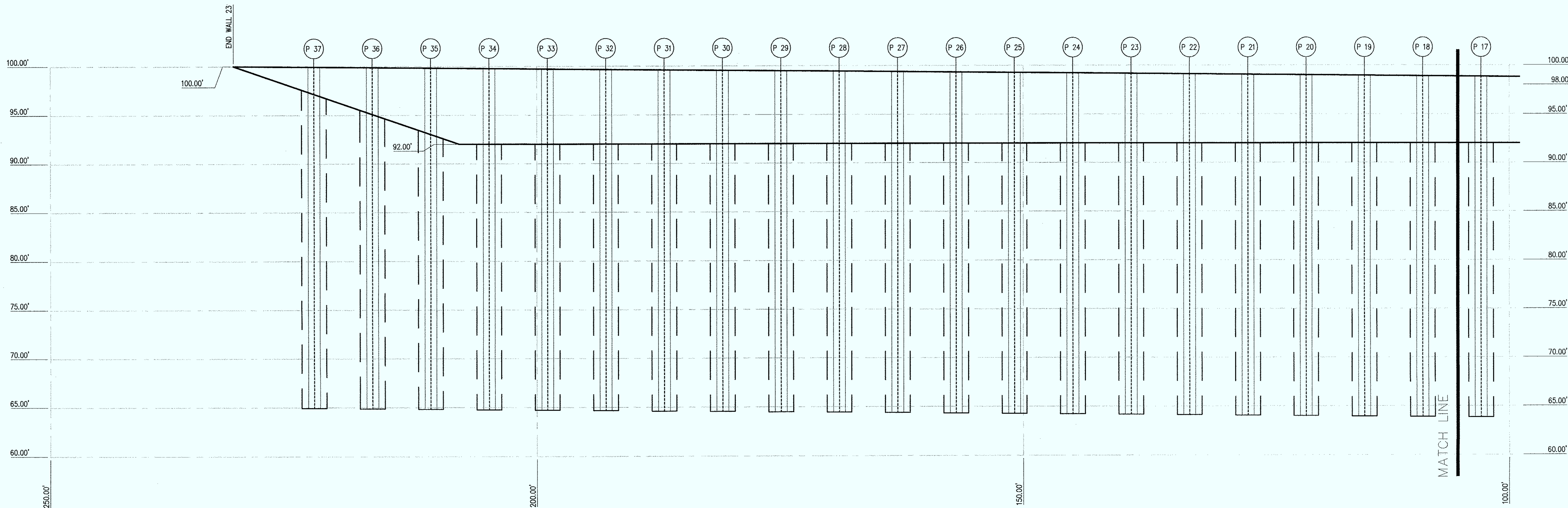
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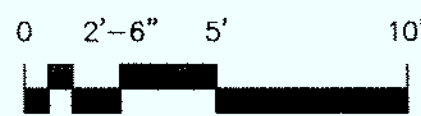
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REFERENCES



AREA = 1,460 SQ. FT. EXPOSED  
PILES = HP14X73 GR. 50 (37 EA. @ 35'-0")

SOLDER PILE WALL PROFILE



REVISIONS

SOLDIER PILE WALL  
PROFILE

NORTH STARS ESTATE  
SUBDIVISION

TOMBALL, TEXAS

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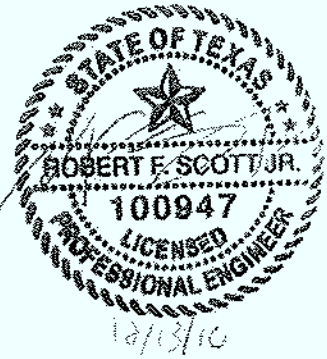
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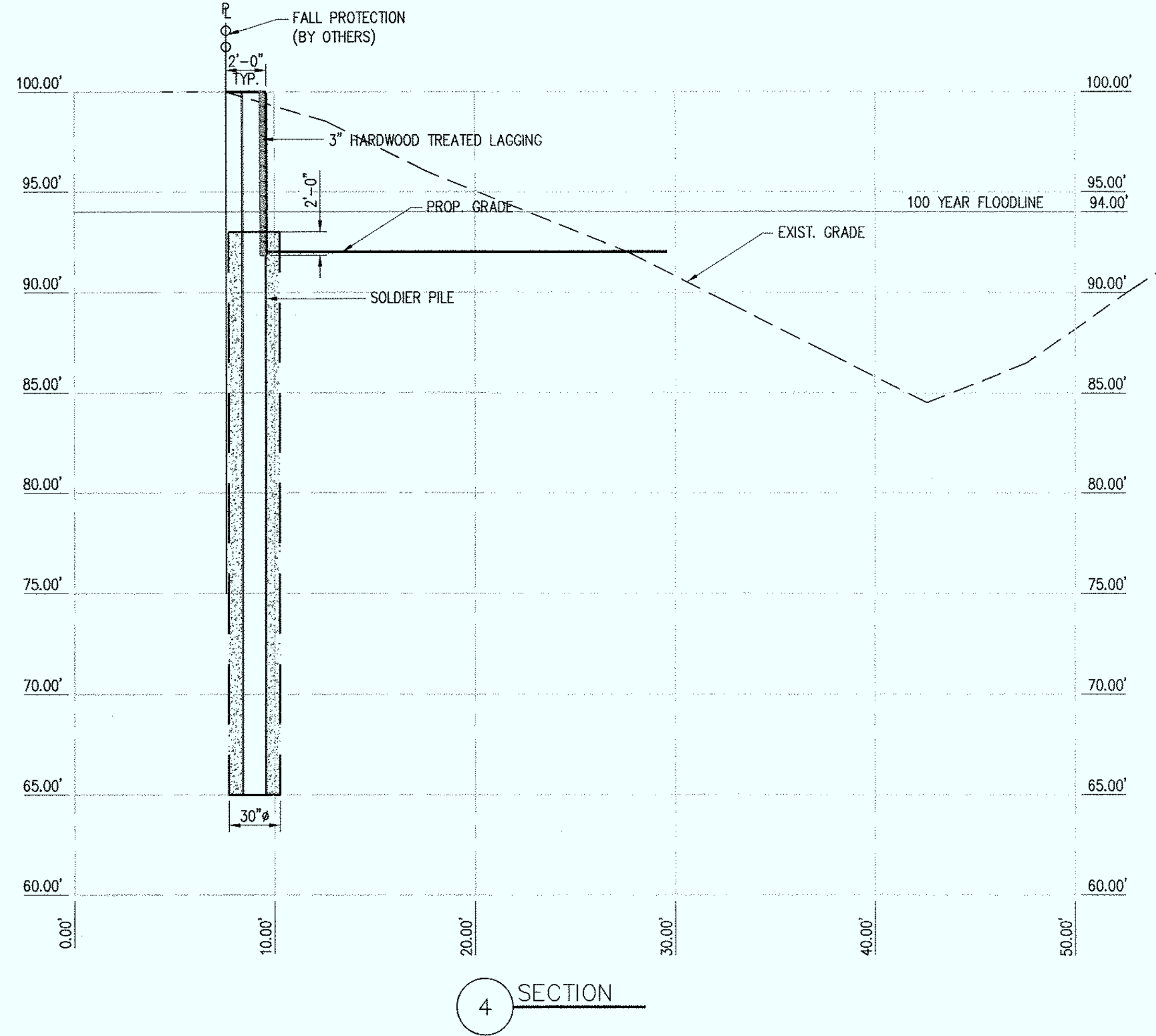
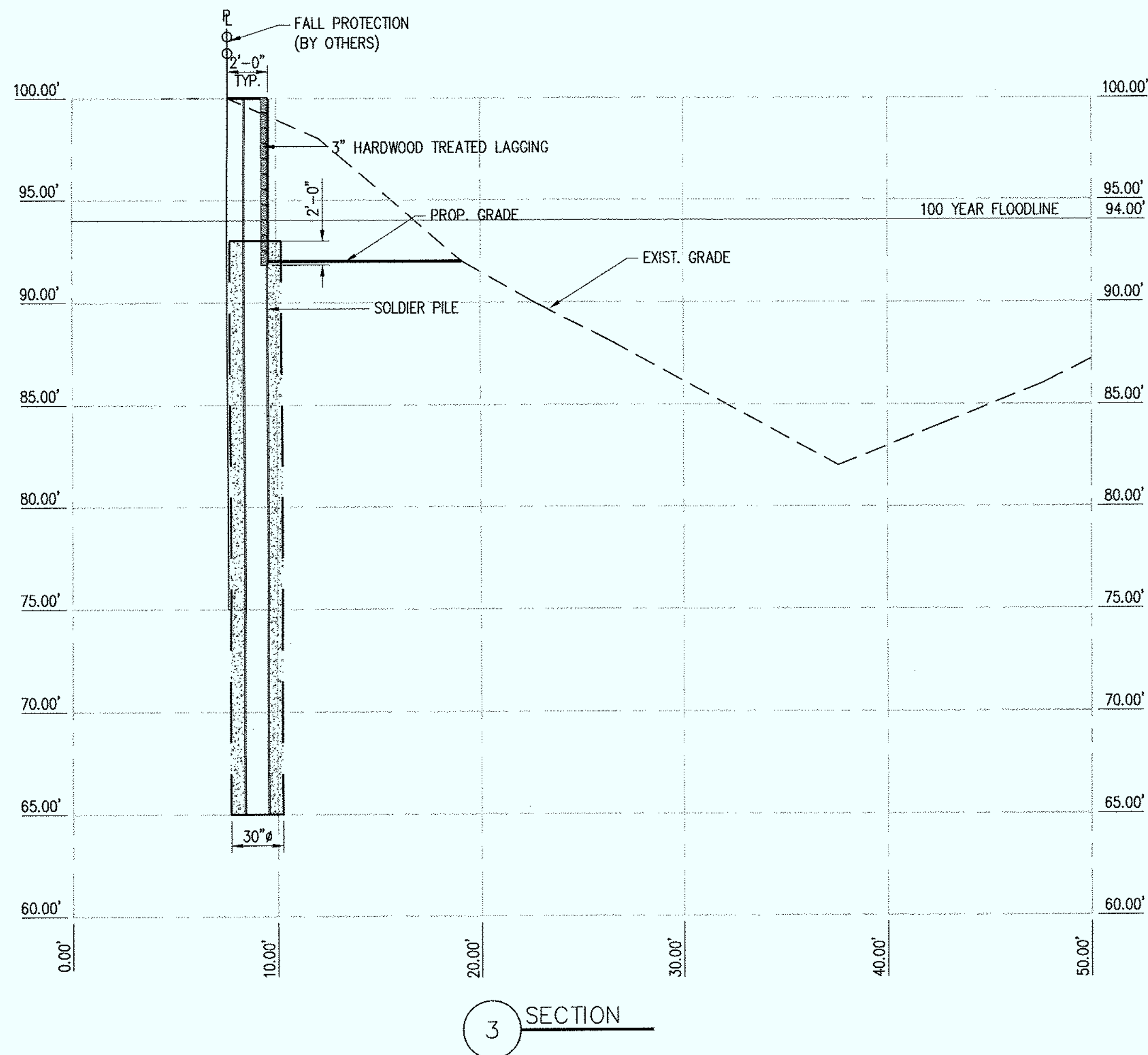
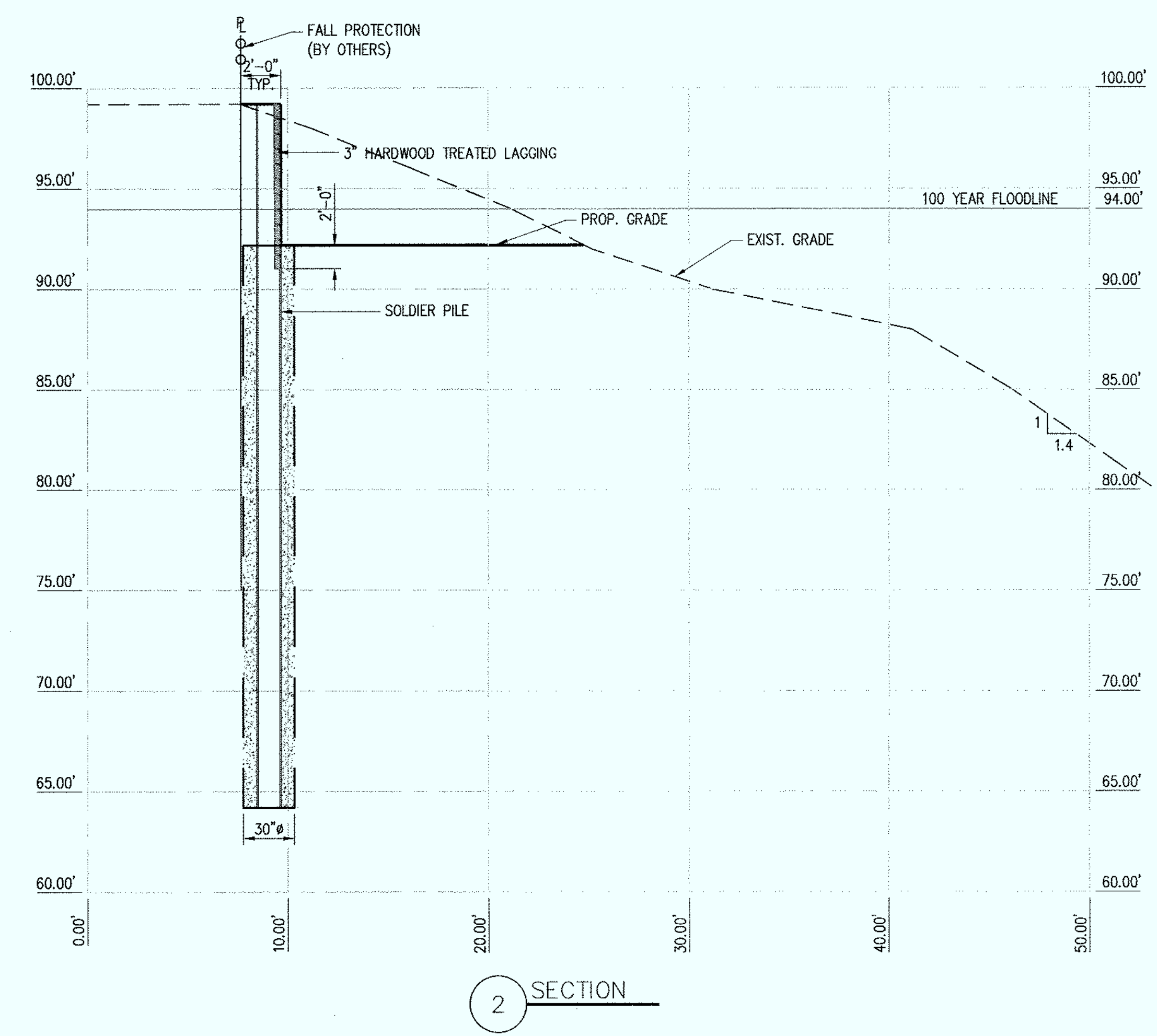
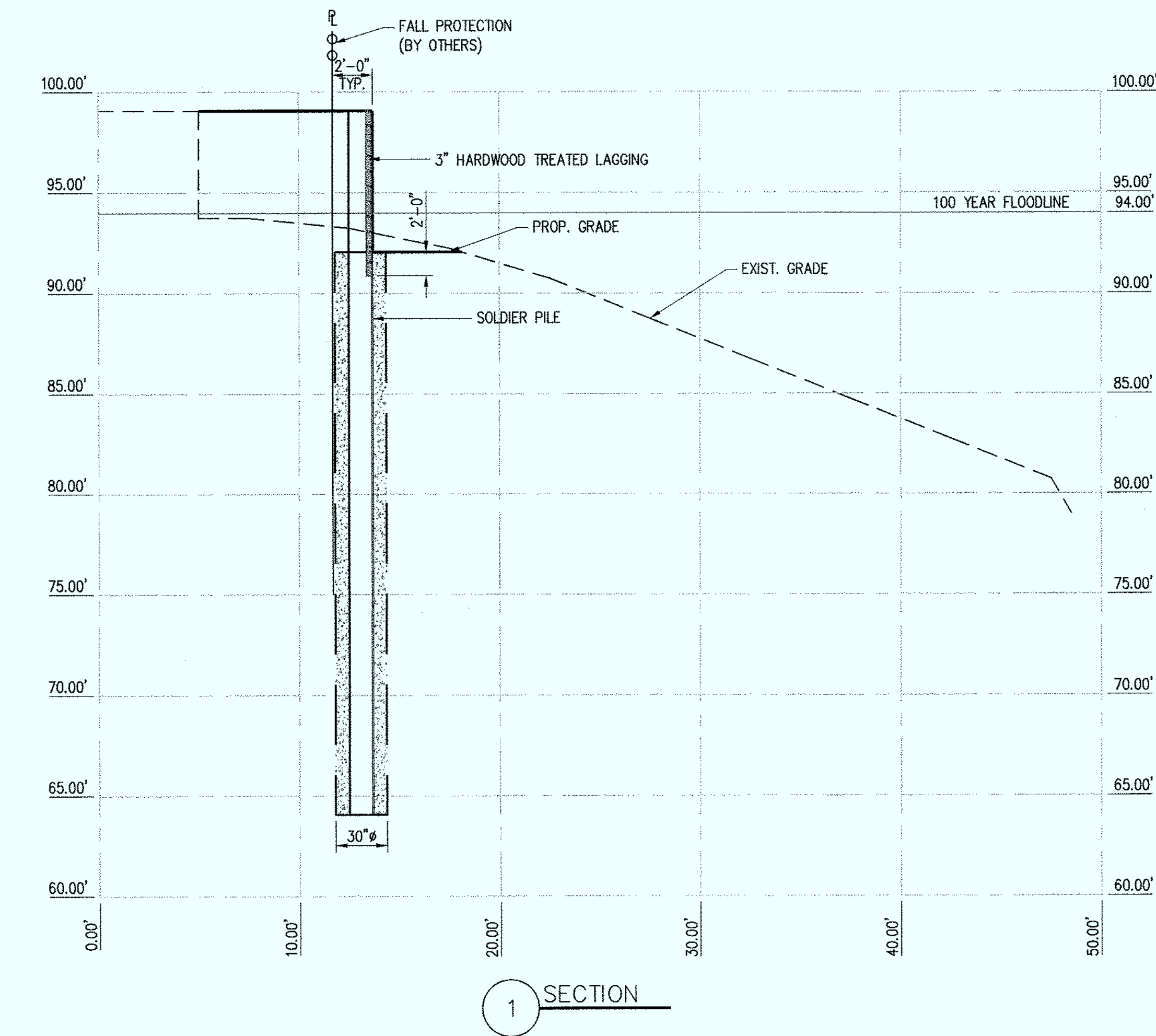
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**S3.1**



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Hayward Baker Inc.  
515 Nine North Court  
Alpharetta, GA 30004  
(770) 442-1801

Project Name: North Stars Estate  
Project No.: TBD

By: RFS  
Chk'd By: DB

# North Stars Estate Subdivision Retaining Wall Tomball, Texas Design Brief

Dated: 12/13/10



**HAYWARD  
BAKER**

A Keller Company



Hayward Baker Inc.  
515 Nine North Court  
Alpharetta, GA 30004  
(770) 442-1801

Project Name: North Stars Estate  
Project No.: TBD

By: RFS  
Chk'd By: DB

### **Design Discussion:**

This is to serve as the design brief for the proposed shoring to be installed at the North Star Estates Subdivision located in Tomball, Texas. In our design we have relied upon the geotechnical report prepared by Geotech Engineering and Testing, dated August 2010. In addition we have also relied upon the topography provided by Global Surveyors, Inc. The wall will be checked for both local and global stability. The exposed wall height is not going to exceed 8'-0". The global stability has been checked for sections 1 & 3. By inspection section 2 & 4 are not as critical and 1 & 3.

**Local Stability Analysis:**

**PASSIVE EARTH PRESSURE COEFFICIENTS**

Compute  $K_p$  using the Coulomb equations in Table 3  
page 42 of FHWA-DP-68-1R

**PASSIVE EARTH PRESSURE AT TOE IN SAND**

Angle of Internal Friction of Soil

$$\phi := 34\text{deg}$$

Slope at Toe of Wall

$$\omega := -21.5\text{deg}$$

Wall to Soil Friction Angle

$$\delta := 0$$

(positive = soil down relative to wall, typically negative)

Slope of Wall (positive = passive up on wedge, typically +)

$$\beta := 0\text{deg}$$

$$K_p := \frac{\cos(\phi + \beta)^2}{\cos(\beta)^2 \cdot \cos(\delta - \beta) \cdot \left(1 - \sqrt{\frac{\sin(\phi - \delta) \cdot \sin(\phi + \omega)}{\cos(\delta + \beta) \cdot \cos(\omega - \beta)}}\right)^2} \quad K_p = 1.682$$

## Design Template for Cantilever Soldier Pile Walls (w/ water level at subgrade):

### Soil Parameters:

Unit weight  $\gamma := 120 \text{ pcf}$   $\gamma_w := 62.4 \text{ pcf}$

Phi angle  $\phi := 32 \cdot \text{deg}$   $k_a := (\tan(45 \text{ deg} - 0.5 \cdot \phi))^2$

Factor of Safety on Passive FS := 1.5

Passive earth pressure coefficient  $k_p := \frac{K_p}{FS}$   $k_p = 1.12$

$k_a = 0.31$

Wall height  $H := 8 \cdot \text{ft}$  Pile Width  $b_f := 30 \text{ in}$

Pile spacing  $s := 6 \cdot \text{ft}$

Effective pile width (passive)

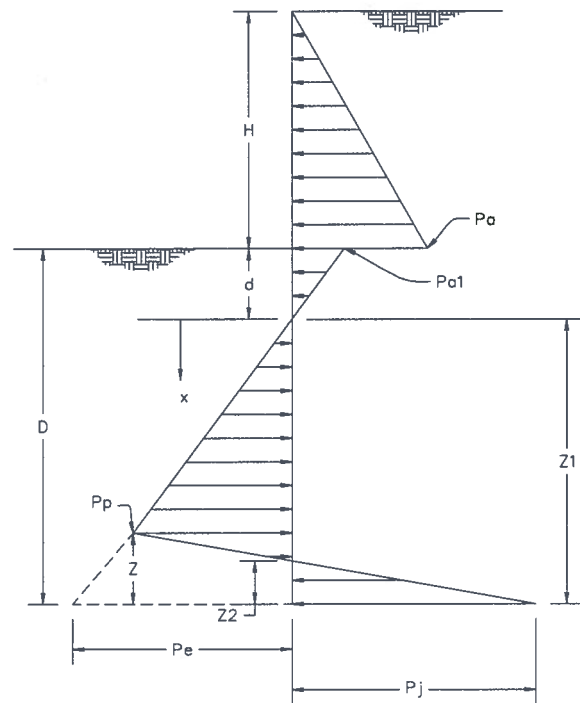
$b_e := \text{if}(3 \cdot b_f < s, 3 \cdot b_f, s)$   $b_e = 6 \text{ ft}$

Active pressure at subgrade

$P_a := k_a \cdot \gamma \cdot H \cdot s$   $P_a = 1.77 \cdot \frac{\text{k}}{\text{ft}}$   $P_{a1} := k_a \cdot \gamma \cdot H \cdot b_f$   $P_{a1} = 0.74 \cdot \frac{\text{k}}{\text{ft}}$

Define depth to zero pressure

$d := \frac{P_{a1}}{(\gamma - \gamma_w) \cdot (k_p \cdot b_e - k_a \cdot b_f)}$   $d = 2.149 \text{ ft}$



EARTH PRESSURE DIAGRAM

Given

$$\frac{P_a \cdot H}{2} + \frac{P_{a1} \cdot d}{2} - \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] \cdot \frac{(D-d)}{2} \dots = 0 \cdot k$$

$$+ \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] + \left[ k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e \right] \cdot \frac{z}{2}$$

$$\begin{aligned} & \frac{D^2 \cdot P_{a1}}{6} + \frac{H^2 \cdot P_a}{6} - \frac{P_{a1} \cdot d \cdot z}{6} + \frac{D \cdot H \cdot P_a}{2} + \frac{D \cdot P_{a1} \cdot d}{6} + \frac{D \cdot P_{a1} \cdot z}{6} + \frac{\gamma \cdot D^3 \cdot b_f \cdot k_a}{6} - \frac{D^3 \cdot \gamma \cdot b_e \cdot k_p}{6} - \frac{D^3 \cdot b_f \cdot k_a \cdot \gamma_w}{6} \dots \\ & + \frac{D^3 \cdot b_e \cdot k_p \cdot \gamma_w}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d^2 \cdot k_a}{6} - \frac{D^2 \cdot \gamma \cdot b_f \cdot d \cdot k_a}{3} - \frac{D \cdot \gamma \cdot b_e \cdot d^2 \cdot k_p}{6} + \frac{\gamma \cdot D^2 \cdot b_e \cdot d \cdot k_p}{3} - \frac{D \cdot \gamma \cdot b_f \cdot k_a \cdot z^2}{6} \dots \\ & + \frac{\gamma \cdot D \cdot b_e \cdot k_p \cdot z^2}{3} + \frac{\gamma \cdot H \cdot b_e \cdot k_p \cdot z^2}{6} - \frac{D \cdot b_f \cdot d^2 \cdot k_a \cdot \gamma_w}{6} + \frac{D^2 \cdot b_f \cdot d \cdot k_a \cdot \gamma_w}{3} + \frac{D \cdot b_e \cdot d^2 \cdot k_p \cdot \gamma_w}{6} - \frac{D^2 \cdot b_e \cdot d \cdot k_p \cdot \gamma_w}{3} \dots \\ & + \frac{\gamma \cdot b_f \cdot d \cdot k_a \cdot z^2}{6} - \frac{\gamma \cdot b_f \cdot d^2 \cdot k_a \cdot z}{6} - \frac{\gamma \cdot b_e \cdot d \cdot k_p \cdot z^2}{6} + \frac{\gamma \cdot b_e \cdot d^2 \cdot k_p \cdot z}{6} + \frac{D \cdot b_f \cdot k_a \cdot \gamma_w \cdot z^2}{6} - \frac{D \cdot b_e \cdot k_p \cdot \gamma_w \cdot z^2}{3} - \frac{b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z^2}{6} \dots \\ & + \frac{b_f \cdot d^2 \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z^2}{6} - \frac{b_e \cdot d^2 \cdot k_p \cdot \gamma_w \cdot z}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d \cdot k_a \cdot z}{6} - \frac{D \cdot \gamma \cdot b_e \cdot d \cdot k_p \cdot z}{6} - \frac{D \cdot b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{D \cdot b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z}{6} \end{aligned}$$

Solving for the variables "D" and "z":

Ans := Find(D, z)

Required toe embedment depth     D := Ans<sub>1</sub>     D = 16.889 ft

Distance from toe to maximum  
passive pressure     z := Ans<sub>2</sub>     z = 3.257 ft

Max. passive pressure (front side)      $P_p := \left[ (\gamma - \gamma_w) \cdot (D - z) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1}$

Max. passive pressure (back side)      $P_j := k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e$

Max. projected passive pressure  
(front side)      $P_e := \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1}$

$$z_1 := D - \left[ \frac{(D - z)}{\left( \frac{P_p}{P_{a1}} + 1 \right)} \right] \quad z_1 = 14.74 \text{ ft} \quad z_2 := \frac{z}{\frac{P_p}{P_j} + 1} \quad z_2 = 2.5 \text{ ft}$$

Sum forces in the horizontal direction to get point of zero shear:

Given

$$\left[ \frac{P_a \cdot H}{2} + \left( \frac{P_{a1} \cdot d}{2} \right) \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \right] \cdot \frac{x}{2} = 0 \cdot k$$

$$x := \text{Find}(x) \quad x = 6.773 \text{ ft}$$

Sum Moments about the point of zero shear:

$$M_d := \left[ \left( \frac{P_a \cdot H}{2} \right) \cdot \left( d + x + \frac{H}{3} \right) + \left[ \frac{P_{a1} \cdot (d)}{2} \right] \cdot \left( x + \frac{2 \cdot d}{3} \right) \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \right] \cdot \frac{x^2}{6}$$

$$M_d = 70.768 \cdot k \cdot \text{ft}$$

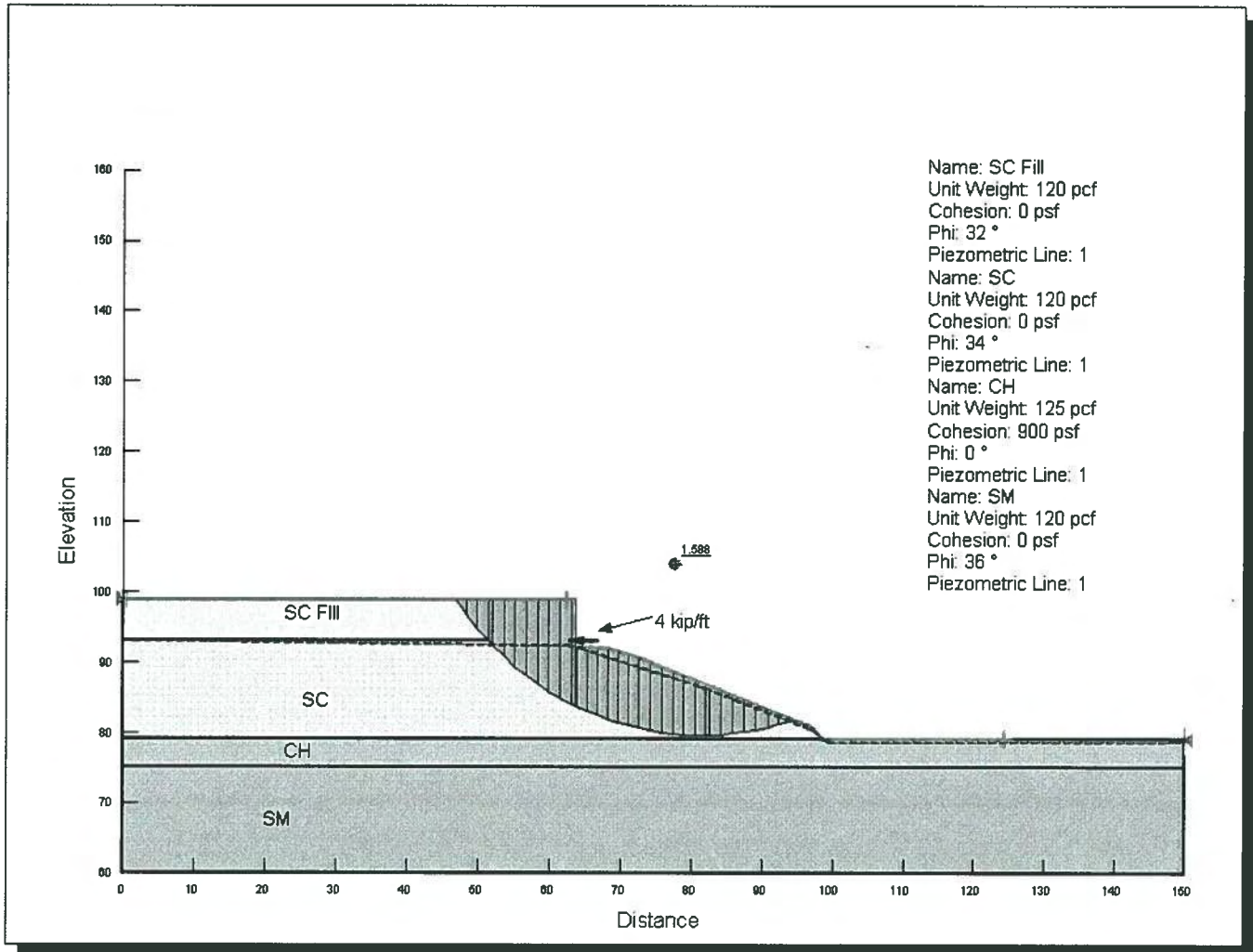
Approximate section modulus required for trial pile size selection

$$F_y := 50 \cdot \text{ksi}$$

$$S_x := \frac{M_d}{0.66 \cdot F_y} \quad S_x = 26 \cdot \text{in}^3$$

## Section 1 Global Stability Analysis:

### Short Term:



# HAYWARD BAKER

A Keller Company

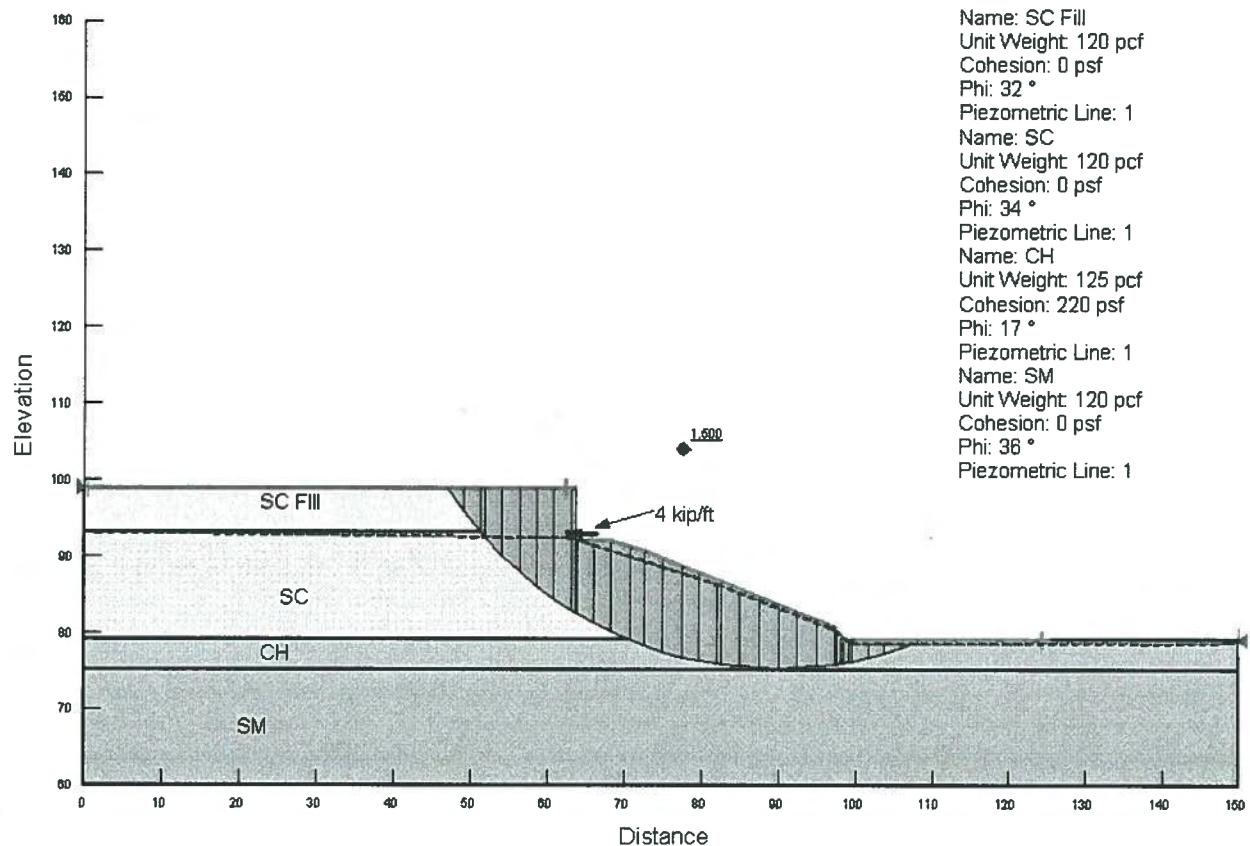


Hayward Baker Inc.  
515 Nine North Court  
Alpharetta, GA 30004  
(770) 442-1801

Project Name: North Stars Estate  
Project No.: TBD

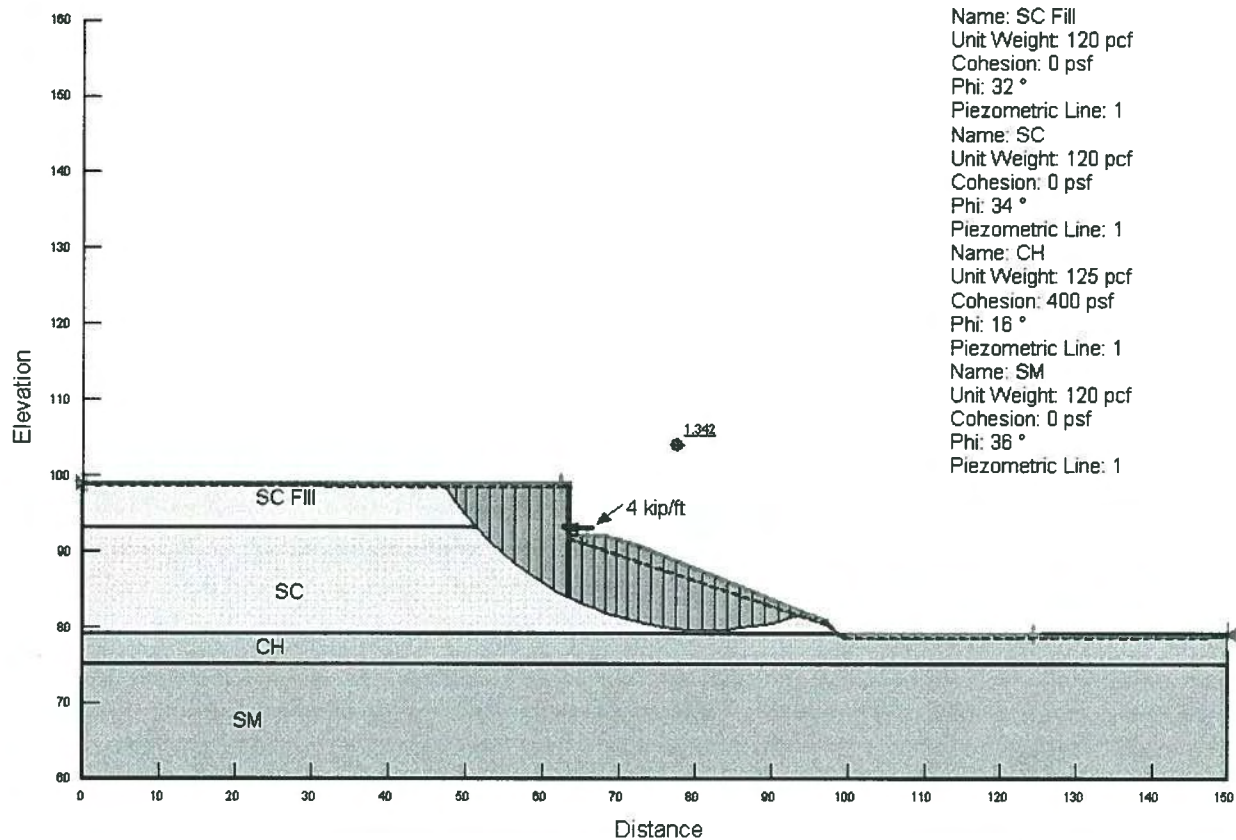
By: RFS  
Chk'd By: DB

## Long Term:





## Rapid Draw Down:



**HAYWARD  
BAKER**

A Keller Company



Hayward Baker Inc.  
515 Nine North Court  
Alpharetta, GA 30004  
(770) 442-1801

Project Name: North Stars Estate  
Project No.: TBD

By: RFS  
Chk'd By: DB

**Global Stability Structural Analysis:**

The required 4kip/ft from the global stability analysis will be added into the local stability analysis. The load will be applied at the base of the exposed height. The load will be divided by the factor of safety of 1.5 to bring this load back to a service level load. This reduction is taken due to the factor of safety applied to the passive capacity in the following calculations.

### Design Template for Cantilever Soldier Pile Walls (w/ water level at subgrade):

#### Soil Parameters:

Unit weight  $\gamma := 120 \text{ pcf}$   $\gamma_w := 62.4 \text{ pcf}$

Phi angle  $\phi := 32 \text{ deg}$   $k_a := (\tan(45 \text{ deg} - 0.5 \cdot \phi))^2$

Factor of Safety on Passive  $FS := 1.5$

$k_a = 0.31$

Passive earth pressure coefficient  $k_p := \frac{K_p}{FS}$

$k_p = 1.12$

Wall height  $H := 8 \text{ ft}$  Pile Width  $b_f := 30 \text{ in}$

Pile spacing  $s := 6 \text{ ft}$

Effective pile width (passive)

$b_e := \text{if}(3 \cdot b_f < s, 3 \cdot b_f, s)$   $b_e = 6 \text{ ft}$

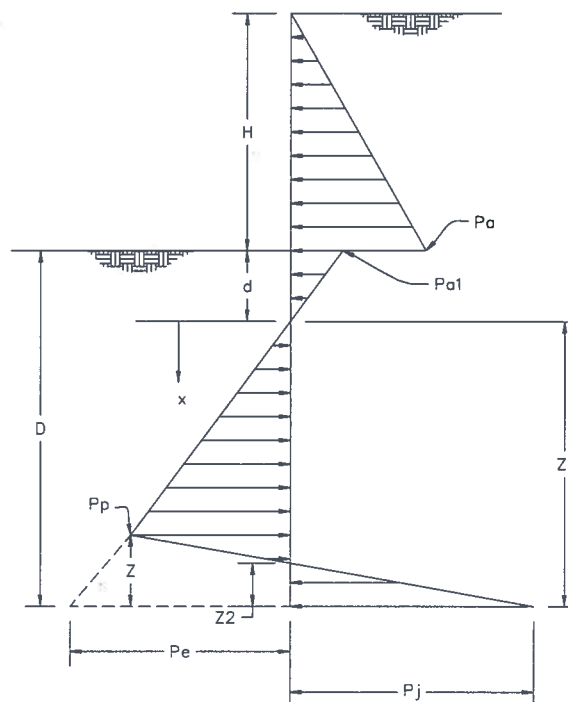
Active pressure at subgrade

$P_a := k_a \cdot \gamma \cdot H \cdot s$   $P_a = 1.77 \frac{\text{k}}{\text{ft}}$   $P_{a1} := k_a \cdot \gamma \cdot H \cdot b_f$   $P_{a1} = 0.74 \frac{\text{k}}{\text{ft}}$

Define depth to zero pressure

$d := \frac{P_{a1}}{(\gamma - \gamma_w) \cdot (k_p \cdot b_e - k_a \cdot b_f)}$   $d = 2.149 \text{ ft}$

Global Force  $P_g := \frac{4 \frac{\text{kips}}{\text{ft}}}{FS} \cdot s$



EARTH PRESSURE DIAGRAM

Given

$$\frac{P_a \cdot H}{2} + \frac{P_{a1} \cdot d}{2} - \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] \cdot \frac{(D-d)}{2} \dots = 0 \cdot k$$

$$+ \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] + \left[ k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e \right] \cdot \frac{z}{2} + P_g$$

$$\begin{aligned} & \frac{D^2 \cdot P_{a1}}{6} + \frac{H^2 \cdot P_a}{6} - \frac{P_{a1} \cdot d \cdot z}{6} + \frac{D \cdot H \cdot P_a}{2} + \frac{D \cdot P_{a1} \cdot d}{6} + \frac{D \cdot P_{a1} \cdot z}{6} + \frac{\gamma \cdot D^3 \cdot b_f \cdot k_a}{6} - \frac{D^3 \cdot \gamma \cdot b_e \cdot k_p}{6} - \frac{D^3 \cdot b_f \cdot k_a \cdot \gamma_w}{6} \dots \\ & + \frac{D^3 \cdot b_e \cdot k_p \cdot \gamma_w}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d^2 \cdot k_a}{6} - \frac{D^2 \cdot \gamma \cdot b_f \cdot d \cdot k_a}{3} - \frac{D \cdot \gamma \cdot b_e \cdot d^2 \cdot k_p}{6} + \frac{\gamma \cdot D^2 \cdot b_e \cdot d \cdot k_p}{3} - \frac{D \cdot \gamma \cdot b_f \cdot k_a \cdot z^2}{6} \dots \\ & + \frac{\gamma \cdot D \cdot b_e \cdot k_p \cdot z^2}{3} + \frac{\gamma \cdot H \cdot b_e \cdot k_p \cdot z^2}{6} - \frac{D \cdot b_f \cdot d^2 \cdot k_a \cdot \gamma_w}{6} + \frac{D^2 \cdot b_f \cdot d \cdot k_a \cdot \gamma_w}{3} + \frac{D \cdot b_e \cdot d^2 \cdot k_p \cdot \gamma_w}{6} - \frac{D^2 \cdot b_e \cdot d \cdot k_p \cdot \gamma_w}{3} \dots \\ & + \frac{\gamma \cdot b_f \cdot d \cdot k_a \cdot z^2}{6} - \frac{\gamma \cdot b_f \cdot d^2 \cdot k_a \cdot z}{6} - \frac{\gamma \cdot b_e \cdot d \cdot k_p \cdot z^2}{6} + \frac{\gamma \cdot b_e \cdot d^2 \cdot k_p \cdot z}{6} + \frac{D \cdot b_f \cdot k_a \cdot \gamma_w \cdot z^2}{6} - \frac{D \cdot b_e \cdot k_p \cdot \gamma_w \cdot z^2}{3} - \frac{b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z^2}{6} \dots \\ & + \frac{b_f \cdot d^2 \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z^2}{6} - \frac{b_e \cdot d^2 \cdot k_p \cdot \gamma_w \cdot z}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d \cdot k_a \cdot z}{6} - \frac{D \cdot \gamma \cdot b_e \cdot d \cdot k_p \cdot z}{6} - \frac{D \cdot b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{D \cdot b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z}{6} + P_g \cdot (D) \end{aligned} = 0$$

Solving for the variables "D" and "z":

Ans := Find(D, z)

Required toe embedment depth     D := Ans<sub>1</sub>     D = 26.208 ft

Distance from toe to maximum  
passive pressure     z := Ans<sub>2</sub>     z = 6.069 ft

Max. passive pressure (front side)      $P_p := \left[ \left[ (\gamma - \gamma_w) \cdot (D - z) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right]$

Max. passive pressure (back side)      $P_j := k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e$

Max. projected passive pressure  
(front side)      $P_e := \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right]$

$$z_1 := D - \left[ \frac{(D - z)}{\left( \frac{P_p}{P_{a1}} + 1 \right)} \right] \quad z_1 = 24.06 \text{ ft} \quad z_2 := \frac{z}{\frac{P_p}{P_j} + 1} \quad z_2 = 4.424 \text{ ft}$$

Sum forces in the horizontal direction to get point of zero shear:

Given

$$\left[ \frac{P_a \cdot H}{2} + \left( \frac{P_{a1} \cdot d}{2} \right) + P_g \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \right] \cdot \frac{x}{2} = 0 \cdot k$$

$$x := \text{Find}(x) \quad x = 11.795 \text{ ft}$$

Sum Moments about the point of zero shear:

$$M_d := \left[ \left( \frac{P_a \cdot H}{2} \right) \cdot \left( d + x + \frac{H}{3} \right) + \left[ \frac{P_{a1} \cdot (d)}{2} \right] \cdot \left( x + \frac{2 \cdot d}{3} \right) \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \right] \cdot \frac{x^2}{6} + P_g \cdot (d + x)$$

$$M_d = 257.316 \cdot k \cdot ft$$

Approximate section modulus required for trial pile size selection

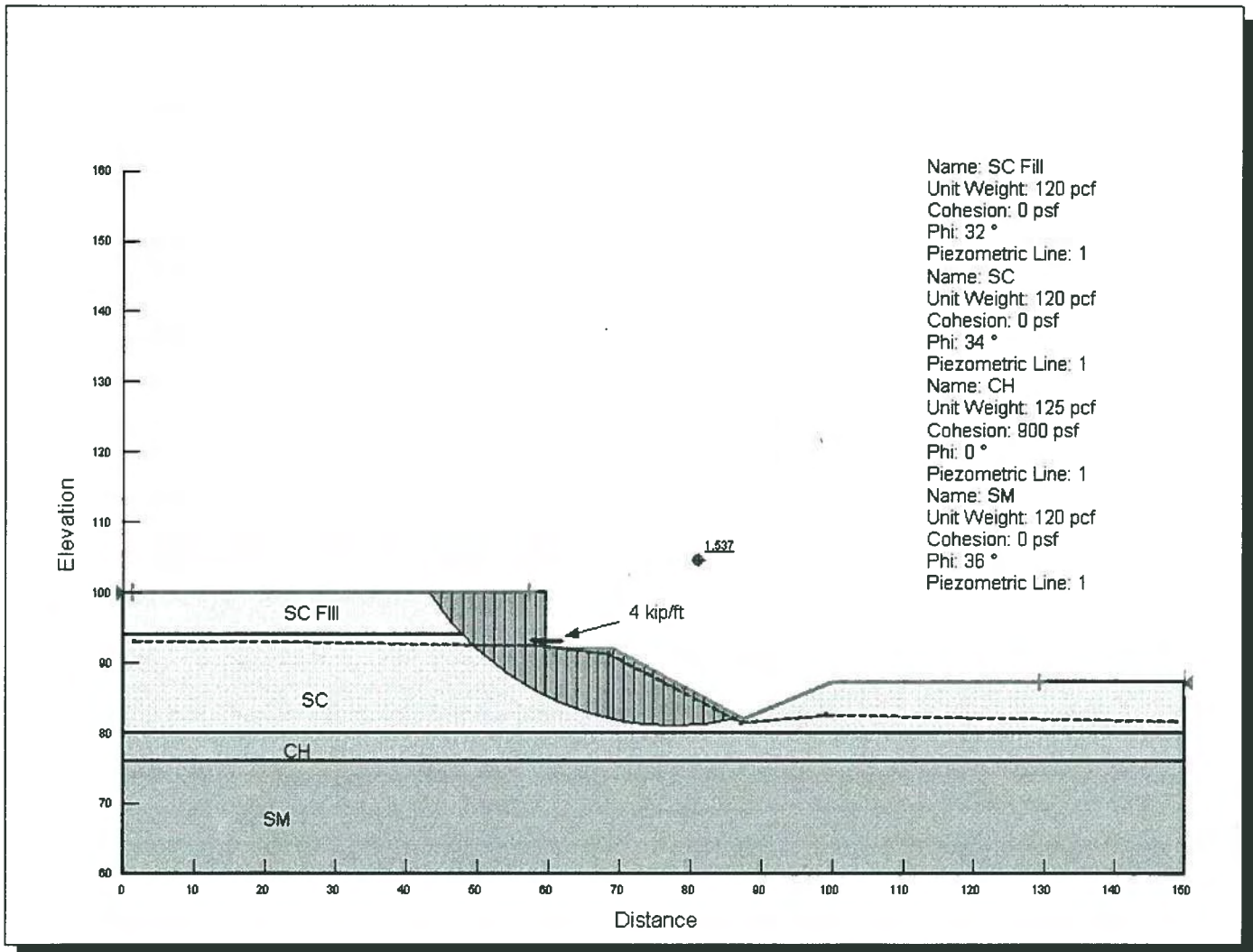
$$F_y := 50 \cdot ksi$$

$$S_x := \frac{M_d}{0.66 \cdot F_y} \quad S_x = 94 \cdot in^3$$

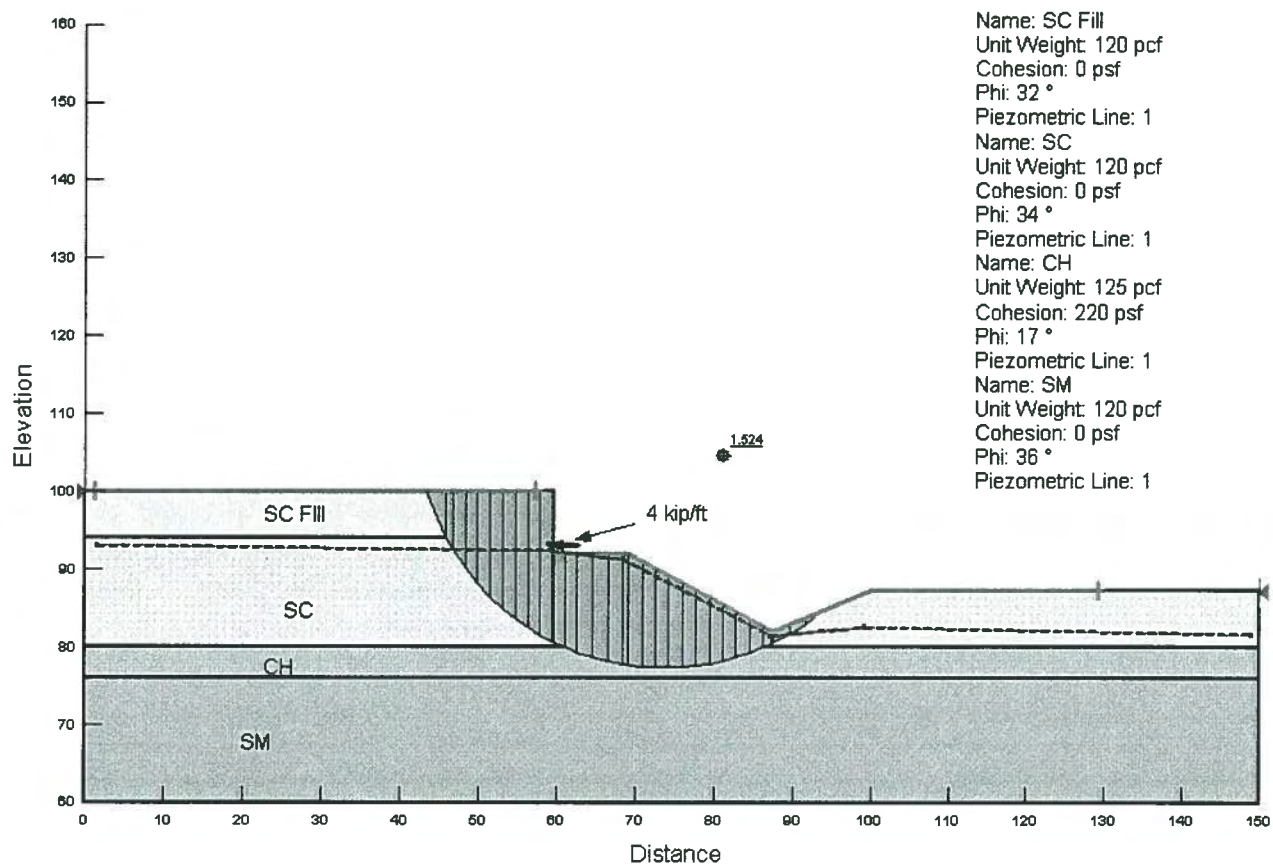
**Use HP14x73 Gr. 50 ksi with a total length of 35'-0" in a 30" soil mix column.**

**Section 3 Global Stability Analysis:**

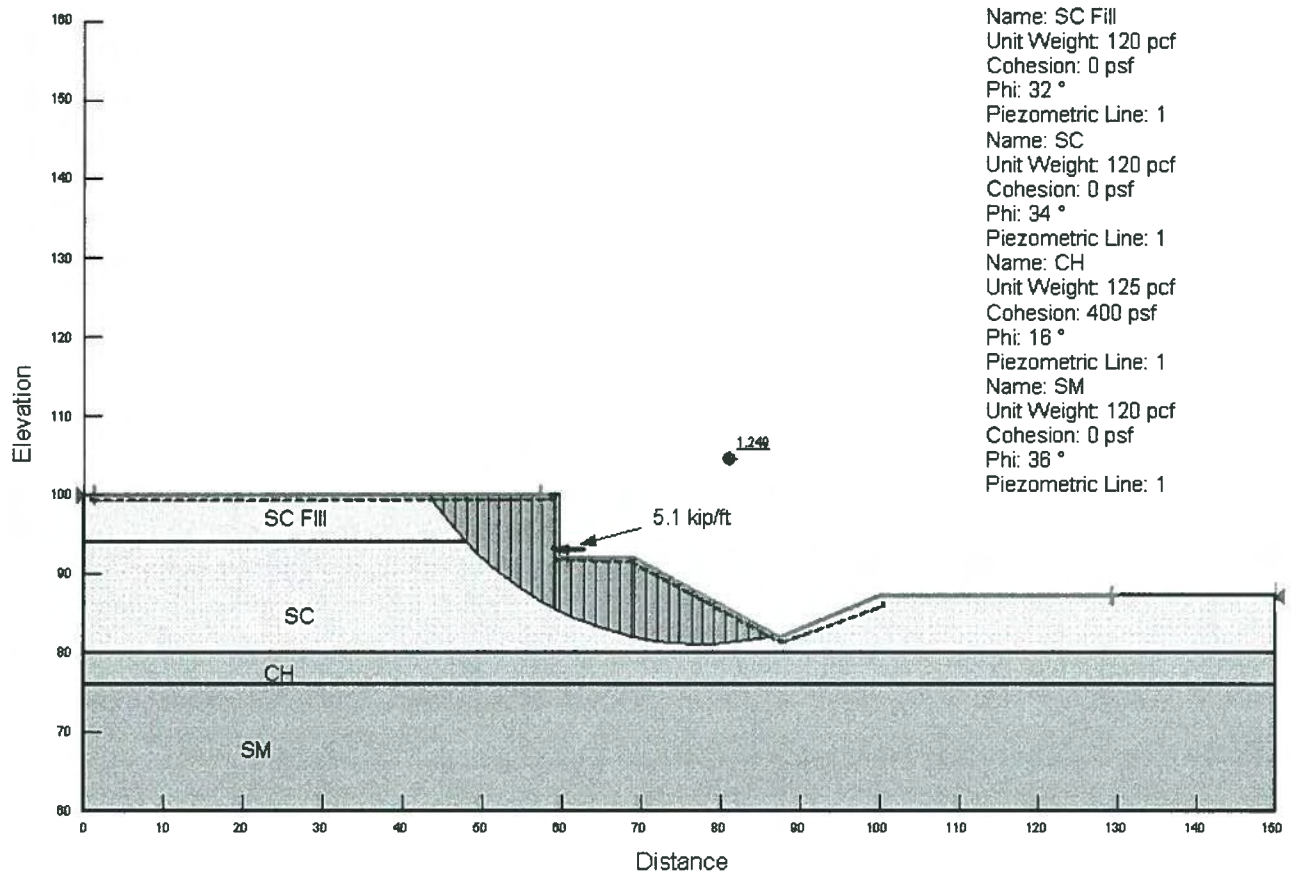
**Short Term:**



Long Term:



Rapid Draw Down:



**Global Stability Structural Analysis:**

The required 4kip/ft from the global stability analysis will be added into the local stability analysis. The load will be applied at the base of the exposed height. The load will be divided by the factor of safety of 1.5 to bring this load back to a service level load. This reduction is taken due to the factor of safety applied to the passive capacity in the following calculations. For the rapid draw down case the required 5.1kip/ft from the global stability analysis will be handled the same as the 4.0 kip for long term stability analysis.

## Design Template for Cantilever Soldier Pile Walls (w/ water level at subgrade) (long term):

### Soil Parameters:

Unit weight  $\gamma := 120 \text{ pcf}$   $\gamma_w := 62.4 \text{ pcf}$

Phi angle  $\phi := 32 \text{ deg}$   $k_a := (\tan(45 \text{ deg} - 0.5 \cdot \phi))^2$

Factor of Safety on Passive  $FS := 1.5$

$k_a = 0.31$

Passive earth pressure coefficient  $k_p := \frac{K_p}{FS}$

$k_p = 1.12$

Wall height  $H := 8 \text{ ft}$  Pile Width  $b_f := 30 \text{ in}$

Pile spacing  $s := 6 \text{ ft}$

### Effective pile width (passive)

$b_e := \text{if}(3 \cdot b_f < s, 3 \cdot b_f, s)$   $b_e = 6 \text{ ft}$

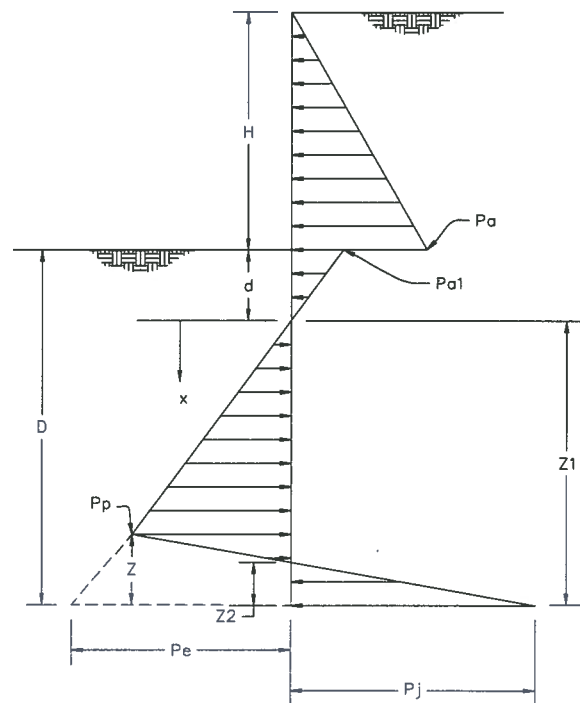
### Active pressure at subgrade

$P_a := k_a \cdot \gamma \cdot H \cdot s$   $P_a = 1.77 \cdot \frac{\text{k}}{\text{ft}}$   $P_{a1} := k_a \cdot \gamma \cdot H \cdot b_f$   $P_{a1} = 0.74 \cdot \frac{\text{k}}{\text{ft}}$

### Define depth to zero pressure

$d := \frac{P_{a1}}{(\gamma - \gamma_w) \cdot (k_p \cdot b_e - k_a \cdot b_f)}$   $d = 2.149 \text{ ft}$

Global Force  $P_g := \frac{4 \cdot \frac{\text{kips}}{\text{ft}}}{FS} \cdot s$



EARTH PRESSURE DIAGRAM

Given

$$\frac{P_a \cdot H}{2} + \frac{P_{a1} \cdot d}{2} - \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] \cdot \frac{(D-d)}{2} \dots = 0 \cdot k$$

$$+ \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] + \left[ k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e \right] \cdot \frac{z}{2} + P_g$$

$$\begin{aligned} & \frac{D^2 \cdot P_{a1}}{6} + \frac{H^2 \cdot P_a}{6} - \frac{P_{a1} \cdot d \cdot z}{6} + \frac{D \cdot H \cdot P_a}{2} + \frac{D \cdot P_{a1} \cdot d}{6} + \frac{D \cdot P_{a1} \cdot z}{6} + \frac{\gamma \cdot D^3 \cdot b_f \cdot k_a}{6} - \frac{D^3 \cdot \gamma \cdot b_e \cdot k_p}{6} - \frac{D^3 \cdot b_f \cdot k_a \cdot \gamma_w}{6} \dots \\ & + \frac{D^3 \cdot b_e \cdot k_p \cdot \gamma_w}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d^2 \cdot k_a}{6} - \frac{D^2 \cdot \gamma \cdot b_f \cdot d \cdot k_a}{3} - \frac{D \cdot \gamma \cdot b_e \cdot d^2 \cdot k_p}{6} + \frac{\gamma \cdot D^2 \cdot b_e \cdot d \cdot k_p}{3} - \frac{D \cdot \gamma \cdot b_f \cdot k_a \cdot z^2}{6} \dots \\ & + \frac{\gamma \cdot D \cdot b_e \cdot k_p \cdot z^2}{3} + \frac{\gamma \cdot H \cdot b_e \cdot k_p \cdot z^2}{6} - \frac{D \cdot b_f \cdot d^2 \cdot k_a \cdot \gamma_w}{6} + \frac{D^2 \cdot b_f \cdot d \cdot k_a \cdot \gamma_w}{3} + \frac{D \cdot b_e \cdot d^2 \cdot k_p \cdot \gamma_w}{6} - \frac{D^2 \cdot b_e \cdot d \cdot k_p \cdot \gamma_w}{3} \dots \\ & + \frac{\gamma \cdot b_f \cdot d \cdot k_a \cdot z^2}{6} - \frac{\gamma \cdot b_f \cdot d^2 \cdot k_a \cdot z}{6} - \frac{\gamma \cdot b_e \cdot d \cdot k_p \cdot z^2}{6} + \frac{\gamma \cdot b_e \cdot d^2 \cdot k_p \cdot z}{6} + \frac{D \cdot b_f \cdot k_a \cdot \gamma_w \cdot z^2}{6} - \frac{D \cdot b_e \cdot k_p \cdot \gamma_w \cdot z^2}{3} - \frac{b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z^2}{6} \dots \\ & + \frac{b_f \cdot d^2 \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z^2}{6} - \frac{b_e \cdot d^2 \cdot k_p \cdot \gamma_w \cdot z}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d \cdot k_a \cdot z}{6} - \frac{D \cdot \gamma \cdot b_e \cdot d \cdot k_p \cdot z}{6} - \frac{D \cdot b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{D \cdot b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z}{6} + P_g \cdot (D) \end{aligned} = 0$$

Solving for the variables "D" and "z":

Ans := Find(D, z)

Required toe embedment depth  $D := \text{Ans}_1 \quad D = 26.208 \cdot \text{ft}$

Distance from toe to maximum passive pressure  $z := \text{Ans}_2 \quad z = 6.069 \cdot \text{ft}$

Max. passive pressure (front side)  $P_p := \left[ (\gamma - \gamma_w) \cdot (D - z) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1}$

Max. passive pressure (back side)  $P_j := k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e$

Max. projected passive pressure (front side)  $P_e := \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1}$

$$z_1 := D - \left[ \frac{(D - z)}{\left( \frac{P_p}{P_{a1}} + 1 \right)} \right] \quad z_1 = 24.06 \cdot \text{ft} \quad z_2 := \frac{z}{\frac{P_p}{P_j} + 1} \quad z_2 = 4.424 \cdot \text{ft}$$

Sum forces in the horizontal direction to get point of zero shear:

Given

$$\left[ \frac{P_a \cdot H}{2} + \left( \frac{P_{a1} \cdot d}{2} \right) + P_g \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \cdot \frac{x}{2} \right] = 0 \cdot k$$

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Sum Moments about the point of zero shear:

$$M_d := \left[ \left( \frac{P_a \cdot H}{2} \right) \cdot \left( d + x + \frac{H}{3} \right) + \left[ \frac{P_{a1} \cdot (d)}{2} \right] \cdot \left( x + \frac{2 \cdot d}{3} \right) \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \cdot \frac{x^2}{6} \right] + P_g \cdot (d + x)$$

$$M_d = 257.316 \cdot k \cdot ft$$

Approximate section modulus required for trial pile size selection

$$F_y := 50 \cdot ksi$$

$$S_x := \frac{M_d}{0.66 \cdot F_y} \quad S_x = 94 \cdot in^3$$

**Use HP14x73 Gr. 50 ksi with a total length of 35'-0" in a 30" soil mix column.**

## Design Template for Cantilever Soldier Pile Walls (w/ water level at subgrade) (long term):

### Soil Parameters:

Unit weight  $\gamma := 120 \text{ pcf}$   $\gamma_w := 62.4 \text{ pcf}$

Phi angle  $\phi := 32 \text{ deg}$   $k_a := (\tan(45 \text{ deg} - 0.5 \cdot \phi))^2$

Factor of Safety on Passive  $FS := 1.25$

$k_a = 0.31$

Passive earth pressure coefficient  $k_p := \frac{K_p}{FS}$

$k_p = 1.35$

Wall height  $H := 8 \text{ ft}$  Pile Width  $b_f := 30 \text{ in}$

Pile spacing  $s := 6 \text{ ft}$

Effective pile width (passive)

$b_e := \text{if}(3 \cdot b_f < s, 3 \cdot b_f, s)$   $b_e = 6 \text{ ft}$

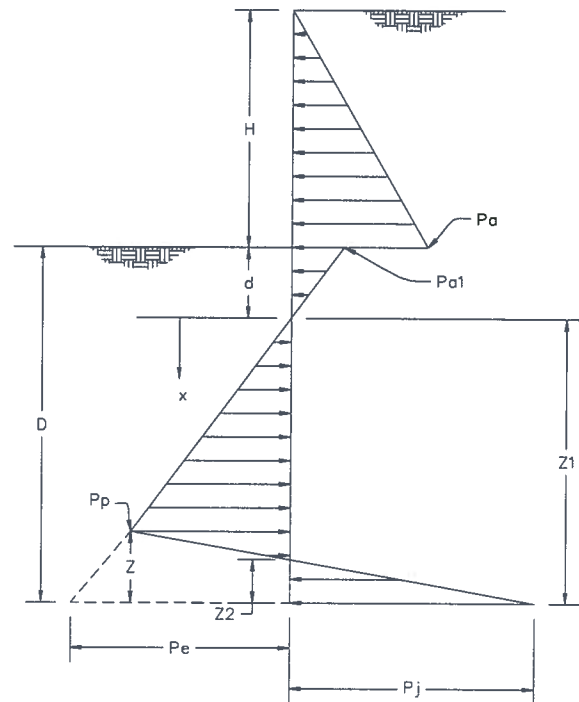
Active pressure at subgrade

$P_a := k_a \cdot \gamma \cdot H \cdot s$   $P_a = 1.77 \cdot \frac{\text{k}}{\text{ft}}$   $P_{a1} := k_a \cdot \gamma \cdot H \cdot b_f$   $P_{a1} = 0.74 \cdot \frac{\text{k}}{\text{ft}}$

Define depth to zero pressure

$d := \frac{P_{a1}}{(\gamma - \gamma_w) \cdot (k_p \cdot b_e - k_a \cdot b_f)}$   $d = 1.753 \text{ ft}$

Global Force  $P_g := \frac{5.1 \cdot \frac{\text{kips}}{\text{ft}}}{FS} \cdot s$



EARTH PRESSURE DIAGRAM

Given

$$\frac{P_a \cdot H}{2} + \frac{P_{a1} \cdot d}{2} - \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] \cdot \frac{(D - d)}{2} \dots = 0 \cdot k$$

$$+ \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right] + \left[ k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e \right] \cdot \frac{z}{2} + P_g$$

$$\begin{aligned} & \frac{D^2 \cdot P_{a1}}{6} + \frac{H^2 \cdot P_a}{6} - \frac{P_{a1} \cdot d \cdot z}{6} + \frac{D \cdot H \cdot P_a}{2} + \frac{D \cdot P_{a1} \cdot d}{6} + \frac{D \cdot P_{a1} \cdot z}{6} + \frac{\gamma \cdot D^3 \cdot b_f \cdot k_a}{6} - \frac{D^3 \cdot \gamma \cdot b_e \cdot k_p}{6} - \frac{D^3 \cdot b_f \cdot k_a \cdot \gamma_w}{6} \dots \\ & + \frac{D^3 \cdot b_e \cdot k_p \cdot \gamma_w}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d^2 \cdot k_a}{6} - \frac{D^2 \cdot \gamma \cdot b_f \cdot d \cdot k_a}{3} - \frac{D \cdot \gamma \cdot b_e \cdot d^2 \cdot k_p}{6} + \frac{\gamma \cdot D^2 \cdot b_e \cdot d \cdot k_p}{3} - \frac{D \cdot \gamma \cdot b_f \cdot k_a \cdot z^2}{6} \dots \\ & + \frac{\gamma \cdot D \cdot b_e \cdot k_p \cdot z^2}{3} + \frac{\gamma \cdot H \cdot b_e \cdot k_p \cdot z^2}{6} - \frac{D \cdot b_f \cdot d^2 \cdot k_a \cdot \gamma_w}{6} + \frac{D^2 \cdot b_f \cdot d \cdot k_a \cdot \gamma_w}{3} + \frac{D \cdot b_e \cdot d^2 \cdot k_p \cdot \gamma_w}{6} - \frac{D^2 \cdot b_e \cdot d \cdot k_p \cdot \gamma_w}{3} \dots \\ & + \frac{\gamma \cdot b_f \cdot d \cdot k_a \cdot z^2}{6} - \frac{\gamma \cdot b_f \cdot d^2 \cdot k_a \cdot z}{6} - \frac{\gamma \cdot b_e \cdot d \cdot k_p \cdot z^2}{6} + \frac{\gamma \cdot b_e \cdot d^2 \cdot k_p \cdot z}{6} + \frac{D \cdot b_f \cdot k_a \cdot \gamma_w \cdot z^2}{6} - \frac{D \cdot b_e \cdot k_p \cdot \gamma_w \cdot z^2}{3} - \frac{b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z^2}{6} \dots \\ & + \frac{b_f \cdot d^2 \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z^2}{6} - \frac{b_e \cdot d^2 \cdot k_p \cdot \gamma_w \cdot z}{6} + \frac{\gamma \cdot D \cdot b_f \cdot d \cdot k_a \cdot z}{6} - \frac{D \cdot \gamma \cdot b_e \cdot d \cdot k_p \cdot z}{6} - \frac{D \cdot b_f \cdot d \cdot k_a \cdot \gamma_w \cdot z}{6} + \frac{D \cdot b_e \cdot d \cdot k_p \cdot \gamma_w \cdot z}{6} + P_g \cdot (D) \end{aligned} = 0$$

Solving for the variables "D" and "z":

Ans := Find(D, z)

Required toe embedment depth     D := Ans<sub>1</sub>     D = 26.728 ft

Distance from toe to maximum  
passive pressure     z := Ans<sub>2</sub>     z = 6.453 ft

Max. passive pressure (front side)      $P_p := \left[ \left[ (\gamma - \gamma_w) \cdot (D - z) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right]$

Max. passive pressure (back side)      $P_j := k_p \cdot [\gamma \cdot H + (\gamma - \gamma_w) \cdot D] \cdot b_e$

Max. projected passive pressure  
(front side)      $P_e := \left[ \left[ (\gamma - \gamma_w) \cdot (D) \right] \cdot (k_p \cdot b_e - k_a \cdot b_f) - P_{a1} \right]$

$$z_1 := D - \left[ \frac{(D - z)}{\left( \frac{P_p}{P_{a1}} + 1 \right)} \right] \quad z_1 = 24.975 \text{ ft} \quad z_2 := \frac{z}{\frac{P_p}{P_j} + 1} \quad z_2 = 4.655 \text{ ft}$$

Sum forces in the horizontal direction to get point of zero shear:

Given

$$\left[ \frac{P_a \cdot H}{2} + \left( \frac{P_{a1} \cdot d}{2} \right) + P_g \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \cdot \frac{x}{2} \right] = 0 \cdot k$$

$$x := \text{Find}(x) \quad x = 12.374 \text{ ft}$$

Sum Moments about the point of zero shear:

$$M_d := \left[ \left( \frac{P_a \cdot H}{2} \right) \cdot \left( d + x + \frac{H}{3} \right) + \left[ \frac{P_{a1} \cdot (d)}{2} \right] \cdot \left( x + \frac{2 \cdot d}{3} \right) \right] - \left[ \left[ k_p \cdot b_e \cdot (\gamma - \gamma_w) \cdot x \right] - \left[ k_a \cdot b_f \cdot (\gamma - \gamma_w) \cdot x \right] \cdot \frac{x}{6} \right] + P_g \cdot (d + x)$$

$$M_d = 340.636 \cdot k \cdot ft$$

Approximate section modulus required for trial pile size selection

$$F_y := 50 \cdot ksi$$

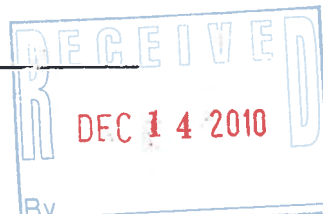
$$S_x := \frac{M_d}{0.75 \cdot F_y} \quad S_x = 109 \cdot in^3$$

**Use HP14x73 Gr. 50 ksi with a total length of 35'-0" in a 30" soil mix column.**



**CITY OF TOMBALL  
CONSTRUCTION PERMIT APPLICATION**

PERMIT NO. \_\_\_\_\_



**SELECT PERMIT TYPE**



Site Work



Public Utilities



Public ROW

Note: If a Structure is proposed a Building Permit is required.

**SECTION 1: General Provisions (APPLICANT to read and sign)**

1. No work of any kind may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Compliance and/or Occupancy is issued.
5. The permit will expire if no work or construction is commenced within six (6) months of issuance, or if construction or work is abandoned for a period of six (6) months at any time after work is commenced.
6. Applicant is hereby informed that other permits may be required to fulfill local, state, and federal regulatory requirements. Separate permits are required for building, electrical, plumbing, heating, ventilation or air conditioning.
7. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not.
8. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law relating to construction, nor does it give authorization or approval to encroach on any easement or property or violate any deed restrictions.
9. The City of Tomball shall never be liable for any damage or loss by reason of the issuance hereof.
10. Each holder and other persons acting under authority of this permit are personally responsible for compliance with all the above provisions and assume the entire risks incidental to the work being permitted.
11. Applicant hereby gives consent to the Local Administrator or his/her representative to make reasonable inspections required to verify compliance.
12. THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

APPLICANT'S NAME (In Print) \_\_\_\_\_

**SECTION 2: Proposed Development (To be completed by APPLICANT)**

**OWNER INFORMATION:**

STREET ADDRESS: \_\_\_\_\_ CITY \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**ENGINEER INFORMATION:** HAYWARD BAKER INC

STREET ADDRESS: 4979 LEBANON ROAD CITY OLD HICKORY STATE: TN ZIP: 37138

PHONE NUMBER: 615-883-6445 EMAIL: REGGIE@HAYWARDBAKER.COM

**ARCHITECT INFORMATION:**

STREET ADDRESS: \_\_\_\_\_ CITY \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**CONTRACTOR INFORMATION:** HAYWARD BAKER INC

STREET ADDRESS: 504 N. SAM HOUSTON PARKWAY E. SUITE 400 CITY HOUSTON STATE: TX ZIP: 77060

PHONE NUMBER: 281-663-1970 EMAIL: CMICORR@HAYWARDBAKER.COM

**PROJECT LOCATION:**

To avoid delay in processing the application, please provide enough information to easily identify the project location. Include an area map with the project location identified.

Project Title: NORTH STAR DRAINAGE DITCH REPAIR

Project Address: 31422 RIGGS COURT

Subdivision (If applicable): NORTH STAR ESTATES Legal Description: \_\_\_\_\_

Lot No.: 24 Block: 1 Tract: \_\_\_\_\_

PERMIT NO. \_\_\_\_\_

DESCRIPTION OF WORK (Check all applicable boxes):

A. STRUCTURE TYPE

ACTIVITY

- ☒ New Structure  
☐ Addition  
☐ Alteration  
☐ Relocation  
☐ Replacement  
☐ Demolition

STRUCTURE TYPE

- ☐ Residential (Single Family)  
☐ Residential (Duplex)  
☐ Residential (Multi-Family)  
☒ Non-Residential  
☐ Floodproofing  
☐ Combined Use (Residential & Commercial)  
☐ Manufactured Home (Single Lot)  
☐ Manufactured Home (Manufactured Home Park)

ESTIMATED COST OF PROJECT \$ 340,000.00

B. OTHER DEVELOPMENT ACTIVITIES

- ☐ Clearing ☐ Filling ☐ Mining ☐ Drilling ☐ Grading  
☐ Excavation (Except for Structural Development Checked Above)  
☐ Watercourse Alteration (Including Dredging and Channel Modifications)  
☐ Drainage Improvements (Including Culvert Work)  
☐ Road, Street, or Bridge Construction  
☐ Subdivision (New or Expansion)  
☐ Utility Extensions (Water, Sanitary, and Gas)  
☐ Individual Water or Sewer System (If allowed by Ordinance)  
☒ Other (Please Specify) EARTH RETENTION WALL

C. OTHER PERMIT REQUIRED (Submit Copy of Permits)

- ☐ TxDOT ☐ HCFC ☐ Harris County

DESCRIPTION: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

OFFICIAL USE ONLY

LIVING UNIT EQUIVALENCY (LUEs): \_\_\_\_\_

DRAINAGE BASIN: \_\_\_\_\_ TOTAL ACREAGE OF SITE: \_\_\_\_\_ acres

PROJECT ACREAGE (Area of Site being developed for Impact Fees): \_\_\_\_\_ acres

|                         | TAP SIZE | TAP FEE  | IMPACT FEE | TOTAL    |
|-------------------------|----------|----------|------------|----------|
| WATER                   | _____    | \$ _____ | \$ _____   | \$ _____ |
| SANITARY                | _____    | \$ _____ | \$ _____   | \$ _____ |
| GAS                     | _____    | \$ _____ | _____      | \$ _____ |
| DRAINAGE                | _____    | _____    | \$ _____   | \$ _____ |
| PLAN CHECK FEE          |          |          |            | \$ _____ |
| CONSTRUCTION FEE        |          |          |            | \$ _____ |
| <b>TOTAL AMOUNT DUE</b> |          |          |            | \$ _____ |

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

CITY ENGINEER

CITY COMMENTS: \_\_\_\_\_

PERMIT NO. \_\_\_\_\_

**TYPE OF WORK (To be Completed by APPLICANT)**

Describe the type of construction you are applying for in the space below, if there is not enough space attach extra page.

**Public** – water lines, sanitary sewer lines, storm sewers, gas lines and/or paving

**Private** – Site work, clearing, grubbing, parking, private utilities

| PRIVATE / PUBLIC | TYPE OF CONSTRUCTION | DESCRIPTION OF PROPERTY LOCATION | LENGTH | SIZE | COST | CONTRIBUTOR * |
|------------------|----------------------|----------------------------------|--------|------|------|---------------|
|                  | ATTACHED             |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  |                      |                                  |        |      | \$   |               |
|                  | TOTAL COST           |                                  |        |      | \$   |               |
|                  | 2% OF TOTAL COST     |                                  |        |      | \$   |               |

\* Names of all persons contributing to any part of the cost of the construction, whether new or for improvements must be listed with the amount paid by each for the property listed.

Construction plans with the Engineer seal must be submitted in duplicate for review for all utility construction permits issued by the City of Tomball. These plans must reflect all materials to be used and the exact dimensions of the project. All applications and plans for public utility / ROW construction work are to be submitted to the City of Tomball Director of Engineering and Planning where they will be filed and become public record.

Construction for NORTH STAR DRAINAGE DITCH REPAIR begin on or after the 10 day of JAN, 20 11.

The map or plat of the subdivision named above is recorded in HCFC \_\_\_\_\_ or Volume \_\_\_\_\_, Page \_\_\_\_\_, of the \_\_\_\_\_ Records of Harris County, Texas.

**FOR PUBLIC UTILITY WORK AND PUBLIC ROW WORK ONLY**

By signing this section I agree to follow the Code of Ordinances for the City of Tomball and any associated laws applicable in the City of Tomball, Harris County, the State of Texas and the United States. Therefore I am bound to defend at my own cost and expense any suit(s), action(s), claim(s) or damage(s) sustained against the City of Tomball for any loss, cost, expense or damage charged or imposed upon the City for granting this permit. Furthermore, I agree to keep in good repair the refilling and surfacing necessitated by the excavation covered by this application for a period of one year. I also understand and agree that this permit shall be granted giving the City of Tomball, or any other person entitled, the lawful right to use said street, alley or other public place. I understand and agree that should this permit be granted for the purpose of locating or placing any pipe, conduit, duct, tunnel or other structure there is no fixed or vested right in said location and the City of Tomball, or any other person entitled, has the lawful right to lay or place its pipes, conduits or other structures in, under, over or across such pipes, conduits or other structures laid without cost or charge by the prior location for such use. I also understand and agree that these improvements, when constructed, will be public improvements, the property of the City of Tomball, and without right of reimbursement by the City for any of the costs, except as stipulated in the CITY OF TOMBALL CODE OF ORDINANCES, Section 82-231, Section 66-136 and Section 82-206 in consideration of the granted permit and the use of public property for the purpose of constructing the described facilities.

APPLICANT'S SIGNATURE Chris Corrigan DATE 12-14-2009

APPLICANT'S NAME (In Print) CHRIS CORRIGAN

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

#### 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):

- Section 551.071 Consultation with Attorney regarding the following matters:
  - A. Demands related to a slope failure at 31422 Rigel Court
  - B. Status of land acquisition for lift station from Peter Hildreth
  - C. Possible civil action to enforce ordinance regarding construction of building and use of land at 30702 State Highway 249

#### Background:

#### Origination:

City Manager

#### Recommendation:

N/A

#### Funding:

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

City Secretary

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

# Regular City Council

## Agenda Item

### Data Sheet

Meeting Date: December 20, 2010

**Topic:**

Authorize City Attorney to Initiate Civil Action to Enforce City Ordinance regarding Construction of Building and Use of Land at 30702 State Highway 249

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

City Manager

**Recommendation:**

N/A

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

City Secretary

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