

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



MONDAY, JUNE 7, 2010

7:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, June 7, 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 Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Invocation

- Led by Pastor Danny Williams, Dominion International

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:

- Plaque to George Covington, Municipal Court Judge (1992-2010)
- Plaque to City Council from VFW

6.0 Reports and Announcements

- June 12, 2010 – **Farmers Market** – 8 a.m.
- June 12, 2010 - **2nd Saturday at the Depot**, 6:00 p.m.
- June 26, 2010 – **Farmers Market** – 8 a.m.
- **July 4, 2010** (Sunday) – Fireworks Display by Tomball Fire Department, approximately 9:15 p.m.
- July 5, 2010 (Monday) – City offices closed for 4th of July holiday
- July 10, 2010 – **Farmers Market** – 8 a.m.
- July 10, 2010 - **2nd Saturday at the Depot**, 6:00 p.m.
- July 24, 2010 – **Farmers Market** – 8 a.m.
- August 6, 2010 – **38th Annual Tomball Night**
- **Walk Tomball!** (Every Saturday at 8:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken

7.0 Approve the Minutes of the following Meetings:

- Regular City Council Meeting of May 17, 2010
- Special City Council Meeting of May 20, 2010
- Special City Council Meeting of May 21, 2010
- Special City Council Meeting of May 24, 2010

8.0 Old Business:

- 8.1 Adopt on Second Reading, Ordinance 2010-11, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 6.3637 acres of land, Legally Described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, Within the City of Tomball, Harris County, Texas, From the AG-Agricultural District to the C-Commercial District; Said Property Being Generally Located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an amount not to exceed \$2,000 for each day of violation of any Provision Hereof, Making Findings of Fact; and Providing for other Related Matters
- 8.2 Adopt on Second Reading, Ordinance 2010-10, an Ordinance of the City Of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 5.3584 acres of land,

Legally Described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, Within the City of Tomball, Harris County, Texas, From the AG-Agricultural District to the C-Commercial District; Said Property Being Generally Located on the westerly side of State Highway 249 Business, Southerly of Alice Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an amount not to exceed \$2,000 for each day of violation of any Provision Hereof, Making Findings of Fact; and Providing for other Related Matters.

9.0 New Business:

- 9.1 Approve the Tomball Economic Development Corporation 2010-2011 Strategic Work Plan
- 9.2 Receive the Tomball Economic Development Corporation 2009-2010 Annual Report
- 9.3 Adopt Resolution No. 2010-09-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's project to expend funds in accordance with an Economic Development Agreement by and between the Corporation and Glass Tex Enterprises LLC to promote and develop a new or expanded business enterprise; containing other provisions relating to the subject; and providing for severability; approving, as a project of the Tomball Economic Development Corporation (TEDC), an agreement with Glass Tex Enterprises LLC, to make direct incentives to, or expenditures for assistance with infrastructure costs related to the development and construction of a commercial building to be located at 200 East Main Street in Tomball, Texas. The estimated amount of expenditure for such Project is \$15,000.00
- 9.4 Approve, as a Project of the Tomball Economic Development Corporation (TEDC), an agreement with Jamison Products, L.P., 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 promotion of new or expanded business development, to wit: Jamison Products, L.P. corporate headquarters relocation to 27760 Commercial Park Drive within the City of Tomball. The estimated amount of expenditure for such Project is \$36,000.00
- 9.5 Approve, as a Project of the Tomball Economic Development Corporation (TEDC), an agreement with PDGL Partners L.P., to make direct incentives to, or expenditures for, assistance with infrastructure costs related to the development and construction of a commercial building to be located at 701 S. Persimmon in Tomball, Texas. The estimated amount of expenditure for such Project is \$25,000.00
- 9.6 Approve Pipeline Relocation/Reimbursement Agreement with Eagle Rock Desoto Pipeline, L.P. ("Eagle Rock") in the amount of \$67,793.00

- 9.7 Approve **Replat “J WALKER HOME”**: A Replat of Lots 41 and 42 into New Lot 41 in Block 33 of Revised Map of Tomball, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 4, Page 25, of the Map Records of Harris County, Texas. Said Block 33 being situated in the William Hurd Survey (A-371).
- 9.8 Adopt, on First Reading, Ordinance No. 2010-12, an Ordinance of the City Council of the City of Tomball, Texas, amending Chapter 24. Courts, by deleting Chapter 24 in its Entirety and substituting therefore a new Chapter 24, making General Provisions for the Operation of the Municipal Court; specifying the Term of the Municipal Court and the Judges of the Court; providing for Citations to the Municipal Court; providing for Severability; providing for a Penalty of an amount not to exceed \$500 for each day of violation of any provision hereof; making Findings of Fact; and making other provisions related thereto.
- 9.9 Approve proposed Lease Agreement with Frank and Russell DeNina for the Property containing the Day Labor Site.
- 9.10 Discussion regarding Reconsideration of Resolution No. 2010-04, a Resolution of the City Council of the City of Tomball, Texas, Designating the Official Newspaper for 2010 for Publication of Matters Pertaining to the City of Tomball
- 9.11 Discussion regarding Hutson Group’s Proposal for City to Lease Land for Parking
- 10.0 Adjournment

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

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 4th day of June 2010 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer

Doris Speer
City Secretary, TRMC

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

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

- Plaque to George Covington, Municipal Court Judge (1992-2010)
- Plaque to City Council from VFW

Background:

Origination:

Recommendation:

Funding:

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

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

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

- June 12, 2010 – **Farmers Market** – 8 a.m.
- June 12, 2010 - **2nd Saturday at the Depot**, 6:00 p.m.
- June 26, 2010 – **Farmers Market** – 8 a.m.
- **July 4, 2010** (Sunday) – Fireworks Display by Tomball Fire Department, approximately 9:15 p.m.
- July 5, 2010 (Monday) – City offices closed for 4th of July holiday
- July 10, 2010 – **Farmers Market** – 8 a.m.
- July 10, 2010 - **2nd Saturday at the Depot**, 6:00 p.m.
- July 24, 2010 – **Farmers Market** – 8 a.m.
- August 6, 2010 – **38th Annual Tomball Night**
- **Walk Tomball!** (Every Saturday at 8:00 a.m. at the Depot)
- Reports by City staff and members of council about items of community interest on which no action will be taken

Background:

Origination:

Recommendation:

Funding:

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

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

ATTACHMENTS:

Farmers Market

2nd Saturday at the Depot



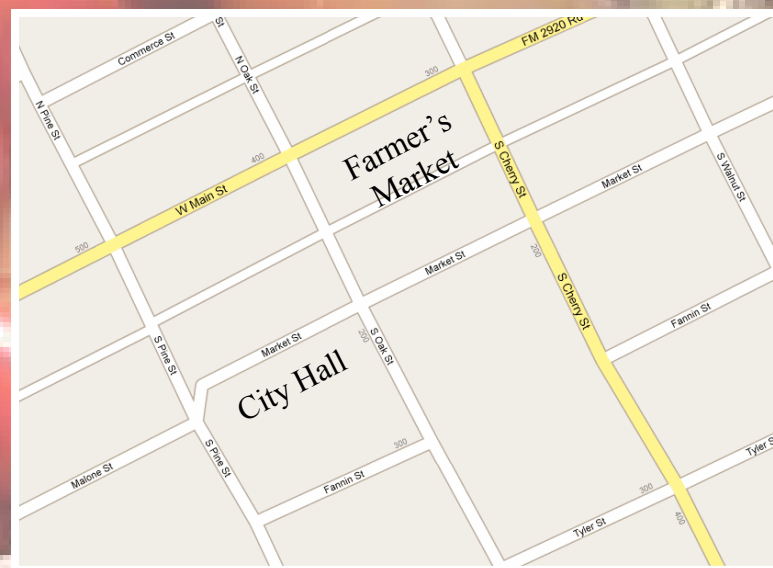
Bringing the farmers back to the community!

Come enjoy the Tomball Farmer's Market! We'll have produce, prepared foods and crafts for you to purchase.

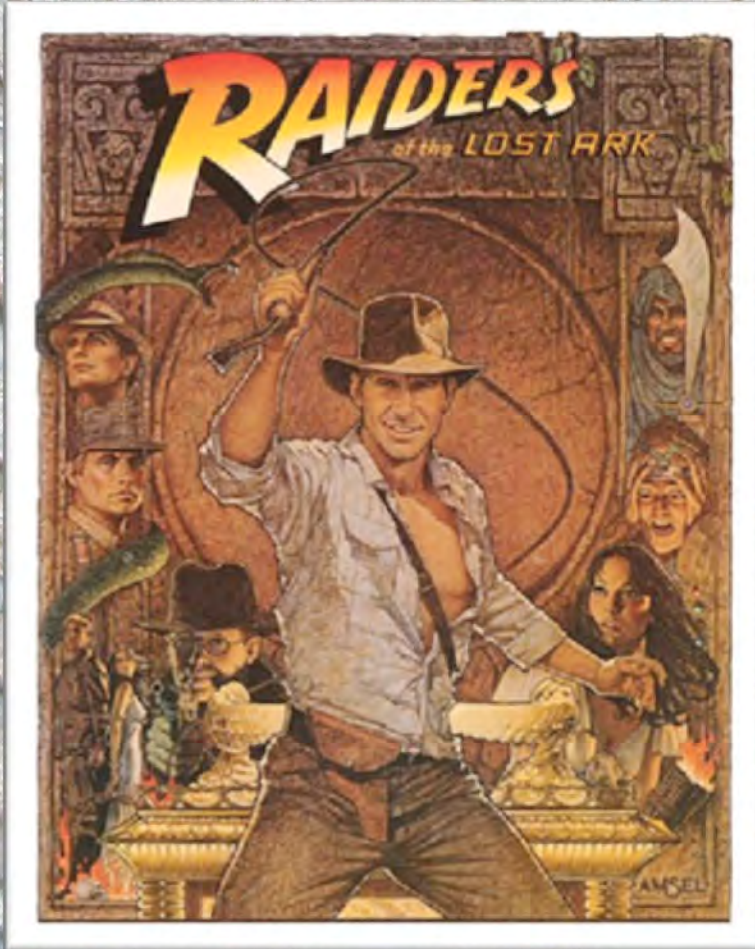
**Now open on the
2nd & 4th Saturday
of every month!**

**Market opens
at 9 AM!**

**Located at the
corner of Cherry &
FM 2920**



A Great Adventure at 2nd Saturday at the Depot June 12 - Tomball, TX



**Tomball
Treasure Hunt!**

**Music by:
Cypress
Ramblers**

**Train Ride!
Sponsored by:
TCPAAA**

**Concessions:
Sno Cones!
Meal Deal!**

Stop by to make your “DAD” a Card!

HISTORIC TOMBALL DEPOT PLAZA

201 South Elm ~ One block south of Main Street

Opens at 6:00 PM ~ Movie begins at dark

Free family entertainment for all ages

Bring your lawn chairs

Concessions available

No Glass Containers!

For more information, please call

Rosalie Dillon at 281-610-2595



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

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve the Minutes of the following Meetings:

- Regular City Council Meeting of May 17, 2010
- Special City Council Meeting of May 20, 2010
- Special City Council Meeting of May 21, 2010
- Special City Council Meeting of May 24, 2010

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

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

ATTACHMENTS:

Minutes - Regular City Council Meeting - May 17, 2010

Minutes - Special City Council Meeting - May 20, 2010

Minutes - Special City Council Meeting - May 21, 2010

Minutes - Special City Council Meeting - May 24, 2010

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



MONDAY, MAY 17, 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 Stoll
Councilman Webb
Councilman Townsend
Councilman Driver
Councilman Quinn
Council-Elect Brown

Others present:

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

Draft

2.0 The invocation was led by Pastor Rick Brown, Sr. Pastor, ChristBridge Fellowship Church

3.0 The pledges to U. S. and Texas Flags were led by Cooper Cason, member of the THS Student Council

4.0 Canvass of Election
Escrutinio de la Elección
Kiểm Phiếu của Cuộc Bầu Cử

The Canvass of the May 8, 2010 Election was presented by Mary Coats, Election Judge. *El escrutinio del la elección del 8 de mayo de 2010 fue presentado por Mary Coats, Juez Electoral.* Kiểm phiếu Cuộc Bầu Cử ngày 8 tháng Năm, 2010 do bà Mary Coats, Trưởng Ban Điều Hành Cuộc Bầu Cử trình bày.

- 4.1 Motion was made by Councilman Driver, second by Councilman Stoll, to Adopt Resolution No. 2010-07, a Resolution and Order Canvassing the Returns and Declaring the Results of the General Election Held on May 8, 2010
Fue presentada una moción por el Concejal Driver, secundada por el Concejal Stoll, para adoptar la Resolución Nro. 2010-XX, una Resolución y Orden de Escrutinio y Declaración de Resultados de la Elección General Celebrada el 8 de Mayo de 2010. Kiến Nghị do Nghị Viên Driver đề ra, Nghị viên Stoll ủng hộ, thông qua Nghị Quyết Số 2010-XX, một Nghị Quyết và Lệnh Yêu Cầu Kiểm Phiếu Bầu và Công Bố Kết Quả của Cuộc Bầu Cử Tổng Quát tổ chức ngày 8 tháng Năm, 2010.

Motion carried unanimously.
Moción aceptada por unanimidad.
Kiến nghị được nhất trí thông qua.

- 4.2 The Oath of Office was administered by Judge George Covington to Gretchen Fagan as the newly elected Mayor and to Rick Brown as the newly elected Councilman, Position 3.
El juramento al cargo fue administrado por el juez George Covington a Gretchen Fagan como la nueva Alcaldesa electa, y a Rick Brown como el nuevo Concejal electo para la posición 3.
Tuyên Thệ nhậm chức đã được Chánh Án George Covington tiến hành cho ông Gretchen Fagan vào chức vụ Thị Trưởng mới được bầu, và cho ông Rick Brown trong chức vụ Nghị viên, Vị trí 3, mới được bầu.

- 4.3 Councilman Stoll nominated David Quinn as Mayor Pro-Tem and Councilman Townsend nominated Mark Stoll as Mayor Pro-Tem, in Accordance with Section 6.08 of the City of Tomball Home Rule Charter. Nominations ceased and vote was as follows:

Councilman Quinn	<u>David Quinn</u>
Councilman Stoll	<u>David Quinn</u>
Councilman Brown	<u>David Quinn</u>
Councilman Townsend	<u>Mark Stoll</u>
Councilman Driver	<u>David Quinn</u>

Councilman Quinn was elected Mayor Pro-Tem.

El Concejal Stoll nominó a David Quinn como Alcalde Interino y el Concejal Townsend nominó a Mark Stoll como Alcalde Interino, en conformidad con la Sección 6.08 da la Carta Orgánica de Gobierno Local de la Ciudad de Tomball. Las nominaciones cesaron y la votación fue de la siguiente manera:

<i>Concejal Quinn</i>	<u><i>David Quinn</i></u>
<i>Concejal Stoll</i>	<u><i>David Quinn</i></u>
<i>Concejal Brown</i>	<u><i>David Quinn</i></u>
<i>Concejal Townsend</i>	<u><i>Mark Stoll</i></u>
<i>Concejal Driver</i>	<u><i>David Quinn</i></u>

El Concejal Quinn fue elegido Alcalde Interino.

Thành viên hội đồng Stoll đề cử David Quinn làm Quyền Thị Trưởng và Thành viên hội đồng Townsend đề cử Mark Stoll làm Quyền Thị Trưởng, chiếu theo Mục 6.08 của Hiến Chương Luật Lệ Thành Phố Tomball. Các đề cử đã kết thúc và bỏ phiếu bầu như sau:

Thành viên hội đồng Quinn	<u>David Quinn</u>
Thành viên hội đồng Stoll	<u>David Quinn</u>
Thành viên hội đồng Brown	<u>David Quinn</u>
Thành viên hội đồng Townsend	<u>Mark Stoll</u>
Thành viên hội đồng Driver	<u>David Quinn</u>

Nghị viên Quinn được bầu làm Quyền Thị Trưởng.

5.0 The following public comments were received:

Lori Wallace 1821 S. Cherry Street, 77375	- Requested Council's consideration for her reappointment to the Planning & Zoning Commission.
Tina Roquemore	- Requested Council's consideration to waive the tennis court reservation fee for special needs individuals
Bruce Hillegeist 29201 Quinn Road, Suite B, 77375	- Thanked Bill Webb for his service to the City of Tomball, Judy Wilson for her desire to serve on Council, good voter turnout for the City election, and congratulated Rick Brown and Gretchen Fagan.

7.0 Reports and Announcements:

- Quarterly Investment Report
- Hurricane Preparedness Week – May 23-29, 2010
- Report regarding scheduled opening dates and times for Jerry Matheson Swimming Pool
- May 20 and May 21, 2010 – Strategic Planning Workshops
- May 23-29, 2010 – Hurricane Preparedness Week
- June 12, 2010 – **Farmers Market**
- June 12, 2010 - **2nd Saturday at the Depot**, 6:00 p.m.
- **Walk Tomball!** (Every Saturday at 8:00 a.m. at the Depot)

- Reports by City staff and members of council about items of community interest on which no action will be taken
- Christal Kliewer provided an update regarding platting of the depot area property; staff is still working on the cost estimate.
- Mayor Fagan introduced Kevin Frayler, who will deploy on July 12.
- Robert Hauck and Randy Parr provided information regarding the escort processional honoring Marine Cpl. Jeffrey Johnson on Tuesday, May 18. Mayor Fagan read an email from the Governor's office, advising that the U. S. and Texas flags may be flown at half-staff from Tuesday, May 18, through Friday morning, May 21, to honor Cpl. Johnson.

6.0 Presentations:

- Mayor Fagan presented a plaque to Councilman and Mayor Pro Tem Bill Webb, honoring his years of service (2007-2010)
- Mayor Fagan presented a proclamation to Randy Parr, Fire Chief, proclaiming the week of May 23 through 29, 2010 as Hurricane Preparedness Week.

8.0 Motion was made by Councilman Townsend, second by Councilman Stoll, to approve the minutes of the following meetings:

- Special City Council Meeting of April 29, 2010
- Special City Council Meeting of May 3, 2010
- Regular City Council Meeting of May 3, 2010
- Special City Council Meeting of May 7, 2010

Motion carried unanimously.

9.0 New Business:

9.1 Motion was made by Councilman Driver, second by Councilman Brown, to reappoint Lori Wallace to the Planning and Zoning Commission.

Motion carried unanimously.

9.2 Motion was made by Councilman Stoll, second by Councilman Driver to reappoint Jerald Till and Gary Smith to the Tomball Economic Development Corporation and to appoint Vincent O'Donnell and William Sumner to the Tomball Economic Development Corporation.

Motion carried unanimously.

- 9.3 Kelly Violette presented the staff report for **ZONING CASE P10-226**: Request by Pete Terpstra to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249 Business, southerly of Alice Road, from the AG-Agricultural District to the C-Commercial District (Tomball Parkway Business Center)

- Mayor Fagan opened the Public Hearing on **ZONING CASE P10-226** at 7:30 p.m.; no public comments being received, the public hearing was closed at 7:30 p.m.
- Motion was made by Councilman Driver, second by Councilman Townsend, to read Ordinance No. 2010-10 by caption only on first reading.

Motion carried unanimously.

Motion was made by Councilman Stoll, second by Councilman Brown, to Adopt on First Reading Ordinance 2010-10, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 5.3584 acres of land, Legally Described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, Within the City of Tomball, Harris County, Texas, From the AG-Agricultural District to the C-Commercial District; Said Property Being Generally Located on the westerly side of State Highway 249 Business, Southerly of Alice Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an amount not to exceed \$2,000 for each day of violation of any Provision Hereof, Making Findings of Fact; and Providing for other Related Matters. Vote was as follows:

Councilman Stoll	<u>Aye</u>
Councilman Brown	<u>Aye</u>
Councilman Townsend	<u>Nay</u>
Councilman Driver	<u>Aye</u>
Councilman Quinn	<u>Aye</u>

Motion carried, 4 votes Aye to 1 vote Nay.

- 9.4 Kelly Violette presented the staff report for **ZONING CASE P10-225**: Request by Pete Terpstra to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, Generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District

- Mayor Fagan opened the Public Hearing on **ZONING CASE P10-225** at 7:35 p.m.; no public comments being received, the public hearing was closed at 7:35 p.m.
- Motion was made by Councilman Townsend, second by Councilman Driver, to read Ordinance No. 2010-11 by caption only on first reading.

Motion carried unanimously.

Motion was made by Councilman Townsend, second by Councilman Stoll, to Adopt on First Reading Ordinance 2010-11, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 6.3637 acres of land, Legally Described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, Within the City of Tomball, Harris County, Texas, From the AG-Agricultural District to the C-Commercial District; Said Property Being Generally Located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an amount not to exceed \$2,000 for each day of violation of any Provision Hereof, Making Findings of Fact; and Providing for other Related Matters. Vote was as follows:

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

Motion carried unanimously.

- 9.5 Glenn Windsor presented an overview of the proposed Resolution to extend the PID agreement. Motion was made by Councilman Driver, second by Councilman Stoll, to Approve Resolution No. 2010-08, a Resolution Amending the Terms of the Development Agreement Establishing Public Improvement District (PID) No. 2 in the City of Tomball, Texas (Raleigh Creek).

Motion carried unanimously.

- 9.6 Councilman Stoll presented the request for the proposed waiver of the reservation fee for the tennis courts for special-needs individuals. Motion was made by Councilman Stoll, second by Councilman Townsend to waive the Tennis Court Reservation Fee for Tina Roquemore's daughter. Motion to limit the waiver period to one (1) year was made by Councilman Stoll, second by Councilman Townsend.

Motion, as amended, carried unanimously.

- 9.7 Doris Speer presented the request to participate in the Emergency Wrecker Rotation List. Motion was made by Councilman Townsend, second by Councilman Brown, to approve the request by Apex Towing to Participate in the Emergency Wrecker Rotation List.

Motion carried unanimously.

- 9.8 Shawn Cox presented an overview of the proposed Walk. Motion was made by Councilman Townsend, second by Councilman Quinn to approve the request from RE/MAX Platinum for Support with their Susan G. Koman "Walk for the Cure", to be held on Saturday, May 22, 2010.

Motion carried unanimously.

- 9.9 Mark McClure presented an overview of the proposed Plat. Motion was made by Councilman Townsend, second by Councilman Stoll, to Approve **FINAL PLAT OF PARKWAY OASIS PARTIAL REPLAT NO. 1:** Being a subdivision of a 7.5797 Acre Tract of Land in the William Hurd Survey, Abstract No. 378 and in the John Hooper Survey, Abstract No. 375 City of Tomball, Harris County, Texas, 4 Lots, and 1 Block.

Motion carried unanimously.

- 9.10 Mark McClure presented an overview of the proposed Replat. Motion was made by Councilman Driver, second by Councilman Townsend, to Approve **TOMBALL CENTER III – B2, REPLAT NO. 2:** 7.8351 Acres, Being a partial Replat of Reserves "A" & "B" of Tomball Center III – B2, Replat No. 1, Film Code Number 625078 H.C.M.R. located in the Joseph House Survey, Abstract Number 34, Harris County, Texas, 1 Block, 2 Reserves.

Motion carried unanimously.

- 9.11 **EXECUTIVE SESSION:** The City Council recessed at 8:01 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 a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court
- Section 551.074 – Personnel Matters – To Deliberate the Hiring/Employment, Duties and Responsibilities of a City Manager
- Section 551.074 – Personnel Matters – To Deliberate the Hiring/Employment, Duties and Responsibilities of a Municipal Court Judge

Upon reconvening into Regular session at 8:37 p.m., no action was taken regarding the following items:

- 9.12 Consideration and Possible Action regarding a Demand for City Action by Gary Smith Related to a Slope Failure at 31422 Rigel Court.
- 9.13 Consideration and Possible Action Regarding the Appointment of a Interim Municipal Court Judge.
- 9.14 Consideration and Possible Action Regarding the Hiring/Employment, Duties and Responsibilities of a City Manager.

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

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 7th day of June 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

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

THURSDAY, MAY 20, 2010



5:00 P.M.

1.0 Call to Order

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

Councilman Quinn
Councilman Brown
Councilman Stoll
Councilman Driver
Councilman Townsend

Others present:

Interim City Manager – Christal Kliever
PSA - Peggy Fiandaca
PSA – Curt Dunham

draft

2.0 Workshop Session

2.1 The Tomball City Council entered into a Strategic Planning Session with Partners in Strategic Action (PSA).

3.0 Motion was made by Councilman Townsend, second by Councilman Driver, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 7th day of June 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

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



FRIDAY, MAY 21, 2010

7:30 A.M.

1.0 Call to Order

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

Councilman Quinn
Councilman Brown
Councilman Stoll
Councilman Driver
Councilman Townsend

Others present:

Interim City Manager – Christal Kliewer
City Secretary – Doris Speer
Police Chief – Robert Hauck
Director of Public Works – David Kauffman
Director of Engineering and Planning – Mark McClure
Fire Chief – Randy Parr
HR Director – Lisa Coe
Finance Director – Glenn Windsor
Building Official – David Allen
Assistant to City Manager – Shawn Cox
City Planner/Comm. Dev. Coordinator – Kelly Violette
Executive Director-TEDC – Betty Reinbeck
PSA - Peggy Fiandaca
PSA – Curt Dunham
George Shackelford
Barbara Tague
Rodney Hutson, M.D.

Draft

2.0 Workshop Session

2.1 The Tomball City Council entered into a Strategic Planning Session with Partners in Strategic Action (PSA).

3.0 Motion was made by Councilman Stoll, second by Councilman Brown, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 7th day of June 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

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



THURSDAY, MAY 24, 2010

5:00 P.M.

1.0 Call to Order

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

Councilman Quinn
Councilman Stoll
Councilman Brown
Councilman Driver

Members Absent: Councilman Townsend

Others present:

Interim City Manager – Christal Kliewer
Assistant to City Manager – Shawn Cox
Assistant City Secretary – Betsy Gates

draft

2.0 New Business

2.1 EXECUTIVE SESSION: The City Council recessed at 5:01 p.m. to meet in Executive Session, as Authorized by Title 5, Chapter 551 of the Government Code (the Texas Open Meetings Act), for the Following Purposes:

- Section 551.074 – Personnel Matters – To Deliberate the Hiring/Employment, Duties and Responsibilities of a City Manager

Upon reconvening into open session at 5:05 p.m., the following action was taken:

2.2 Motion was made by Councilman Driver, second by Councilman Stoll to Appoint George Shackelford as City Manager and Authorize the Mayor to Execute and the City Secretary to Attest an Employment Agreement with George Shackelford.

Motion carried unanimously.

3.0 Motion was made by Councilman Stoll, second by Councilman Quinn, to adjourn.

Motion carried unanimously.

Meeting adjourned.

PASSED AND APPROVED this 7 day of June 2010.

Doris Speer, TRMC
City Secretary

Gretchen Fagan
Mayor

Regular City Council

Agenda Item

Meeting Date: June 7, 2010

Data Sheet

Topic:

Adopt on Second Reading, Ordinance 2010-11, an Ordinance of the City of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 6.3637 acres of land, Legally Described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, Within the City of Tomball, Harris County, Texas, From the AG-Agricultural District to the C-Commercial District; Said Property Being Generally Located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an amount not to exceed \$2,000 for each day of violation of any Provision Hereof, Making Findings of Fact; and Providing for other Related Matters

Background:

On March 31, 2010, the City received a rezoning application from Pete Terpstra to rezone approximately 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District.

The northerly site (Tracts 2B & 2Y-1) is currently developed with an approximately 2,400 square foot metallic commercial warehouse facility that houses Ham's Truck Plus, Inc. The southerly site (Tract 2Z) is currently vacant. There is a private road known as Humble Road along the northern boundary of Tract 2Z.

The subject site was annexed into the City of Tomball on December 1, 2008 as part of the 172.812 acre SH 249 Bypass (Tomball Expressway) Road Right-of-Way annexation. Because the subject site was annexed after the passage of the Zoning Ordinance and because a concurrent rezoning request was not filed by the property owner, the subject site was given an initial zoning classification of AG-Agricultural District.

After reviewing the request, staff prepared a report to the Planning and Zoning Commission recommending approval based on the fact that the proposed zoning is consistent with the existing and intended uses in the area, is consistent with the Comprehensive Plan's Future Land Use Plan Map designation of Commercial, and will help support the commercial development pattern along the SH 249 Business corridor and future commercial development along the SH 249 Bypass (Tomball Expressway).

On May 10, 2010, the Planning and Zoning Commission, after conducting a public hearing on this request, voted unanimously to recommend approval. On May 17, 2010, Council adopted Ordinance No. 2010-11 on First Reading.

Origination:

Pete Terpstra, Property Owner

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted unanimously to approve Zoning Case P10-225, as recommended by staff, based on the following: (a) the proposed zoning of

C-Commercial District will be compatible with the land uses in the vicinity; (b) the proposed zoning of C-Commercial District is compatible with the Tomball Comprehensive Plan; (c) the proposed zoning of C-Commercial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area; and (d) there is sufficient utility capacity to service commercial uses on this site.

Funding:

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

Kelly Violette, City Planner

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

ATTACHMENTS:

- Ordinance No. 2010-11
- P10-225 Staff Report
- Public Comment Forms
- Notice of Public Hearing
- Adjacent Property Owner Notification

ORDINANCE NO. 2010-11

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 6.3637 ACRES OF LAND, LEGALLY DESCRIBED AS TRACTS 2B, 2Y-1, AND 2Z OUT OF THE C.N. PILLOT SURVEY, ABSTRACT NUMBER 632, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AG-AGRICULTURAL DISTRICT TO THE C-COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED BETWEEN THE SOUTH INTERSECTION OF SH 249 BYPASS (TOMBALL EXPRESSWAY) AND SH 249 BUSINESS, NORTHERLY OF HOLDERRIETH ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS

* * * * *

Whereas, the owner(s) of 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pilot Survey, Abstract Number 632, generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; and

Whereas, at least eight (8) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to change the zoning for the Property from AG-Agricultural District to the C-Commercial District; and

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

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

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

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

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

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

Section 2. The zoning classification of 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, (the "Property"), is hereby changed from AG-Agricultural District to the C-Commercial District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, ("Zoning District Map"), shall be revised and amended to show the designation of 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road, as C-Commercial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road, to C-Commercial District as described above.

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

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

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF MAY 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF JUNE 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: May 10, 2010

Rezoning Case: P10-225

Property Owner(s): Peter S. Terpstra
R.K. McGaughy

Applicant(s): Peter S. Terpstra

Legal Description: Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas

Location: 27202 SH 249 & 0 SH 249 (Generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road)

Area: 6.3637 acres

Present Zoning and Use: AG-Agricultural District / Commercial (Ham's Truck Plus, Inc.) and vacant

Comp Plan Designation: Commercial

Proposed Zoning and Use: C-Commercial District / Office, retail, hotel, restaurants, etc.

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

Adjacent Zoning & Land Uses:

North: AG-Agricultural / Tool rental facility and vacant land

South: ETJ (unzoned) / SH 249 Expressway ROW and vacant land

East: C-Commercial District / SH 249 Business and various retail and commercial uses

West: AG-Agricultural and ETJ (unzoned) / SH 249 Bypass (Tomball Expressway), vacant land, and Harris County Flood Control District detention facility

BACKGROUND

The subject site is 6.3637 acres of land legally described as tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas. The site is generally located between the south intersection of SH 249 Bypass (Tomball Expressway) and SH 249 Business, northerly of Holderrieth Road (Exhibit "C"). The northerly

site (Tracts 2B & 2Y-1) is currently developed with an approximately 2,400 square foot metallic commercial warehouse facility that houses Ham's Truck Plus, Inc. (Fig. 3). The southerly site (Tract 2Z) is currently vacant. There is a private road known as Humble Road (Fig. 2) along the northern boundary of Tract 2Z.

The property was annexed into the City of Tomball on December 1, 2008 as part of the 172.812 acre SH 249 Bypass (Tomball Expressway) Road Right-of-Way annexation (Exhibit "I"). Because the subject site was annexed after the passage of the Zoning Ordinance and because a concurrent rezoning request was not filed by the property owner, the subject site was given a zoning classification of AG-Agricultural District. Section 6.1 of the Zoning Ordinance states, "For any period of time following official annexation by the City until a zoning action has been officially adopted to zone the land, the interim zoning of the land shall be considered to be Agricultural ('AG'), and all zoning and development regulations of the 'AG' zoning district shall be adhered to with respect to the development and use of the land."

On March 17, 2010, City staff met with representatives of the property owner to discuss the Agricultural zoning of the site along with zoning issues associated with a proposed ambulance service at the Tomball Parkway Business Center (27503 Tomball Parkway), which the property owner also owns. City staff informed the representatives that the subject properties were annexed into the City of Tomball in December 2008 and given an initial zoning classification of AG-Agricultural. Additionally, staff explained that both properties have a Future Land Use designation of "Commercial" under the City's adopted Comprehensive Plan and that a rezoning request to the C-Commercial District would be consistent with this designation. The property owner's representatives expressed intent to rezone both sites.

On March 31, 2010, the applicant submitted rezoning applications to rezone the subject site as well as Tract 2 (27503 Tomball Parkway) from the AG-Agricultural District to the C-Commercial District.

ANALYSIS

According to the Tomball Zoning Ordinance, the C-Commercial District "is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the district will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration."

The applicant is requesting the rezoning to bring the property's zoning classification in line with the commercial use already established on the site and to permit future potential uses including office, retail, hotel, restaurant, and other uses (Exhibit "D").

The uses in the general vicinity of the subject site are predominately commercial and retail related (Exhibit "C"). To the north of the subject site is the Tomball Tool Rental facility and vacant land fronting onto SH 249 Bypass (Tomball Expressway), to the south of the subject site is the SH 249 Bypass (Tomball Expressway), vacant land, and a Harris County Flood Control District detention facility in the AG-Agricultural District and in portions of the unzoned extraterritorial jurisdiction (ETJ) (Exhibit "A"). To the east of the subject site is SH 249 Business and various retail and commercial uses including the former McCauley Lumber Yard

and Palm Harbor manufactured home display and sales facility in the C-Commercial District (Exhibit “A”). To the west of the subject site is the SH 249 Bypass (Tomball Expressway), vacant land, and a Harris County Flood Control District detention facility in the AG-Agricultural District and in portions of the unzoned extraterritorial jurisdiction (Exhibit “A”).

The proposed rezoning to the C-Commercial District is consistent with the “Commercial” Comprehensive Plan land use designation (Exhibit “B”). The Comprehensive Plan states that the Commercial land use designation “is where retail sales and service activities should occur. These uses include but are not limited to shopping centers, convenience stores, auto dealers, department stores, grocery and drug stores, entertainment facilities, food and beverage purveyors, salons, and small repair shops.” Additionally, the “Commercial Planning Guidelines” outlined in the Comprehensive Plan provide that commercial development is to be compatible with surrounding land uses and that consideration for the impacts of commercial development on the local and regional roadway network shall be determined.

Due to the fact that the requested rezoning is consistent with the Comprehensive Plan’s Future Land Use Plan Map, is consistent with the existing and intended uses in the area, and will help support the commercial development pattern along the SH 249 Business corridor and future commercial development along the SH 249 Bypass (Tomball Expressway), staff is supportive of the rezoning request.

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

ZONING CONSIDERATIONS

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

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

The uses in the general vicinity of the subject site are predominately commercial and retail related. To the north of the subject site are various retail and commercial uses in the AG-Agricultural and C-Commercial districts (Exhibit “A”). To the south of the subject site is the SH 249 Bypass (Tomball Expressway), vacant land, and a Harris County Flood Control District detention facility in the AG-Agricultural District and in portions of the unzoned extraterritorial jurisdiction. To the east of the subject site is SH 249 Business and various retail and commercial uses in the C-Commercial District (Exhibit “A”). To the west of the subject site is the SH 249 Bypass (Tomball Expressway), vacant land, and a Harris County Flood Control District detention facility in the AG-Agricultural District and in portions of the unzoned extraterritorial jurisdiction.

Staff feels the rezoning and proposed land uses would be in keeping with the existing mix of land uses in the vicinity.

As such, the rezoning and permitted land uses in the C-Commercial District would be in keeping with the existing and intended land uses in the vicinity.

Any future development/redevelopment of this site will require compliance with the City's land use and development regulations.

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

There is currently sufficient water, sewer, and gas capacity in the area to service this site (Exhibit "H"). The future development of the site may require the extension of utilities to and through the site.

SH 249 Business and SH 249 Bypass (Tomball Expressway) are designated as "State Highways" on the adopted Major Thoroughfare Plan (MTP). The MTP states, "The main purpose of State Highways and FM Roadways is to move large volumes of traffic through urban areas and provide direct access to local freeways, while also providing controlled access to adjacent businesses." The right-of-way for State Highway 249 and State Highway 249 Expressway has been acquired in the vicinity and the impacts to these roadways due to the rezoning of the site are anticipated to be minimal.

The development of the site for commercial purposes would not impact the public school system as it would not increase attendance to the school system.

As a matter of information, the future development of the site will likely result in increased impermeable area, thereby altering absorption rates and increasing surface runoff. Drainage improvements shall comply with the requirements of the City's Engineering and Public Works Departments.

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

There are a limited number of undeveloped properties zoned C-Commercial District in the immediate vicinity (Exhibit "C"). However, there is a large amount of vacant land available along Holderrieth Road and in the rest of the City of Tomball that is zoned C-Commercial District. Most of the undeveloped acreage along SH 249 and SH 249 Expressway south of Alice Road (within the City of Tomball) is zoned AG-Agricultural District because of the December 2008 annexation, however it is anticipated that these properties will be rezoned at some point in the future to accommodate future commercial growth.

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

The subject property is located in an area that is developed with extensive commercial uses. The surrounding commercial and retail uses have developed steadily for a number of years due to the high traffic volumes and visibility on SH 249.

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

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

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

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

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

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

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

The request is consistent with the Comprehensive Plan’s land use designation (Exhibit “B”). The Comprehensive Plan states that the Commercial land use “is where retail sales and service activities should occur. These uses include but are not limited to shopping centers, convenience stores, auto dealers, department stores, grocery and drug stores, entertainment facilities, food and beverage purveyors, salons, and small repair shops. Small professional office uses such as physicians, accountants, or therapy offices would be permitted.”

Additionally, the “Commercial Planning Guidelines” aim to ensure commercial development compatibility with surrounding land uses and provide proper transitions, buffers, or architectural reliefs to minimize negative impacts to adjacent uses.” The proposed rezoning of the property to the C-Commercial District is consistent with the Comprehensive Plan’s Future Land Use Plan Map, will help to ensure commercial land use consistency along the SH 249 corridor, and will enhance the area’s long-term economic viability.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on April 30, 2010 and, as of the writing of this report, no public comment forms were received.

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P10-225 based on the following:
 - a. The proposed zoning of C-Commercial District will be compatible with the land uses in the vicinity.
 - b. The proposed zoning of C-Commercial District is compatible with the Tomball Comprehensive Plan.
 - c. The proposed zoning of C-Commercial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
 - d. There is sufficient utility capacity to service commercial uses on this site.
2. APPROVAL of the staff report as the Planning and Zoning Commission's final recommendation to the City Council.

EXHIBITS

- A. Location/Zoning Map
- B. Comprehensive Plan Future Land Use Map
- C. Aerial Photo
- D. Rezoning Application
- E. Rezoning Request Letter
- F. Metes and Bounds
- G. Property Survey
- H. Utility Block Maps
- I. Ordinance 2008-32 Annexation Map
- J. Site Photos

Exhibit "A"
Location/Zoning Map

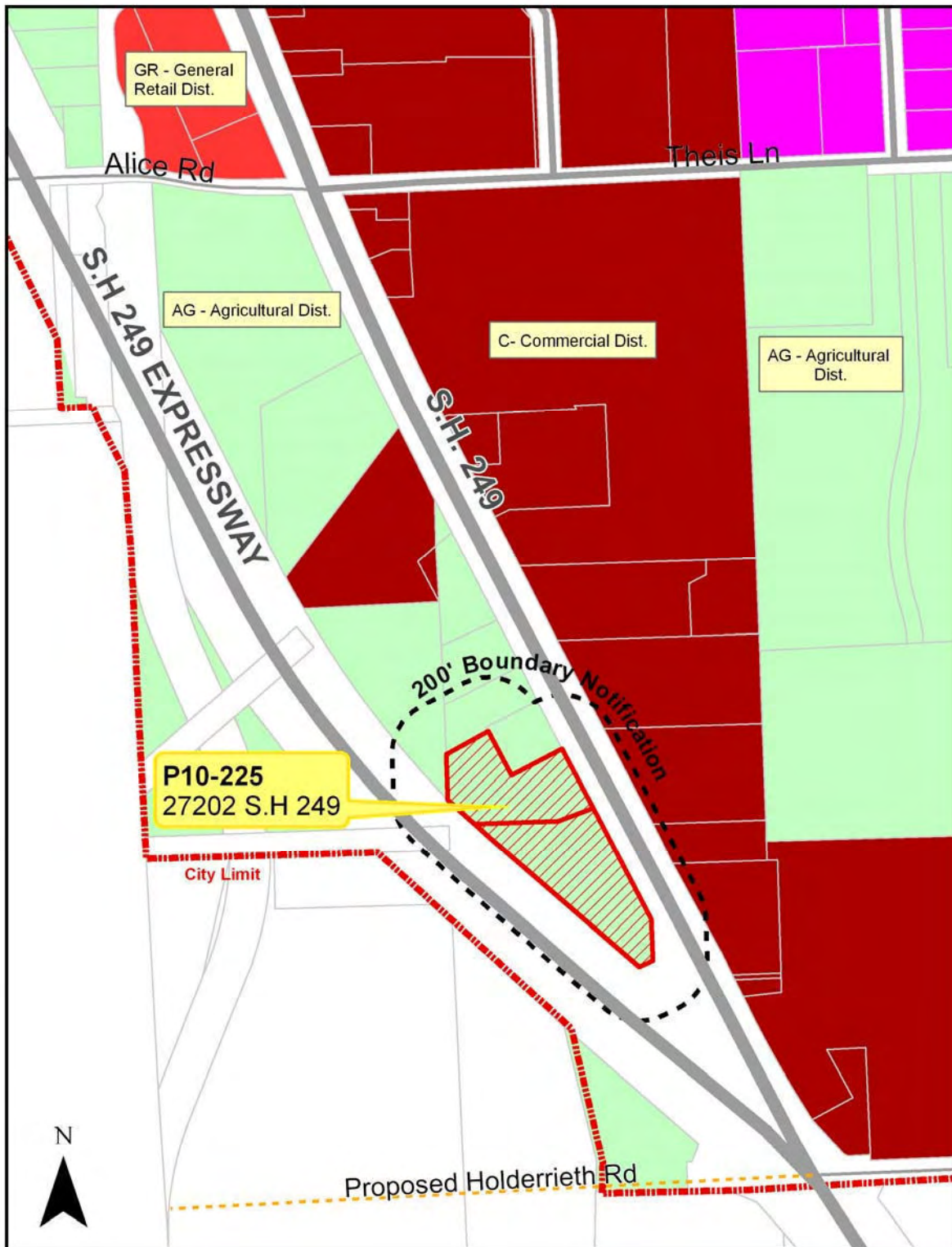


Exhibit "B"
Comprehensive Plan Future Land Use Map

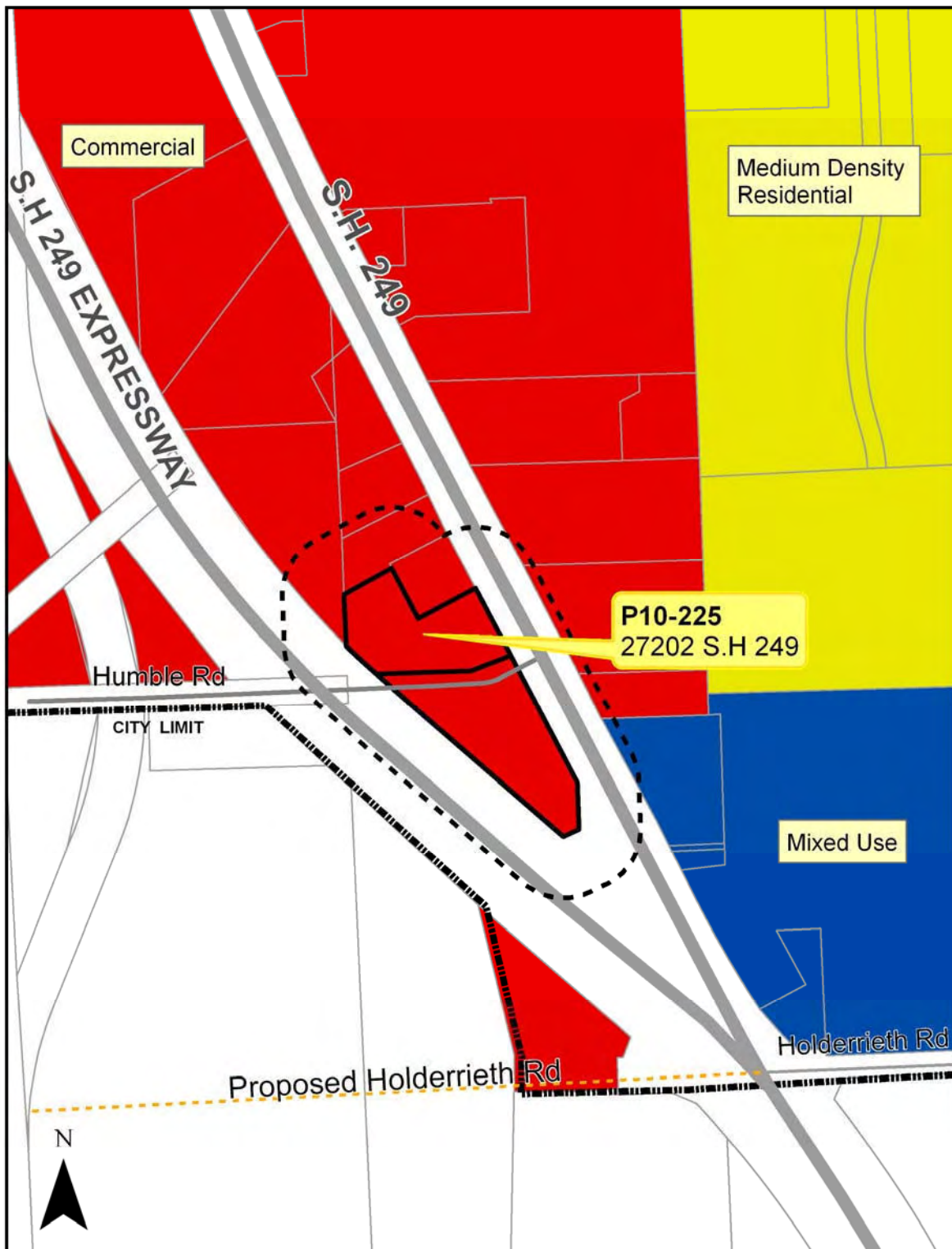


Exhibit "C"
Aerial Photo

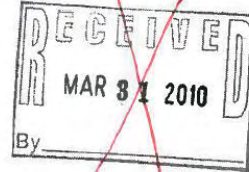


Exhibit "D"
Rezoning Application



Revised 1/20/09

APPLICATION FOR REZONING
Engineering & Planning Department



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

Applicant

Name: PETER S. TERPSTRA Title: _____
Mailing Address: 14343-B TORREY CHASE BLVD City: HOUSTON State: TX
Zip: 77014
Phone: (281) 580-4855 Fax: (281) 580-3808 Email: terprestate@mind.spring.com

Owner PETER S. TERPSTRA

Name: R.K. MCGAUGHY Title: Owners
Mailing Address: 14343-B TORREY CHASE BLVD City: HOUSTON State: TX
Zip: 77014
Phone: (281) 580-4855 Fax: (281) 580-3808 Email: terprestate@mind.spring.com

Engineer/Surveyor (if applicable)

Name: JOHN G. THOMAS #270 Title: PRESIDENT
Mailing Address: 14340 TORREY CHASE BLVD City: HOUSTON State: TX
Zip: 77014
Phone: (281) 440-7730 Fax: (281) 440-7737 Email: john@thomaslandsurveying.com

Description of Proposed Project: Commercial, Offices, RETAIL, Hotel, Restaurants, etc.

Physical Location of Property: Intersection of Tomball Parkway and State Hwy 249 BY PASS

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

Legal Description of Property: 6.3637 ACRES OUT OF THE CLAUDE M. PILLOT SURVEY, ABSTRACT NO. 632
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]
Harris County, TEXAS

Current Zoning District: AG

Current Use of Property: COMMERCIAL

Proposed Zoning District: COMMERCIAL

Proposed Use of Property: OFFICE, RETAIL, HOTEL, RESTAURANTS, ETC.

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

www.ci.tomball.tx.us

HCAD Identification Number: 044-058-000-0264
044-058-000-0282 Acreage: 6.3637 Acres

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

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

X Pete P. Dwyer 3/31/10
Signature of Applicant Date

X Pete P. Dwyer 3/31/10
Signature of Owner Date

R. K. McGaughey, Trustee 4/20/10
R. K. McGaughey, Trustee Date

Exhibit "E"
Rezoning Request Letter

Thomas Land Surveying
Surveying · Planning · Project Management

March 31, 2010

Reference: 6.3637 Acres
C.N. Pillot Survey, A-632
Tomball, Harris County, Texas

To Whom It May Concern:

We have requested a zoning change on the referenced tract from ag zoning to Commercial zoning as the tract is proposed to be and currently is used for commercial purposes.

Respectfully


John G. Thomas

14340 Torrey Chase Boulevard · Suite 270 · Houston, Texas 77014
(281) 440-7730 · Fax (281) 440-7737
www.thomaslandsurveying.com

Exhibit "F"

Metes and Bounds



March 31, 2010
6.3637 Acres

Fieldnotes for 6.3637 acres of land out of the Claude M. Pillot Survey, Abstract No. 632, in Harris County, Texas and being all of that certain 1 acre tract, more or less conveyed to A.W. Theis and Thelma Theis by deed recorded in Volume 6895, Page 342 of the Deed Records of Harris County, and being out of and a part of that certain 160 acres of land conveyed to said A.W. Theis and Thelma Theis by deed recorded in Volume 3395, page 47 of the said Deed Records, and being all of that certain 2.8181 acre tract of land conveyed to Peter S. Terpstra, Trustee as described in deed recorded under County Clerk's File No. S283264 of the Real Property Records of Harris County, and all of that certain 3.6571 acre tract of land described as Tract 1 in deed to R.K. McGaughy recorded under County Clerk's File No. Z273961 of the said Real Property Records, said 6.3637 acres of land being more particularly described by metes and bounds as follows:

Commencing at a 5/8 inch iron rod found in the West line of State Highway No. 249, (Tomball Parkway) based on a 180.00 foot right-of-way, marking the Southeast corner of that certain 1.2618 acre tract of land conveyed to Gregory D. Kitchens, et ux by deed recorded under County Clerk's File No. T027655 of the said Real Property Records, said point also being the Northeast corner of that certain 1.0127 acre tract of land conveyed to Morris W. Kitchens and Virgie F. Kitchens by deed recorded under County Clerk's File No. G716425 of the said Real Property Records, said point also being South 27°31'59" east, 772.49 feet from the intersection of the West line of said State Highway No. 249 with the West line of the said C.M. Pillot Survey and the Sam Lewis Survey, Abstract No. 1704;

Thence, South 27°31'59" East, 208.00 feet with the East line of the said Kitchens 1.0127 acre tract and the common West line of said State Highway No. 249 to a 5/8 inch steel rod set for the most Easterly North east corner and PLACE OF BEGINNING for the herein described tract of land, said point also being the Southeast corner of the said 1.0127 acre tract;

Thence, South 27°31'59" east, 703.84 feet with the Southwest line of said State Highway No. 249 to a 5/8 inch steel rod set for an angle point for the herein described tract, said point also being at the North end of a cut-back for said State Highway No. 249 bypass;

Thence, South 02°11'48" East, 151.01 feet with the said cut-back to a 5/8 inch steel rod set for a second angle point and the most easterly Southeast corner of the herein described tract;

Thence, continuing with the said cut-back, South 64°18'58" West, 55.75 feet to a 5/8 inch steel rod set at a third angle point and the most Southerly corner of the herein described tract, said point being at the Southwest end of the said cut-back;

Thence, North 49°10'17" West, 658.65 feet with the Northeast line of said State Highway No. 249 bypass to a 5/8 inch steel rod set at a point of curve to the right, having a radius of 3644.72 feet and a central angle of 04°32'12";

Thence, continuing with the Northeast line of said proposed State Highway no. 249 bypass and with the said curve to the right having a radius of 3644.72 feet (chord bearing North 46°54'10" West, 288.52 feet) an arc distance of 288.52 feet to a 1/2 inch steel rod set in the West line of the said 2.8181 acre tract, said point also being in the West line of the said Claude M. Pillot Survey and the East line of the Sam Lewis Survey, Abstract NO. 1704, said point also being a Southerly corner of a residue tract of a 145.78 acre tract conveyed to Ralph Lewis Frapart and described as tract 6 in instrument recorded under County Clerk's File No. F014298 of the said Real Property Records;

Thence, North 02°34'51" West, 156.55 feet with the West line of the said 2.8181 acre tract and the said C.N. Pillot Survey and with the common East line of the said Sam Lewis Survey and an Easterly line of the said residue tract to a 1/2 inch steel rod with cap set for the Northwest corner of the said 2.8181 acre tract and the herein described tract, said point also being the Southwest corner of the aforesaid Kitchens 1.2618 acre tract;

14340 Torrey Chase Boulevard · Suite 270 · Houston, Texas 77014
(281) 440-7730 · Fax (281) 440-7737
www.thomaslandsurveying.com

March 31, 2010
6.3637 Acres
Page 2

Thence, North $61^{\circ}14'30''$ East, 180.64 feet with the North line of the said 2.8181 acre tract and the South line of the said Kitchens 1.2618 acre tract to a $\frac{5}{8}$ inch steel rod found marking the most Northerly Northeast corner of the said 2.8181 acre tract and the herein described tract, said point also being in the West of the said Kitchens 1.0127 acre tract;

Thence, South $27^{\circ}31'59''$ east, 191.17 feet with the West line of the said Kitchens 1.0127 acre tract and an Easterly line of the said 2.8181 acre tract to a 4 inch steel post found at an ell corner, said point being the Southwest corner of the said Kitchens 1.0127 acre tract;

Thence, North $62^{\circ}36'28''$ East, 212.27 feet with the South line of the said Kitchens 1.0127 acre tract and the North line of the said 2.8181 acre tract to the PLACE OF BEGINNING and containing 6.3637 acres or 277, 201 square feet of land, more or less.

This description is based on the Land Title Survey and Plat (Job No. 14367 made under the direction of John G. Thomas, Registered Professional Land Surveyor.


John G. Thomas, R.P.L.S. No. 1494



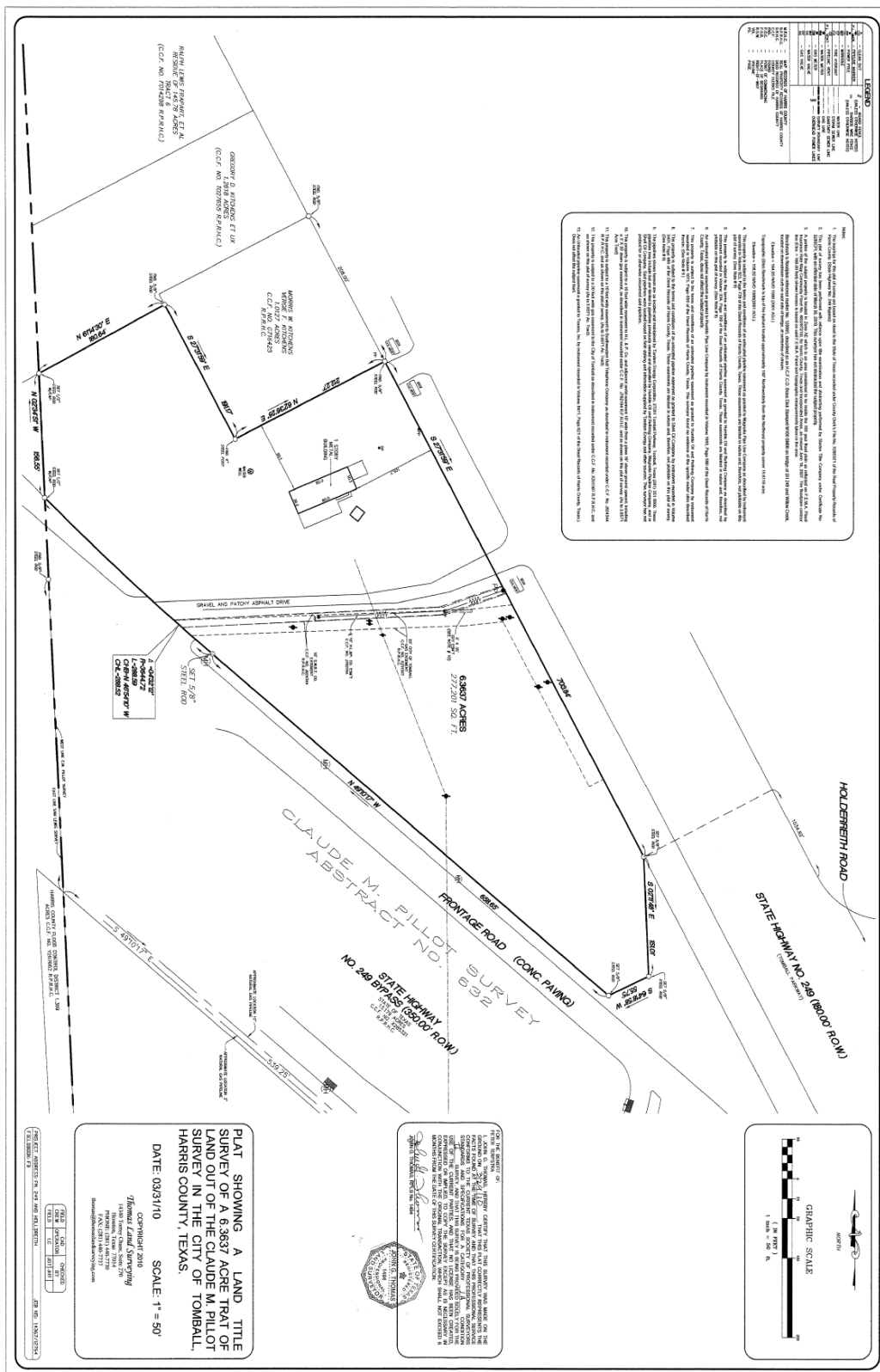


Exhibit “H”

Utility Block Maps

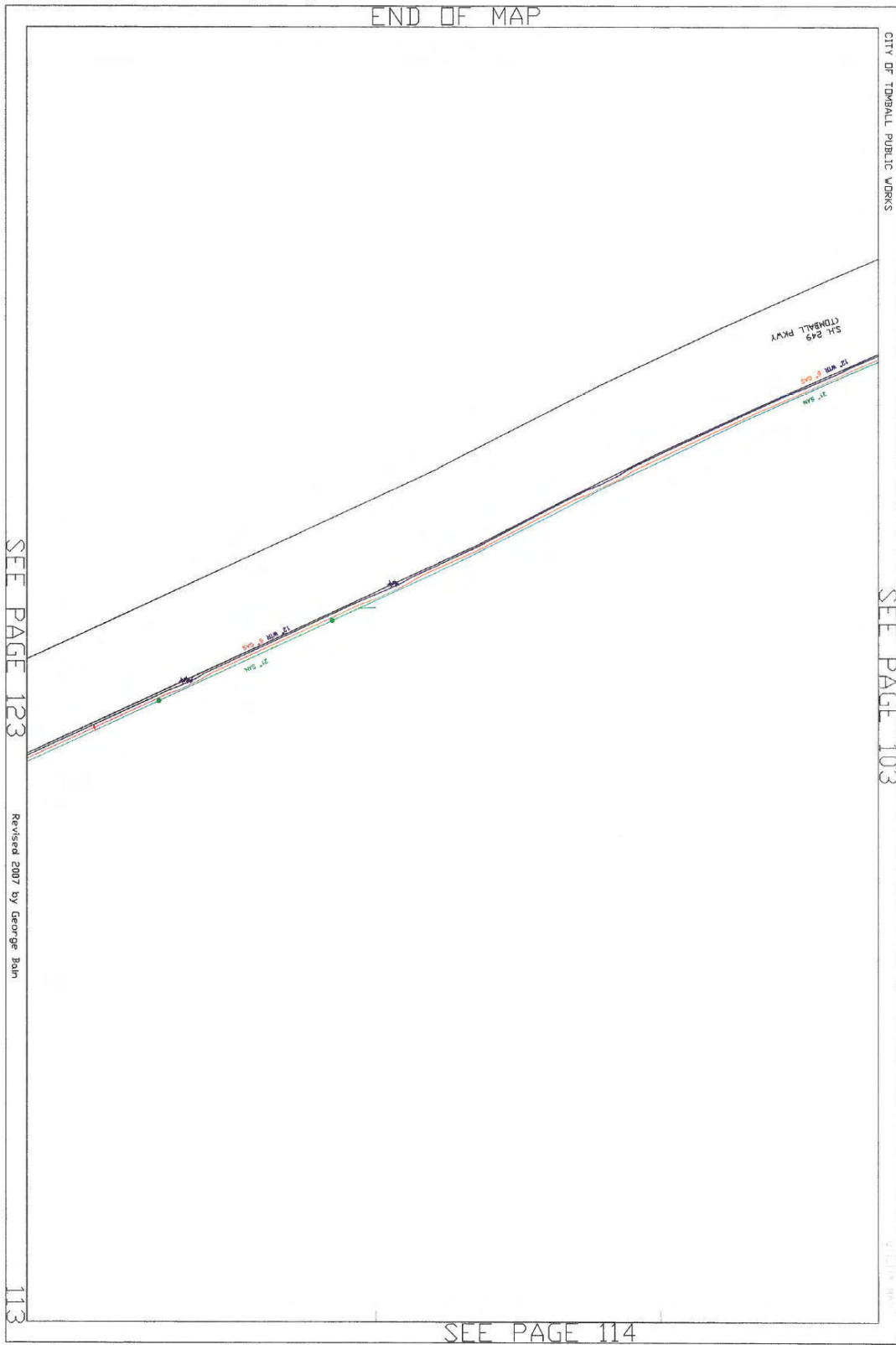
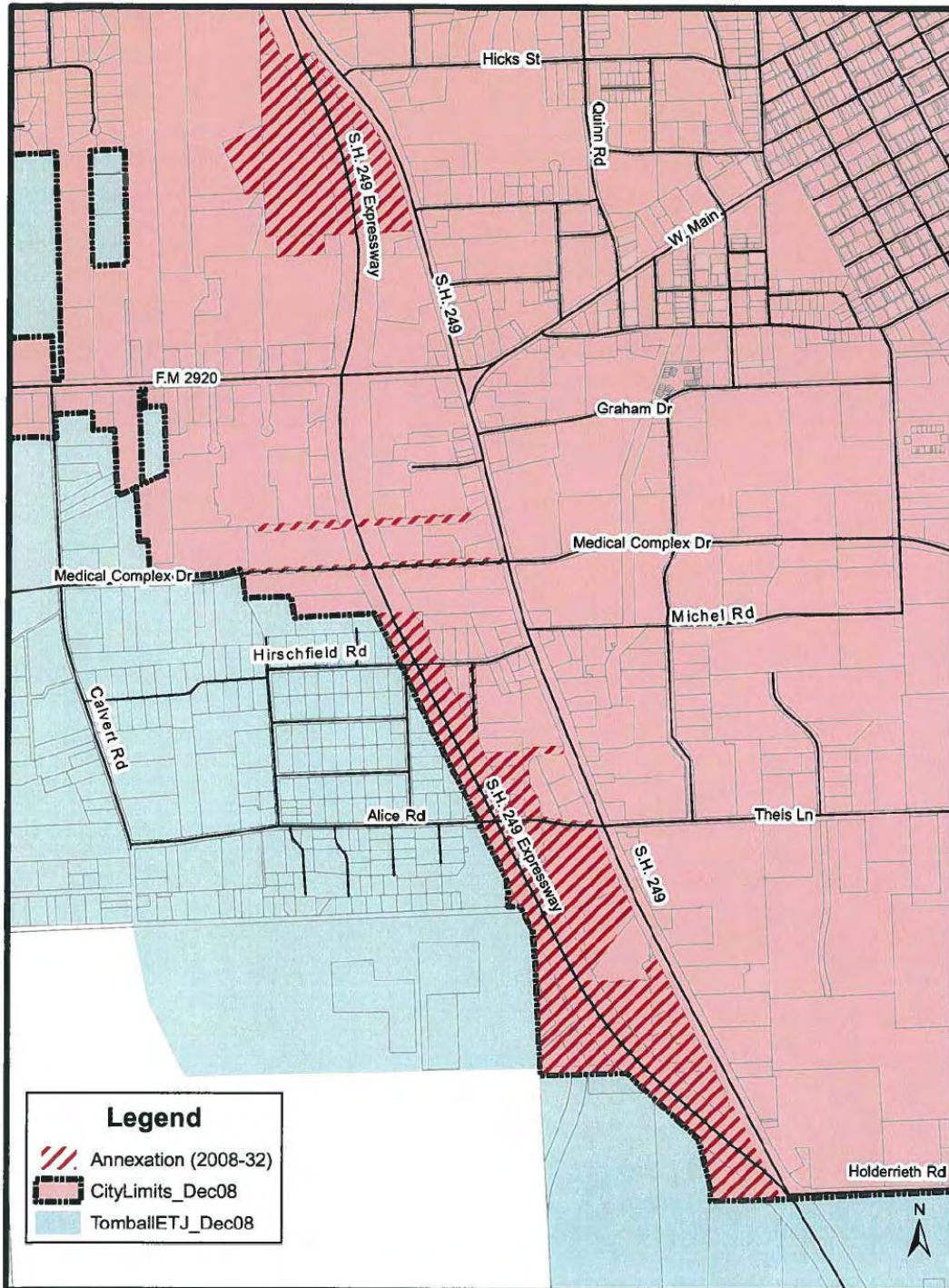


Exhibit "I"
Ordinance 2008-32 Annexation Map

City of Tomball Annexation (Ordinance #:2008-32)



Date Created: 2/26/09
Map Created By: City of Tomball
Engineering & Planning Dept.

**Exhibit “J”
Site Photos**



Figure 1: Southerly view of subject site.



Figure 2: Westerly view of subject site. Humble Road in center of photo.



Figure 3: Westerly view of subject site. Ham's Trucks Plus, Inc.



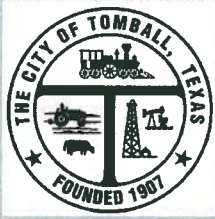
Figure 4: Northerly view up SH 249. Subject site on left. Various retail and commercial uses north of subject site.



Figure 5: Southerly view down SH 249. Subject site on right. Commercial and retail uses on left.



Figure 6: Harris County Flood Control District detention facility to the west of subject site.



Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:

City of Tomball
Department of Engineering & Planning
Attn: Kelly Violette
501 James Street
Tomball, TX 77375



Name: MC CAULEY LUMBER TOMBALL INC

(please print) Address: (27210 SH 249 TOMBALL)

30814 QUINN RD TOMBALL 77375

Signature: [Handwritten Signature]

Date: 5-3-10

X

I am **FOR** the requested rezoning as explained on the attached public notice for **Zoning Case P10-225**. (Please state reasons below)

I am **AGAINST** the requested rezoning as explained on the attached public notice for **Zoning Case P10-225**. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, May 10, 2010, 6:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, May 17, 2010, 7:00 PM

City Council Chambers of the City of Tomball, City Hall
401 Market Street, Tomball, Texas

COMMENTS:

You may also comment via email to kviolette@ci.tomball.tx.us. Please reference the Zoning Case number in the subject line.

For questions regarding this request please call 281-290-1491.

BROKER:
Pete Terpstra
Mark Terpstra

TEL: (281) 580-4855
FAX: (281) 580-3808

TERPSTRA & ASSOCIATES

COMMERCIAL and INVESTMENT REAL ESTATE
CENTRAL TEXAS RANCHES



May 4, 2010

City of Tomball
Department of Engineering & Planning
Attn: Kelly Violette
501 James Street
Tomball, Texas 77375

Re: Zoning Case P10-225
Peter S. Terpstra, Applicant

Dear Ms. Violette:

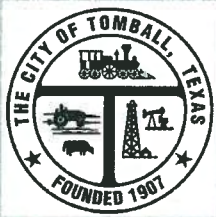
Enclosed herewith is the Public Comment Form which I have signed indicating that I am "for the requested rezoning" as referenced in the above zoning case.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Peter S. Terpstra

amp
Encl.



Public Comment Form

(Please type or use black ink)

All submitted forms will become a part of the public record.

Please return to:

City of Tomball

Department of Engineering & Planning

Attn: Kelly Violette

501 James Street

Tomball, TX 77375



Name:

Peter S. Terpstra

(please print)

Address:

14343-B Torrey Chase Blvd.

Houston Texas 77014

Signature:

Peter S. Terpstra

Date:

May 4, 2010

X

I am **FOR** the requested rezoning as explained on the attached public notice for **Zoning Case P10-225**. (Please state reasons below)

I am **AGAINST** the requested rezoning as explained on the attached public notice for **Zoning Case P10-225**. (Please state reasons below)

Date, Location & Time of **Planning & Zoning Commission** meeting:

Monday, May 10, 2010, 6:00 PM

City Council Chambers of the City of Tomball, City Hall

401 Market Street, Tomball, Texas

Date, Location & Time of **City Council** meeting:

Monday, May 17, 2010, 7:00 PM

City Council Chambers of the City of Tomball, City Hall

401 Market Street, Tomball, Texas

COMMENTS:

You may also comment via email to kviolette@ci.tomball.tx.us. Please reference the Zoning Case number in the subject line.

For questions regarding this request please call 281-290-1491.

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
MAY 10, 2010
&
CITY COUNCIL
MAY 17, 2010**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, May 10, 2010, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, May 17, 2010, at 7:00 P.M.** at Regular Meetings, in the City Council Chambers of the City of Tomball at City Hall, 401 Market Street, Tomball, Texas. On such dates, the Planning & Zoning Commission and City Council will consider the following:

ZONING CASE P10-225: Request by Pete Terpstra to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District.

ZONING CASE P10-226: Request by Pete Terpstra to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, southerly of Alice Road, from the AG-Agricultural District to the C-Commercial District.

Persons interested in these cases will be given an opportunity to be heard. Action by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Should the Planning & Zoning Commission vote to table a decision/recommendation on one or more of the above cases, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a decision/recommendation is forwarded to the City Council by the Planning and Zoning Commission. The application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Engineering & Planning Department office, located at 501 James Street, Tomball, TX 77375. **Contact City Planner** Kelly Violette, (281) 290-1491, kviolette@ci.tomball.tx.us

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 6th day of May 2010 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate

Brandy Pate

Senior Administrative Assistant

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



Notice of Public Hearing

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

CASE NUMBER: P10-225

APPLICANT: Pete Terpstra

LOCATION: Westerly side of State Highway 249, northerly of Holderrieth Road

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, from the AG-Agricultural District to the C-Commercial District.

* * *

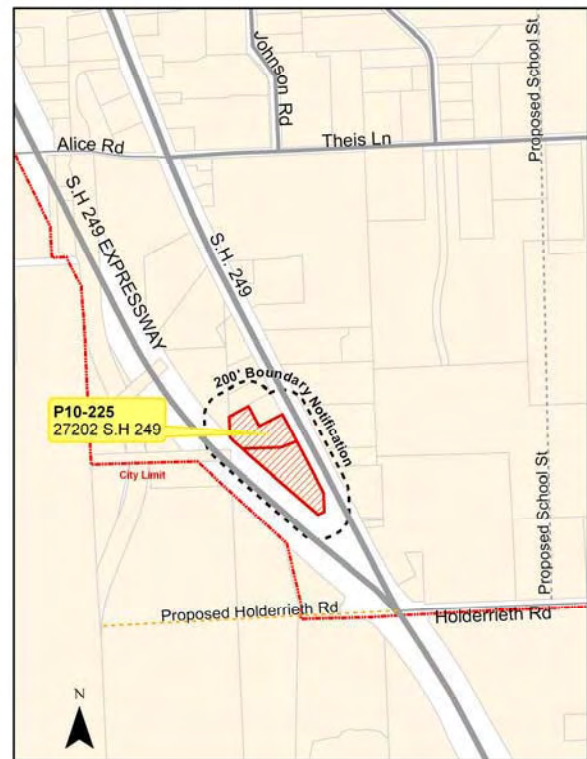
CONTACT PLANNER: Kelly Violette

PHONE: (281) 290-1491

E-MAIL: kviolette@ci.tomball.tx.us

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

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



**Planning and Zoning Commission
Public Hearing:
Monday, May 10, 2010, 6:00 PM**

**City Council Public Hearing:
*Monday, May 17, 2010, 7:00 PM**

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

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

Regular City Council

Agenda Item

Data Sheet

Meeting Date: June 7, 2010

Topic:

Adopt on Second Reading, Ordinance 2010-10, an Ordinance of the City Of Tomball, Texas, Amending its Comprehensive Zoning Ordinance by Changing the Zoning District Classification of approximately 5.3584 acres of land, Legally Described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, Within the City of Tomball, Harris County, Texas, From the AG-Agricultural District to the C-Commercial District; Said Property Being Generally Located on the westerly side of State Highway 249 Business, Southerly of Alice Road; Providing for the Amendment of the Official Zoning Map of the City; Providing for Severability; Providing for a Penalty of an amount not to exceed \$2,000 for each day of violation of any Provision Hereof, Making Findings of Fact; and Providing for other Related Matters.

Background:

On March 31, 2010, the City received a rezoning application from Pete Terpstra to rezone an approximately 5.3584 acre tract of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, generally located on the westerly side of State Highway 249 Business, southerly of Alice Road, from the AG-Agricultural District to the C-Commercial District.

The property is known as the Tomball Parkway Business Center and is currently developed with two brick-clad commercial buildings totaling approximately 26,122 square feet in size that primarily house transportation and auto service related uses.

The subject site was annexed into the City of Tomball on December 1, 2008 as part of the 172.812 acre SH 249 Bypass (Tomball Expressway) Road Right-of-Way annexation. Because the subject site was annexed after the passage of the Zoning Ordinance and because a concurrent rezoning request was not filed by the property owner, the subject site was given an initial zoning classification of AG-Agricultural District.

After reviewing the request, staff prepared a report to the Planning and Zoning Commission recommending approval based on the fact that the proposed zoning is consistent with the existing and intended uses in the area, is consistent with the Comprehensive Plan's Future Land Use Plan Map designation of Commercial, and will help support the commercial development pattern along the SH 249 Business corridor and future commercial development along the SH 249 Bypass (Tomball Expressway).

On May 10, 2010, the Planning and Zoning Commission, after conducting a public hearing on this request, voted unanimously to recommend approval. On May 17, 2010, Council adopted Ordinance No. 2010-10 on First Reading.

Origination:

Pete Terpstra, Property Owner

Recommendation:

In its formal recommendation to City Council, the Planning and Zoning Commission voted unanimously to approve Zoning Case P10-226, as recommended by staff, based on the following: (a) the proposed zoning of C-Commercial District will be compatible with the land uses in the vicinity; (b) the proposed zoning of C-Commercial District is compatible with the Tomball Comprehensive Plan; (c) the proposed zoning of C-

Commercial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area; and (d) there is sufficient utility capacity to service commercial uses on this site.

Funding:

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

Kelly Violette, City Planner

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

ATTACHMENTS:

- Ordinance No. 2010-10
- Staff Report P10-226
- Notice of Public Hearing
- Adjacent Property Owner Notification

ORDINANCE NO. 2010-10

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING ITS COMPREHENSIVE ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 5.3584 ACRES OF LAND, LEGALLY DESCRIBED AS TRACT 2 OUT OF THE SAM LEWIS SURVEY, ABSTRACT NUMBER 1704, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS, FROM THE AG-AGRICULTURAL DISTRICT TO THE C-COMMERCIAL DISTRICT; SAID PROPERTY BEING GENERALLY LOCATED ON THE WESTERLY SIDE OF STATE HIGHWAY 249 BUSINESS, SOUTHERLY OF ALICE ROAD; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS

* * * * *

Whereas, the owner(s) of 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, generally located on the westerly side of State Highway 249, southerly of Alice Road, in the City of Tomball, Harris County, Texas, (the "Property"), have requested that the Property be rezoned; and

Whereas, at least eight (8) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days written notice of that hearing to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to change the zoning for the Property from AG-Agricultural District to the C-Commercial District; and

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

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

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

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

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

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

Section 2. The zoning classification of 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas, (the "Property"), is hereby changed from AG-Agricultural District to the C-Commercial District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas-Ordinance 2008-01, ("Zoning District Map"), shall be revised and amended to show the designation of 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, generally located on the westerly side of State Highway 249, southerly of Alice Road, as C-Commercial District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, generally located on the westerly side of State Highway 249, southerly of Alice Road, to C-Commercial District as described above.

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

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

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

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF MAY 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF JUNE 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



Rezoning Staff Report

Planning and Zoning Commission Hearing Date: May 10, 2010

Rezoning Case: P10-226
Property Owner(s): Peter S. Terpstra
Applicant(s): Peter S. Terpstra
Legal Description: Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas
Location: 27503 Tomball Parkway (Generally located between SH 249 Bypass (Tomball Expressway) and SH 249 Business, southerly of Alice Road)
Area: 5.3584 acres
Present Zoning and Use: AG-Agricultural District / Commercial (Tomball Parkway Business Center)
Comp Plan Designation: Commercial
Proposed Zoning and Use: C-Commercial District / Office, office warehouse, retail, etc.

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

Adjacent Zoning & Land Uses:

North: AG-Agricultural / Manufactured Home Display and Sales
South: C-Commercial / Mini-Storage/Warehouses
East: C-Commercial / SH 249 Business and retail uses
West: ETJ (unzoned) / SH 249 Bypass (Tomball Expressway), vacant land, and energy distribution facility

BACKGROUND

The subject site is a 5.3584 acre tract legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas. The site is generally located on the westerly side of State Highway 249 Business, southerly of Alice Road and is bound on the west by the SH 249 Bypass (Tomball Expressway) (Exhibit "C"). The property is known as the Tomball Parkway Business Center and is currently developed with two brick-clad commercial buildings totaling approximately 26,122 square feet in size that primarily house transportation and auto service related uses (Fig. 1). The southerly two-thirds of the site is largely undeveloped, however a Purple Heart clothing donation trailer is situated near the SH

249 Business frontage (Fig. 2). Aerial photos indicate that this portion of the site was previously utilized as a sales/display location for portable and modular buildings; however the use it not presently operating on the site at this time.

The subject site was annexed into the City of Tomball on December 1, 2008 as part of the 172.812 acre SH 249 Bypass (Tomball Expressway) Road Right-of-Way annexation (Exhibit "I"). Because the subject site was annexed after the passage of the Zoning Ordinance and because a concurrent rezoning request was not filed by the property owner, the subject site was given a zoning classification of AG-Agricultural District. Section 6.1 of the Zoning Ordinance states, "For any period of time following official annexation by the City until a zoning action has been officially adopted to zone the land, the interim zoning of the land shall be considered to be Agricultural ('AG'), and all zoning and development regulations of the 'AG' zoning district shall be adhered to with respect to the development and use of the land."

On March 11, 2010, City staff met with a tenant of the Tomball Parkway Business Center, Mr. Ken Harvey, regarding a proposed ambulance service at the subject site. Earlier that day, Mr. Harvey had been issued a stop work order by the City after the City's Fire Marshal observed contractor's performing interior renovations to one of the lease spaces without City permits. During the March 11th meeting, Mr. Harvey was informed that the property was zoned AG-Agricultural District and his proposed use as an ambulance service was not permitted in that zoning district.

As a matter of information, Section 43.002 of the Texas Local Government Code provides for the continuation of land use in the manner in which the land was being used prior to annexation. However, the ambulance service was not operating at the location at the time of annexation and therefore constitutes a new use and not a continuation of the existing land uses typically associated with the Tomball Parkway Business Center.

On March 17, 2010, City staff met with the property owner's representatives to discuss the zoning issues associated with the proposed ambulance service. Staff informed the representatives that the property was annexed into the City of Tomball in December 2008, the property was given an initial zoning classification of AG-Agricultural, and that the ambulance service would not be permitted until the property was rezoned to a district permitting such a use. Additionally, staff explained that the property has a Future Land Use designation of "Commercial" under the City's adopted Comprehensive Plan and that a rezoning request to the C-Commercial District would be consistent with this designation and would permit an ambulance service land use. The property owner's representatives expressed intent to rezone the subject site in order to get the zoning classification in line with the site's existing and future uses. Additionally, the representatives indicated that the property owner also owned 6.3637 acres of land southerly of the subject site and that a rezoning of that property to the C-Commercial District would also be requested.

On March 31, 2010, the applicant submitted rezoning applications to rezone the subject site as well as Tracts 2B, 2Y-1, and 2Z (Zoning Case P10-225) to the south of the property from the AG-Agricultural District to the C-Commercial District.

ANALYSIS

According to the Tomball Zoning Ordinance, the C-Commercial District “is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Some light manufacturing may also be allowed with certain conditions. The uses envisioned for the district will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.”

The applicant is requesting the rezoning to bring the property’s zoning classification in line with the uses already established on the site and to permit office, office warehouse, retail, and other related uses in the future (Exhibit “D”).

The uses in the general vicinity of the subject site are predominately commercial and retail related (Exhibit “C”). To the north of the subject site is a manufactured home display and sales location operated by Luv Homes, to the south is a mini-storage/warehouse facility (Excel Storage), to the east of the site (across SH 249 Business) is the Wal-Mart shopping center, and to the west of the site is the SH 249 Expressway ROW, vacant land, and an energy distribution facility in portions of the unzoned extraterritorial jurisdiction (ETJ) (Exhibit “A”).

The proposed rezoning to the C-Commercial District is consistent with the “Commercial” Comprehensive Plan land use designation (Exhibit “B”). The Comprehensive Plan states that the Commercial land use designation “is where retail sales and service activities should occur. These uses include but are not limited to shopping centers, convenience stores, auto dealers, department stores, grocery and drug stores, entertainment facilities, food and beverage purveyors, salons, and small repair shops.” Additionally, the “Commercial Planning Guidelines” outlined in the Comprehensive Plan provide that commercial development is to be compatible with surrounding land uses and that consideration for the impacts of commercial development on the local and regional roadway network shall be determined.

Due to the fact that the requested rezoning is consistent with the Comprehensive Plan’s Future Land Use Plan Map, is consistent with the existing and intended uses in the area, and will help support the commercial development pattern along the SH 249 Business corridor and future commercial development along the SH 249 Bypass (Tomball Expressway), staff is supportive of the rezoning request.

ZONING CONSIDERATIONS

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

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

The uses in the general vicinity of the subject site are predominately commercial and retail related. To the north of the subject site is a manufactured home display and sales location operated by Luv Homes, to the south is a mini-storage/warehouse facility (Excel Storage), to the east of the site (across SH 249 Business) is the Wal-Mart shopping center, and to the west of the site is the SH 249 Expressway ROW, vacant land, and an energy distribution facility in portions of the unzoned extraterritorial jurisdiction (ETJ).

As such, the rezoning and permitted land uses in the C-Commercial District would be in keeping with the existing and intended land uses in the vicinity.

Any future development/redevelopment of this site will require compliance with the City's land use and development regulations.

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

There is currently sufficient water, sewer, and gas capacity in the area to service this site (Exhibit "H"). Future development/redevelopment of the site may require the extension of utilities to and through the site.

SH 249 Business and SH 249 Bypass (Tomball Expressway) are designated as "State Highways" on the adopted Major Thoroughfare Plan (MTP). The MTP states, "The main purpose of State Highways and FM Roadways is to move large volumes of traffic through urban areas and provide direct access to local freeways, while also providing controlled access to adjacent businesses." The right-of-way for State Highway 249 and State Highway 249 Expressway has been acquired in the vicinity and the impacts to these roadways due to the rezoning of the site are anticipated to be minimal.

The development of the site for commercial purposes would not impact the public school system as it would not increase attendance to the school system.

As a matter of information, any further future development of the site will likely result in increased impermeable area, thereby altering absorption rates and increasing surface runoff. Drainage improvements shall comply with the requirements of the City's Engineering and Public Works Departments.

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

There are a limited number of undeveloped properties zoned C-Commercial District in the immediate vicinity (Exhibit "C"). However, there is a large amount of vacant land available along Holderrieth Road and in the rest of the City of Tomball that is zoned C-Commercial District. Most of the undeveloped acreage along SH 249 and SH 249 Expressway south of Alice Road (within the City of Tomball) is zoned AG-Agricultural District because of the December 2008 annexation, however it is anticipated that these properties will be rezoned at some point in the future to accommodate future commercial growth.

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

The subject property is located in an area that is developed with extensive commercial uses. The surrounding commercial and retail uses have developed steadily for a number of years due to the high traffic volumes and visibility on SH 249.

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

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

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

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

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

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

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

The request is consistent with the Comprehensive Plan’s land use designation (Exhibit “B”). The Comprehensive Plan states that the Commercial land use “is where retail sales and service activities should occur. These uses include but are not limited to shopping centers, convenience stores, auto dealers, department stores, grocery and drug stores, entertainment facilities, food and beverage purveyors, salons, and small repair shops. Small professional office uses such as physicians, accountants, or therapy offices would be permitted.”

Additionally, the “Commercial Planning Guidelines” aim to ensure commercial development compatibility with surrounding land uses and provide proper transitions, buffers, or architectural reliefs to minimize negative impacts to adjacent uses.” The proposed rezoning of the property to the C-Commercial District is consistent with the Comprehensive Plan’s Future Land Use Plan Map, will help to ensure commercial land use consistency along the SH 249 corridor, and will enhance the area’s long-term economic viability.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal on April 30, 2010 and, as of the writing of this report, no public comment forms were received.

RECOMMENDATION

That the Planning and Zoning Commission recommend:

1. APPROVAL of Zoning Case P10-226 based on the following:
 - a. The proposed zoning of C-Commercial District will be compatible with the land uses in the vicinity.
 - b. The proposed zoning of C-Commercial District is compatible with the Tomball Comprehensive Plan.
 - c. The proposed zoning of C-Commercial District will not negatively impact public schools, streets, water supply, sanitary sewers, or other utilities to the area.
 - d. There is sufficient utility capacity to service commercial uses on this site.
2. APPROVAL of the staff report as the Planning and Zoning Commission's final recommendation to the City Council.

EXHIBITS

- A. Location/Zoning Map
- B. Comprehensive Plan Future Land Use Map
- C. Aerial Photo
- D. Rezoning Application
- E. Rezoning Request Letter
- F. Metes and Bounds
- G. Property Survey
- H. Utility Block Map
- I. Ordinance 2008-32 Annexation Map
- J. Site Photos

Exhibit "A"
Location/Zoning Map

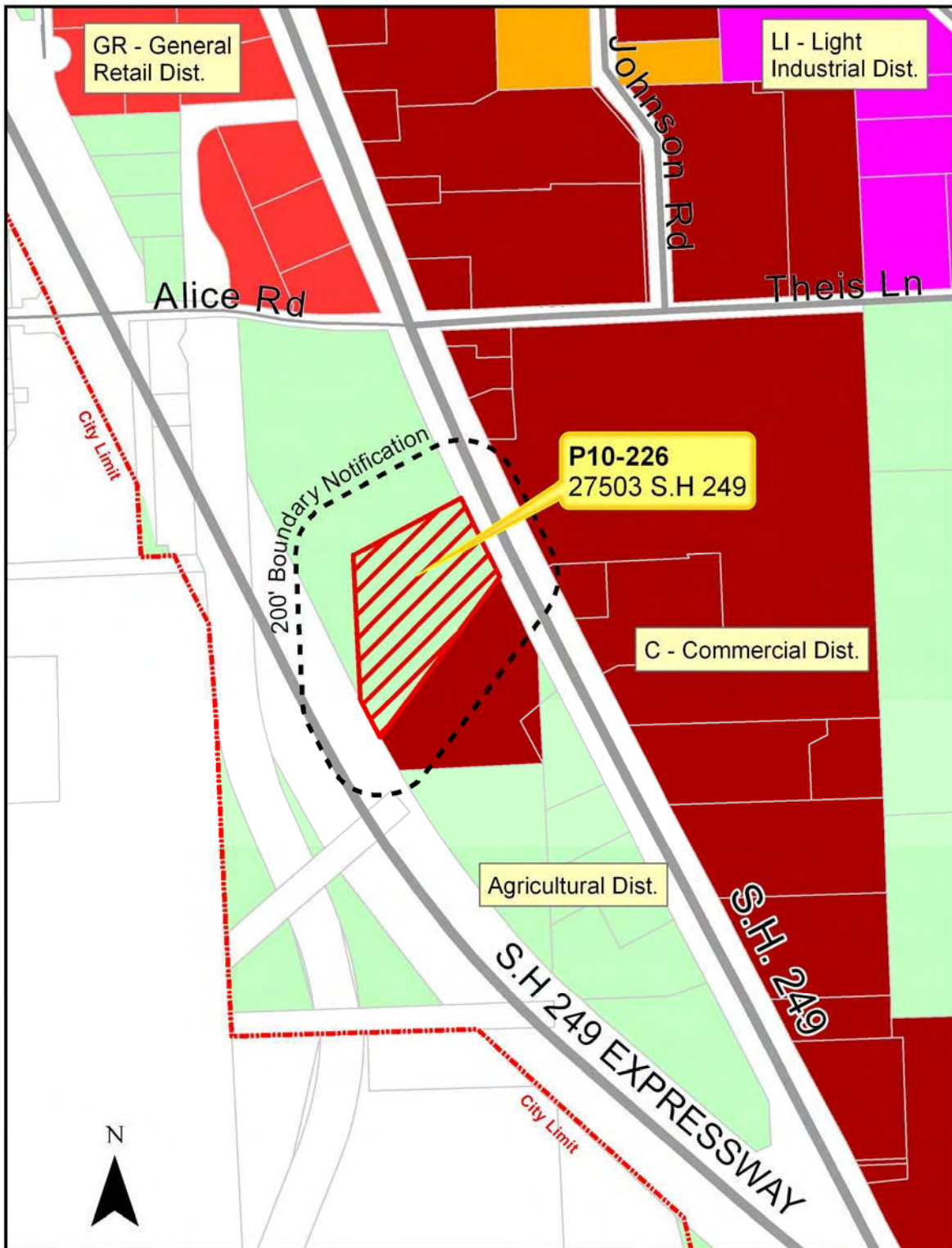


Exhibit "B"
Comprehensive Plan Future Land Use Map

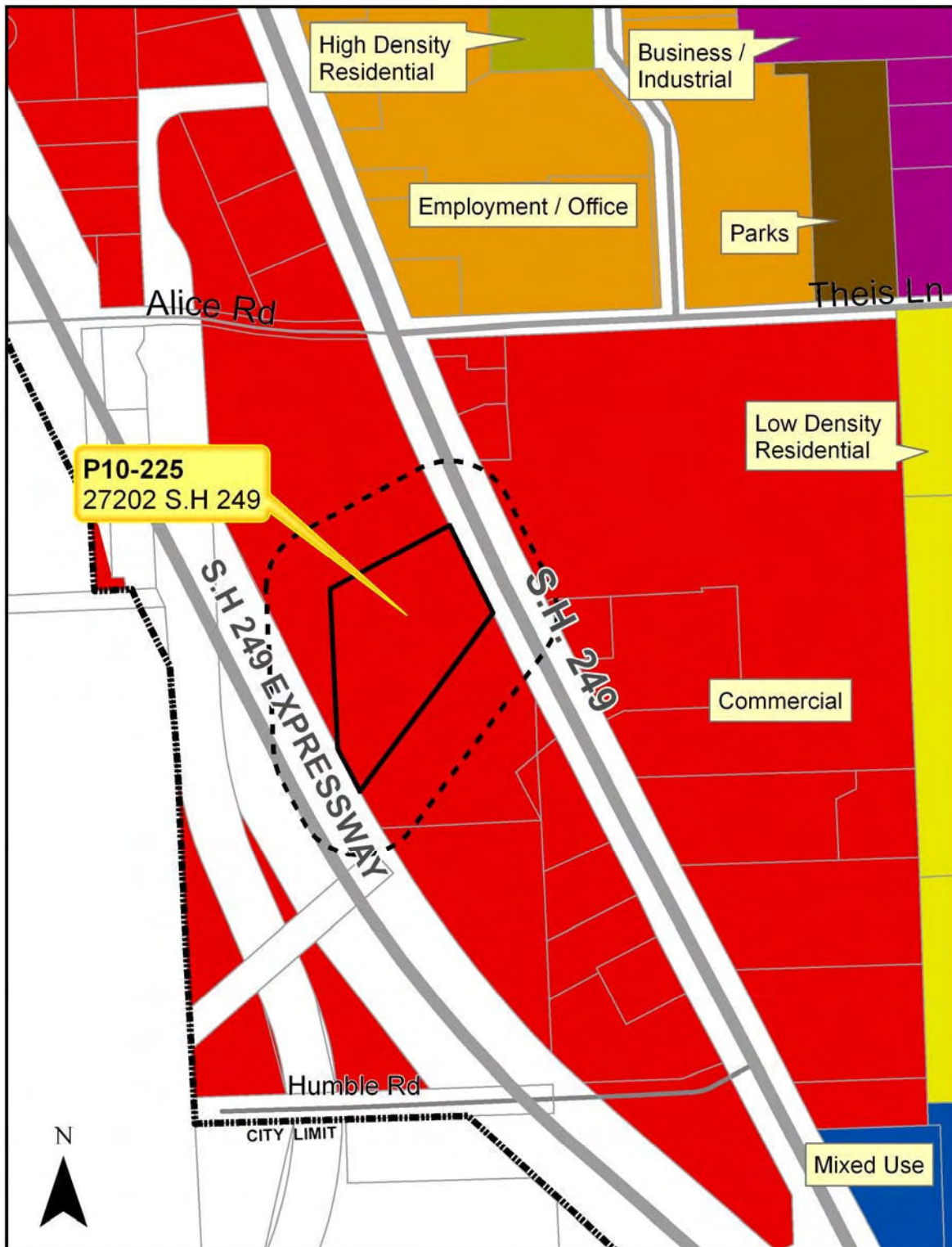


Exhibit "C"
Aerial Photo

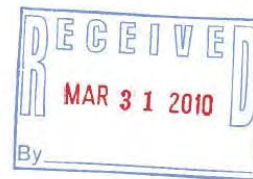


Exhibit "D"
Rezoning Application

Revised 1/20/09



APPLICATION FOR REZONING
Engineering & Planning Department



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

Applicant

Name: PETER S. TERPSTRA Title: _____
Mailing Address: 14343-B TORREY CHASE BLVD City: HOUSTON State: TX
Zip: 77014
Phone: (281) 580-4855 Fax: (281) 580-3808 Email: terprealestate@mind.spring.com

Owner

Name: PETE TERPSTRA, TRUSTEE Title: OWNER
Mailing Address: 14343-B TORREY CHASE BLVD City: HOUSTON State: TX
Zip: 77014
Phone: (281) 580-4855 Fax: (281) 580-3808 Email: terprealestate@mind.spring.com

Engineer/Surveyor (if applicable)

Name: JOHN G. THOMAS Title: THOMAS LAND SURVEYING PRESIDENT
Mailing Address: 14340 TORREY CHASE BLVD City: HOUSTON State: TX
Zip: 77014
Phone: (281) 440-7730 Fax: (281) 440-7737 Email: john@thomaslandsurveying.com

Description of Proposed Project: COMMERCIAL OFFICE, OFFICE WAREHOUSE, RETAIL, ETC.

Physical Location of Property: WEST SIDE OF TOMBOLL PARKWAY
635 FT SOUTH OF ALICE ROAD
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: 5.3584 ACRES OUT OF THE SAM LEWIS SURVEY, A-1704
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

Current Zoning District: AG

Current Use of Property: COMMERCIAL

Proposed Zoning District: COMMERCIAL

Proposed Use of Property: OFFICE, OFFICE WAREHOUSE, RETAIL, ETC.

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

www.ci.tomball.tx.us

HCAD Identification Number: 048-241-000-0002 Acreage: 5.3584 ACRES

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

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

X Peter P. Despotis 3/31/10
Signature of Applicant Date

X Peter P. Despotis 3/31/10
Signature of Owner Date

Exhibit "E"
Rezoning Request Letter

Thomas Land Surveying
Surveying · Planning · Project Management

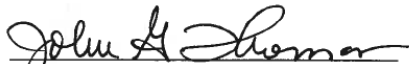
March 31, 2010

Reference: 5.3584 Acres
Sam Lewis Survey, A-1704
Tomball, Harris County, Texas

To Whom It May Concern:

We have requested a zoning change on the referenced tract from ag zoning to Commercial zoning as the tract is proposed to be and currently is used for commercial purposes.

Respectfully


John G. Thomas

14340 Torrey Chase Boulevard · Suite 270 · Houston, Texas 77014
(281) 440-7730 · Fax (281) 440-7737
www.thomaslandsurveying.com

Exhibit "F"
Metes and Bounds

Thomas Land Surveying

Surveying • Planning • Project Management

March 31, 2010
5.3584 Acres

Fieldnotes for a 5.3584 acre tract of land out of the Sam Lewis Survey, abstract No. 1704, in Harris County, Texas, being that same tract of land conveyed to Pete Terpstra, Trustee as described in instrument recorded under County Clerk's File NO. N357294 of the Real Property Records of Harris County, Texas, and being out of and a part of that certain 11.0045 acre tract of land (called 11.054 acres) described in deed recorded under Film Code no. 158-22-0813 of the said Real Property records, said 5.3584 acres being more particularly described by metes and bounds as follows:

BEGINNING at a ½ inch steel pipe found in the Southwesterly line of State Highway No. 249 (also known as Tomball Parkway), based on a 180.00 foot right-of-way, marking the most Northerly or Northeasterly corner of the said 11.0045 acre tract and the herein described tract, said point also being the Southeast corner of a residue tract of 145.78 acres of land conveyed to Ralph Lewis Frapart, et al and described as Tract 6 in instrument recorded under County Clerk's File No. F014298 of the said Real Property Records of;

Thence, in a Southeasterly direction with the Southwesterly line of State Highway No. 249 and with a curve to the left, having a radius of 11,549.16 feet and a central angle of 1°29'53" (chord bearing South 24°54'39" East, 301.96 feet), an arc distance of 301.96 feet to a ½ inch steel rod set for the Southeast corner of the herein described tract, said point being the most Northerly or Northeast corner of that certain 5.2445 acre tract of land conveyed to Iamcam Investors, LLC as described in deed recorded under County Clerk's File No. 20070114155 of the said Real Property Records;

Thence, South 36°49'00" West, 693.70 feet with the Northwesterly line of the said 5.2445 acre tract to a ½ inch steel rod with cap set in the Northeasterly line of State Highway No. 249 (By Pass) for the most Southerly or Southwesterly corner of the herein described tract, said point also being the Northwest corner of the said 5.2445 acre tract, said point also being in a non-tangent curve to the right having a radius of 3644.72 feet and a central angle of 02°07'47";

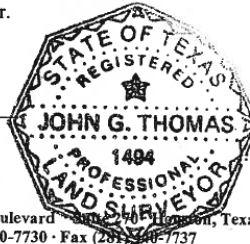
Thence, in a Northwesterly direction with the Northeasterly line of said State Highway 249 (By Pass) and with the said curve to the right having a radius of 3644.72 feet (chord bearing North 27°29'47" West, 135.47 feet), an arc distance of 135.48 feet to a 5/8 inch steel rod found at an angle point, said point, said point also being a Southerly corner of the residue of the aforesaid 145.78 acre tract, said point also being in the West line of the said 11.0045 acre tract;

Thence, North 02°27'59" West, 514.61 feet with the West line of the said 11.0045 acre tract and an Easterly line of the said residue tract to a ½ inch steel rod found marking the Northwest corner of the said 11.0045 acre tract and the herein described tract, said point being an inside ell corner to the right of the said residue tract;

Thence, North 62°25'33" East, 421.04 feet with the North line of the said 11.0045 acre tract and a Southerly line of the said residue tract to the POINT OF BEGINNING and containing 5.3584 acres or 233,411 square feet of land, more or less.

This description is based on the Land Title Survey and Plat (Job No. 11701 made under the direction of John G. Thomas, Registered Professional Land Surveyor.


John G. Thomas, R.P.L.S. No. 1494



14340 Torrey Chase Boulevard • Houston, Texas 77014
(281) 440-7730 • Fax (281) 440-7737
www.thomaslandsurveying.com

Exhibit "G" Property Survey

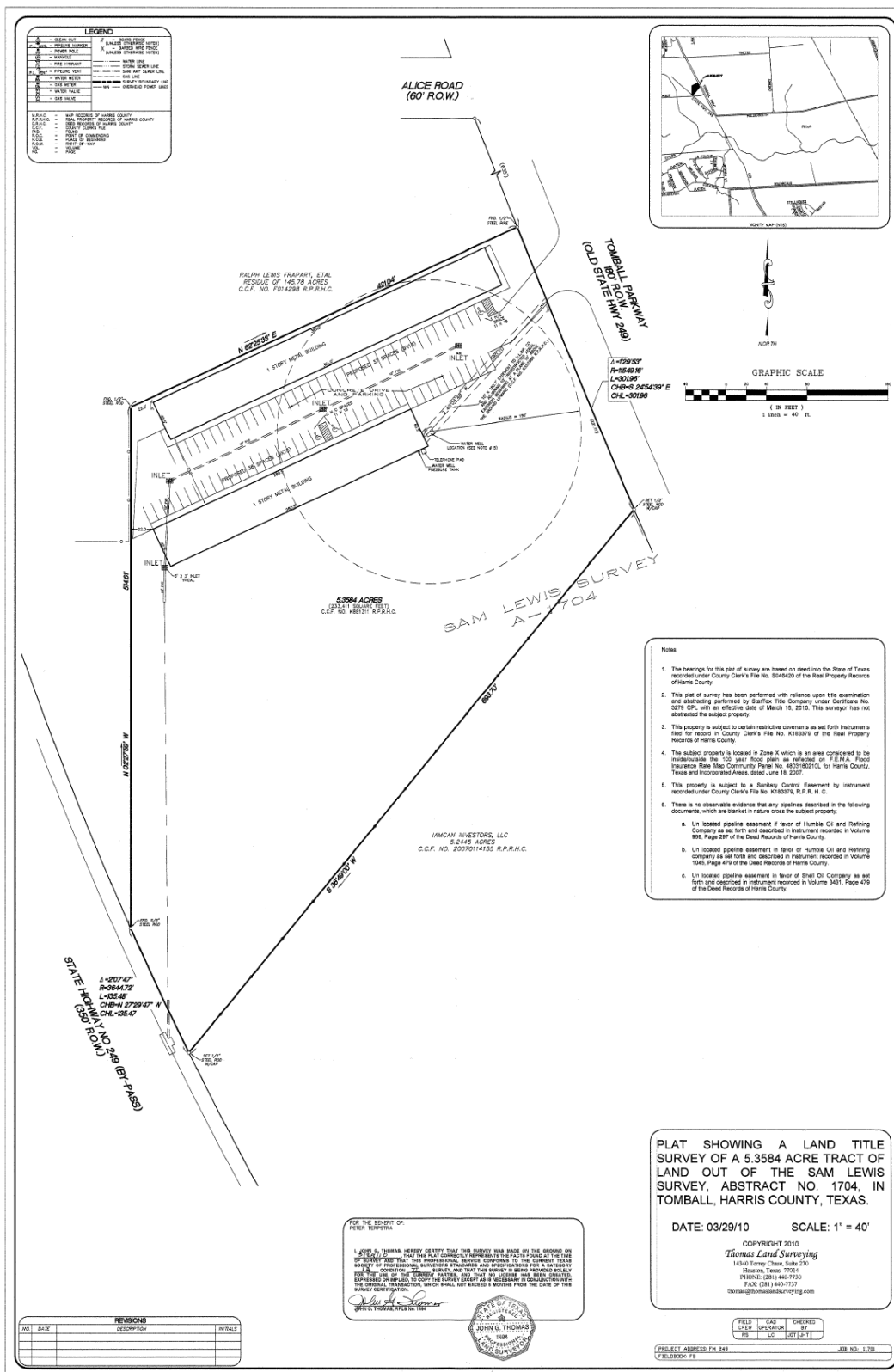


Exhibit "H"
Utility Block Map

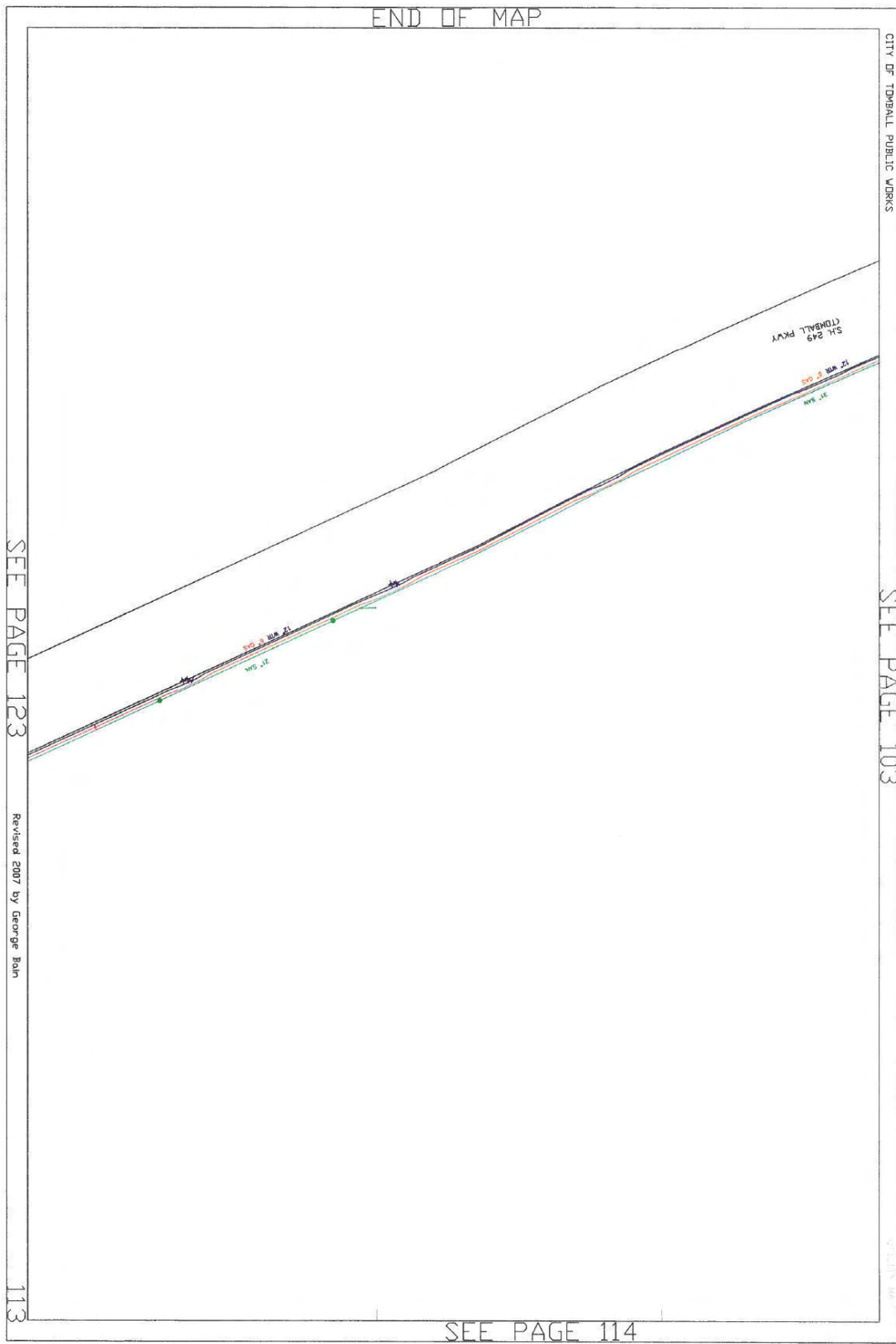
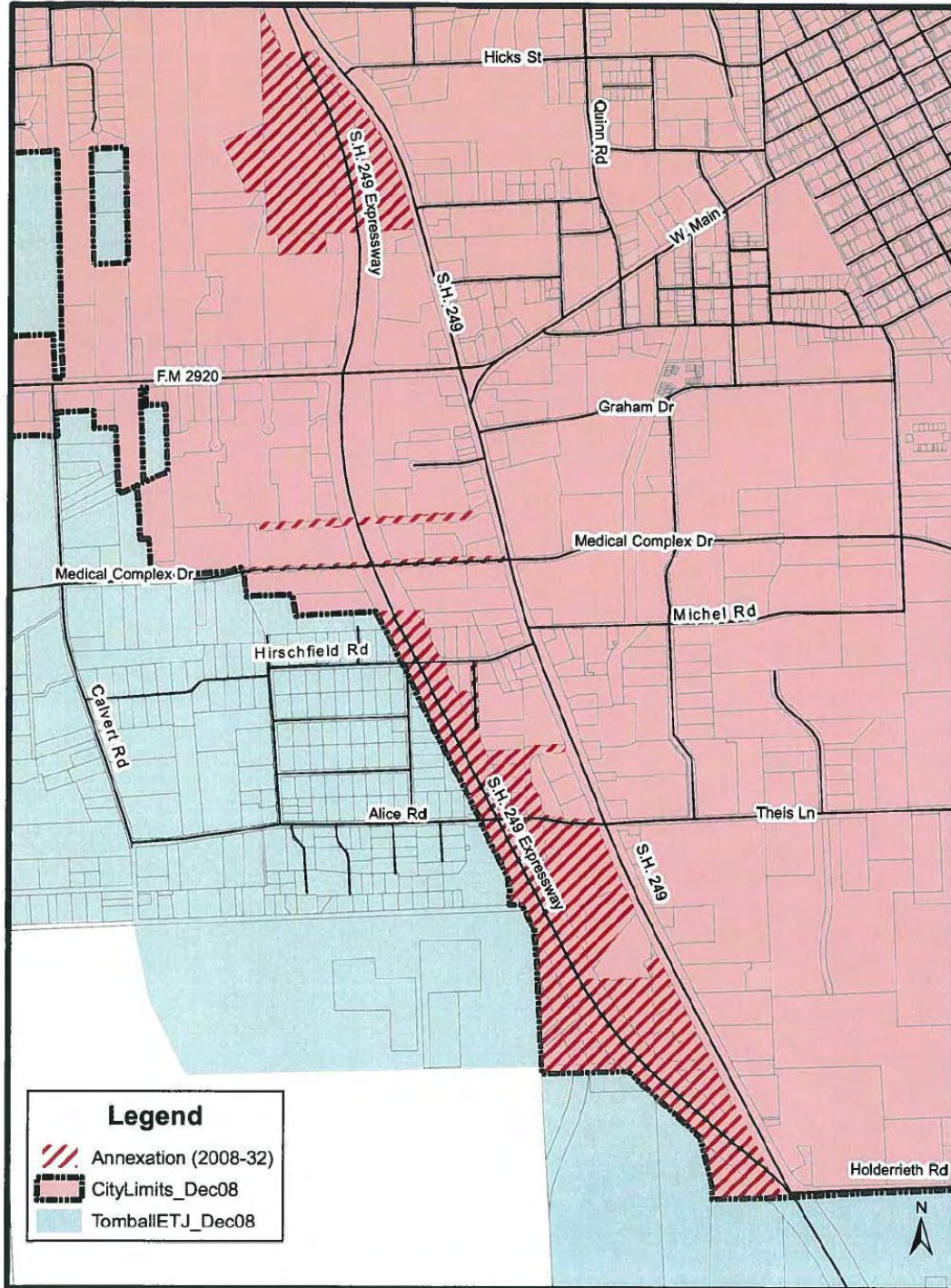


Exhibit "I"
Ordinance 2008-32 Annexation Map

City of Tomball Annexation (Ordinance #:2008-32)



**Exhibit “J”
Site Photos**



Figure 1: Northwesterly view of subject site.



Figure 2: Southerly view of subject site.



Figure 3: Northerly view up SH 249. Subject site to the left of photographer. Various retail and commercial uses on left and right.



Figure 4: Easterly view from subject site. SH 249 ROW and Wal-Mart.



Figure 5: Southerly view down SH 249. Subject site on right. Various retail and commercial uses on left and right.



Figure 6: Northeasterly view of largely undeveloped portion of SH 249 Expressway. Subject site in center left of photo.

**NOTICE OF PUBLIC HEARING
CITY OF TOMBALL
PLANNING & ZONING COMMISSION
MAY 10, 2010
&
CITY COUNCIL
MAY 17, 2010**



Notice is Hereby Given that a Public Hearing will be held by the Planning & Zoning Commission of the City of Tomball on **Monday, May 10, 2010, at 6:00 P.M.**, and by the City Council of the City of Tomball on **Monday, May 17, 2010, at 7:00 P.M.** at Regular Meetings, in the City Council Chambers of the City of Tomball at City Hall, 401 Market Street, Tomball, Texas. On such dates, the Planning & Zoning Commission and City Council will consider the following:

ZONING CASE P10-225: Request by Pete Terpstra to amend the City's Comprehensive Zoning Ordinance to rezone approximately 6.3637 acres of land, legally described as Tracts 2B, 2Y-1, and 2Z out of the C.N. Pillot Survey, Abstract Number 632, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, northerly of Holderrieth Road, from the AG-Agricultural District to the C-Commercial District.

ZONING CASE P10-226: Request by Pete Terpstra to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas, generally located on the westerly side of State Highway 249, southerly of Alice Road, from the AG-Agricultural District to the C-Commercial District.

Persons interested in these cases will be given an opportunity to be heard. Action by the Planning and Zoning Commission serves as a recommendation to the City Council and is not a final action on the request. Should the Planning & Zoning Commission vote to table a decision/recommendation on one or more of the above cases, the date and time of a future meeting will be specified and the City Council will not review the subject case until such a decision/recommendation is forwarded to the City Council by the Planning and Zoning Commission. The application is available for public inspection Monday through Friday, holidays excepted, between the hours of 8:00 a.m. and 5:00 p.m. in the Engineering & Planning Department office, located at 501 James Street, Tomball, TX 77375. **Contact City Planner** Kelly Violette, (281) 290-1491, kviolette@ci.tomball.tx.us

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 6th day of May 2010 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Brandy Pate

Brandy Pate

Senior Administrative Assistant

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



Notice of Public Hearing

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

CASE NUMBER: P10-226

APPLICANT: Pete Terpstra

LOCATION: Westerly side of State Highway 249, southerly of Alice Road

PROPOSAL: Request to amend the City's Comprehensive Zoning Ordinance to rezone approximately 5.3584 acres of land, legally described as Tract 2 out of the Sam Lewis Survey, Abstract Number 1704, within the City of Tomball, Harris County, Texas, from the AG-Agricultural District to the C-Commercial District.

* * *

CONTACT PLANNER: Kelly Violette

PHONE: (281) 290-1491

E-MAIL: kviolette@ci.tomball.tx.us

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

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



**Planning and Zoning Commission
Public Hearing:
Monday, May 10, 2010, 6:00 PM**

**City Council Public Hearing:
*Monday, May 17, 2010, 7:00 PM**

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

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

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve the Tomball Economic Development Corporation 2010-2011 Strategic Work Plan

Background:

As stated in the TEDC By-Laws: "The Board of Directors shall direct the Corporation staff to research, develop, prepare, and submit to the City Council for its approval an annual work plan which shall set out goals and objectives of the Corporation, including, but not limited to, short-term and long-term goals for the economic development of the City; goals and objectives for the utilization of funds to promote the expansion and development of a sound economic base for and within the City; and, any other similar goals and objectives deemed appropriate by the Board and the City Council. The Board shall review and update the plan each year prior to the submission of the annual budget as required by other provisions of these By-laws."

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval of the 2010-2011 Strategic Work Plan

Funding: Yes

Account Number:

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

Betty Reinbeck

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

ATTACHMENTS:

Cover Memo

2010-2011 Strategic Work Plan



TO: Board of Directors
Tomball Economic Development Corporation

FROM: Betty Reinbeck
Executive Director

MEETING DATE: May 25, 2010

SUBJECT: Strategic Work Plan 2010-2011

The three goals of the 2010-2011 Strategic Work Plan remain the same as those on previous years' plans.

Minor wording changes have been made in some of the objectives listed under each goal.

I added the Livable Centers Study to Objective III (G)

Minor revisions to the Plan have been approved over the last six years, and I think we have a Plan that works and that keeps us focused on our ultimate goal, which is the creation and retention of jobs in the City of Tomball.

I welcome any suggestions, revisions, or recommendations that you feel would make it even better.

**2010-2011
STRATEGIC WORK PLAN
GOALS AND OBJECTIVES**

Tomball Economic Development Corporation

I. PROMOTE BUSINESS RETENTION AND EXPANSION

- A. Maintain a structured business retention and expansion program
 - 1. Establish relationships with existing businesses and industries to determine present and future needs
 - 2. Follow up and maintain contact with existing businesses and industries
- B. Partner with the Lone Star College System on workforce training
- C. Encourage and assist, where possible, the development of additional tourist attractions in the historical downtown and depot area, as well as other appropriate locations in Tomball
- D. Maintain and promote the Business Improvement Grant Program which is designed to encourage owner reinvestment in existing businesses

II. ATTRACT NEW BUSINESS AND INDUSTRY

- A. Work with the private sector in developing industrial land, business parks, and ready-to-use facilities to achieve Tomball's focused growth
- B. Work with the City of Tomball to remove potential barriers to new or expanded industrial/business development: drainage improvements, oil & gas issues, infrastructure needs, and mobility issues
- C. Continue utilizing a marketing plan to promote a positive and pro-business image of Tomball
 - 1. Revise and update web site on regular and on-going basis
 - 2. Advertise in business publications and journals of targeted industries/markets
 - 3. Develop professional collateral materials for targeted market campaigns
- D. Maintain detailed property databases of available sites and buildings and utilize the Greater Houston Partnership's GIS system to locate additional pertinent information

- E. Continue to stress the importance of David Wayne Hooks Memorial Airport as an asset to business/industry
- F. Encourage the continued development of Tomball Marketplace as a regional shopping center
- G. Continue to more clearly define the incentive program
- H. Develop relationships and maintain contact with sources of new client referrals:
 - Real estate firms/brokers
 - Developers
 - Greater Tomball Area Chamber of Commerce
 - City of Tomball staff
 - Governor's Office of Economic Development
 - Greater Houston Partnership
 - CenterPoint Energy
 - Small Business Development Center
 - Tomball area business owners, managers, staff, and service organizations
 - North Harris Economic Development Alliance
 - North Houston Association

III. COORDINATE ECONOMIC DEVELOPMENT EFFORTS IN TOMBALL, THE REGION, AND THE STATE

- A. Maintain and promote coordination/liaison with Tomball Economic Development Corporation (TEDC) allies:
 - Congressman Michael McCaul's office
 - Governor's Office of Economic Development
 - Senator Dan Patrick's office
 - State Representative Allen Fletcher's office
 - Commissioner Jerry Eversole's office
 - Texas Economic Development Council
 - CenterPoint Energy
 - Greater Houston Partnership
 - Houston Regional Economic Development Alliance
 - North Harris Economic Development Alliance
 - Harris County Department of Economic Development
 - Greater Tomball Area Chamber of Commerce
 - North Houston Association
 - Northwest Houston Chamber of Commerce
 - Lone Star College System/Center for Training and Development
 - Lone Star College System/Small Business Development Center
 - Tomball Independent School District

- Tomball Regional Hospital
- Houston Technology Center
- The WorkSource
- Houston North Economic Forum
- Montgomery County Economic Forum

- B. Develop feedback mechanisms to "shareholders"
 - 1. Make presentations to area service organizations and groups
 - 2. Keep the TEDC Board of Directors and Ex-Officio members informed at all times
 - 3. Maintain reporting systems to the City Council as per the By-Laws
 - 4. Develop news articles for area periodicals
 - 5. Maintain membership in relevant economic development organizations and attend meetings
- C. Refer start-up businesses to the Small Business Development Center at Lone Star College System
- D. Prepare annual budget to include operations, marketing, capital improvements, and grant program
- E. Maintain public files of TEDC minutes, resolutions, reports, financials, contracts, agendas, and notices for approved projects and public hearings
- F. Administer incentive and infrastructure funding policies
- G. Work with the City of Tomball on implementation of its tax abatement policy, comprehensive plan, and livable centers study

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Receive the Tomball Economic Development Corporation 2009-2010 Annual Report

Background:

As stated in the TEDC By-Laws, any reports outlining the activities of the Corporation in carrying out the TEDC Strategic Work Plan shall be submitted in writing by the TEDC Board of Directors for review by the City Council.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

As per the TEDC By-Laws, this annual report is for review by the City Council. No action is required.

Funding: No

Funds will be transferred from Account: to Account:

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

Betty Reinbeck

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

ATTACHMENTS:

2009-2010 TEDC Annual Report



Tomball Economic Development Corporation Annual Report 2009-2010



ANNUAL REPORT

2009-2010
TOMBALL ECONOMIC DEVELOPMENT CORPORATION

The Board of Directors for this reporting year are as follows:

Mark Stoll – President
Steven Vaughan – Vice President
James Geer – Secretary
Gary Smith – Treasurer
Gretchen Fagan
David Quinn
Jerald Till

Staff members are Betty Reinbeck, Executive Director, and Tiffani McMinn, Economic Development Coordinator.

This year's annual report will chronicle the many accomplishments of the Tomball Economic Development Corporation (TEDC) and will highlight how the goals and objectives of the TEDC Strategic Work Plan were achieved.

The 2009-2010 STRATEGIC WORK PLAN of the TEDC focused on three (3) major goals:

- **PROMOTE BUSINESS RETENTION AND EXPANSION**
- **ATTRACT NEW BUSINESS AND INDUSTRY**
- **COORDINATE ECONOMIC DEVELOPMENT EFFORTS IN TOMBALL, THE REGION, AND THE STATE**

Each goal has specific objectives, and this report outlines the approach that was taken to ensure that the objectives were addressed on a regular and on-going basis throughout the year.

The 2009-2010 Strategic Work Plan has been the driving force behind all activities and efforts of the TEDC Board of Directors and staff members.

PROMOTE BUSINESS RETENTION AND EXPANSION

- The TEDC staff has worked with many of our businesses over the past year. They were contacted by on-site visits, meetings in the TEDC office, through phone calls, personal letters, and e-mail. Some of those contacted are: Crow Corporation; ChemValve; Ameresco

- Representatives of the TEDC, the Greater Tomball Area Chamber of Commerce (GTACC), and the City of Tomball continue to work together to establish positive, working relationships with many of our existing area businesses. We visit with local companies to introduce ourselves, to inquire as to whether they have concerns which we might help to address, to ask about possible plans to expand, and to offer workforce training opportunities through the Lone Star College System.
- The Executive Director has met with the Senior Vice Chancellor and Associate Vice Chancellor for Lone Star College-Workforce Development and will continue to work with them through their Corporate College program.
- In an effort to encourage and assist in the development of additional tourist attractions, the TEDC Board of Directors did partner with several organizations to fund the purchase of a second bronze statue for the Depot Area. The statue is a train conductor to celebrate our City's rich railroad history. The face of the conductor is Klaus Beck, the Mayor of Telgte, Tomball's Sister City.
- The TEDC Board of Directors has offered its support in helping to fund some of the Livable Center Study recommendations.
- The TEDC sponsored a Comprehensive Plan Brokers Breakfast and sponsored Dr. Barton Smith, a highly respected economist, at a GTACC First Friday luncheon.
- The TEDC Executive Director has had many meetings with the City of Tomball staff, GTACC staff and directors, business prospects, and developers to help find solutions to the issues that often are the barriers that limit or prohibit industrial/business development, primarily in the areas of mobility, drainage, and infrastructure.
- The TEDC has committed to fund a portion of Phase I of the Rudolph Road improvement project.
- TEDC Business Improvement Grant Program (BIGP)
 - Guidelines, Criteria, Fact Sheet, and Application have been created and posted on the TEDC website.
 - A presentation was made at Rotary to introduce the BIGP.
 - Several ads have been placed in the local papers as well as on the TEDC website and Facebook. (see attachment).
 - Staff has met with several businesses to discuss how the program works.
 - Three grants have been approved: Graco Awards, Clifford Parker Insurance, and Rick Friedrichs DDS.

ATTRACTING NEW BUSINESS AND INDUSTRY

- The TEDC staff has worked with many prospects during the year. Some have now entered into agreements with the TEDC while others are still in the due diligence stage.
- TEDC staff has continued to implement the Buxton Study, a retail economic development analysis for the Tomball trade area.
 - The “Top 20” retailers from the study were contacted either by letter or phone. Staff met with several leasing representatives at the ICSC Show in San Antonio in November and in Vegas in May. Vegas is the largest ICSC deal-making retail event where eighty percent (80%) of the deal-making is done.
 - A new marketing flyer for ICSC show in San Antonio was created. (See attached.)
 - Updates are made to the TEDC website on a regular and ongoing basis in order to better market for business opportunities.
 - Staff attended Buxton’s webinar “Using Incentives to Achieve Your Community’s Goal.
 - Staff continues to work with leasing representatives of Weingarten Realty, New Quest, Four Corners Shopping Center, and J. Beard in order to stay current on information relating to Tomball’s major retail sites.
 - Staff worked closely with Chas Stoker with Buxton to prepare for the ICSC show in San Antonio as well as the ICSC show in Vegas in May. Tomball will have its information available in the Buxton Booth.
 - Staff met with Brody Farris, Weingarten Realty, and Zach Armstrong, J. Beard Real Estate Company, to discuss prospects in Vegas.

The following projects have been approved and adopted by the TEDC during this reporting year:

Chestnut Business Park

Chestnut Street and Timkin Lane

Chestnut Business Park, which is under construction on sixteen (16) acres on Chestnut Street and Timkin Lane in Tomball, will consist of twelve (12) buildings when completed. An amount not to exceed \$325,000 was approved for assistance with the construction of the roadway in the business park, as well as other infrastructure costs.

Creacom, Inc.

2100 Hufsmith-Kohrville Road

Creacom, Inc. is currently located at 506 Northville in Houston and has been in business since 1999. The company’s proposed 9,375 square foot facility on Hufsmith-Kohrville is under construction, and plans are to relocate Creacom’s base of operations and all of its forty (40) employees to Tomball. This company installs highway, street, and bridge lighting and traffic signals.

WireTel Services, L.P.**1032 Lizzie Lane**

WireTel Services, L.P. has finished the build-out of its 8,750 square foot facility on Lizzie Lane and will be moving its operation once a certificate of occupancy has been obtained. WireTel has been in business since 1999, and they install cell phone towers. WireTel plans to relocate fifty (50) jobs and create twenty-five (25) new jobs in Tomball.

FabCorp, Inc.**27807 Red Fox Road**

FabCorp, Inc.'s facility in Tomball is located at 27807 Red Fox Road, which is in Tomball's extraterritorial jurisdiction (ETJ) and is approximately two blocks west of the southbound lanes of Tomball Expressway between Hirschfield Road and Alice Road. The company is willing to petition to be annexed into the City limits once it is eligible to do so. They are planning to relocate fifty-two (52) full-time employees to this location.

Klein Financial Services, L.P. and L. Klein & Company, P.C.**1427 Keefer Street**

(See company information in "Check Presentations" section of report.)

TEDC staff is currently working with additional prospects on their possible relocation to Tomball.

2009-2010 Check Presentations

Devasco International, Inc.

The Tomball Economic Development (TEDC) was honored to present a \$120,000 development grant to Devasco International. Devasco International is an industrial development corporation that specializes in customized welding solutions. Their new location is at 1626 S. Cherry Street.





Century Hydraulics, LLC

The Tomball Economic Development Corporation (TEDC) was honored to present a \$39,000 development grant to Century Hydraulics LLC. Century Hydraulics repairs various hydraulic components such as pumps, motors, cylinders and valves. Their new location is 1028 Lizzie Lane.

Persimmon Development Partners, LLC

The Tomball Economic Development Corporation (TEDC) was honored to present a \$40,000 development grant to Persimmon Development Partners. Persimmon Development constructed three (3), 8,400 square-foot office/warehouse buildings at 702 S. Persimmon Street in Tomball.



BL Technology, Inc.

The Tomball Economic Development Corporation (TEDC) was honored to present a \$105,000 development grant to BL Technology, Inc. BL Technology constructed a 16,000 square foot office and light manufacturing facility at 1730 Cherry Street in Tomball.

OM Hospitality, Inc. Hampton Inn & Suites

The Tomball Economic Development Corporation (TEDC) was honored to present a \$72,600 grant to OM Hospitality, Inc. OM Hospitality, Inc. developed a four-story, eighty rooms, Hampton Inn & Suites which is located on Medical Complex Drive in Tomball.



Klein Financial Services, L.P.

The Tomball Economic Development Corporation (TEDC) was honored to present a \$30,000 grant to Klein Financial Services, L.P. Klein Financial Services relocated its corporate headquarters and 10 employees to 1427 Keefer Street in Tomball.

● Marketing:

The TEDC Staff continues to implement and enhance the Marketing Plan that was prepared two years ago.

Materials: TEDC staff has created retail marketing flyers, TEDC newsletters, and several advertisements for magazines, newspapers and flyers. (See attachments.)

GTACC Magazine and Map: The new 2010 GTACC magazine and map are now available and in circulation.

Social Media: Updates are made to the TEDC website on a regular basis. TEDC staff has made it a priority to keep things fresh and new on the website so viewers always have the latest information that is available. To visit the TEDC website, please go to www.tomballtxedc.org. TEDC is also now available on Facebook.

Weekly, if not daily, interaction with Facebook fans is published as an educational and marketing tool to let people know what the TEDC has to offer.

- Marketing-related activities include:
 - continuing the TEDC's membership in the Texas One Program, which is the advertising arm of the State of Texas;
 - receiving excellent press coverage of TEDC activities and updates in area newspapers; and,
 - participating in the activities of other communities and organizations within the Tomball area and the state of Texas, including providing promotional items for the "goodie" bags of the GTACC and the North Houston Association golf tournaments.
- Property Database: TEDC subscribes to an Internet accessible real estate information service company, LoopNet, which sends regular notices of available properties in the City of Tomball.
- CenterPoint Energy provides quarterly updates on property listings in Tomball, and TEDC staff works with area brokers and developers for updated property information.
- When start-up businesses call for assistance, they are referred to the Small Business Development Center (SBDC) of the Lone Star College System, and the TEDC Executive Director meets with the Senior Consultant, Steve Hamilton, on a regular basis.
- TEDC staff has developed relationships and maintains contact with sources of new client referrals, including, but not limited to those listed in the Strategic Work Plan.
- TEDC, in partnership with CenterPoint Energy, hosted its 1st Annual Realtor Breakfast on June 11, 2009. Approximately forty (40) realtors, developers and business professionals were in attendance. The event was a huge success, and staff is making plans to host the 2nd Realtor Breakfast on June 15, 2010. Once again, CenterPoint Energy partnered with the TEDC and provided a \$4,500 grant which helps fund the Realtors Breakfast and other marketing promotional materials..

COORDINATE ECONOMIC DEVELOPMENT EFFORTS IN TOMBALL, THE REGION, AND THE STATE

- TEDC staff maintains and promotes the organization and coordination of economic development activities as the liaison with TEDC allies and continues to develop working relationships with many groups, including, but not limited to, those listed on the Strategic Work Plan.

- The Executive Director (ED) met with members of the Tomball Think Tank, a group of local leaders who were meeting once a quarter to update each other on what is happening in their organizations. Members included: Mayor Fagan, Jan Belcher, Dr. Susan Karr, John Neubauer, Lynn LeBouef, Bruce Hillegeist, and Betty Reinbeck.
- The ED attended a seminar on the Fundamentals of Economic Development Finance and the Economic Development Sales Tax Training seminar.
- The ED attends the City Council meetings and the City of Tomball's Development Review Committee meetings as needed.
- The ED has attended the following events: West Houston Association Tri-County Regional Issues Forum; North Houston Association Economic Symposium; State of the County Address; TxDOT Rail Visioning Workshop; Regional Mobility Forum; Livable Centers Forum; TIP Strategies Assessment of North Houston Economic Opportunities; North Houston Association Regional Aviation System Plan; Lone Star College-Tomball groundbreakings; and, some of the Northwest Chamber of Commerce luncheon meetings.
- The ED served on the Greater Houston Partnership's (GHP) Certified Property Program Committee, which is a new economic development program and tool of the GHP.
- Along with other members of the Houston Regional Economic Development Alliance, the Executive Director met with the entire staff of the Governor's Department of Economic Development in regard to all that the Houston region has to offer for prospects looking at possibly locating their companies in the State of Texas.
- The ED serves on the GTACC Business Seminar Committee, and she served on the Leadership North Houston Selection Committee.
- The TEDC Coordinator has attended the following seminars/meetings: Texas Economic Development Council Spring Conference; Tomball Business and Professional Women; Network Tomball; Leadership North Houston; Buxton Webinar on "Using Incentives to Achieve Your community's Goals; International Council of Shopping Centers (ICSC) Trade Shows; International Economic Development Council (IEDC) "Managing Economic Development Organizations"; and, Community Development Institute (CDI) year two.
- TEDC is a member of the following organizations, and staff attends meetings and/or training sessions when feasible and appropriate:
 - Texas Economic Development Council
 - International Economic Development Council
 - International Council of Shopping Centers
 - North Houston Association
 - North Houston Economic Development Alliance
 - Houston Regional Economic Development Alliance
 - Greater Houston Partnership

- Greater Tomball Area Chamber of Commerce (GTACC) – Ex-Officio Member, Board of Directors
 - GTACC Government and Legislative Affairs Committee
 - GTACC Mobility and Transportation Committee
 - Tomball Rotary Club
 - Tomball Business & Professional Women
- The TEDC Executive Director has made presentations to the Tomball Rotary Club, the City of Tomball Management Team monthly meeting, the North Houston Association Development Trends Committee, and to the Tomball ISD bond rating companies. She provides information on the TEDC’s goals and objectives, how the TEDC is organized, the state legislation that governs the types of projects that are eligible for funding, and the projects that the TEDC has adopted for funding assistance.
- The TEDC Board and the Tomball City Council have been kept informed of the activities of the TEDC throughout the year by means of regular reports and updates and through the attendance of the Executive Director at meetings of the TEDC Board and City Council. The Executive Director and the City Manager have held monthly meetings to maintain open communication between the City and the TEDC.
- The annual budget was prepared to include operations, marketing, capital improvements, and grant programs. It was approved in August 2009 by the TEDC Board of Directors and in September 2009 by the Tomball City Council.
- The public files of TEDC minutes, resolutions, reports, financials, contracts, agendas, and public hearings are being maintained at the Corporation’s registered/principal office at 401 W. Market Street, Tomball, Texas.
- TEDC staff visits with each prospect as to the incentive and infrastructure funding policies. The Executive Director also includes this information in her presentations, and it is available on the TEDC web site.
- The overlay district studies that were included in the approved fiscal year 2009-2010 TEDC budget were based on the future land use map that is a part of the City’s comprehensive plan. The Engineering and Planning Department of the City of Tomball will coordinate these studies in conjunction with TEDC staff. The overlay districts are the “Medical Center Overlay District Study” and the “Railroad Overlay District Study.”

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Adopt Resolution No. 2010-09-TEDC, a Resolution of the City Council of the City of Tomball, Texas, authorizing and approving the Tomball Economic Development Corporation's project to expend funds in accordance with an Economic Development Agreement by and between the Corporation and Glass Tex Enterprises LLC to promote and develop a new or expanded business enterprise; containing other provisions relating to the subject; and providing for severability; approving, as a project of the Tomball Economic Development Corporation (TEDC), an agreement with Glass Tex Enterprises LLC, to make direct incentives to, or expenditures for assistance with infrastructure costs related to the development and construction of a commercial building to be located at 200 East Main Street in Tomball, Texas. The estimated amount of expenditure for such Project is \$15,000.00

Background:

Every expenditure of TEDC sales tax revenue must first be approved as a "Project." And, since this proposed expenditure of funds does not involve the creation of "primary jobs," the governing body of the City of Tomball would have to adopt a Resolution authorizing the Project after giving the Resolution at least two separate readings in order for it to be approved.

At its regular board meeting on May 25, 2010, the TEDC Board of Directors did take formal action to approve, as a Project of the TEDC, the expenditure of funds in accordance with the Economic Development Agreement by and between the TEDC and Glass Tex Enterprises LLC.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Adoption of the Resolution, approving, as a Project of the TEDC, the attached agreement which states a grant amount not to exceed \$15,000.00

Funding: Yes

Account Number: Grant Funds Available

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

Betty Reinbeck, Executive Director-TEDC

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

ATTACHMENTS:

Resolution No. 2010-09-TEDC

Cover Memo

Request Letter

Economic Impact

Agreement

RESOLUTION NO. 2010-09-TEDC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AUTHORIZING AND APPROVING THE TOMBALL ECONOMIC DEVELOPMENT CORPORATION'S PROJECT TO EXPEND FUNDS IN ACCORDANCE WITH AN ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CORPORATION AND GLASS TEX ENTERPRISES LLC TO PROMOTE AND DEVELOP A NEW OR EXPANDED BUSINESS ENTERPRISE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

* * * * *

WHEREAS, the Tomball Economic Development Corporation (the "TEDC"), created pursuant to the Development Corporation Act, now Chapter 501 of the Texas Local Government Code, as amended (the "Act"), desires to adopt projects and provide incentives for economic development within the City; and

WHEREAS, the Board of Directors of the TEDC had adopted as a specific project the expenditure of the estimated amount of Fifteen Thousand Dollars (\$15,000) found by the Board to be required or suitable to promote a new business development by Glass Tex Enterprises LLC.; and

WHEREAS, pursuant to the Act, the TEDC may not undertake such project without the approval of Tomball City Council; and

WHEREAS, City Council finds and determines that such project promotes new or expanded business development and is in the best interests of the citizenry; now, therefore,

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

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

Section 2. The City Council hereby authorizes and approves the adoption, by the Board of Directors of the Tomball Economic Development Corporation, as a specific project for the economic development of the City, an expenditure of the estimated amount of Fifteen Thousand Dollars (\$15,000) to Glass Tex Enterprises LLC, in accordance with an economic development agreement by and between the TEDC and Glass Tex Enterprises LLC, to promote and develop a new or expanded business enterprise, to be located at 200 East Main Street in Tomball, Texas.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Resolution or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Resolution as a whole or any part or provision hereof other than the part

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

PASSED AND APPROVED on first reading this ____ day of _____, 2010.

PASSED, APPROVED, AND RESOLVED on second and final reading this ____ day of _____, 2010.

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary



TO: Board of Directors
Tomball Economic Development Corporation

FROM: Betty Reinbeck
Executive Director

MEETING DATE: May 25, 2010

SUBJECT: Glass Tex Enterprises LLC

Sandra Taylor, John Butz, and Reed Johnson of Glass Tex Enterprises LLC are planning to develop existing commercial property at 200 East Main Street in Tomball. Glass Tex will locate its sales and distribution of windows, doors and glass business in this new facility.

The project involves construction of a 1,500 square foot commercial building on the site, with mixed use, consisting of office and warehouse space with an estimated value of \$550,000.00.

They are asking for grant funding assistance with infrastructure costs that are necessary to complete this project. Details as to the infrastructure improvements are shown in Exhibit C of the proposed agreement between the Tomball Economic Development Corporation and GlassTex Enterprises LLC.

Although this project does not create primary jobs, it does promote the development and expansion of business enterprise, which is considered a permissible project as outlined in the Handbook on Economic Development Laws for Texas Cities. If this project is approved, it will go to the Tomball City Council for final approval by resolution at two separate readings.

An economic impact model form is included with the agreement to show the five (5) year impact of this firm on Tomball's economy.

STAFF RECOMMENDATION:

Staff recommends approval, as a Project of the TEDC, the attached agreement which states a grant amount not to exceed \$15,000.00.

SANDRA TAYLOR

1509 Waverly Street
Houston, Texas 77008
Phone (713) 875-5665

May 14, 2010

Betty Reinbeck
Executive Director
Tomball Economic Development Corp.

Mrs. Reinbeck,

The following is the updated information for our TEDC grant application. Please contact Reed Johnson if you need additional information, or have any questions.

Thank you,
Sandra Taylor

Revised application information

* Intent of business	Develop existing commercial property
* Name of business	Glass Tex Enterprises LLC
* Contact information for principals	John Butz - 203 Southmore St. Tomball, TX 77375 Tel 832 472-0068 Reed Johnson - 203 Southmore St. Tomball, TX 77375 Tel 832 472-0067 Sandra Taylor - 1509 Waverly St. Houston, TX 77008 Tel 713 875-5665
* Contact person	Reed Johnson - Tel 832 472-0067 Fax 281 255-3781 Email reed123@gmail.com
* Description of business	Sales & distribution of Windows, Doors & Glass
* NAICS Codes	238150, 236118
* Business location	200 East Main St. Tomball, Tx 77375
* Size of property	7000 Square feet
* Value of property	\$175,000.00
* Deed to property	To be provided
* Value of capital improvements	\$550,000.00
* Type of construction	New construction
* Square ft. of building	1500
* Project start date	7-1-10
* Project completion date	7-1-11
* Construction plans	To be provided
* New jobs created	20
* Average wage of jobs	\$18.00/hr
* Estimated Sales tax generated	\$136,000.00

GLASS TEX ENTERPRISES LLC
TOMBALL ECONOMIC DEVELOPMENT CORPORATION
CITY OF TOMBALL ECONOMIC IMPACT MODEL

Average Annual Wage Assessment:

<u>Number of Employees</u>	<u>Average Hourly Wage</u>	<u>Average Weekly Wages</u>	<u>Total Annual Wages (52 wks.per Yr.)</u>
Existing: 0			
Prospective: 20	18.00		
TOTAL: 20	18.00	14,400	748,800
Federal Income and FICA Taxes at 28% deducted			209,664
Fixed payments for rent, insurance, etc. at 25%			187,200
Net Disposable Annual Income			351,936

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	3,744
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	13,104

Annual Sales Tax Impact:

<u>Value of Retail Sales</u>	<u>Sales Tax</u>	
136,000	2.00%	2,720

Estimated Property Tax Impact:

<u>Value of Property and Improvements</u>	<u>Tomball Tax Rate (per \$100)</u>	
725,000	0.25146	1,823
Annual Economic Impact of Manufacturing and Maintenance Facility		17,647
Economic Impact over a Five Year Period		88,235

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 **Glass Tex Enterprises LLC** (the “Company”), 203 Southmore Street, Tomball, TX 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 proposes to develop a 0.160697-acre (7000 square feet) tract of land within the City, located at 200 East Main Street, 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 a 1500 square foot commercial building (the “Improvements”) on the site, with mixed use, consisting of office and warehouse space, and 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 Fifteen Thousand Dollars (\$15,000.00), or an amount equal to actual construction costs if less than the sum stated

above, to assist in the construction of infrastructure necessary to promote and develop new business enterprises on the Property. The infrastructure found by the Board of Directors of TEDC to be required to develop the Property are certain drainage facilities and related improvements, site improvements, water, sewer, and electric utilities to the exterior of the building (the "Infrastructure Improvements"), identified and described in Exhibit "C," attached hereto and made a part hereof; and

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

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 and maintain on the Property a 1500 square-foot office/warehouse building (the "Improvements") identified and described in Exhibit "B," attached hereto and made a part hereof. In conjunction with the development of the Property, the Company further agrees to construct the Improvements contemplated by this Agreement, in accordance with the requirements of the ordinances of the City and the plans and specifications approved by the City. The Company further represents and agrees that it will certify the costs of the construction of such Infrastructure Improvements to the TEDC prior to construction.

2.

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 eighteen (18) months from 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 covenants and agrees that the Improvements described in Paragraph 1 hereof will be occupied and that the office and warehouse facilities will be maintained on the Property 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 Fifteen Thousand Dollars (\$15,000.00), or an amount equal to actual construction costs if less than the sum stated above. The TEDC agrees to reimburse the Company for such amount within thirty (30) days of receipt of a letter from the Company requesting such payment and including: (a) certification of the costs of constructing the Infrastructure Improvements; (b) a copy of the

City's occupancy permit for the Improvements to the Property; (c) verification from the City acknowledging that all necessary plats, permits, plans, and specifications have been received, reviewed, and approved; (d) certification that the Infrastructure 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 Infrastructure Improvements have been paid and any and all liens and claims regarding such work have been released.

6.

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 one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company, or any owner or lessee of the Improvements, 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 one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) 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. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default.

7.

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, lessees, affiliates, and subsidiaries, and shall remain in force whether the Company sells, leases, 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.

8.

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:

Glass Tex Enterprises
203 Southmore Street
Tomball, Texas 77375
Attn: John Butz, Managing Partner

9.

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.

10.

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.

11.

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.

12.

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.

13.

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 _____ 2010 (the “Effective Date”).

GLASS TEX ENTERPRISES

By: _____
Name: John Butz
Title: Managing Partner

ATTEST:

By: _____
Name: _____
Title: _____

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

By: _____
Name: _____
Title: President, Board of Directors

ATTEST:

By: _____
Name: _____
Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2010, by John Butz, Managing Partner of Glass Tex Enterprises, 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 _____
2010, by _____, 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 Eight (8), in Block Sixty-Six (66), of TOMBALL, a subdivision situated in Harris County, Texas, according to the map or plat thereof, recorded in Volume 4, Page 25 of the Deed Records of Harris County, Texas

Exhibit B

Description of Improvements

Construction of a 1500 square foot commercial building on the site, with mixed use, consisting of office and warehouse space

DRAFT

Exhibit C

Description of Infrastructure Improvements

- Site work and improvements
 - Earth work
 - Storm Drainage
 - Site Paving and Approach
 - Water, sewer, electric utility lines on exterior of building

Regular City Council

Agenda Item

Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve, as a Project of the Tomball Economic Development Corporation (TEDC), an agreement with Jamison Products, L.P., 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 promotion of new or expanded business development, to wit: Jamison Products, L.P. corporate headquarters relocation to 27760 Commercial Park Drive within the City of Tomball. The estimated amount of expenditure for such Project is \$36,000.00

Background:

All expenditures of Tomball EDC sales tax revenue must first be approved as a "Project". At its regular meeting on May 25, 2010, the Tomball EDC Board of Directors did take formal action to approve, as a Project of the Tomball EDC, an agreement with Jamison Products, L.P.

The City Council of Tomball has final approval authority over all projects and agreements of the Tomball EDC.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval, as a Project of the Tomball EDC, the attached Economic Development Agreement, stating a grant amount not to exceed \$36,000.00

Funding: Yes

Account Number: Grant Funds Available

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

Betty Reinbeck, Executive Director-TEDC

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

ATTACHMENTS:

Cover Memo

Request Letter

Economic Impact

Agreement



TO: Board of Directors
Tomball Economic Development Corporation

FROM: Betty Reinbeck
Executive Director

MEETING DATE: May 25, 2010

SUBJECT: Jamison Products, L.P.

David Kelly, former City of Tomball engineer, contacted me regarding a client of his, Jamison Products, L.P., that was looking at a location in Tomball for the possible relocation of his business operations.

I talked with Tim Randall, president and owner of Jamison Products, and arranged to meet with him at his current location at 6417 Cunningham Road in Houston. We discussed his business and his plans to expand and how the Tomball Economic Development Corporation (TEDC) might be able to assist his company with some of his relocation costs if he were to move to Tomball.

Jamison Products was started in 2000 as a distributor of manufactured products and designer of fabricated pipeline products for the oil & gas pipeline industry.

Mr. Randall is now in the process of purchasing the building and property at 27760 Commercial Park Road in Tomball. He will relocate six (6) employees and create four-six (4-6) new jobs in Tomball; these are primary jobs. He hopes to close on the purchase in early June 2010 and then start construction of the improvements immediately and hopes to be moved in by September 2010.

He plans to increase the size of the warehouse and offices to add 4,200 square feet to the existing 5,400 square foot building for a total of 9,600 square feet.

An economic impact model form is included with the agreement to show the five (5) year impact of this firm on Tomball's economy.

Staff recommends approval, as a Project of the TEDC, the attached agreement stating a grant amount not to exceed \$36,000.00.



Jamison Products, L.P. P.O. Box 41896, Houston, TX 77241-1896 Tel: 713-466-6951 Fax: 713-466-5051

April 29th, 2010

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

For the attention of: Betty Reinbeck

Dear Betty,

I am writing to kindly request your consideration of funding assistance for our planned re-location from Houston to Tomball.

My name is Tim Randall, I am the founder, president and whole owner of Jamison Products LP. The company was started in 2000 as a distributor of manufactured products and designer of fabricated pipeline products for the oil & gas pipeline industry. We have steadily grown over 10 years and hope to accelerate our growth after we expand into the new facility.

The NAICS codes for our products are: 333999, 332420

We are intending to purchase a metal building located at 27760 Commercial Park Rd, Tomball. The lot is 0.913 acres and the existing building is 22' high, 5400 square feet with 710 sq ft of offices. We intend to increase the size of the warehouse and offices after closing on the property to 9600 sq ft total building size, and improve the façade parking, landscaping etc.

The contract price for the property before inspections/repairs, is \$362,000. We are budgeting for costs of improvements of approx \$200,000. We will have an initial inventory of finished products of approx \$50,000.

We hope to close on the purchase of the building in early June 2010. We will then start construction of the improvements immediately and hope to be moved in by September 2010.

We will have 6 employees moving from our existing location. With the extra office and warehouse space, we expect to staff up fairly quickly to 10-12 employees. Most of these will be sales staff, average wage will be approx \$50,000.

My contact details are as follows:

Tim Randall,
Manager of General Partner, Jamison Holdings, L.L.C.
Jamison Products, L.P.
6417 Cunningham Rd.
Houston, TX 77041
Tel: 713-466-6951
Fax: 713-466-5051
Cell: 713-851-0430
email: trandall@jamisonproducts.com
Website: www.jamisonproducts.com

Please let me know if you need any more information.

Thank you in advance for your kind consideration of our expansion in Tomball.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Tim Randall", with a stylized, cursive script.

Tim Randall.

JAMISON PRODUCTS, L.P.
TOMBALL ECONOMIC DEVELOPMENT CORPORATION
CITY OF TOMBALL ECONOMIC IMPACT MODEL

Average Annual Wage Assessment:

<u>Number of Employees</u>	<u>Average Hourly Wage</u>	<u>Average Weekly Wages</u>	<u>Total Annual Wages (52 wks.per Yr.)</u>
Existing: 6			
Prospective: 6			
TOTAL: 12	24.00	11,520	599,040
Federal Income and FICA Taxes at 28% deducted			167,731
Fixed payments for rent, insurance, etc. at 25%			149,760
Net Disposable Annual Income			281,549

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	2,995
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	10,483

Annual Sales Tax Impact:

<u>Value of Retail Sales</u>	<u>Sales Tax</u>	
300,000	2.00%	6,000

Estimated Property Tax Impact:

<u>Value of Property and Improvements</u>	<u>Tomball Tax Rate (per \$100)</u>	
612,000	0.25146	1,539
Annual Economic Impact of Manufacturing and Maintenance Facility		18,022
Economic Impact over a Five Year Period		90,111

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 **Jamison Products, L.P.** (the “Company”), 6417 Cunningham Road, Houston, Texas 77041.

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 is purchasing a building on a 0.913 acre tract of land within the City, located at 27760 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, currently located at 6417 Cunningham Road in Houston, Texas, proposes to relocate its corporate headquarters to the Property, and as part of the process, plans to expend funds to make capital improvements to an existing 5,400 square foot facility (the “Improvements”), more particularly described in Exhibit “B” attached hereto and made a part hereof; and

WHEREAS, the Company also proposes to relocate six (6) full-time employees to Tomball and create six (6) new full-time jobs on the Property in conjunction with the relocation and upgrading of its business operations to the Property; and

WHEREAS, the TEDC agrees to provide to the Company the sum of Thirty-Six Thousand Dollars (\$36,000.00) to assist in the construction of the Improvements, the relocation of the six (6) employees, and the creation of the six (6) new full-time jobs 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 relocation of the corporate headquarters to 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 twelve (12) employees on the Property at the prevailing wage.

2.

The Company also covenants and agrees that construction of the Improvements, the relocation of the six (6) employees, the hiring of the six (6) new employees, and obtaining all

necessary occupancy permits from the City shall occur within eighteen (18) 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 Thirty-Six Thousand Dollars (\$36,000.00) to fund a portion of the cost of the Improvements, the relocation of the six (6) employees, and the addition of the six (6) 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) verification 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 or maintained, 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 thirty (30) 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 thirty (30) 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:	Jamison Products, L.P. P. O. Box 41896 Houston, Texas 77241-1896 Attn: Tim Randall, 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 _____ 2010 (the “Effective Date”).

JAMISON PRODUCTS, L.P.

By: _____

Name: Tim Randall

Title: President/Owner

ATTEST:

By: _____

Name: _____

Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: President, Board of Directors

ATTEST:

By: _____

Name: _____

Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2010, by Tim Randall, President/Owner of Jamison Products, L.P. 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 _____
2010, by _____, 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 4, Block 3, TOMBALL INDUSTRIAL PARK

Exhibit “B”

The Improvements

Increase the size of the warehouse and offices with the addition of 4,200 square feet to the existing building, which is 22’ high, 5,400 square feet with 710 square feet of offices.

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve, as a Project of the Tomball Economic Development Corporation (TEDC), an agreement with PDGL Partners L.P., to make direct incentives to, or expenditures for, assistance with infrastructure costs related to the development and construction of a commercial building to be located at 701 S. Persimmon in Tomball, Texas. The estimated amount of expenditure for such Project is \$25,000.00

Background:

All expenditures of Tomball EDC sales tax revenue must first be approved as a "Project". At its regular meeting on May 25, 2010, the Tomball EDC Board of Directors did take formal action to approve, as a Project of the Tomball EDC, an agreement with PDGL Partners L.P.

The City Council of Tomball has final approval authority over all projects and agreements of the Tomball EDC.

Origination:

Tomball Economic Development Corporation Board of Directors

Recommendation:

Approval, as a Project of the Tomball EDC, the attached Economic Development Agreement, which states a grant amount not to exceed \$25,000.00.

Funding: Yes

Account Number: Grant Funds Available

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

Betty Reinbeck, Executive Director-TEDC

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

ATTACHMENTS:

Cover Memo
Request Letter
Economic Impact
Agreement



TO: Board of Directors
Tomball Economic Development Corporation

FROM: Betty Reinbeck
Executive Director

MEETING DATE: May 25, 2010

SUBJECT: PDGL Partners L.P.

Peter Goldsmith and David Mitchell are the developers of the Office/Warehouse Business Park located at 701 S. Persimmon in Tomball. They are planning to expand the business park and add a 10,000 square foot building for a total square footage in the park of 53,382 square feet.

This new building will be occupied by one of their current tenants, Trilogy Cheer and Dance Company, home to twenty-four (24) National Championships.

Once Trilogy and another tenant, Dynalloy, vacate their current spaces in the business park, APS Pressure and APS Plastics will move into those spaces and expand their businesses. APS Pressure and APS Plastics are the two most significant companies in the PDGL Partners L.P. portfolio. More information about the organizational chart of PDGL and these two companies is included with this memo.

The expansion of APS Pressure and APS Plastics will create primary jobs.

An economic impact model form is included with the agreement to show the estimated five (5) year impact of this firm and its expansion project on Tomball's economy.

Staff recommends approval, as a Project of the TEDC, the attached agreement which states a grant amount not to exceed \$25,000.



PDGL Partners L.P.

701 South Persimmon

Tomball, TX 77375

Tel: (281) 290-9950 FAX: (281) 290-9952

May 6, 2010

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

Attn: Ms. Betty Reinbeck
Executive Director

Dear Sirs,

PDGL Partners L.P. would like to request funding assistance for a proposed 10,000 sq. ft. additional building to be constructed within our existing Office/Warehouse Business Park located at 701 S. Persimmon, here in Tomball.

We have read your documentation, which details the information that you will require in order to process our application, and for easy reference we have responded to this in a table format, which is an attachment to this letter.

PDGL Partners L.P. is one of a small group of companies which have essentially the same ownership. The two most significant additional companies are APS Pressure Systems L.P. and APS Plastics L.P. Information concerning these companies has been summarized under separate heading as part of this submission. An organization chart is also included.

We thank you for your consideration of our application, and look forward to hearing from you.

Yours truly,

A handwritten signature in dark ink, appearing to read "David L. Mitchell", is written over a light blue horizontal line.

David L. Mitchell
Partner

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

Intended Location: Persimmon Business Park - New Construction

Name of Company: PDGL Partners L.P.

Principal Partners: Peter J. Goldsmith & David L. Mitchell

Address of Principals: Peter J. Goldsmith P.E.
701 S. Persimmon, Suite 85
Tomball, Tx 77375
Tel:(281) 290-9950 Ex 108

David I. Mitchell
710 S. Persimmon, Suite 85
Tomball, TX 77375
Tel: (281) 290-9950 Ex 111

Contact Person: David L. Mitchell (please see above for contact info.)

Type of Business etc.: See separate sheet under Tab 2

NAICS code: See separate sheet under Tab 2

Exact location: See aerial map under Tab 5

Size of property: 5 acres

Value of Property: \$1,650,000 (HCAD)

Improvement value: \$590,000 (estimate)

Sq. footage of building: 10,000

Start date: June 2010

Completion date: September 2010

Site& construction plans See attached drawing under Tab 4

PDGL PARTNERS L.P.

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

CITY OF TOMBALL ECONOMIC IMPACT MODEL

Average Annual Wage Assessment:

<u>Number of Employees</u>	<u>Average Hourly Wage</u>	<u>Average Weekly Wages</u>	<u>Total Annual Wages (52 wks.per Yr.)</u>
Existing: 0			
Prospective: 15			
TOTAL: 15	20.00	12,000	624,000
Federal Income and FICA Taxes at 28% deducted			174,720
Fixed payments for rent, insurance, etc. at 25%			156,000
Net Disposable Annual Income			293,280

Total Return to Local Government by Annual Payroll:

Local Sales Tax Rate of 2% on Fixed Payments:	3,120
Average Multiplier effect of the Dollar turning over 3.5 times to Calculate the Total Annual Local Sales Tax Impact:	10,920

Annual Sales Tax Impact:

<u>Value of Retail Sales</u>	<u>Sales Tax</u>	
1,103,090	2.00%	22,062

Estimated Property Tax Impact:

<u>Value of Improvements</u>	<u>Tomball Tax Rate (per \$100)</u>	
590,000	0.25146	1,484
Annual Economic Impact of Manufacturing and Maintenance Facility		34,465
Economic Impact over a Five Year Period		172,327

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 **PDGL Partners L.P.** (the “Company”), 701 S. Persimmon Street, Tomball, TX 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 proposes to expand its operation on a five-acre tract of land within the City, located at 701 S. Persimmon Street, 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 a 10,000 square foot commercial building (the “Improvements”) on the site, 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 Twenty-Five Thousand Dollars (\$25,000), or an amount equal to actual construction costs if less than the sum stated above, to assist in the construction of infrastructure necessary to promote and develop new

business enterprises on the Property. The infrastructure found by the Board of Directors of TEDC to be required to develop the Property are certain drainage facilities and related improvements, site improvements, water, sanitary sewer, and electric, utilities to the exterior of the buildings (the “Infrastructure Improvements”), identified and described in Exhibit “C,” attached hereto and made a part hereof; and

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

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 and maintain on the Property a 10,00 square-foot commercial building (the “Improvements”) identified and described in Exhibit “B,” attached hereto and made a part hereof. In conjunction with the development of the Property, the Company further agrees to construct the Improvements contemplated by this Agreement, in accordance with the requirements of the ordinances of the City and the plans and specifications approved by the City. The Company further represents and agrees that it will certify the costs of the construction of such Infrastructure Improvements to the TEDC prior to construction.

2.

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 eighteen (18) months from 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 covenants and agrees that the Improvements described in Paragraph 1 hereof will be occupied and that the office and warehouse facilities will be maintained on the property 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 Twenty-Five Thousand Dollars (\$25,000), or an amount equal to actual construction costs if less than the sum stated above. The TEDC agrees to reimburse the Company for such amount within thirty (30) days of receipt of a letter from the Company requesting such payment and including: (a) certification of the costs of constructing the Infrastructure Improvements; (b) a copy of the City's occupancy permit for the Improvements to the Property; (c) verification from

the City acknowledging that all necessary plats, permits, plans, and specifications have been received, reviewed, and approved; (d) certification that the Infrastructure 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 Infrastructure Improvements have been paid and any and all liens and claims regarding such work have been released.

6.

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 one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) days after the TEDC notifies the Company of the default. It is further understood and agreed by the parties that if the Company, or any owner or lessee of the Improvements, 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 one-half percent ($\frac{1}{2}\%$) per annum, within thirty (30) 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. Such reimbursement shall be due and payable thirty (30) days after the Company receives written notice of default.

7.

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, lessees, affiliates, and subsidiaries,

and shall remain in force whether the Company sells, leases, 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.

8.

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:	PDGL Partners L.P. 701 S. Persimmon, Suite 85 Tomball, Texas 77008 Attn: David L. Mitchell, Partner
----------------	--

9.

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.

10.

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.

11.

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.

12.

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.

13.

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 _____ 2010 (the “Effective Date”).

PDGL PARTNERS L.P.

By: _____
Name: David L. Mitchell
Title: Partner

ATTEST:

By: _____
Name: _____
Title: _____

**TOMBALL ECONOMIC DEVELOPMENT
CORPORATION**

By: _____
Name: _____
Title: President, Board of Directors

ATTEST:

By: _____
Name: _____
Title: Secretary, Board of Directors

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____
2010, by David L. Mitchell, Partner, PDGL Partners, L.P., 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 _____
2010, by _____, 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

OUTLOT 332, BEING 5.002 ACRES, SITUATED IN THE FIVE ACRE TRACTS, TOMBALL TOWNSITE, OUT OF THE JESSE PRUITT SURVEY, ABSTRACT 629, HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 2, PAGE 65, MAP RECORDS, HARRIS COUNTY, TEXAS

Exhibit B

Description of Improvements

Construction of a 10,000 square foot commercial building on the site

The tenant for the building is an existing tenant in Phase I of the Persimmon Business Park that needs to expand its operation.

Exhibit C

Description of Infrastructure Improvements

Site Improvements:

- Strip, exit, silt fence, inlet protection – approximately one acre
- Excavation haul-offs
- Select fill building pad
- Roll and compaction – to soil proctor specs
- Pipe bollards

Water/Sanitary/Storm:

- 2" Water line
- Sanitary sewer – tap existing manhole, run interior line
- Man hole – set one (1) man hole on back side of building for future
- Raise one (1) existing storm sewer inlet

Electric:

- Power delivery to site – CenterPoint

Storm Water Pollution Prevention Plans – required by TCEQ for construction activities

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve Pipeline Relocation/Reimbursement Agreement with Eagle Rock Desoto Pipeline, L.P. ("Eagle Rock") in the amount of \$67,793.00

Background:

Eagle Rock is the current owner and operator of an existing 4-inch nominal diameter pipeline, a portion of which is located within the pipeline easement referenced in Partial Assignment of Pipeline Easement (Correction Instrument) dated June 7, 1990, but effective March 27, 1990, from Exxon Corporation to Texas Southeastern Gas Company, recorded under Harris County Clerk's File Number M690884, which partially assigned the easement rights created under a grant dated June 14, 1934, between C.R. Rudel and wife, Mary Rudel, Grantor, and Humble Oil and Refining Company, Grantee, recorded in Vol. 957, Page 256 of the Deed Records of Harris County, Texas.

The City has notified Eagle Rock of its plans to implement a portion of the M121 West Channel drainage improvement project that will conflict with Eagle Rock's use and maintenance of the existing pipeline. The City requested that Eagle Rock relocate/lower approximately eight-hundred-fifty feet (850') of the existing pipeline in order to accommodate the drainage improvement project. Eagle Rock determined that it is agreeable to relocating/lowering a portion of its existing pipeline, subject to the attached Pipeline Relocation/Reimbursement Agreement.

The pipeline relocation is required prior to Lone Star College System performing excavation of a portion of the M121 West Channel for detention purposes related to their development associated with Restricted Reserve A out of the Doctors Professional Office Building Subdivision Final Plat. The site is located northerly of Graham and westerly of School Street and is commonly referred to as the Nursing College.

Origination:

Engineering and Planning Department

Recommendation:

Engineering and Planning Department recommends approval.

Funding: No

Funds will be transferred from Account: 154-6409 Michel Rd (#074) to Account: 154-6409 M-121W (#072)

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

Mark McClure, Engineering and Planning Department

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

ATTACHMENTS:

Pipeline Relocation/Reimbursement Agreement

05.14.10 Eagle Rock Email Correspondence

Doctors Professional Office Building Subdivision Final Plat

PIPELINE RELOCATION/ REIMBURSEMENT AGREEMENT

This Pipeline Relocation /Reimbursement Agreement (this "Agreement") is made and entered into on this _____ day of June, 2010 (the "Effective Date"), by and between EAGLE ROCK DESOTO PIPELINE, L.P. ("Eagle Rock") and the CITY OF TOMBALL ("the City"), (Eagle Rock and the City are sometimes hereinafter collectively referred to as the "Parties" and individually as the "Party").

WITNESSETH:

WHEREAS, Eagle Rock is the current owner and operator of a 4-inch nominal diameter pipeline (the "Existing Pipeline"), a portion of which is located within the pipeline easement referenced in Partial Assignment of Pipeline Easement (Correction Instrument) dated June 7, 1990, but effective March 27, 1990, from Exxon Corporation to Texas Southeastern Gas Company, recorded under Harris County Clerk's File Number M690884, which partially assigned the easement rights created under a grant dated June 14, 1934, between C.R. Rudel and wife, Mary Rudel, Grantor, and Humble Oil and Refining Company, Grantee, recorded in Vol. 957, Page 256 of the Deed Records of Harris County, Texas; and

WHEREAS, the City has notified Eagle Rock of its plans to implement a drainage improvement project that will conflict with Eagle Rock's use and maintenance of the Existing Pipeline; and

WHEREAS, the City has requested that Eagle Rock relocate/lower approximately eight hundred fifty feet (850') of the Existing Pipeline in order to accommodate the drainage improvement project; and

WHEREAS, Eagle Rock has determined that it is agreeable to relocating/lowering a portion of its Existing Pipeline, subject to the terms and conditions set forth herein.

AGREEMENTS:

NOW THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, Eagle Rock and the City do hereby agree as follows:

1. Eagle Rock shall relocate/lower approximately eight hundred fifty feet (850') of its Existing Pipeline to accommodate the City's drainage improvement project as shown on the attached drawing marked Exhibit "A".

2. TO THE EXTENT PERMITTED BY LAW, THE CITY AGREES TO RELEASE, PROTECT, INDEMNIFY, DEFEND AND HOLD EAGLE ROCK, ITS RESPECTIVE AFFILIATES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, DIRECTORS, EMPLOYEES, OFFICERS, AGENTS AND OTHER REPRESENTATIVES, CONSULTANTS AND SERVANTS AND ITS AND THEIR SUCCESSOR AND ASSIGNS (COLLECTIVELY, "COMPANY GROUP") HARMLESS FROM AND AGAINST ALL CLAIMS FOR COMPENSATION, CAUSES OF ACTION (INCLUDING DAMAGE TO

PROPERTY OR INJURY OR DEATH TO PERSONS, ADMINISTRATIVE OR REGULATORY PROCEEDINGS, DAMAGES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE) (COLLECTIVELY "CLAIMS") ASSERTED BY ANY HOLDERS OF INTERESTS IN THE REAL PROPERTY ON WHICH THE EXISTING PIPELINE IS LOCATED IN CONNECTION WITH THE PIPELINE RELOCATION/LOWERING BY COMPANY GROUP AND ARISING OUT OF THE PERFORMANCE OF SERVICES BY THE CITY.

3. In consideration for the relocation/lowering of the pipeline by Eagle Rock, the City will pay all reasonable costs plus 5% in connection with Eagle Rock's relocation/lowering of its pipeline in accordance with this Agreement, including, without limitation, the costs of material, labor and equipment for the relocation/lowering of the Existing pipeline. As outlined in Cost Estimate, Exhibit B attached hereto, the total estimated cost plus 5% for the relocation work to be performed by Eagle Rock is \$67,793.00 (the "Estimated Cost"). The City fully understands that the actual cost may exceed or be less than the Estimated Cost. The Estimated Cost shall not be construed to constitute a maximum, minimum, or guarantee of all the costs that may be incurred to relocate/lower the Existing Pipeline to accommodate the drainage improvement project. The City will pay \$67,793.00 of the Estimated Cost to Eagle Rock upon execution of this Agreement and prior to the commencement by Eagle Rock of the relocation/lowering of the pipeline. Eagle Rock will provide to the City a schedule of the actual costs incurred by Eagle Rock, along with supporting invoices, within ninety (90) days from Eagle Rock's receipt of all invoices incurred. If the actual costs plus 5% exceed the Estimated Cost, the City will pay to Eagle Rock the difference within thirty (30) days of the receipt of such schedule. If the actual costs plus 5% are less than the Estimated Cost, Eagle Rock will pay to the City the difference within thirty (30) days of delivery of such schedule.

4. Eagle Rock shall have no obligation to relocate/lower its pipeline pursuant to this Agreement unless and until all of the following conditions have been satisfied to Eagle Rock's satisfaction. The City shall have delivered to Eagle Rock, at no cost to Eagle Rock, (i) duplicate originals of this agreement executed by an authorized representative of the City; (ii) a check made payable to Eagle Rock Desoto Pipeline, L.P. in the amount of \$67,793.00.

In the event that the conditions precedent set forth in this Section 4 are not satisfied by August 17, 2010, Eagle Rock shall thereafter have the right to terminate this Agreement by delivering written notice of termination to the City at any time prior to satisfaction of all conditions precedent.

5. Should Eagle Rock in its sole discretion determine that the relocation/lowering work described in this agreement could cause a curtailment of gas deliveries to its customers during any period of cold weather then Eagle Rock can elect to delay such work indefinitely, and in any event, until such period of impending cold weather has passed.

6. Miscellaneous. This Agreement shall be governed by Texas law and the exclusive venue for any action arising out of or in connection with this Agreement shall be in Harris County, Texas. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement constitutes the entire Agreement between the

parties hereto regarding the subject matter hereof and supersedes any and all prior oral or written agreements or understandings. This Agreement may not be amended or modified except in writing signed by the parties hereto.

7. Severability. If any part of this Agreement contravenes any applicable statutes, regulations, rules, or common law requirements, then to the extent and only to the extent of such contravention, such part shall be severed from this Agreement and deemed non-binding while all other parts of this Agreement shall remain binding and this Agreement shall be deemed reformed as required thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple counterparts by their proper officers thereunto duly authorized, as of the Effective Date.

EAGLE ROCK DESOTO PIPELINE, L.P.

BY: EAGLE ROCK PIPELINE GP, LLC,
ITS GENERAL PARTNER

By: _____
Bryan W. Johnson, as Vice President of
Midstream Operations

THE CITY OF TOMBALL

By: _____

Name: _____

Title: _____

FINAL PLAN
JAMES PLACE LIMITED SUBDIVISION
A SUBDIVISION OF 4.876 ACRES
SITUATED IN THE WILLIAM HURD SURVEY, A-371
HARRIS COUNTY, TEXAS
F.C. No. 889108

DATUM STATEMENT

ALL COORDINATES SHOWN HEREON ARE GRID COORDINATES BASED ON THE TEXAS STATE PLANE COORDINATES SYSTEM, SOUTH CENTRAL ZONE, NAD83. ALL DISTANCES SHOWN HEREON ARE SURFACE HORIZONTAL DISTANCES. MULTIPLY BY A SCALE FACTOR OF 0.99994557 TO OBTAIN GRID DISTANCES. VERTICAL DATUM IS NAVD88 (2001 ADJUSTMENT), GEOID09.

THE UNDERGROUND UTILITIES SHOWN HEREON HAVE BEEN INDICATED BASED ON A FIELD SURVEY, UTILITY RECORD DRAWINGS AND VISIBLE OBSERVATION. THE SURVEYOR DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN HEREON COMPRISE ALL SUCH UTILITIES IN THE SUBJECT TRACT, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN HEREON ARE IN THE EXACT LOCATION INDICATED BUT ARE BASED ON THE FOUND VISIBLE ABOVE GROUND FEATURES FOR EACH UTILITY ON THE SUBJECT TRACT. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. THE LOCATION OF THE UNDERGROUND UTILITIES SHOULD BE FIELD VERIFIED PRIOR TO BEGINNING EXCAVATION OR CONSTRUCTION ON THE SUBJECT TRACT.

EXIST. EAGLE ROCK PIPELINE APPROXIMATELY 20' DEEP

** 850 L.F. *
 Proposed lowering/relocation of Eagle Rock Pipeline approximately 25' below existing grade*

** 850 L.F. Pipeline lowering from 0+00 (4" Pipeline w/ Valve) to Station 8+50 (Existing pipeline buried approximately 20')*

THE TOMBALL PIES
BEGING PART OF LOTS 83A, 83B, AND 142 OF
FIVE ACRE TRACTS TOMBALL TOWNSITE
MAP RECORDED IN VOLUME 2, PAGE 85
IN THE JAMES PRIETT SURVEY, A-629
HARRIS COUNTY, TEXAS

PARENT TRACT 8.278 ACRES
 TOMBALL CONGREGATE HOUSING, LTD.
 F.C. No. 105-48-1007
 H.C.C.F. No. N769071

PRIVATE UTILITY LINES SHOWN

AT LEAST 48 HOURS BEFORE EXCAVATING IN STREET R.O.W. OR EASEMENTS CALL THE LONE STAR NOTIFICATION 713-223-4667.

Date:	
CenterPoint Energy/Electric Facilities (Approved only for crossing underground ductlines, unless otherwise noted.) Valid at time of review only.	Date:
SBC Approved for underground conduit facilities only. Signature valid for one year.	Date:
CenterPoint Energy/Gas Facilities (Gas service lines are not shown)	Date:

INTERIM REVIEW
 Not intended for construction, bidding or permit purposes.
 Engineer:
 P.E. Serial No.:
 Date:

CobbFendley
 13430 Northwest Freeway, Suite 1100
 Houston, Texas 77040
 713.462.3242 | fax 713.462.3262 | www.cobbfendley.com

JOB NO.090204401 DWG. NO.090204401-LDD

CITY OF TOMBALL
 TOMBALL, TEXAS

HARDIN STREET @
M121 DITCH

PLAN & PROFILE

SUBMITTED:	DESIGNED BY: BKH
SCALE: 1"=30' 1"=2'	DRAWN BY: BKH
DATE: JAN. 13, 2010	SHEET No.: 1 OF 1
SURVEY BY: BKH	DWG. NO.:
F B NO: 2050	

EXHIBIT A

Exhibit "B" mm
Eagle Rock Energy Partners
DETAIL CAPITAL COST ESTIMATE

Client: EAGLE ROCK DESOTO PIPELINE, L.P.	EREJob No:
Project: CITY OF TOMBALL HARDIN STREET M121 DITCH pipe size 4	Date: 4/15/2010
AFE No:	Estimated By: DONL
	Rev No./Date: 0

Item No.	Description	Unit	Qty.	Unit Cost	Amount \$	TOTAL \$
A.	Survey & Mapping					
1.	Prelim. & Control, Dry (One 2-man crew w/ GPS)	Days	0	\$ -	\$ -	
2.	Prelim. & Control, Marsh/Water (Two 2-man crews w/ GPS)	Days	0	\$ 1,400	\$ -	
3.	Properties (One 2-man crew w/ GPS)	Days	0	\$ 1,100	\$ -	
4.	River Crossings, (One 2-man crew w/ GPS, fathom., etc.)	Days	0	\$ 1,800	\$ -	
5.	Pre-Construction Staking (Two 2-man crews)	Days	1	\$ 1,100	\$ 1,100	
6.	Mapping Permit Dwg's & Property Plats (Assume 5 ea)	Hrs.	0	\$ 45	\$ -	
7.	Certifying/Stamping Property Plats (RPLS)	Hrs.	0	\$ 90	\$ -	
	Sub Total				\$	1,100
B.	Permitting & Environmental					
1.	Permit Fees	Lot	0	\$ 2,000	\$ -	
2.	Environ./Regulatory Consulting Time & Expenses	Hrs.	0	\$ 85	\$ -	
3.	Mitigation	Acre	0	\$ 2,000	\$ -	
	Sub Total				\$	-
C.	Land & ROW					
1.	Agents Time & Expenses	days	1	\$ 500	\$ 500	
2.	ROW Easements (1.32 miles)	ft	0	\$ 5	\$ -	
3.	ROW Easements (Private owners, 0 miles)	Rods	0	\$ 300	\$ -	
4.	ROW Easements (State of Louisiana, 0.0 miles)	Rods	0	\$ 25	\$ -	
	Sub Total				\$	500
D.	Equipment & Materials					
1.	Pipe: 4.5" x 0.337" x API 5L X-42, ERW, w/FBE	Ft	900	\$14.33	\$ 12,897	
2.	Pipe: 4.5" x 0.280" x API 5L X-42, ERW, FBE	Ft	0	\$ 8.50	\$ -	
3.	Pipe: Miscellaneous 1" thru 4", ERW, Bare	Ft	0	\$ 3	\$ -	
4.	Valves:					
	a) 4", ball, Full Open/Thru Cond., ANSI 600, FxF,	Ea.	0	\$ 1,139	\$ -	
	b) 3", Orbit, Reg Port, ANSI 600, FxF	Ea.	0	\$ 2,000	\$ -	
	c) 1"x3/4" PSV, ANSI 600, Thrd.	Ea.	0	\$ 500	\$ -	
5.	Misc. 1/2" thru 2", valves for PI's, vents, drains, etc.	Lot	2	\$ 200	\$ 400	
6.	Scraper Traps (Incl closures, pipe, fittings, flanges, etc.)	Ea.	0	\$ 8,000	\$ -	
7.	Meter Skid, 2", ANSI 600	Ea.	0	\$ 7,000	\$ -	
8.	EFM equipment	Lot	0	\$ 5,000	\$ -	
9.	Misc. Flanges, Fittings, and Bulk Materials	Lot	1	\$ 250	\$ 250	
10.	Miscellaneous Materials:					
	a) Pigs, 4", foam & cup	Ea.	3	\$ 25	\$ 75	
	b) Bends, 4.5", 6D w/ FBE	Ea.	0	\$ 250	\$ -	
	c) Cathodic Protection	Lot	0	\$ 20,000	\$ -	
	d) Signs, markers, etc.	Lot	0	\$ 14.38	\$ -	
	e) Fencing, fill dirt, geotextile mat'l., gravel/shell, etc.	Lot	0	\$ 4,000	\$ -	
	f) Joint coating for welds (FBE applied)	Ea.	0	\$ 10	\$ -	

Exhibit "B"
Eagle Rock Energy Partners
DETAIL CAPITAL COST ESTIMATE

Client: EAGLE ROCK DESOTO PIPELINE, L.P.	EREJob No:
Project: CITY OF TOMBALL HARDIN STREET M121 DITCH pipe size 4	Date: 4/15/2010
AFE No:	Estimated By: DONL
	Rev No./Date: 0

Item No.	Description	Unit	Qty.	Unit Cost	Amount \$	TOTAL \$
Equipment & Materials (Continued)						
	g) P's, pig sigs, vent caps, etc.	Lot	0	\$ 100	\$ -	
	h) Adjustable pipe supports	Ea.	0	\$ 100	\$ -	
	i) Freight for materials	Lot	1	\$ 750	\$ 750	
Sub Total						\$ 14,372
E.	Construction					
	1. Fabricate Scraper Traps (6"x 10")	Ea.	0	\$ 5,000	\$ -	
	2. Fab. & install piping at each end	Lot	0	\$ 1,000	\$ -	
	3. Fab & install piping at 8" Tie-In, inc'l. supports	Lot	0	\$ 500	\$ -	
	4. Clear, grade, ditch, weld, backfill & test pipeline (dry lay)	Lot	1	\$36,856	\$ 36,856	
	5. Clear, grade, ditch, weld, backfill & test pipeline (marsh lay)	Ft.	0	\$ 28	\$ -	
	6. Ditch, weld, backfill & test pipeline (open water lay)	Ft.	0	\$ 31	\$ -	
	7. String, weld, pre-test and support drill crossings	Ft.	0	\$ 15	\$ -	
	8. Horizontal directional drills	Ft.	0	\$ 35	\$ -	
	9. Road crossings	Ft.	0	\$ 25	\$ -	
	10. Purchase and install timber platforms for MLBV's	Ea.	0	\$ 10,000	\$ -	
	11. Blast & Paint piping at both ends Tie-In	Ea.	0	\$ 500	\$ -	
	12. Purchase & install all dirt fill, rock, fencing, etc.	Lot	0	\$ 2,000	\$ -	
	13. Fill, hydro, dewater & clean piping & pipeline	Lot	0	\$ 5,000	\$ -	
Sub Total						\$ 36,856
F.	Construction Services					
	1. Welder Testing (Materials and X-Ray)	Lot	0	\$ 2,000	\$ -	
	2. X-ray: 2-man crew (inc'l film)	Day	2	\$ 1,200	\$ 2,400	
	3. Nitrogen Services	Lot	0	\$ 15,000	\$ -	
	4. Cathodic Protection Services	Lot	0	\$ 8,000	\$ -	
	5. As-Built Survey (One 2-man crew w/ GPS)	Days	0	\$ 1,200	\$ -	
	6. Inspection Services (inc'l. mileage & per diem)	Days	6	\$ 500	\$ 3,000	
Sub Total						\$ 5,400
G.	Other Items:					
	1. Tax on materials @ 8.25	%	0.082	\$ 14,372	\$ 1,179	
	2. Blowdown & Refill 4" Gas Line	Lot	1	\$ 500	\$ 500	
	3. Lab samples & testing of test water	Lot	0	\$ 500	\$ -	
	4. Engineering, design, project mgm't., admin., travel expenses, etc., @ 8% of A thru F update maps, update records.	%	0.00	\$ -	\$ 4,658	
Sub Total						\$ 6,337
Total A - G						\$ 64,565
Contingency @ 5%						\$ 3,228
TOTAL						\$ 67,793

\$/ft #DIV/0!

Mark McClure

From: Russell, M. [m.russell@EagleRockEnergy.com]
Sent: Friday, May 14, 2010 9:34 AM
To: Mark McClure
Subject: RE: City of Tomball Hardin Street M121 Ditch

Mark,

Following up with our last phone conversation, because of the proposed depth of the relocate and the scale of the plan and profile sheet I am unable to properly draw the proposed pipeline route. The initial bore will begin at point located approximately 350' south east of the existing 4" pipeline valve. Depth of the bore will begin approximately 25' below existing grade. Pipeline will PI approximately 25' below existing 4" pipeline valve located northwest of Hardin Rd. Eagle Rock will 90 pipe back up to the existing 4" valve from that PI. Most of the relocate will be buried approximately 25' deep along an 850' stretch beginning at the existing 4" valve back to the reconnect point located 850' to the south east. There will be a slight incline to the reconnect point (4" existing pipe) which is located approximately 20' below existing grade.

Should you have any questions or need any additional information please feel free to contact Don Luedke at 979-203-3220.

Thanks,

Mike Russell

From: Mark McClure [mailto:mmcclure@ci.tomball.tx.us]
Sent: Tuesday, May 11, 2010 10:37 AM
To: Russell, M.
Subject: RE: City of Tomball Hardin Street M121 Ditch

Mike, I have attached a copy of the draft agreement. If you can provide me comments to the agreement, a copy of the plans (Exhibit A), and the cost estimate I can finalize the draft agreement for your review prior to me taking to Council. The Council meeting is May 17th, but we would have to have all issues resolved by the end of the day today. We have to upload all documents by noon on Wednesday to make the agenda for the 17th. We should probably work towards placing on the June 7th agenda, which means we have to have all our issues resolved and finalized by June 1st. Please advise or call.

Mark A. McClure, P.E.
 City of Tomball
 Director of Engineering & Planning
 501 James Street
 Tomball, Texas 77375
 (281) 290-1412
 Fax: (281) 351-4735
 mmcclure@ci.tomball.tx.us

From: Russell, M. [mailto:m.russell@EagleRockEnergy.com]
Sent: Monday, May 10, 2010 11:04 AM
To: Mark McClure
Cc: Holt, Gary
Subject: RE: City of Tomball Hardin Street M121 Ditch

Mark,

Good morning, I would like to know when the next City Council meeting will be scheduled so I can try to make the agenda.

Thanks,

5/14/2010

Mike Russell

From: Mark McClure [mailto:mmcclure@ci.tomball.tx.us]
Sent: Monday, April 26, 2010 4:07 PM
To: Russell, M.
Subject: RE: City of Tomball Hardin Street M121 Ditch

Mike, please provide me the cost estimate and I will roll the cost into a typical reimbursement agreement to be executed by Eagle Rock Energy and the City of Tomball. In addition, have you shown the relocation on the plan and profile drawings that Cobb Fendley prepared? If so can you provide me a copy? The drawings will be an exhibit to the agreement. I will need to take the final agreement to City Council for final authorization. I will prepare the draft agreement language and send over for your review and comments. Thanks for the help on this project.

Mark A. McClure, P.E.
City of Tomball
Director of Engineering & Planning
501 James Street
Tomball, Texas 77375
(281) 290-1412
Fax: (281) 351-4735
mmcclure@ci.tomball.tx.us

From: Russell, M. [mailto:m.russell@EagleRockEnergy.com]
Sent: Monday, April 26, 2010 3:01 PM
To: Mark McClure
Subject: City of Tomball Hardin Street M121 Ditch

Mark,

Good afternoon, I have been ask to contact you regarding a proposed 4" pipeline re-locate and to see what needs to be done in the way presenting you a proposed cost estimate for the project. Eagle Rock has put together a detail cost estimate and is prepared to submit for payment.

Sincerely,

Mike Russell
Land Department
956-583-1233 office
956-330-4758 Cell
m.russell@eaglerockenergy.com

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve **Replat "J WALKER HOME"**: A Replat of Lots 41 and 42 into New Lot 41 in Block 33 of Revised Map of Tomball, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 4, Page 25, of the Map Records of Harris County, Texas. Said Block 33 being situated in the William Hurd Survey (A-371).

Background:

The Planning and Zoning Commission approved this replat with contingencies on April 13, 2009. A condition of the plat approval required the property owner to execute a common access agreement with the adjacent property owner at 605 Clayton Street because the two lots share a common driveway.

The Common Access Agreement was approved by City Council on February 1, 2010 and was recorded with Harris County on February 15, 2010. The replat is now being forwarded to City Council for approval consideration.

Origination:

James Walker, Property Owner

Recommendation:

The Engineering and Planning Department recommends approval of this replat.

Funding:

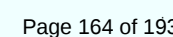
Party(ies) responsible for placing this item on agenda:

Mark McClure, Engineering and Planning Department

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

ATTACHMENTS:

J Walker Home Replat
Common Access Agreement



Easmt
F
Common (Reciprocal) Access Agreement

State of Texas,
County of Harris.

As a condition for Plat of the "J. Walker Home" Subdivision as approved by the City Council of the City of Tomball, Texas, on 2/1/10, the property owners hereby agree to share a common 12' wide driveway along Clayton Street as evidenced by this Agreement and Easement:

DATE: January 6, 2010.

First Party: James A. Walker

First Party Address: 607 Clayton Street

Second Party: James A. Rice, and his wife, Lavirl Rice

Second Party Address: 605 Clayton Street

First Party's Lienholder:

First Party's Lienholder's Address:

Second Party's Lienholder:

Second Party's Lienholder's Address:

First Party's Property:

PARCEL A

Subdivision Name: Revised Map of Tomball Lot No.: 41 & 42 Block No.: 33

Recorded in: Volume 4 Page 25 Harris County

Address: 607 Clayton Street, Tomball, TX 77375

Current uses: Single-family residence

FILED
2010 FEB 15 PM 3:10
Brenda R. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

Hold

Second Party's Property:

PARCEL B

Subdivision Name: Revised Map of Tomball Lot No.: 43, 44 & 3 feet of 45

Block No.: 33

Recorded in: Volume 4 Page 25 Harris County

Address: 605 Clayton Street, Tomball, TX 77375

Current uses: Single-family residence

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to and egress from, and access across and between the First Party's Property and the Second Property's Property as follows:

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Reservations from Conveyance of First Party's Property: NONE.

Exceptions to Warranty of First Party's Property: NONE.

Reservations from Conveyance of Second Party's Property: NONE.

Exceptions to Warranty of Second Party's Property: NONE.

First Party, for the Consideration and subject to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property, grants, sells, and conveys to Second Party and Second Party's heirs, successors, and assigns an easement to, over and across the First Party's Property for the Easement Purpose and for the benefit of all or any portion of Second Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to Second Party and Second Party's heirs, successors, and assigns forever. First Party binds First Party and First Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights and appurtenances in Second Party and Second Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of First Party's Property and Exceptions to Warranty of First Party's Property, to the extent that such claim arises by, through, or under First Party but not otherwise.

Second Party, for the Consideration and subject to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, grants, sells, and conveys to First Party and First Party's heirs, successors, and assigns an

easement to, over and across the Second Party's Property for the Easement Purpose and for the benefit of all or any portion of First Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to First Party and First Party's heirs, successors, and assigns forever. Second Party binds Second Party and Second Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights and appurtenances in First Party and First Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, to the extent that such claim arises by, through, or under Second Party but not otherwise.

Terms and Conditions: *The following terms and conditions apply to the Easement granted by this agreement-*

1. *Character of Easement.* The Easements are appurtenant to and run with the Properties, and all and any portions thereof, whether or not the Easements are referenced or described in any conveyance of all or such portion of the Properties, or any portion thereof. The Easements are nonexclusive and irrevocable. The Easements are for the benefit of the Parties, and the heirs, successors and assigns of the Parties who at any time own the Properties or any interest therein (as applicable, the "Holders"), and for the City of Tomball, Texas, as described below.

2. *Duration of the Easement.* The duration of the Easement shall be perpetual.

3. *Use and location of Easements.* The Parties and other Holders will be entitled to exercise direct access to and between the Properties without interference except as set forth in this agreement and to use all access areas and driveways in exercising the Easements. A Holder's invitees will not be entitled to park on the other Holder's Property, but will be permitted to walk or drive across or otherwise traverse the Properties to obtain ingress to or egress from the other Properties.

4. *Nonexclusiveness of Easements.* The Easements are nonexclusive, and each of the Parties reserves for itself and its heirs, successors, and assigns the right to use all or part of the Easements in conjunction with any other Holder and the right to convey to others the right to use all or part of the Easements in conjunction with the Holders, as long as such further conveyance is subject to the terms of this agreement.

5. *Maintenance of Easement Property.* All access ways and driveways located on the Properties must be maintained at a level of appearance and utility consistent with that for similarly used properties in the neighborhood in which the Properties are located. Each Holder will be solely responsible for the costs of maintaining the access ways and driveways located on that Holder's Property.

6. *Rights Reserved.* Each Party reserves for that Party and that Party's heirs, successors, and assigns the right to continue to use and enjoy the surface of their Property for

purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easements.

7. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.
8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns; provided, further, however, that this Agreement is intended for the benefit of the Parties hereto, and is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.
9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Harris County, Texas.
10. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
11. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
12. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
13. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal

delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

14. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

15. *Time.* Time is of the essence.

Designated Third Party Beneficiary. The Parties designate the public and the City of Tomball, Texas, as a beneficiary of this Agreement. The violation of this agreement may result in revocation of a Certificate of Occupancy, fine, or both, in accordance with the Comprehensive Zoning Ordinance.

Signed and agreed to, this the 26 day of May, 2009

(4) *for*
First Party/Parcel A Owner Name

James A. Walker

(4) *for*
Parcel A Owner's Signature

James A. Walker

Second Party/Parcel B Owner Name *for*
for

James A. & Lavirl Rice

Parcel B Owners' Signature

James A. Rice
Lavirl M. Rice *for*
for

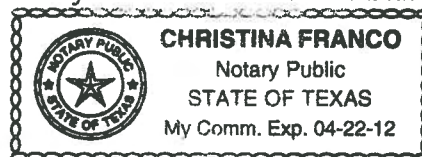
Acknowledgments for Owners:

State of Texas,
County of Harris.

This instrument was acknowledged before me on 5/26/09 by James A. Walker.

Seal

Christina Franco
Notary Public in and for the State of Texas.

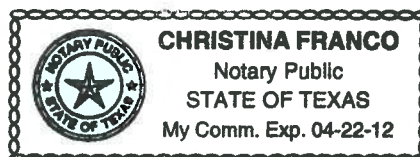


State of Texas,
County of Harris.

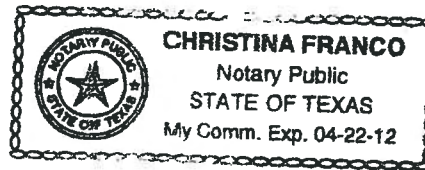
This instrument was acknowledged before me on 5/26/09 by James A. Rice.

Seal

Christina Franco
Notary Public in and for the State of Texas.



State of Texas,
County of Harris.



This instrument was acknowledged before me on 5/26/09 by Lavirl Rice.

Seal

Christina Franco
Notary Public in and for the State of Texas.

Consent and Subordination by Lienholders

Lienholders, as the holders of liens on the Properties, consent to the above grants of Easements, including the terms and conditions of the grants, and Lienholders subordinate their liens to the rights and interests of Holders, so that a foreclosure of the liens will not extinguish the rights and interests of Holders.

Jennifer Bilbrey
Jennifer Bilbrey - Vice President

Acknowledgements for Lienholders

State of Texas, FL
County of Harris. On Page

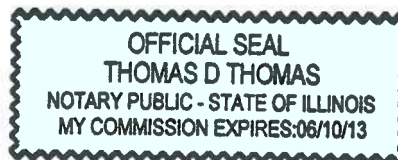
This instrument was acknowledged before me on 12/30/09 by Jennifer Bilbrey

Seal

Notary Public in and for the State of Texas: FL

A circular official seal for Thomas D Thomas, Notary Public - State of Illinois. It includes the text "OFFICIAL SEAL", "THOMAS D THOMAS", "NOTARY PUBLIC - STATE OF ILLINOIS", and "MY COMMISSION EXPIRES: 06/10/13".

State of Texas,
County of Harris.

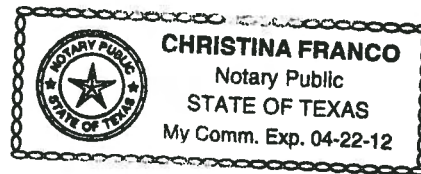


This instrument was acknowledged before me on _____ by _____.

Seal

Notary Public in and for the State of Texas.

State of Texas,
County of Harris.



This instrument was acknowledged before me on 5/26/09 by Lavirl Rice.

Seal

Christina Franco
Notary Public in and for the State of Texas.

Consent and Subordination by Lienholders

Lienholders, as the holders of liens on the Properties, consent to the above grants of Easements, including the terms and conditions of the grants, and Lienholders subordinate their liens to the rights and interests of Holders, so that a foreclosure of the liens will not extinguish the rights and interests of Holders.

Michele Holtz
Assistant Vice President

Acknowledgements for Lienholders

State of ~~Texas~~, NEW YORK
County of ~~Harris~~: ERIE

This instrument was acknowledged before me on August 18 2009 by Jennifer A. Collier
Jennifer A. Collier
Notary Public in and for the State of ~~Texas~~: NEW YORK

State of ~~Texas~~,
County of ~~Harris~~.

This instrument was acknowledged before me on _____ by _____.

Seal

Notary Public in and for the State of Texas.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number Sequence on the date and at the place shown below by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County Texas on

FEB 15 2010



Brenda B. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Adopt, on First Reading, Ordinance No. 2010-12, an Ordinance of the City Council of the City of Tomball, Texas, amending Chapter 24. Courts, by deleting Chapter 24 in its Entirety and substituting therefore a new Chapter 24, making General Provisions for the Operation of the Municipal Court; specifying the Term of the Municipal Court and the Judges of the Court; providing for Citations to the Municipal Court; providing for Severability; providing for a Penalty of an amount not to exceed \$500 for each day of violation of any provision hereof; making Findings of Fact; and making other provisions related thereto.

Background:

Ordinance No. 2010-12 outlines the requirements and duties of the Tomball Municipal Court and its officers; it sets the term for the Municipal Court and its Judges. Ordinance 2010-12 is replacing Chapter 24 of the City's Ordinance. Chapter 24 created the Special Funds used by the Municipal Court. The information in Chapter 24 has been included in Ordinance No. 2010-12.

Origination:

Tomball Municipal Court

Recommendation:

Adopt Ordinance No. 2010-12 on first reading.

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

Shawn Cox - Assistant to the City Manager

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

ATTACHMENTS:

Ordinance No. 2010-12

ORDINANCE NO. 2010-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
TOMBALL, TEXAS, AMENDING CHAPTER 24. COURTS, BY
DELETING CHAPTER 24 IN ITS ENTIRETY AND SUBSTITUTING
THEREFORE A NEW CHAPTER 24, MAKING GENERAL PROVISIONS
FOR THE OPERATION OF THE MUNICIPAL COURT; SPECIFYING
THE TERM OF THE MUNICIPAL COURT AND THE JUDGES OF THE
COURT; PROVIDING FOR CITATIONS TO THE MUNICIPAL COURT;
PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF
AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION
OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND
MAKING OTHER PROVISIONS RELATED THERETO.**

* * * * *

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

SECTION 1. Chapter 24, Courts, of the Code of Ordinances of the City of Tomball, Texas, is amended by deleting all of Chapter 24 thereof and substituting therefore a new Chapter 24 to provide as follows:

“CHAPTER 24. COURTS

ARTICLE I. IN GENERAL

Sec. 24-1. Seal.

The municipal court shall have a seal having engraved thereon a star of five (5) points in the center and words "Municipal Court in Tomball, Texas" around the margin thereof, which shall be used to authenticate the official acts of the clerk and of the judge, where the clerk or the judge is authorized or required to use the seal of office.

Sec. 24-2. Jurisdiction.

The municipal court shall have jurisdiction with the power to hear and determine all cases of violation of this Code, the ordinances of the city, and all other cases of which municipal courts are given jurisdiction, or allowed to take jurisdiction, by state law. The municipal court shall exist for the disposition of misdemeanor criminal matters arising within its jurisdiction under the laws of the state or this Code or any other ordinances of the city.

Sec. 24-3. Organization; Alternate Judges.

(a) Judge. The judge and alternate judges of the municipal court shall be appointed by the Council.

(b) Presiding judge. The office of presiding judge of the municipal court is hereby created. The presiding judge is authorized to designate which judge shall preside over the Court for any given session.

(c) Alternate judges. The offices of alternate or associate judge are hereby created. Each associate judge shall preside over the Court when designated by the Presiding Judge.

(d) Powers and duties. Each judge shall be a magistrate and shall have all of the powers and authority prescribed by state law and the charter and ordinances of the city. Each judge shall have the duties pertaining to the office of judge.

(e) Terms of office. The Municipal Court shall have a two-year term beginning on September 1 of each even-numbered calendar year and extending through August 31 of the next following even-numbered calendar year. The presiding judge shall serve for the specific term, or the unexpired portion thereof, of the Municipal Court. Each associate judge shall serve for a two-year term of office beginning on September 1 of each odd-number calendar year and extending through August 31 of the next odd-numbered calendar year. Removal of judges shall be governed by state law and the city charter. All judges shall also serve after the expiration of their terms of office until their successor is appointed and shall have qualified; provided, however, that any judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the Council, continue to serve for another term of office.

Sec. 24-4. Oath.

The judges of the municipal court, prior to taking office, shall take the requisite oath of office required by the constitution and state law.

Sec. 24-5. Deputy clerks--Appointment.

There shall be appointed such number of deputy municipal court clerks as may be necessary for the municipal court to properly perform its functions. The appointment of deputy municipal court clerks shall be by the City Secretary of the municipal court, with approval by the City Manager.

Sec. 24-6. Same--Powers and duties.

The deputy clerks of the municipal court shall perform all the duties and have all the powers bestowed upon clerks of municipal courts by state law. Any clerk or deputy clerk so appointed may act as the official clerk of the municipal court and perform all acts incident to such office.

Sec. 24-7. Rules of practice and procedure.

The rules of practice and procedure as prescribed by state law governing trials in the state justice of the peace courts shall govern the procedure and practice of the municipal court; and the judge and the city council may prescribe such additional rules of practice and procedure as may not be inconsistent with state law.

Sec. 24-8. Notice to appear tickets.

(a) Whenever a person is arrested for any violation of law punishable by a fine in the municipal courts of the city, the arresting officer may prepare a written notice to appear that shall require the person to appear in municipal court within 10 days to answer the charges listed and shall contain the following information:

- (1) Name of the person arrested.
- (2) Address of the person arrested.
- (3) Driver's license or other identification.

(b) The following information may be included for informational purposes, but shall not nullify any promise to appear:

- (1) Date of violation.
- (2) Place of violation.
- (3) Offense charged.
- (4) Name of arresting officer.

This subsection shall not preclude the filing of any additional charges nor the filing of another offense.

(c) Notice to appear, incorrect name and address:

- (1) The above notice to appear shall only be a promise to appear and is not an admission of guilt.
- (2) It shall be unlawful for the arrested person to violate his written notice to appear in municipal court, regardless of the disposition of the charges upon which the person originally arrested.
- (3) It shall be unlawful for any person upon being issued a notice to appear to give the arresting officer other than the person's true name and correct address.

(d) The above procedure shall not be applicable:

- (1) When the person arrested demands an immediate appearance before a magistrate.
- (2) When the arrested person shall refuse to sign the notice to appear or furnish any of the information in subsection (a).
- (3) When the offense is a violation of the traffic laws or is covered by a specific provision of state law dictating the following of a procedure contrary to the above subsections.

(e) The above procedures in subsections (a), (b) and (c) shall not be mandatory upon the arresting officer. The arresting officer shall have authority to consider all the

circumstances relevant to the arrest and any police departmental regulations or policies in choosing whether or not to issue a notice to appear.

Sec. 24-9. Citations for violation of city codes and state laws.

(a) When any person is found in violation of any provision of the codes adopted by the City of Tomball or of the laws of the State of Texas, an agent or employee of the City of Tomball may, if the person agrees to sign a citation, issue a citation that shall require the person to appear in court within the time provided on the citation. The citation shall give the person at least 10 days to answer any charge of violation of any provision of the codes adopted by the city.

(b) Signing the citation shall only be a promise to appear and is not an admission of guilt.

(c) It shall be unlawful for any person, upon being issued any citation, to give the City of Tomball's agent or employee a false name or address.

(d) It shall be unlawful to fail to appear in municipal court within the time provided in the citation, provided the citation gave the person at least 10 days to answer any charge of violation of any provision of the codes adopted by the city.

(e) The following information shall be contained on the citation:

- (1) Name of the defendant;
- (2) Address of the defendant;
- (3) Driver's license or other identification.

The following information may be included for informational purposes, but shall not nullify any promise to appear:

- (i) Date of violation;
- (ii) Place of violation;
- (iii) Offense charged;
- (iv) Name of person issuing citation.

(f) Additional or other charges shall not be precluded by the issuance of citation.

Sec. 24-11. Compensation for jurors.

Each juror sworn to serve in a case pending in the municipal court shall be entitled to receive a fee as may be established by Council from time by resolution for each day on which the person actually serves as such juror, to be paid out of the city treasury.

Sec. 24-12. Prosecutor.

The City Attorney, or such other attorneys designated by the City Manager with approval of the City Council, may prosecute cases in the Municipal Court.

Sec. 24-13. Court bailiffs.

The City Manager, upon the request of the judge, shall furnish one or more peace officers to serve as municipal court bailiffs during the convening of the court and when, in the judgment of the judge, a bailiff is necessary to maintain proper decorum during any court proceedings.

(Sec. 24-14 – 24-20, reserved.)

ARTICLE II. Special funds.

Sec. 24.21. Municipal court building security fund.

(a) There is hereby created and established a municipal court building security fund (the "fund") pursuant to Article 102.017 of the Code of Criminal Procedure.

(b) The municipal court is authorized and required to assess a municipal court building security fee (the "fee") in the amount of \$3.00 against all defendants convicted in a trial of a misdemeanor offense by the municipal court. Each misdemeanor conviction shall be subject to a separate assessment of the fee.

(c) The municipal court clerk is hereby authorized and required to collect the fee and to pay same to the treasury of the city. All fees so collected and paid over to the treasury of the city, shall be segregated in the fund.

(d) The fund shall be used only for the purpose of financing the purchase of security devices and/or services for the building or buildings housing the municipal court of the city. Security devices and/or services shall include any and all items described in Article 102.017(d) of the Code of Criminal Procedure.

(e) The fund shall be administered by or under the direction of the Council.

Sec. 24-22. Establishment of municipal court technology fund.

(a) There is hereby created and established a municipal court technology fund, here-in-now known as the fund, pursuant to article 102.0172 of the Code of Criminal Procedure.

(b) The fund may be maintained in an interest-bearing account and may be maintained in the general revenue account.

Sec. 24-23. Establishment of amount of the fee and assessment and collection.

(a) The fee shall be in the amount of four dollars.

(b) The fee shall be assessed and collected from the defendant upon conviction for a misdemeanor offense in the municipal court as a cost of court. A defendant is considered convicted if:

- (1) A sentence is imposed on the person;
- (2) The person is placed on community supervision, including deferred adjudication community supervision; or
- (3) The court defers final disposition of the person's case.

(c) The fee shall be collected on conviction for an offense committed on or after November 1, 1999.

(d) The clerk of the court shall collect the fee and pay the fee to the treasurer of the city, who shall deposit the fee into the municipal court technology fund.

Sec. 24-24. Designated use of the fund and administration.

(a) The municipal court technology fund shall be used only to finance the purchase of or to maintain technological enhancements for a municipal court of the city, including:

- (1) Computer systems;
- (2) Computer networks;
- (3) Computer hardware;
- (4) Computer software;
- (5) Imaging systems;
- (6) Electronic kiosks;
- (7) Electronic ticket writers; and
- (8) Docket management systems.

(b) The fund shall be administered by or under the direction of the city council.”

SECTION 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

SECTION 3. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 4. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense.

SECTION 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s home rule Charter.”

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF
THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE ____TH DAY OF
_____ 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

SECOND READING:

READ, PASSED AND ADOPTED AS SET OUT BELOW AT THE MEETING OF
THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE ____TH DAY OF
_____ 2010.

COUNCILMAN QUINN	_____
COUNCILMAN STOLL	_____
COUNCILMAN BROWN	_____
COUNCILMAN TOWNSEND	_____
COUNCILMAN DRIVER	_____

Gretchen Fagan, Mayor
City of Tomball

ATTEST:

Doris Speer, City Secretary
City of Tomball

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Approve proposed Lease Agreement with Frank and Russell DeNina for the Property containing the Day Labor Site.

Background:

On October 17, 2000, the City of Tomball signed a lease with Frank and Russell DeNina for use of their 3.547 acre tract of land located on the East side of the railroad tracks and South of Main Street. The City has used this area as the location for the Day Labor Site. The lease was for a period of five (5) years, with an option to extend an additional two (2) years. On June 12, 2006, the lease was extended until October 17, 2007. Since then, no other agreements have been signed; however, the City has continued to honor the lease by paying the ad valorem taxes on the property. Taxes paid on the property are as follows:

- 2000 to 2002 - \$5,087.86
- 2003 to 2004 - \$4981.44
- 2005 - \$2,478.32
- 2006 - \$2,333.79
- 2007 - \$2,051.22
- 2008 - \$1,301.84
- 2009 - \$1,487.88

Based on the terms of the previous lease agreement, Staff, along with the City Attorney, has drafted the new lease. The only major change to the lease is the removal of the environmental study provision. In 2000, the City had an Environmental Study of the area conducted and found that there were remnants of two fuel storage tanks, but that there should be no risk to the day labor site occupants.

The new lease is for five (5) years with an option to renew for an additional two (2) years.

Origination:

Recommendation:

Funding:

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

Shawn Cox, Assistant to the City Manager

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

ATTACHMENTS:

Lease 2010

Lease 2000

LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered as of the _____ day of _____, 2010, by and between Frank DeNina and Russell DeNina, individuals, whose principal address is 27100 Tomball Parkway, Tomball, TX 77375 ("Lessor"), and the City of Tomball, a home rule municipal corporation located in Harris County, Texas, having its City Hall located at 401 W. Market Street, Tomball, TX 77375 (the "City").

Whereas, Lessor is the owner of a certain 3.547 acre tract of land, more or less, located within the City of Tomball, Harris County, Texas; and

Whereas, the City desires to lease said 3.547 acre tract from Lessor for use by the City as a day worker's assembly and collection facility; and

Whereas, Lessor is willing to lease said 3.547 acre tract to the City subject to the terms and conditions contained herein; now therefore

For and in consideration of the mutual obligations and benefits to be derived hereunder, Lessor and the City do hereby agree as follows:

Section 1. Lessor agrees to lease to the City, and the City agrees to lease from Lessor, all of that certain 3.547 acre tract of land, more or less, located in the City of Tomball, Harris County, Texas, said 3.547 acre tract being more particularly described and depicted in Exhibit "A" attached hereto and for all things, made a part hereof (the "Property").

Section 2. The primary term of this lease shall be for a period of five (5) years, commencing on the effective date written above, which primary five (5) year term may be extended for an additional period of two (2) years (the "Renewal Term") upon effective notice thereof to Lessor not less than (90) days prior to the expiration of the Primary Term. Notwithstanding the foregoing, Lessor shall have the right at any time after the end of the first year of this agreement to terminate this Lease, upon ninety (90) days advance written notice thereof, subject to payment by Lessor to the City of proportionate amount of the capital expenditures up to a maximum of \$15,000 made by the City to the Property after the effective date of this Lease, such proportionate amount being the percentage thereof that equals the percentage of the primary Term during that the City occupied the Property. The City shall have the right, at any time, to terminate this lease upon thirty (30) days advance written notice thereof.

Section 3. The City shall pay to Lessor, as its annual lease payment, an amount that equals the total ad valorem taxes that may become due and payable on the Property during the Term or any Renewal Term hereof, including, but not limited to, ad valorem taxes levied by any school district, county, city, conservation reclamation district, hospital district, or any other lawfully constituted taxing unit for that year. Rental shall be due and payable on or before December 15 of each calendar year. For any year of the Primary Term or and Renewal Term that includes less than a full calendar year, the lease payment shall be prorated based upon the portion of the year during which this lease agreement is in effect. It is expressly recognized and agreed between Lessor and the City that the value of the leasehold interest being obtained by the City hereunder exceeds the rental as provided by this Section. The City agrees to cooperate with Lessor, at request of Lessor, with establishing a fair market value of such leasehold estate for the purpose of determining the value of the contribution made by Lessor to the City hereunder.

Section 4. The City shall be authorized to construct and place fixtures and other improvements on the Property as reasonably necessary to provide for the safe and healthful assemblage of day workers and employers. Such improvements may include, but shall not be limited to, perimeter fencing, lighting, portable water facilities, sanitary sewer facilities, including portable toilets, seating, designated vehicular and bicycle parking areas, and shelters. All such improvements constructed or placed on the Property shall be approved by Lessor, which approval shall not be unreasonably withheld.

Section 5. The City agrees to maintain the Property in accordance with the same standards applicable to maintenance of other similar properties of the City. At a minimum, such maintenance shall include regular policing of the grounds and trash removal. The City shall not use, or permit the use of, the Property in any manner that results in waste.

Section 6. The City agrees to maintain policies of liability insurance, insuring against personal injury property damage arising from use of the Property, such policies to provide coverage in amounts not less than those carried for other similar properties by the City. The City shall maintain such policies of insurance at all times during the Term or Renewal Term of this Lease.

Section 7. The City shall return the Property at the termination of the lease in a comparable condition to that which existed on the effective date hereof, normal wear and tear expected. Notwithstanding the foregoing, the City shall not be required to remove fixtures attached to the Property by the City during the Term hereof unless any such fixture shall constitute an attractive nuisance. The City shall not allow attractive nuisance to exist on the Property, nor shall the City return the Property to Lessor at the termination hereof with any attractive nuisance existing on the Property.

Section 8. The City shall be authorized to use the Property as a day laborer assembly and collection site and if agreed upon in writing by both the Lessor and the City for any other lawful municipal purposes.

Section 9. If the City defaults in performing any covenant or term of this Lease and does not correct the default within thirty (30) days after receipt of written notice from Lessor to the City to do so, the City shall be deemed in default hereunder and Lessor shall be entitled to terminate this Lease.

Section 10. Lessor warrants that they own the Property in fee simple.

Section 11. Lessor covenants that as long as the City pays the rental and other charges under this Lease and observes the covenants and terms of this Lease, the City will lawfully hold, occupy, and enjoy the Property during the lease Term and any Renewal Term hereof without being disturbed by Lessor or any person claiming under Lessor, except for any portion of the Property taken under the power of eminent domain. In the event of any such taking by eminent domain, the City shall be entitled to a prorated reduction of rentals equivalent to the reduction in the Property. Provided further, in the event any such taking of the Property by eminent domain leaves insufficient space for the City to provide the facilities contemplated hereby, the City shall be entitled to terminate this Lease.

Executed in duplicate originals as of the date provided above.

THE CITY

City of Tomball, Texas

By: _____

Mayor

Attest:

Doris Speer
City Secretary

LESSOR

Frank DeNina

Russell DeNina

ACKNOWLEDGMENTS

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the _____ day of _____, 2010, by _____, Mayor of the City of Tomball, TX.

Notary Public In and For the State of Texas

My Commission Expires: _____

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the _____ day of _____, 2010, by Doris Speer, City Secretary for the City of Tomball, TX.

Notary Public In and For the State of Texas

My Commission Expires: _____

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the _____ day of _____, 2010, by Frank DeNina.

Notary Public In and For the State of Texas

My Commission Expires: _____

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the _____ day of _____, 2010, by Russell DeNina.

Notary Public In and For the State of Texas

My Commission Expires: _____

LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into as of the ____ day of _____, 2000, by and between Frank DeNina and Russell DeNina, individuals, whose principal address is 27100 Tomball Parkway, Tomball, Texas, 77375 ("Lessor"), and the City of Tomball, a home rule municipal corporation located in Harris County, Texas, having its City Hall located at 401 W. Market Street, Tomball, Texas ("Lessee").

Whereas, Lessor is the owner of a certain 3.547 acre tract of land, more or less, located within the City of Tomball, Harris County, Texas; and

Whereas, Lessee desires to lease said 3.547 acre tract from Lessor for use by Lessee as a day workers' assembly and collection facility; and

Whereas, Lessor is willing to lease said 3.547 acre tract to Lessee subject to the terms and conditions contained herein; now therefore

For and in consideration of the mutual obligations and benefits to be derived hereunder, Lessor and Lessee do hereby agree as follows:

Section 1. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, all of that certain 3.547 acre tract of land, more or less, located in the City of Tomball, Harris County, Texas, said 3.547 acre tract being more particularly described and depicted in Exhibit "A" attached hereto and for all things made a part hereof (the "Property").

Section 2. The Primary Term of this Lease shall be for a period of five (5) years, commencing on the effective date written above, which primary five (5) year term may be extended for an additional period of two (2) years (the "Renewal Term") upon notice thereof to Lessor not less than ninety (90) days prior to the expiration of the Primary Term. Notwithstanding the foregoing, Lessor shall have the right at any time after the end of the first year of this agreement to terminate this Lease, upon ninety (90) days advance written notice thereof, subject to payment by Lessor to Lessee of a proportionate amount of the capital expenditures up to a maximum of \$15,000 made by Lessee to the Property, such proportionate amount being the percentage thereof which equals the percentage of the primary Term during which Lessee occupied the Property. Lessee shall have the right, at any time, to terminate this lease upon thirty (30) days advance written notice thereof.

Section 3. Lessee shall pay to Lessor, as lease payments, an amount which equals the total ad valorem taxes which may become due and payable on the Property during the Term or any Renewal Term hereof, including, but not limited to, ad valorem taxes levied by any school district, county, city, conservation reclamation district, hospital district, or any other lawfully constituted taxing unit. Rental shall be due and payable on or before December 15th of each calendar year. For any year of the Primary Term or any Renewal Term which includes less than a full calendar year, the lease payment shall be prorated based upon the portion of the year during

which this lease agreement is in effect. It is expressly recognized and agreed between Lessor and Lessee that the value of the leasehold interest being obtained by Lessee hereunder exceeds the rental as provided by this Section. Lessee agrees to cooperate with Lessor, at request of Lessor, with establishing a fair market value of such leasehold estate for the purpose of determining the value of the contribution make by Lessor to Lessee hereunder.

Section 4. Lessee shall be authorized to construct and place fixtures and other improvements on the Property as reasonably necessary to provide for the safe and healthful assemblage of day workers and employers. Such improvements may include, but shall not be limited to, perimeter fencing, lighting, potable water facilities, sanitary sewer facilities, including portable toilets, seating, designated vehicular and bicycle parking areas, and shelters. All such improvements constructed or placed on the Property shall be approved by Lessor, which approval shall not be unreasonably withheld.

Section 5. Lessee agrees to maintain the Property in accordance with the same standards applicable to maintenance of other similar properties of Lessee. At a minimum, such maintenance shall include regular policing of the grounds and trash removal. Lessee shall not use, or permit the use of, the Property in any manner that results in waste.

Section 6. Lessee agrees to maintain policies of liability insurance, showing Lessor as an additional insured, insuring against personal injury and property damage arising from use of the Property, such policies to provide coverage in amounts not less than those carried for other similar properties by Lessee. Lessee shall maintain such policies of insurance at all times during the Term or any Renewal Term of this Lease, and shall provide to Lessor upon request certificates evidencing such coverages.

Section 7. Lessee shall return the Property at the termination of the lease in a comparable condition to that which existed on the effective date hereof, normal wear and tear excepted. Notwithstanding the foregoing, Lessee shall not be required to remove fixtures attached to the Property by Lessee during the Term hereof unless any such fixture shall constitute an attractive nuisance. Lessee shall not allow an attractive nuisance to exist on the Property, nor shall Lessee return the Property to Lessor at the termination hereof with any attractive nuisance existing on the Property.

Section 8. Lessee shall be authorized to use the Property as a day laborer assembly and collection site and if agreed upon in writing by both lessor and lessee for any other lawful municipal purposes.

Section 9. Lessee shall be authorized to provide for an environmental assessment to be conducted of the Property by a qualified environmental consultant, which assessment shall be conducted in as expeditious a manner as is reasonably practicable. The assessment shall be conducted according to the following minimum standards: (a) Phase I of the assessment shall include a review of available documents, interviews with people aware of operations that have been conducted on the Property, and a physical inspection of the Property; (b) Phase II of the assessment may be conducted if the results of Phase I are inconclusive to show the presence or

absence of any hazardous substances on the Property. In the event that a Phase II of the assessment is required, it shall include a more detailed review of the Real Property, and specialized physical sampling as indicated necessary from the results of Phase I; (c) If the results of the Phase II assessment are inconclusive to show the presence or absence of any hazardous substances on the Real Property, a Phase III assessment may be conducted. The nature of the inquiries to be made in the Phase III assessment, if any, shall be determined by the Purchaser and the environmental consultant retained to conduct the assessment following the Purchaser's analysis of the report on the Phase II assessment.

The cost of any environmental assessment performed pursuant to this Section shall be paid solely by Lessee. Lessor agrees to cooperate with all inquiries made by the environmental consultant, including, but not limited to, giving the environmental consultant access to the Property at all times and making all records kept by Lessor concerning releases of hazardous substances on the Property available to the consultant for inspection at Lessor's offices. Lessee shall be liable for the repair of any damage or destruction to the Property as a result of any such environmental assessment. Any such repair or restoration shall return the Property to its original condition prior to the conduct of any such environmental site assessment activity.

Section 10. If Lessee defaults in performing any covenant or term of this Lease and does not correct the default within thirty (30) days after receipt of written notice from Lessor to Lessee to do so, Lessee shall be deemed in default hereunder and Lessor shall be entitled to terminate this Lease.

Section 11. Lessor warrants that he is the owner in fee simple of the Property.

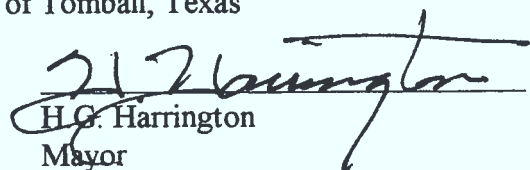
Section 12. Lessor covenants that as long as Lessee pays the rental and other charges under this Lease and observes the covenants and terms of this Lease, Lessee will lawfully hold, occupy, and enjoy the Property during the lease Term and any Renewal Term hereof without being disturbed by Lessor or any person claiming under Lessor, except for any portion of the Property taken under the power of eminent domain. In the event of any such taking by eminent domain, Lessee shall be entitled to a prorated reduction of rentals equivalent to the reduction in the Property. Provided further, in the event any such taking of the Property by eminent domain leaves insufficient space for Lessee to provide the facilities contemplated hereby, Lessee shall be entitled to terminate this Lease.

Executed in duplicate originals as of the date provided above.

LESSEE

City of Tomball, Texas

By:


H.G. Harrington
Mayor

Attest:

Mary Coker
Mary Coker
City Secretary

LESSOR

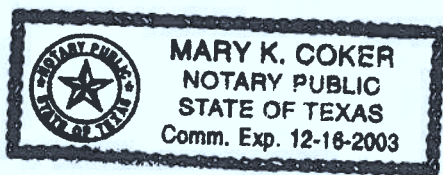
Frank DeNina
Frank DeNina
Russell DeNina
Russell DeNina

ACKNOWLEDGMENTS

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 3rd day of October, 2000,
by H.G. Harrington, Mayor of the City of Tomball, Texas.



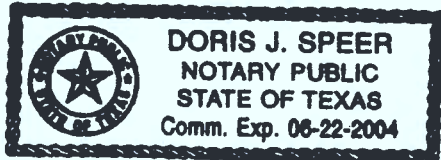
Mary K. Coker
Notary Public In and For the State of Texas

My Commission Expires: 12-16-03

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 3rd day of October, 2000,
by Mary Coker.



Doris J. Speer
Notary Public In and For the State of Texas

My Commission Expires: 6-22-2004

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 17th day of OCTOBER, 2000,
by Frank DeNina.

Cheerl Hunt
Notary Public In and For the State of Texas

My Commission Expires: 01/06/01

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 10th day of OCTOBER, 2000,
by Russell DeNina.

Cheerl Hunt
Notary Public In and For the State of Texas

My Commission Expires: 01/06/01

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Discussion regarding Reconsideration of Resolution No. 2010-04, a Resolution of the City Council of the City of Tomball, Texas, Designating the Official Newspaper for 2010 for Publication of Matters Pertaining to the City of Tomball

Background:

On January 18, 2010, Council adopted Resolution No. 2010-04, designating the Tribune as the official newspaper for 2010. On February 1, 2010, Council again discussed the designation of the official newspaper, due to erroneous information provided during the January 18, 2010 Council meeting.

Following discussion, Councilman Townsend requested that an item to reconsider Resolution No. 2010-04 be placed on the agenda when the 90-day period required for defeated motions under Chapter 2, Section 2-32. Rules of Procedure, (9) Reconsideration of a subject when defeated, in the Code of Ordinances expired.

The 90-day period has expired and this item has been placed on the agenda for Council discussion and direction to staff.

Origination:

Councilman Townsend

Recommendation:

N/A

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

Doris Speer, City Secretary

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

ATTACHMENTS:

Resolution No. 2010-04

RESOLUTION NO. 2010-04

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF TOMBALL, TEXAS, DESIGNATING THE OFFICIAL
NEWSPAPER FOR 2010 FOR PUBLICATION OF
MATTERS PERTAINING TO THE CITY OF TOMBALL.**

* * * * *

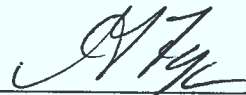
WHEREAS, the Home Rule Charter of the City of Tomball, Section 3.06 – Official Newspaper, states:

“The Council shall have power to contract with, and by ordinance or resolution, annually designate a public newspaper of general circulation in the City as the official newspaper thereof and to continue as such until another is designated, and shall cause to be published therein all ordinances, notices and other matters required to be published by this Charter, by the ordinances of the City or by the Constitution or laws of the State of Texas.”

NOW, THEREFORE, BE IT RESOLVED that the City of Tomball and its governing body hereby designates the Tomball-Magnolia Tribune to be named the official newspaper for 2010 for the City of Tomball, Texas, for the publication of ordinances, notices, and other matters required by law or ordinance to be published, and that this resolution shall take effect upon its passage.

**PASSED AND APPROVED BY A VOTE OF 3 TO 2 AS SET OUT BELOW AT
THE MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF JANUARY
2010:**

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>NAY</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</u>
COUNCILMAN DRIVER	<u>ABSENT</u>
MAYOR FAGAN	<u>AYE</u>



GRETCHEN FAGAN, Mayor

ATTEST:



Doris Speer, City Secretary

Regular City Council Agenda Item Data Sheet

Meeting Date: June 7, 2010

Topic:

Discussion regarding Hutson Group's Proposal for City to Lease Land for Parking

Background:

Councilman Townsend requested that this item be placed on the agenda for discussion purposes.

Origination:

Councilmember Townsend

Recommendation:

Funding:

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

Mayor Gretchen Fagan

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