

**CITY OF TEXAS CITY  
REGULAR CALLED CITY COMMISSION MEETING**

**AGENDA**

**WEDNESDAY, APRIL 20, 2011 - 5:00 P.M.  
KENNETH T. NUNN COUNCIL ROOM - CITY HALL  
1801 9th Ave. N.  
Texas City, TX 77590**

**(1) INVOCATION**

**(2) PLEDGE OF ALLEGIANCE**

**(3) PROCLAMATIONS AND PRESENTATIONS**

|     |                |              |        |
|-----|----------------|--------------|--------|
| (a) | Robert Wiley   | Police       | 5 Yrs  |
|     | David Heckard  | Police       | 5 Yrs  |
|     | Richard Morris | Police       | 5 Yrs  |
|     | Clayton Pope   | Police       | 5 Yrs  |
|     | Ryan Gerhardt  | Public Works | 5 Yrs  |
|     | Donna Johnson  | Police       | 15 Yrs |
|     | Brett Cyr      | Police       | 20 Yrs |

(b) Proclamation recognizing April 2011 National Parkinson's Awareness Month.

(c) Proclamation recognizing May 2011 Cinco de Mayo Month. (Mayor)

**(4) CONSENT AGENDA**

(a) Consider approval of the minutes from the April 6, 2011 regular called City Commission meeting.

(b) Resolution No. 11-027 approving the First Amendment to the Lago Mar Commercial Property's original Declaration of Covenants, Conditions, Restrictions and Easements. (Planning)

(c) Resolution No. 11-028 approving additional repair costs for the 14th Street Elevated Storage Tank. (Purchasing)

(d) Resolution No. 11-029 approving a renewal contract for three years with ABS Billing for the EMS Billing. (Fire)

**(5) REGULAR ITEMS**

- (a)** Consider approval of Ordinance No. 11-11 amending the City of Texas City Code of Ordinances , Chapter 94, Second Hand Goods, Article II. - Junk Dealers, Division 1. Generally, Section 94-31 Definitions and Division 2. License, by revising the Ordinance clarifying issuance of permits. (Police)
- (b)** Consider approval of Ordinance No. 11-12 amending the City of Texas City Code of Ordinances , Chapter 14, Amusements and Entertainments, Article II. Coin-Operated Machines, Sections 14-33, 14-36 and 14-37 by revising the Ordinance clarifying which department will issue occupation taxes, permits and licenses. (Police)
- (c)** Consider approval of Ordinance No. 11-13 permanently rezoning a portion of Land Tejas PUD for the pending Premium Outlet Mall. (Planning)

**(6) PUBLIC COMMENTS**

**(7) MAYOR'S COMMENTS**

**(8) COMMISSIONERS' COMMENTS**

**(9) ADJOURNMENT**

**NOTICE OF ANY SUBJECT APPEARING ON THIS AGENDA REGARDLESS OF HOW THE MATTER IS STATED MAY BE ACTED UPON BY THE CITY COMMISSION.**

**NOTICE: The City of Texas City will furnish free transportation to handicapped individuals via a 4-door sedan for anyone wishing to attend the City Commission meetings. Call 948-3111, City Secretary's Office before noon on Monday preceding the meeting to make arrangements.**

**I CERTIFY THAT THE ABOVE NOTICE OF THE MEETING WAS POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING, 1801 9TH AVENUE NORTH, TEXAS CITY, TEXAS ON APRIL 15, 2011 AT 5:00 P.M.**

**/s/Nicholas J. Finan  
NICHOLAS J. FINAN  
CITY SECRETARY  
POSTED APRIL 15, 2011**

**CITY COMMISSION AGENDA****Item #: 3. (a.****Date:** 04/20/2011**Service Awards****Submitted By:** Rachel Wyatt, Human Resources**Department:** Human Resources

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**ACTION REQUEST (Brief Summary)**

|                |              |          |
|----------------|--------------|----------|
| Robert Wiley   | Police       | 5 Years  |
| David Heckard  | Police       | 5 Years  |
| Richard Morris | Police       | 5 Years  |
| Clayton Pope   | Police       | 5 Years  |
| Ryan Gerhardt  | Public Works | 5 Years  |
| Donna Johnson  | Police       | 15 Years |
| Brett Cyr      | Police       | 20 Years |

**BACKGROUND****ANALYSIS****ALTERNATIVES CONSIDERED**

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**CITY COMMISSION AGENDA**

**Item #: 3. (b.**

**Date:** 04/20/2011

**National Parkinson's Awareness Month**

**Submitted For:** Nicholas Finan      **Submitted By:** Susan Sensat,  
Administration

**Department:** Administration

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**ACTION REQUEST (Brief Summary)**

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**CITY COMMISSION AGENDA**

**Item #: 3. (c.**

**Date:** 04/20/2011

**Proclamation recognizing May 2011 Cinco de Mayo Month**

**Submitted For:** Mayor      **Submitted By:** Susan Sensat,  
Administration

**Department:** Administration

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**ACTION REQUEST (Brief Summary)**

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**CITY COMMISSION AGENDA**

**Item #: 4. (a.**

**Date:** 04/20/2011

**Approval of the April 6, 2011 CC Meeting Minutes**

**Submitted By:** Susan Sensat, Administration

**Department:** Administration

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**ACTION REQUEST (Brief Summary)**

**BACKGROUND**

**ANALYSIS**

**ALTERNATIVES CONSIDERED**

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**Attachments**

CC Minutes 4/6/2011

REGULAR CALLED CITY COMMISSION MEETING

MINUTES

WEDNESDAY, APRIL 6, 2011 – 5:00 P.M.  
KENNETH T. NUNN COUNCIL ROOM – CITY HALL

**A Regular Called Meeting of the City Commission** was held on **Wednesday, April 6, 2011, at 5:00 P.M.** in the Kenneth T. Nunn Council Room in City Hall, Texas City, Texas, with the following in attendance: Mayor Matthew T. Doyle, Commissioners: Mike Land, Donald Singleton, Dee Ann Haney and Rick Wilkenfeld. Commissioner Scooter Wilson and Dedrick Johnson were unable to attend.

**Mayor Matthew T. Doyle** called upon **Pastor Daniel Keur, Trinity Baptist Church**, to offer the **Invocation**. **Commissioner Land** led all present in the **recitation of the Pledge of Allegiance**.

**PROCLAMATIONS AND PRESENTATIONS**

- a. Proclamation declaring April 2011 Child Abuse Prevention and Awareness Month.

Proclamation read as follows:

***WHEREAS**, children are the embodiment of innocence and our hope for the future, and every child deserves to grow up in a nurturing environment, free from harm and fear. Sadly, however, child abuse is a reality, a problem we must relentlessly combat through awareness, education and action. Every responsible person will agree that even one abused child is one too many. Over 68,000 children were confirmed victims of child abuse and neglect in Texas just last year, and over 3300 children living in Galveston County were reported to be victims of child abuse or neglect; and*

***WHEREAS**, when abuse or neglect occurs, we have a duty to report it to the appropriate authorities. All responsible citizens must do what is necessary to resolve this insidious issue; and*

***WHEREAS**, to significantly impact Child Abuse, partnerships must be established between citizens, agencies, schools, religious organizations, law enforcement, and business communities to work together and make every effort to promote programs that benefit children and strengthen families.*

***NOW THEREFORE I, Matthew T. Doyle**, Mayor of the City of Texas City, in the great state of Texas, proclaim April, 2011 as*

*Child Abuse Prevention and Awareness Month*

*and encourage all citizens to join me in renewing our commitment to preventing child abuse and to learning what we can do to promote the safety and well-being of our community's children.*

*In testimony whereof, witness my hand and the Seal of the City of Texas City, this the 6<sup>th</sup> day of April, 2011.*

- b. Proclamation recognizing April 4 through April 10, 2011 as National Public Health Week.

Proclamation read as follows:

*Whereas, the Galveston County Health District will be observing "National Public Health Week" the week of April 4-10, 2011, in an effort to inform all citizens of the many public services provided by the Galveston County Health District and how they can help or serve the citizens of Galveston County and cities; and*

*Whereas, the Health District collaborates with others in the Galveston County Community to meet the public health needs of all our citizens; and operates environmental programs which work to insure the safety of our food, water, and air in Galveston county; and conducts annual immunization drives for Back-to-School, National Infant Immunization Month and seasonal flu with a goal of eliminating preventable illnesses among children and adults; and*

*Whereas, the Health District operates the 4Cs clinics which provide high quality primary and preventive health care for all residents of Galveston County including the medically-underserved; and*

*Whereas, the Health District is improving public health preparedness to deal with naturally-occurring and intentional disease outbreaks by educating residents and recruiting volunteers to assist in mass dispensing clinics; and*

*Whereas, the Health District provides timely, competent emergency medical services through the operations of the Galveston Area Ambulance Authority; and investigators track and evaluate reportable diseases to identify outbreaks and quickly reduce the spread of infectious diseases*

*Now, Therefore, I, Matthew T. Doyle, Mayor of the City of Texas City am honored to hereby proclaim the week of April 4-10, 2011, as "National Public Health Week" and urge all citizens to observe this week by helping families, friends, neighbors, co-workers and leaders understand the importance of wellness and community health in Galveston County and cities.*

*In testimony whereof, witness my hand and the Seal of the City of Texas City, this the 6<sup>th</sup> day of April, 2011.*

Ronnie Schultz, Director of the Environmental Health Program, reported the Health District will observe Thursday, April 7, 2011 National Public Health Week and National Immunization week. The Health District will offer free immunizations as well as educate the public.

- c. Present Engineer Shonna Bellow the 2011 Fire Fighter of the Year award.

Fire Chief Gorman presented the 2011 Fire Fighter of the Year Award to Engineer Shonna Bellow and award read as follows:

City Commission Minutes

April 6, 2011

Page 3

*Dear Shonna,*

*It is a personal privilege and professional honor to recognize you as the department's selection for "Firefighter of the Year" for calendar year two thousand and ten A.D.*

*Since your employment in April of 2007 you have worked tirelessly in meeting the mission of the Fire Department and City of Texas City. You have obtained State Certification as Firefighter, Driver Operator, Fire Inspector, Fire Investigator, Paramedic, and CPR Instructor. Along the way you have also earned a promotion to Engineer and assignment as Assistant Fire Marshal.*

*Furthermore, you have accepted an active role the Explorer Program, providing countless hours to creating agendas, recruitment, and planning activities. Also of note was your recent participation in "Saving Ourselves", a community outreach event, by assisting and providing CPR certification to numerous Citizens over a two day period.*

*Your work as a Juvenile Fire setter Intervention Specialist has provided an invaluable service to at-risk children and their families.*

*These accomplishments denote remarkable achievement and advancement in three short years and are deserving of award.*

*Your dedication, professionalism, and commitment to meeting the mission and needs of the Department are noteworthy qualities which are greatly appreciated by the department and the citizens we so proudly serve.*

*On behalf of the Fire Department and the City of Texas City, I offer congratulations for a "job well done" and extend to you and your family our blessing for continued good health, happiness, and success throughout life's journey.*

*Respectfully Yours,*

*Joseph A. Gorman*

*Fire Chief*

Shonna Bellows thanked Chief Gorman and Assistant Chief Zacherl for selecting her for the Firefighter of the Year Award and thanked her family and friends for their love and support.

- d. Recognition of the T.A.A.F. 8U Girls Division II Texas City Bulls team for placing first and third and 18 other teams who participated at the 2011 State Basketball Tournament held on March 18-20, 2011, in The Colony and Carrollton, Texas.

Certificate of Recognition read as follows:

*Certificate of Recognition  
The City of Texas City, Texas, on behalf of the citizens and City Commission does  
hereby present to  
TEXAS CITY BULLS*

*GIRLS & UNDER DIVISION II*

*in commemoration of*

*Your outstanding performance during the TAAF State Tournament where you and your team placed 1<sup>st</sup> and 3<sup>rd</sup> on March 18-20, 2011. Thank you to the Coaches for your leadership and coaching skills and for encouraging our young people to strive and maintain the highest ideals of amateur sports in the State of Texas. Texas City is proud of you and the TEXAS CITY BULLS.*

*In testimony whereof, witness my hand and the Seal of the City of Texas City, this the 6<sup>th</sup> day of April, 2011.*

**PRELIMINARY PLAT APPROVAL**

- a. Consider Preliminary plat approval for retail/commercial outlet to be located south of Holland Road Westside of I-45, being 71.8 acres out of the Alexander Farmer League, Abstract 11 Galveston County, Texas consisting of 2 restricted reserves.

Don Carroll addressed the Commission: The request came before the Planning Board on March 21, 2011. All staff concerns were properly vetted and there were no controversial issues associated with the preliminary plat request. After the Planning Boards review and the information provided the Commission unanimously recommended approval. The commercial retail component is associated with the Land Tejas Special District/ PUD project which was approved by the Commission in 2007.

**CONSENT AGENDA**

**Mayor Matthew T. Doyle stated that item (e), Resolution No. 11-026 requesting permission to re-designate funding already approved in fiscal year 2010-2011 Capital Funding for the Rescue 11 to purchase a used fire apparatus be pulled for further discussion.**

- a. Consider approval of the minutes from the March 16, 2011 regular called City Commission meeting.
- b. Resolution No. 11-023 awarding a contract for the Pump Station "A" Roof Project.

**RESOLUTION NO. 11-023**

A RESOLUTION APPROVING CONTRACT AND AWARDED BID FOR PUMP STATION "A" ROOF PROJECT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

- c. Resolution No. 11-024 authorizing the Mayor to execute an Architectural Service Agreement with M2L Associates for the FM 1764 Landscaping and Lighting Project.

RESOLUTION NO. 11-024

A RESOLUTION APPROVING AN ARCHITECTURAL SERVICES AGREEMENT WITH M2L ASSOCIATES FOR THE FM 1764 LANDSCAPING AND LIGHTING PROJECT; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

- d. Resolution No. 11-025 awarding an annual contract for the Gasoline and Diesel.

RESOLUTION NO. 11-025

A RESOLUTION AWARDING A BID AND AUTHORIZING THE MAYOR TO ENTER INTO ANNUAL CONTRACT WITH APACHE OIL FOR THE PURCHASE OF GASOLINE AND DIESEL; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

Commissioner Haney made a MOTION to APPROVE CONSENT AGENDA items (a), (b), (c) and (d); the motion was SECONDED by Commissioner Singleton. All present voted AYE. MOTION CARRIED.

- e. Resolution No. 11-026 requesting permission to re-designate funding already approved in fiscal year 2010-2011 Capital Funding for the Rescue 11 to purchase a used fire apparatus.

RESOLUTION NO. 11-026

A RESOLUTION AUTHORIZING REDESIGNATION OF FUNDS FOR PURCHASE OF A FIRE APPARATUS; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

Assistant Fire Chief David Zacherl reported the fire department currently has one 1985 La France fire engine and one 1986 Seagrave fire engine in need of extensive repair. Chief Zacherl found a used high quality 2001 HME/Central State Rescue Pumper with less than 10,000 miles and seller will furnish the complete pump test. Commissioner Dee Ann Haney asked Chief Zacherl what he plans on doing with the two fire trucks being replaced. He was offered \$5,000.00 trade-in for the 1986 Seagrave and this includes the transportation cost. The 1985 La France will be sold at auction. Commissioner Rick Wilkenfeld mentioned emissions was a problem for the previous owner, are we not concerned? Assistant Chief Zacherl said no, we have had these types of engines in the past and they are not a problem to maintain.

Commissioner Land made a MOTION to APPROVE CONSENT AGENDA item (e); the motion was SECONDED by Commissioner Haney. All present voted AYE. MOTION CARRIED.

**REGULAR ITEMS**

- a. Consider approval of Ordinance No. 11-06 requesting to amend the City of Texas City's fiscal year 2010-2011 budget to account for funds received from the Texas Department of Rural Affairs (TDRA) for emergency power project.

ORDINANCE NO. 11-06

AN ORDINANCE AMENDING ORDINANCE NO. 10-21, ADOPTING THE 2010-2011 FISCAL YEAR BUDGET FOR RECEIPT OF GRANT FUNDS FROM TEXAS DEPARTMENT OF RURAL AFFAIRS (TDRA) FOR EMERGENCY POWER TO WATER AND WASTEWATER FACILITIES; DIRECTING THE CHIEF EXECUTIVE OFFICER TO FILE OR CAUSE TO BE FILED A COPY OF THE AMENDED BUDGET IN THE OFFICE OF THE GALVESTON COUNTY CLERK AND THE STATE COMPTROLLER'S OFFICE; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

Laura Boyd, Finance Director reported the budget amendment is needed to account for grant funds being received from the Texas Department of Rural Affairs (TDRA). The funds will be used for a project to supply emergency power to water and wastewater facilities. The contract was awarded to McDonald Electric under Resolution No. 10-117. Under this grant, the contractor submits invoices for work completed to the Texas Department of Rural Affairs and in turn the Texas Department of Rural Affairs releases the funds to the City in order for the City to pay the contractor.

Commissioner Land made a MOTION to APPROVE Ordinance No. 11-06, amending the City of Texas City's fiscal year 2010-2011 budget to account for funds received from the Texas Department of Rural Affairs (TDRA) for emergency power project; the motion was SECONDED by Commissioner Wilkenfeld. All present voted AYE. MOTION CARRIED.

- b. Consider approval of Ordinance No. 11-07 requesting to amend the City of Texas City's fiscal year 2010-11 budget to account for funds received from the Texas Department of Rural Affairs for the 5th Street North paving, drainage, water and sewer improvements project.

Laura Boyd, reported the budget amendment is needed to account for grant funds being received from the Texas Department of Rural Affairs (TDRA). The funds will be used for the 5<sup>th</sup> Street North paving, drainage, water and sewer improvements with SER Construction as the contractor. SER Construction will submit invoices to the Texas Department of Rural Affairs, and then releases the funds to the City so the City can pay the Contractor.

Commissioner Wilkenfeld made a MOTION to APPROVE Ordinance No. 11-07, amending the City of Texas City's fiscal year 2010-2011 budget to account for funds received from the Texas Department of Rural Affairs (TDRA) for the 5<sup>th</sup> Street North Paving, drainage, water and sewer improvements project; the motion was SECONDED by Commissioner Singleton. All present voted AYE. MOTION CARRIED.

- c. Consider approval of Ordinance No. 11-08 requesting to amend the City of Texas City's fiscal year 2010-11 budget to account for funds to be received from Texas Parks & Wildlife (TPWD) for Texas City Dike boat ramp improvements.

Laura Boyd, reported the budget amendment is needed to account for funds being received from the Texas Parks and Wildlife Department (TPWD) for the Texas City Dike boat ramp improvements. Texas Parks and Wildlife will reimburse the City up to \$599,900.00.

Commissioner Land made a MOTION to APPROVE Ordinance No. 11-08, amending the City of Texas City's fiscal year 2010-2011 budget to account for funds to be received from Texas Parks & Wildlife (TPWD) for Texas City Dike boat ramp improvements; the motion was SECONDED by Commissioner Wilkenfeld. All present voted AYE. MOTION CARRIED.

- d. Consider approval of Ordinance No. 11-09 requesting to amend the City of Texas City's fiscal year 2010-11 budget to appropriate Texas City Economic Development Corporation funds for additional Robinson Stadium improvements.

Laura Boyd, reported the Texas City Economic Development Corporation approved the appropriation March 16, 2011 for the Robinson Stadium improvements.

Commissioner Land made a MOTION to APPROVE Ordinance No. 11-09, amending the City of Texas City's fiscal year 2010-2011 budget to appropriate Texas City Economic Development Corporation funds for additional Robinson Stadium improvements; the motion was SECONDED by Commissioner Haney. All present voted AYE. MOTION CARRIED.

- e. Consider approval of Ordinance No. 11-10 requesting to amend the City of Texas City's fiscal year 2010-11 budget to appropriate Texas City Economic Development Corporation funds for biosphere facility improvements.

Laura Boyd, reported the Texas City Economic Development Corporation approved the appropriation March 16, 2011 for the biosphere facility improvements.

Commissioner Singleton made a MOTION to APPROVE Ordinance No. 11-10, amending the City of Texas City's fiscal year 2010-2011 budget to appropriate Texas City Economic Development Corporation funds for biosphere facility improvements; the motion was SECONDED by Commissioner Wilkenfeld. All present voted AYE. MOTION CARRIED.

## **PUBLIC COMMENTS**

Jay Williams reminded everyone the Texas City Arts Festival runs from April 9 through April 13.

**MAYOR'S COMMENTS**

Mayor wanted to remind everyone April 14 was the deadline to register to vote for May's election. Early voting starts May 2 and ends May 10. Election Day is May 14.

**COMMISSIONERS' COMMENTS**

None.

Having no further business, Mike Land made a MOTION to ADJOURN at 5:35 p.m.; the motion was SECONDED by Commissioner Wilkenfeld. All present voted AYE. MOTION CARRIED.

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MATTHEW T. DOYLE, MAYOR

ATTEST:

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Susan Sensat,  
Deputy City Secretary  
4-8-2011

## **CITY COMMISSION AGENDA**

**Item #: 4. (b.**

**Date:** 04/20/2011

### **Resolution Approving Lago Mar Amendment**

**Submitted For:** Don Carroll **Submitted By:** Edna Patterson,  
Transportation and  
Planning

**Department:** Transportation and Planning

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### **ACTION REQUEST (Brief Summary)**

Resolution affirming consent to the First Amendment for the Lago Mar Commercial Property, more specifically, original Covenant, Conditions, and Restrictions as formulated for the initial PUD approval that was granted.

### **BACKGROUND**

As the Commission will recall the Land Tejas Special District /PUD was approved in 2007. The original declaration requires City consent to any amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Lago Mar Commercial Property. Moving forward the City has agreed to the minor change cited in the ""Regional Retail Design Guidelines" reference Item #7 (Section 6.2).

### **ANALYSIS**

### **ALTERNATIVES CONSIDERED**

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### **Attachments**

Res 11-027

Lago Mar Amend1 Memo

Lago Mar Declaration

**RESOLUTION NO. 11-027**

**A RESOLUTION APPROVING AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LAGO MAR COMMERCIAL PROPERTY; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, the Commission approved the Land Tejas Special District / PUD in 2007 which required Commission approval to any amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Lago Mar Commercial Property; and

**WHEREAS**, City staff have no objections to minor changes required as a result of the “Regional Retail Design Guidelines,” as set out in the memo attached hereto as Exhibit “A” .

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the City Commission of the City of Texas City, Texas, approves the First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Lago Mar Commercial Properties as set out in Exhibit “B,” attached hereto and made a part hereof for all purposes and the Mayor is authorized to execute said amendment.

**SECTION 2:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of April, 2010.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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Nicholas J. Finan  
City Secretary

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Ronald F. Plackemeier  
City Attorney

# MEMO

**TO:** Mayor  
City Commission

**FROM:** Don Carroll, City Planner *D.K. C.*

**DATE:** April 13, 2011

**RE:** Land Tejas Texas City, Ltd.  
Lago Mar Commercial Property  
First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements

As the Commission will recall this commercial retail component for the mall is in association with Land Tejas Special District / PUD which was approved by the Commission in 2007 and filed with the County Clerk.

A Resolution affirming consent to the First Amendment for the Lago Mar Commercial Property, more specifically, original Covenant, Conditions, and Restrictions as formulated for the initial PUD approval that was granted. The original declaration requires City consent to any amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Lago Mar Commercial Property. Moving forward the City has agreed to the minor change cited in the ""Rezoned Retail Design Guidelines" reference Item #7 (Section 6.2).

Administration and Staff have no objections to the proposed resolution and intent to adhere to the "Regional Retail Design Guidelines" as proposed and requested by the Principals for the outlet mall.

DRC:ep

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
for  
LAGO MAR COMMERCIAL PROPERTY**

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**STATE OF TEXAS                   §  
                                          §  
COUNTY OF GALVESTON       §**

**RECITALS**

By that certain instrument entitled "Declaration of Covenants, Conditions, Restrictions and Easements for Lago Mar Commercial Property," filed of record in the Official Public Records of Galveston County, Texas on May 15, 2007 under County Clerk's File No. 2007031573 (the "Original Declaration"), Land Tejas Texas City, Ltd., a Texas limited partnership (the "Declarant") imposed all those certain covenants, conditions, restrictions, easements, charges, and liens therein set forth on the property encumbered by the Original Declaration described in Exhibits "A" and "B" attached hereto and made a part hereof (the "Initial Property");

By the certain instrument entitled "Annexation and Supplemental Declaration for Lago Mar Commercial Property," filed of record in the Official Public Records of Galveston County, Texas on May 29, 2007 under County Clerk's File No. 2007034504 (the "Supplement"), Declarant annexed the property described in Exhibit "C" attached hereto and made a part hereof (the "Annexed Land") to the Initial Property and made certain modifications to the Original Declaration as set forth in the Supplement (the Original Declaration as supplemented and modified by the Supplement being herein referred to as the "Declaration" and the Initial Property and Annexed Land being herein collectively referred to as the "Property");

ARTICLE VII, Section 7.2 of the Declaration provides that so long as Declarant owns any of the real property in the Initial Property, Declarant shall have the right to amend the Declaration with the joinder of the City of Texas City ("City") and as of the date hereof Declarant continues to own real property in the Initial Property;

Galveston Premium Outlets, LLC, a Delaware limited liability company ("Simon") is the contract purchaser of certain lands owned by Declarant and covered by the Declaration as more particularly described on Exhibit "D" attached hereto and made a part hereof (the "Simon Parcel");

Simon is unwilling to complete the purchase of the Simon Parcel unless Declarant amends the Declaration to exclude the Simon Parcel from various provisions of the Declaration or modify such provisions insofar as they affect the Simon Parcel and to impose protective covenants for the benefit of Simon on the remainder of the Property covered by the Declaration;

Declarant and City each approve this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Lago Mar Commercial Property (this "Amendment") by their signatures set forth below.

AGREEMENTS:

1. Terms defined in the Declaration shall have the same meanings used herein unless a contrary meaning is expressly indicated. References herein to a "Section" or "Sections" shall mean reference to such Section(s) of the Declaration unless another document is expressly mentioned.

2. Reference is here made to Article I of the Declaration, entitled "Definitions". As hereinafter set forth, the Simon Parcel shall be excluded from the application of various provisions of the Declaration and other provisions of the Declaration will be amended in so far as they apply to the Simon Parcel. Notwithstanding the fact that various defined terms in the Declaration appear in the provisions of the Declaration that are hereafter amended, a reference in such provision to such defined terms shall not render any such provisions applicable to the Simon Parcel except as otherwise expressly provided after giving effect to this Amendment.

3. Article II of the Declaration is hereby amended by adding thereto the following as Section 2.6 thereof:

"SECTION 2.6.        OVERRIDING LIMITATION AS TO SIMON PARCEL.

Notwithstanding any provisions to the contrary contained in Article II of the Declaration or any other provision of Declaration, the provisions of Section 2.1, Section 2.2, Section 2.3, Section 2.4 and Section 2.5 of this Declaration shall not be applicable to the Simon Parcel. Declarant may not grant, dedicate, reserve or otherwise create (and no other Owner shall have) any easement or right-of-way with respect to the Simon Parcel without the prior written consent of the "Simon Parcel Owner" (as hereinafter defined) which may be granted or withheld in the sole and absolute discretion of the Simon Parcel Owner, except as hereinafter set forth. So long as any such easement or right-of-way is located solely within the setback areas created for the Simon Parcel pursuant to the Regional Retail Design Guidelines attached hereto as Exhibit "B" (the "Regional Retail Design Guidelines"), the Simon Parcel Owner shall not unreasonably withhold, condition or delay approval of such easement or right-of-way. Facilities contained within any such easement or right-of-way shall be located underground and the party granted such easement or right-of-way shall be responsible for all repair and replacement due to damage to landscaping, drives, parking lots or other improvements located within such setback areas. The Simon Parcel Owner hereby grants to all police, fire protection, ambulance and other emergency vehicles, City employees and to garbage and trash collection vehicles, postal service vehicles and other governmental service vehicles and the operators thereof the right and easement to enter upon the Simon Parcel in the performance of their duties. The surface of the setback areas may be used for planting of shrubbery, trees, lawns, sprinklers or flowers and for lighting, signage, driveways and sidewalks or other physical improvements constructed in accordance with the Regional Retail Design Guidelines. For purposes hereof the term "Simon Parcel Owner" shall mean the record owner from time to time of fee simple title to the Simon Parcel. If there shall be more than one record owner of fee simple title to portions of the

Simon Parcel, the term "Simon Parcel Owner" shall mean the owner, from to time, of a majority of the land area of the Simon Parcel."

4. Article III of the Declaration is hereby amended by adding thereto the following as Section 3.11 thereof:

"SECTION 3.11      OVERRIDING LIMITATION AS TO SIMON PARCEL.

Notwithstanding any provisions to the contrary in Section 3.1 of the Declaration or any other provisions of the Declaration, the Association shall have no right or power to manage, construct, maintain, repair, replace, administer or operate the Simon Parcel without the prior written consent of the Simon Parcel Owner, which may be granted or denied in the Simon Parcel Owner's sole and absolute discretion. In no event shall the Articles of Incorporation, By-Laws or Rules and Regulations of the Association be amended in any manner which would be applicable to the Simon Parcel without the prior written consent of the Simon Parcel Owner, which may be granted or denied in the Simon Parcel Owner's sole and absolute discretion.

Notwithstanding the provisions of Section 3.2 of the Declaration, at the option of the Simon Parcel Owner, until the expiration of the Declaration Control Period, the Simon Parcel Owner shall have the right to appoint one (1) Director.

Notwithstanding the provisions of Section 3.4 of the Declaration, the Transfer Fee with respect to the Simon Parcel shall not exceed one hundred dollars (\$100.00).

Notwithstanding the provisions of Section 3.6 of the Declaration, no Rules and Regulations may be adopted, amended, repealed or enforced against the Simon Parcel without the prior written consent of the Simon Parcel Owner, which may be granted or denied in the Simon Parcel Owner's sole and absolute discretion.

The provisions of Section 3.7 of the Declaration shall not be applicable to the Simon Parcel."

5. Article IV of the Declaration shall not be applicable to the Simon Parcel. With respect to the Simon Parcel, and in lieu of any Assessments with respect to the Simon Parcel, the Simon Parcel Owner hereby agrees, at the Simon Parcel Owner's sole cost and expense, to install and maintain landscaping within the Simon Parcel setback areas as set forth in the Regional Retail Design Guidelines and to maintain the same in a neat and attractive condition.

6. Article V of the Declaration is hereby amended by adding thereto the following as Section 5.7 thereof:

"SECTION 5.7.        OVERRIDING LIMITATION AS TO SIMON PARCEL.

All references in Article V of the Declaration to "Commercial Design Guidelines" (and all references to Commercial Design Guidelines elsewhere in the Declaration), when applied to the Simon Parcel, shall mean and be deemed to refer to the Regional Retail Design Guidelines.

Notwithstanding the provisions of Section 5.1 of the Declaration or any other provisions of the Declaration, the Committee has heretofore approved plans and specifications for the initial construction of Improvements on the Simon Parcel (such plans and specifications being herein referred to as the "Original Plans and Specifications").

Further, notwithstanding the provisions of Section 5.1 of the Declaration, or any other provisions of the Declaration, the Simon Parcel Owner shall have the right, from time to time, to modify the initial Improvements and/or construct additional Improvements on the Simon Parcel (collectively, "Future Improvements"), pursuant to plans and specifications therefor ("Future Plans and Specifications"), without the approval of the Committee so long as the Future Plans and Specifications comply with the Regional Retail Design Guidelines and provide for a quality of construction substantially similar to that set forth in the Original Plans and Specifications and initial Improvements.

Notwithstanding the provisions of Section 5.2 of the Declaration, in the event that the Committee fails to indicate approval or disapproval of any Future Plans and Specifications (when approval of the Committee is required), within thirty (30) days after receipt thereof, such failure shall be deemed an approval of the Future Plans and Specifications. Where the approval of the Committee is required, the Committee will not unreasonably withhold, condition or delay approval of any such Future Plans and Specifications.

Notwithstanding the provisions of Section 5.3 of the Declaration, prior to the end of the Declarant Control Period, at the option of the Simon Parcel Owner, one (1) member of the Committee appointed by Declarant shall be the nominee of the Simon Parcel Owner.

Notwithstanding the provisions of Section 5.4 of the Declaration, the Committee shall not unreasonably withhold, condition or delay a request by the Simon Parcel Owner for any variance. Failure of the Committee to indicate approval or disapproval of a requested variance within thirty (30) days after receipt of request therefor, shall be deemed approval of the variance."

7. Section 6.2 of the Declaration is hereby amended, in so far as the Simon Parcel is concerned, by deleting the words "Commercial Design Guidelines" appearing therein and substituting in place thereof the words "Regional Retail Design Guidelines".

8. Section 6.8 of the Declaration is hereby amended by adding the following prohibited uses after item (w) thereof:

"(x) No portion of the Property other than the Simon Parcel shall be used for a "Competing Use," as defined herein. A "Competing Use" shall mean any use for a manufacturer's or outlet center or store by a merchandise manufacturer or advertising therefor on any billboard;

- (y) Farming uses;
- (z) Any vibration, noise, sound or other disturbance that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (aa) Any obnoxious emission of odors or of noxious, caustic or corrosive matters, whether toxic or non-toxic, gas, fumes or smoke;
- (bb) Any litter, dust, dirt or fly ash in excessive quantities (except as necessary for typical grading purposes);
- (cc) Warehouse uses (except an area for the storage of goods intended to be sold in any retail establishment shall be deemed not to be a warehouse);
- (dd) Recycling facility, jail or honor farm;
- (ee) Any excavation, removal and/or storage of earth materials, except as part of normal grading operations in connection with construction of improvements;
- (ff) Any breeding, slaughtering or keeping animals or poultry of any kind, except for security watchdogs kept for security purposes pet shops or a national pet supplies supermarket;
- (gg) Bowling alley."

Section 6.8 of the Declaration is further amended to provide that the provisions of items (q) and (s) of Section 6.8 shall not apply to the Simon Parcel.

9. Section 6.9 of the Declaration is hereby amended to provide that the Committee shall not unreasonably withhold, condition or delay approval of any of the matters set forth in Section 6.9 in so far as it affects the Simon Parcel. Failure of the Committee to grant approval or disapproval within thirty (30) days after receipt of request therefor shall be deemed approval of such request by the Committee.

10. Section 6.10 of the Declaration is hereby amended (insofar as it applies to the Simon Parcel) by deleting the following parenthetical expression contained therein: (excluding

the landscape and irrigation system installed in the Landscape Area of a Building Site as more specifically addressed in Section 1.16 of this Declaration)". The remainder of Section 6.10(a) remains as written with respect to the Simon Parcel.

11. Section 6.12 of the Declaration is hereby amended (insofar as it applies to the Simon Parcel) by deleting the words "or act as a Reimbursement Assessment in accordance with Section 4.7 of this Declaration" appearing therein. The remainder of Section 6.12 remains as written with respect to the Simon Parcel.

12. Article VI of the Declaration is further amended by adding thereto the following as Section 6.13 thereof:

"SECTION 6.13.      OVERRIDING LIMITATION AS TO SIMON PARCEL.

Sections 6.3, 6.4, 6.5 and 6.6 of the Declaration shall not apply to the Simon Parcel. All building setbacks, parking, landscaping, screening and building site appearance, signs and exterior illumination with respect to the Simon Parcel shall be governed by the Regional Retail Design Guidelines."

13. Notwithstanding the provisions of Sections 7.1 and 7.2 of the Declaration or any other provisions of the Declaration, (i) no provision of this Amendment and (ii) no other provision of the Declaration insofar as it affects the Simon Parcel may be amended without the prior written consent of the Simon Parcel Owner, which may be granted or denied in the sole and absolute discretion of the Simon Parcel Owner.

14. Section 7.3 of the Declaration is hereby amended by deleting the same in its entirety and substituting in lieu and in place thereof the following:

"SECTION 7.3.    ENFORCEMENT. The Association, the Declarant, or any Owner (at such Owner's expense) or any other party with standing shall have the right to

enforce the provisions set out in this Declaration, any Supplemental Declarations, Rules and Regulations or Commercial Design Guidelines ("Governing Documents"). Failure or refusal of the Association, any Owner or the Declarant to take any action upon a breach of the Governing Documents as herein provided shall not render such party liable in any manner for such failure or refusal. Failure or refusal of the Association, any Owner or the Declarant to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default."

EXECUTED by the respective parties on the dates set forth below to be effective the date this document is filed of record in the Official Public Records of Real Property of Galveston County, Texas.

*[Signature Pages Follow]*

**DECLARANT**

**LAND TEJAS TEXAS CITY, LTD.,**

a Texas Limited Partnership

By its general partners:

Grover Lago Mar, L.L.C.,

a Texas limited liability company

By: \_\_\_\_\_  
Courtney Grover, Manager

Brende Lago Mar, L.L.C.,

a Texas limited liability company

By: \_\_\_\_\_  
Al Brende, Manager

Date: \_\_\_\_\_, 2011

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_ §

Before me, a notary public, on this day personally appeared Courtney Grover, the Manager of Grover Lago Mar, L.L.C., a Texas limited liability company, a general partner of Land Tejas Texas City, Ltd., a Texas limited partnership and Al Brende, the Manager of Brende Lago Mar, L.L.C., a Texas limited liability company, a general partner of Land Tejas Texas City, Ltd., a Texas limited partnership, known to me to be the persons whose names are subscribed to the foregoing instrument, and being by me first duly sworn and declared that they executed same in the capacities therein expressed and as the act and deed of said limited liability companies and limited partnership.

Given under my hand and seal of office this \_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Notary Public of the State of Texas**

**REVIEWED AND APPROVED AS WRITTEN**

**CITY OF TEXAS CITY**

By: \_\_\_\_\_  
Name: Matthew Doyle  
Title: Mayor  
Date: \_\_\_\_\_ 2011

STATE OF TEXAS           §  
                                          §  
COUNTY OF GALVESTON §

Before me, a notary public, on this day personally appeared Matthew Doyle, the Mayor of the City of Texas City, known to me to be the person whose name is subscribed to the foregoing instrument, and being by me first duly sworn and declared that he executed same in the capacity therein expressed and as the act and deed of said city.

Given under my hand and seal of office this \_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Notary Public of the State of Texas**

## Exhibit "A"

### TRACT ONE

**DESCRIPTION OF 35.98 ACRES OF LAND  
IN THE ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS**

BEING 35.98 acres of land situated in the Alexander Farmer League, Abstract Number 11, in the city of Texas City, Galveston County, Texas, being out of a called 2,052.761 acre tract of land recorded under Galveston County Clerk's File Number 2000027987 and being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone

**BEGINNING** at a 5/8-inch iron rod with cap stamped "Brown & Gay" found in the east line of Holland Road Estates Section Two, a subdivision recorded in Volume 18, Page 442 of the Galveston County Map Records, the west line of said called 2,052.761 acre tract and in the north right-of-way line of Holland Road (60-foot width) dedicated by instrument recorded in Volume 1199, Page 407 of the Galveston County Deed Records and being the southwest corner of this tract;

THENCE N 01° 58' 11" W, a distance of 2,045.75 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found in the southwesterly right-of-way line of Interstate Highway 45 (Width Varies) for the north corner of this tract,

THENCE with the southwesterly right-of-way line of Interstate Highway 45 (Width Varies) as follows:

S 42° 38' 35" E, a distance of 1,594.72 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found for corner and point of curve,

In a southeasterly direction, 558.46 feet, with the arc of a curve to the right, having a radius of 533.69 feet, a central angle of 59° 57' 19" and chord which bears S 12° 26' 02" E, 533.33 feet to a broken TxDOT monument found for corner;

S 17° 32' 12" W, a distance of 51.06 feet to a TxDOT monument found for corner and point of curve, from which a found 5/8-inch iron rod bears S 73° 23' W, 2.05 feet,

In a southeasterly direction, 185.89 feet, with the arc of a curve to the left, having a radius of 423.06 feet, a central angle of 25° 10' 32" and chord which bears S 04° 30' 42" W, 184.40 feet to a TxDOT monument found at the point of tangency from which a found 5/8-inch iron rod bears S 89° 02' W, 0.98 feet,

S 07° 34' 27" E, a distance of 35.11 feet to a broken TxDOT monument found for corner;

S 46° 19' 11" W, a distance of 49.82 feet to a broken TxDOT monument found for corner from which a found 5/8-inch iron rod bears N 66° 13' W, 0.70 feet,

S 01° 26' 48" E, a distance of 10.19 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found in the north right-of-way line of Holland Road for the northeast corner of this tract;

THENCE S 87° 54' 50" W, a distance of 1,064.50 feet, with the north right-of-way line of Holland Road the **POINT OF BEGINNING** and containing 35.98 acres of land.

This metes and bounds description was prepared under 22 Texas Annotated Code # 663.21 and reflects the assembly of instruments of record to describe political boundary limits and is not to be used to convey or establish interests in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which is was prepared.

TRACT TWO

DESCRIPTION OF 136.44 ACRES OF LAND SITUATED IN THE  
ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 136.44 acres of land situated in the Alexander Farmer League, Abstract No 11 and lying within the city limits of Texas City, Galveston County, Texas and being out of and a part of a tract described as 801.38 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002502, said 136.44 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone:

**BEGINNING** at a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking an angle point in the South right-of-way line of Holland Road (60-foot width) dedicated by instrument recorded in Volume 1199, Page 407 of the Galveston County Deed Records, same being the Northwest corner of the herein described tract, same further being the most Northerly Northwest corner of said 801.38 acre tract and being located S 01° 58' 11" E, 6.50 feet from an angle point in said South right-of-way line,

**THENCE** N 87° 54' 50" E, along and with the South right-of-way line of said Holland Road a distance of 1,063.95 feet to a 5/8-inch iron rod with a cap stamped "Brown & Gay" found in the southwesterly right-of-way line of Interstate Highway 45 (Width Varies) for the most Northerly corner of the herein described tract;

**THENCE**, along and with the Southwesterly right-of-way line of said Interstate Highway 45 (Width Varies) the following courses and distances as follows

S 01° 26' 48" E, a distance of 10.19 feet to a TxDOT monument found for corner,

S 59° 51' 01" E, a distance of 99.95 feet to a TxDOT monument found for corner,

S 29° 02' 56" E, a distance of 38.17 feet to a TxDOT monument found marking the beginning of a non-tangent curve to the left from whose center bears N 62° 17' 57" E, 423.06 feet and from which a 5/8-inch iron rod bears S 09° 48' E, 5.28 feet;

In a Southeasterly direction, along and with the arc of said curve to the left, having a Radius of 423.06 feet, a Central Angle of 65° 04' 17" and a Long Chord which bears S 60° 14' 12" E, 455.06 feet, for a total Arc Distance of 480.47 feet to a TxDOT monument found marking the end of said curve from which a 5/8-inch iron rod bears N 16° 14' W, 3.45 feet,

N 87° 26' 16" E, a distance of 291.31 feet to a broken TxDOT monument found marking the Point of Curvature of a curve to the right,

In a Southeasterly direction, along and with the arc of said curve to the right, having a Radius of 533.69 feet, a Central Angle of 49° 54' 39" and a Long Chord which bears S 67° 36' 31" E, 450.34 feet, for a total Arc Distance of 464.90 feet to a disturbed TxDOT monument found marking the end of said curve from which a 5/8-inch iron rod bears N 08° 38' E, 2.55 feet,

136.44 ACRES  
PAGE 2 OF 2

S 42° 40' 24" E, a distance of 4,745.80 feet to a point in the Northwestern line of a canal right-of-way described as 190.00 feet wide at this point in a conveyance to the Galveston County Water Company and recorded in Volume 821, Page 490 of the Galveston County Deed Records marking the most Easterly corner of the herein described tract and being located N 42° 40' 24" W, 65.43 feet from a TxDot monument and a 5/8-inch iron rod with cap stamped "Hovis Surveying" found marking an angle point in the Southwesterly right-of-way line of said Interstate Highway 45;

THENCE, over and across said 801.38 acre tract the following courses and distances as follows:

S 66° 15' 20" W, along and with the Northwestern line of said Galveston County Water Company right-of-way, a distance of 26.43 feet to the most Southerly corner of the herein described tract

N 42° 40' 24" W, 25.00 feet Southwesterly of (measured at right angles) and parallel to the Southwesterly right-of-way line of said Interstate Highway No. 45, a distance of 1,516.39 feet to an interior corner of the herein described tract,

S 47° 19' 36" W, a distance of 975.00 feet to an interior corner of the herein described tract;

N 42° 40' 24" W, 1,000.00 feet Southwesterly of (measured at right angles) and parallel to the Southwesterly right-of-way line of said Interstate Highway No. 45, a distance of 2,700.00 feet to an interior corner of the herein described tract,

S 88° 01' 49" W, distance of 1,836.03 feet to a point in the East line of INTERURBAN GARDENS, a subdivision per plat or map recorded in Volume 223, Page 207 of the Galveston County Map Records and being located N 01° 58' 11" W, 3,020.15 from a 5/8-inch iron rod found marking the Southeast corner of said INTERURBAN GARDENS;

THENCE N 01° 58' 11" W, along and with the East line of said INTERURBAN GARDENS, a distance of 1,564.25 feet to the POINT OF BEGINING and containing 136.44 acres of land

TRACT THREE

DESCRIPTION OF 290.89 ACRES OF LAND SITUATED IN THE  
ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 290.89 acres of land situated in the Alexander Farmer League, Abstract No. 11 and lying within the city limits of Texas City, Galveston County, Texas and being out of and a part of a tract described as 801.38 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002502, said 290.89 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone

**COMMENCING** at a 5/8-inch iron rod marking the Southeast corner of said INTERURBAN GARDENS, a subdivision per plat or map recorded in Volume 223, Page 207 of the Galveston County Map Records, same being an interior corner of said 801.38 acre tract;

**THENCE** N 01° 58' 11" W, along and with the East line of said INTERURBAN GARDENS, a distance of 542.73 feet to the Southwest corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE** N 01° 58' 11" W, continuing along and with the East line of said INTERURBAN GARDENS, a distance of 2,477.42 feet to the Northwest corner of the herein described tract and being located S 01° 58' 11" E, 1,564.25 feet from a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking an angle point in the South right-of-way line of Holland Road (60-foot width) dedicated by instrument recorded in Volume 1199, Page 407 of the Galveston County Deed Record, same being the most Northerly Northwest corner of said 801.38 acre tract,

**THENCE** N 88° 01' 49" E, a distance of 1,836.03 feet to the most Westerly Northeast corner of the herein described tract;

**THENCE** S 42° 40' 24" E, 1,000.00 feet Southwesterly of (measured at right angles) and parallel to the Southwesterly right-of-way line of Interstate Highway No. 45 (Width Varies), a distance of 2,700.00 feet to an interior corner of the herein described tract,

**THENCE** N 47° 19' 36" E, a distance of 975.00 feet to an interior corner of the herein described tract,

**THENCE** S 42° 40' 24" E, 25.00 feet Southwesterly of (measured at right angles) and parallel to the Southwesterly right-of-way line of said Interstate Highway No. 45, a distance of 1,516.39 feet to a point in the Northwesterly line of a canal right-of-way described as 190.00 feet wide at this point in a conveyance to the Galveston County Water Company and recorded in Volume 821, Page 490 of the Galveston County Deed Records marking the Southeasterly corner of the herein described tract;

290.89 ACRES  
PAGE 2 OF 2

THENCE, along and with the Northwesternly line of said Galveston County Water Company right-of-way, the following courses and distances:

S 66° 15' 20" W, a distance of 211.46 feet to an angle point,

S 53° 40' 26" W, a distance of 310.47 feet to an angle point;

S 36° 19' 34" E, a distance of 7.64 feet to an angle point (said Galveston County Water Company right-of-way 170.00 feet wide at this point),

S 61° 55' 36" W, a distance of 822.76 feet to an angle point,

S 69° 33' 40" W, a distance of 832.91 feet to an angle point,

S 62° 02' 56" W, a distance of 491.58 feet to an angle point;

N 27° 57' 04" W, a distance of 5.00 feet to an angle point (said Galveston County Water Company right-of-way 180.00 feet wide at this point);

S 62° 02' 56" W, a distance of 820.00 feet to an angle point,

S 27° 57' 04" E, a distance of 5.00 feet to an angle point (said Galveston County Water Company right-of-way 170.00 feet wide at this point);

S 62° 02' 56" W, a distance of 736.28 feet to the most Southerly or Southwest corner of the herein described tract,

THENCE N 26° 09' 52" W, a distance of 2,045.23 feet to an interior corner of the herein described tract,

THENCE S 88° 04' 32" W, a distance of 668.54 feet to the **POINT OF BEGINNING** and containing 290.89 acres of land

TRACT FOUR

DESCRIPTION OF 38.00 ACRES OF LAND SITUATED IN THE  
ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 38.00 acres of land situated in the Alexander Farmer League, Abstract No. 11 and lying within the city limits of Texas City, Galveston County, Texas and being the Southerly portion of Galveston County Municipal District No. 54 and being out of and a part of a tract described as 376.53 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002502, said 38.00 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone

COMMENCING at a 5/8-inch iron rod with cap stamped "Brown & Gay" found in the Southwesterly right-of-way line of Interstate Highway 45 (Width Varies) marking the most Northerly corner of a tract described as an exception tract and being 18.205 acres in a conveyance recorded under Galveston County Clerk's File No. 2000027987 and being located N 42° 40' 24" W, 48.28 feet from a 3/8-inch iron rod found marking an angle point in the East line of said 18.205 acre tract;

THENCE N 42° 40' 24" W, along and with the Southwesterly right-of-way line of said Interstate Highway 45, a distance of 2,089.27 feet to the most Easterly corner of and **POINT OF BEGINNING** of the herein described tract,

THENCE S 47° 19' 36" W, along and with the Southeasterly line of said Galveston County Municipal District No. 54, a distance of 1,000.00 feet to the most Southerly corner of the herein described tract;

THENCE N 42° 40' 24" W, along and with the Southwesterly line of said Galveston County Municipal District No. 54 and being 1,000.00 feet Southwesterly of (measured at right angles) and parallel to the Southwesterly right-of-way line of said Interstate Highway No. 45, at a distance of 643.07 feet pass a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking an interior corner of said 376.53 acre tract, same being the most Easterly corner of a tract described as 396.70 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002509, at a distance of 1,790.78 feet pass a 5/8-inch iron rod with cap stamped "Brown & Gay" found in the Southeasterly line of a canal right-of-way described as 170.00 feet wide at this point in a conveyance to the Galveston County Water Company and recorded in Volume 821, Page 490 of the Galveston County Deed Records marking an angle point in the Southeasterly line of a tract described as 801.38 acres in said conveyance recorded under Galveston County Clerk's File Number 2006002502, same being the Northwest corner of said 376.53 acres, same further being the most Northerly corner of said 396.70 acre tract, in all, a total distance of 1,804.37 feet to a point for the common most Westerly corner of the Southerly portion of said Galveston County Municipal District No. 54 and the herein described tract,

THENCE, along and with the Northwesterly line of the Southerly portion of said Galveston County Municipal District No. 54 the following courses and distances

N 66° 22' 36" E, at a distance of 169.44 feet pass the common Southeasterly of said

38.00 ACRES  
PAGE 2 OF 2

Galveston County Water Company right-of-way and said 801.38 acre tract, same being the Northwestern line of said 376.53 acre tract, in all, a total distance of 459.14 feet to an angle point;

S 33°12' 24" E, a distance of 880 feet to an angle point;

N 56° 47' 36" E, at 513.21 feet pass the common Southeasterly of said Galveston County Water Company right-of-way and said 801.38 acre tract, same being the Northwestern line of said 376.53 acre tract, in all, a total distance of 549.94 feet to an interior corner of said Galveston County Municipal District No. 54,

THENCE N 78° 13' 10" E, a distance of 29.13 feet to a point in the Southwesterly right-of-way line of said Interstate Highway 45 marking the most Easterly corner of said 801.38 acre tract, same being the common most Northerly corner of said 376.53 acre tract and the herein described tract;

THENCE S 42° 40' 24" E, along and with the Southwesterly right-of-way line of said Interstate Highway 45, a distance of 1,540.42 feet to the **POINT OF BEGINNING** and containing 38.00 acres of land.

TRACT FIVE

DESCRIPTION OF 14.81 ACRES OF LAND SITUATED IN THE  
ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 14.81 acres of land situated in the Alexander Farmer League, Abstract No. 11 and lying within the city limits of Texas City, Galveston County, Texas and being out of and a part of a tract described as 376.53 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002502, said 14.81 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone:

**COMMENCING** at a 5/8-inch iron rod with cap stamped "Brown & Gay" found in the Southwesterly right-of-way line of Interstate Highway 45 (Width Varies) marking the most Northerly corner of a tract described as an exception tract and being 18.205 acres in a conveyance recorded under Galveston County Clerk's File No. 2000027987 and being located N 42° 40' 24" W, 48.28 feet from a 3/8-inch iron rod found marking an angle point in the East line of said 18.205 acre tract,

**THENCE** N 42° 40' 24" W, along and with the Southwesterly right-of-way line of said Interstate Highway 45, a distance of 1,444.29 feet to the most Easterly corner and **POINT OF BEGINNING** of the herein described tract,

**THENCE** S 47° 19' 36" W, a distance of 1,000.00 feet to the most Southerly corner of the herein described tract,

**THENCE** N 42° 40' 24" W, 1000.00 feet Southwesterly of (measured at right angles) and parallel to the Southwesterly right-of-way line of said Interstate Highway No. 45, a distance of 644.98 feet to the most Westerly corner of the herein described tract,

**THENCE** N 47° 19' 36" E, a distance of 1,000.00 feet to a point in the Southwesterly right-of-way line of said Interstate Highway No. 45 for the most Northerly corner of the herein described tract and being located S 42° 40' 24" E, 1,540.42 feet from a 5/8-inch iron rod with cap stamped "Brown & Gay" found in said Southwesterly right-of-way line marking the most Northerly corner of said 376.53 acre tract,

**THENCE** S 42° 40' 24" E, along and with the Southwesterly right-of-way line of said Interstate Highway 45, a distance of 644.98 feet to the **POINT OF BEGINNING** and containing 14.81 acres of land

## Exhibit "B"

### DESCRIPTION OF 119.59 ACRES OF LAND SITUATED IN THE ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11 CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 119.59 acres of land situated in the Alexander Farmer League, Abstract No. 11 and lying within the city limits of Texas City, Galveston County, Texas and being out of and a part of a tract described as 806.49 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002506, said 119.59 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone.

COMMENCING at a 5/8-inch iron rod with cap stamped "Hovis Surveying" found in the Northeast right-of-way line of Interstate 45 (380 feet wide) marking the Northwestern corner of a tract described as 5.000 acres in a conveyance recorded under Galveston County Clerk's File No. 2000041886, same being the most Southerly corner of a tract described as 489.39 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002513,

THENCE along the Northeasterly right-of-way line of said Interstate Highway No. 45 (380 feet wide) the following courses and distances:

N 42° 40' 24" W, a distance of 2,418.69 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found, from which a found Broken TXDOT Monument bears N 52° 31' W, 1.19 feet and from which a found 5/8-inch iron rod bears S 75° 18' W, 1.20 feet,

S 47° 19' 36" W, a distance of 40.00 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found from which a found Broken TXDOT Monument bears N 72° 38' W, 0.53 feet and from which a found 5/8-inch iron rod bears S 55° 26' W, 1.08 feet,

N 42° 40' 24" W, a distance of 70.00 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found and a found Broken TXDOT Monument from which a found 5/8-inch iron rod bears S 57° 55' W, 1.20 feet,

N 47° 19' 36" E, a distance of 40.00 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found from which a found Broken TXDOT Monument bears S 42° 22' W, 0.54 feet and from which a found 5/8-inch iron rod bears S 44° 44' W, 1.14 feet;

N 42° 40' 24" W, a distance of 4,006.39 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found marking the beginning of a non-tangent curve to the right from whose center bears N 44° 23' 37" E, 532.97 feet, from said point which a 5/8-inch iron rod bears S 42° 22' W, 0.73 feet, and a 5/8-inch iron rod bears S 15° 15' W, 3.24 feet and a 5/8-inch iron rod bears N 67° 40' W, 5.92 feet;

In a Northwestern direction, along and with the arc of said curve to the right, having a Radius of 532.97 feet, a Central Angle of 56° 05' 27" and a Long Chord which bears N 17° 33' 39" W, 501.18 feet, for a total Arc Distance of 521.76 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking the end of said curve from which a found Broken TXDOT Monument bears S 65° 41' 48" E, 14.68 feet,

N 10° 23' 03" E, a distance of 415.03 feet to a disturbed TXDOT monument found marking an angle point,

N 04° 21' 11" W, a distance of 50.11 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" and another 5/8-inch iron rod found marking the Southwest corner and **POINT OF BEGINNING** of the herein described tract;

N 17° 35' 29" W, a distance of 57.03 feet to a found TXDOT monument marking the beginning of a non-tangent curve to the left from whose center bears S 72° 19' 04" W, 423.06 feet;

In a Northwesterly direction, along and with the arc of said curve to the left, having a Radius of 423.06 feet, a Central Angle of 75° 02' 27" and a Long Chord which bears N 55° 12' 10" W, 515.33 feet, for a total Arc Distance of 554.09 feet to a TXDOT Monument marking the end of said curve;

S 87° 17' 48" W, a distance of 387.02 feet to a disturbed TXDOT monument found marking the beginning of a non-tangent curve to the right from whose center bears N 02° 43' 14" W, 533.69 feet,

In a Northwesterly direction, along and with the arc of said curve to the right, having a radius of 533.69 feet, a central angle of 49° 59' 58" and a chord which bears N 67° 43' 15" W, 451.09 feet, for a total Arc Distance of 465.73 feet to a found 5/8-inch iron rod with cap stamped "Hovis Surveying",

N 42° 38' 35" W, a distance of 2,752.43 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found in the East line of Lot O, INTERURBAN GARDENS, a subdivision per plat per map recorded under Volume 223, Page 207 of the Galveston County Map Records from which a found 5/8-inch iron rod bears S 02° 18' E, 7.33 feet, same being the Southwest corner of said 806.49 acre tract,

THENCE N 01° 56' 37" W, along and with the East line Lot O and Lot N of said INTERURBAN GARDENS, a distance of 1,390.66 feet to a point for the most Northerly corner of the herein described tract and being located S 01° 56' 37" E, 12.55 feet from a 3/8-inch iron rod found for the Southeasterly corner of Lot K of said INTERURBAN GARDENS;

THENCE over and across said 806.49 acre tract the following courses and distances:

S 42° 26' 06" E, a distance of 3,675.60 feet to a point for corner;

N 87° 03' 02" E, a distance of 1,808.64 feet to a point for the Northeast corner of the herein described tract;

S 02° 53' 03" E, a distance of 1,137.50 feet to a point in the South line of said 806.49 acre tract for the Southeast corner of the herein described tract;

THENCE along and with the South line of said 806.49 acre tract the following courses and distances

S 73° 22' 22" W, a distance of 241.77 feet to a 5/8-inch iron rod with Brown & Gay cap found marking the Point of Curvature of a curve to the right,

In a Westerly direction, along and with the arc of said curve to the right, having a Radius of 1500.00 feet, a central angle of 13° 46' 38" and a Long Chord which bears S 80° 15' 41" W, 359.82 feet, for a total Arc Distance of 360.69 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking the Point of Tangency;

S 87° 09' 00" W, a distance of 601.90 feet to the **POINT OF BEGINNING** and containing 119.59 acres of land

## Exhibit "C"

TEXAS CITY CCR-03  
120.36 ACRES

NOVEMBER 22, 2006  
JOB NO. LTC15-01

DESCRIPTION OF 120.36 ACRES OF LAND  
SITUATED IN THE  
ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 120.36 acres of land situated in the Alexander Farmer League, Abstract No. 11 and lying within the city limits of Texas City, Galveston County, Texas and being out of and a part of a tract described as 489.39 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002513, said 120.36 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone

**COMMENCING** at a 5/8-inch iron rod with cap stamped "Hovis Surveying" found in the Northeast right-of-way line of Interstate 45 (380 feet wide) marking the Northwestern corner of a tract described as 5.000 acres in a conveyance recorded under Galveston County Clerk's File No. 2000041886, same being the most Southerly corner of said 489.39 acre tract,

**THENCE** along the Northeasterly right-of-way line of said Interstate Highway No. 45 (380 feet wide) the following courses and distances

N 42° 40' 24" W, a distance of 2,418.69 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found, from which a found Broken TXDOT Monument bears N 52° 31' W, 1.19 feet and from which a found 5/8-inch iron rod bears S 1° 18' W, 1.24 feet;

S 47° 19' 36" W, a distance of 40.00 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found from which a found Broken TXDOT Monument bears N 72° 38' W, 0.53 feet and from which a found 5/8-inch iron rod bears S 55° 26' W, 1.08 feet;

N 42° 40' 24" W, a distance of 70.00 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found and a found broken TXDOT Monument from which a found 5/8-inch iron rod bears S 57° 55' W, 1.20 feet;

N 47° 19' 36" E, a distance of 40.00 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found from which a found Broken TXDOT Monument bears S 42° 22' W, 0.54 feet and from which a found 5/8-inch iron rod bears S 44° 44' W, 1.14 feet;

N 42° 40' 24" W, a distance of 45.22 feet to the most Southerly corner and **POINT OF BEGINNING** of the herein described tract;

N 42° 40' 24" W, a distance of 3,961.17 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" found marking the beginning of a non-tangent curve to the right from whose center bears N 44° 23' 37" E, 532.97 feet, from said point which a 5/8-inch iron rod bears S 42° 22' W, 0.73 feet, and a 5/8-inch iron rod bears S 15° 15' W, 3.24 feet and a 5/8-inch iron rod bears N 67° 40' W, 5.92 feet,

In a Northwesterly direction, along and with the arc of said curve to the right, having a Radius of 532.97 feet, a Central Angle of 56° 05' 27" and a Long Chord which bears N 17° 33' 39" W, 501.18 feet, for a total Arc Distance of 521.76 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking the end of said curve from which a found Broken TXDOT monument bears S 65° 41' 48" E, 14.68 feet,

N 10° 23' 03" E, a distance of 415.03 feet to a disturbed TXDOT monument found marking an angle point,

N 04° 21' 11" W, a distance of 50.11 feet to a 5/8-inch iron rod with cap stamped "Hovis Surveying" and another 5/8-inch iron rod found marking the Southwest corner of a tract described as 806.49 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002506, same being the common Northwest corner of said 489.39 acre tract and the herein described tract,

THENCE along the South line of said 806.49 acre tract, same being the North line of said 489.39 acre tract the following courses and distances

N 87° 09' 00" E, 601.90 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking the Point of Beginning of a curve to the left,

In a Northwesterly direction, along and with the arc of said curve to the left, having a Radius of 1500.0 feet, a Central Angle of 13° 46' 38" and a Long Chord which bears N 80° 15' 41" E, 359.82 feet, for a total Arc Distance of 360.69 feet to a 5/8-inch iron rod with cap stamped "Brown & Gay" found marking the Point of Tangency,

N 73° 22' 22" E, a distance of 542.24 feet to a point for the Northeast corner of the herein described tract,

THENCE over and across said 489.39 acre tract the following courses and distances

S 05° 23' 24" E, a distance of 1,365.08 feet to an angle point;

S 42° 40' 24" E, 1000.00 feet Northeasterly of (measured at right angles) and parallel to the Northeasterly right-of-way line of said Interstate Highway No. 45, a distance of 3,067.87 feet to a point in the Northwesterly line of a canal right-of-way described as 150.00 feet wide at this point in a conveyance to the Galveston County Water Company and recorded in Volume 821, Page 490 of the Galveston County Deed Records for the most Easterly corner of the herein described tract,

THENCE along and with Northwesterly line of said canal right-of-way the following courses and distances

S 62° 07' 50" W, a distance of 605.49 feet to an angle point,

N 27° 52' 10" W, a distance of 5.00 feet to an angle point (said canal right-of-way being 175.00 feet wide at this point),

S 62° 07' 50" W, a distance of 430.16 feet to the **POINT OF BEGINNING** and containing 120.36 acres of land

TEXAS CITY CCR-04  
53.09 ACRES

NOVEMBER 22, 2006  
JOB NO. LTC15-01

DESCRIPTION OF 53.09 ACRES OF LAND  
SITUATED IN THE  
ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11  
CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS

BEING 53.09 acres of land situated in the Alexander Farmer League, Abstract No. 11 and lying within the city limits of Texas City, Galveston County, Texas and being out of and a part of a tract described as 489.39 acres in a conveyance recorded under Galveston County Clerk's File Number 2006002513, said 53.09 acre tract being more particularly described by metes and bounds as follows with the basis of bearings being the Texas State Plane Coordinate System, South Central Zone:

**BEGINNING** at a 5/8-inch iron rod with cap stamped "Hovis Surveying" found in the Northeast right-of-way line of Interstate 45 (380 feet wide) marking the Northwestern corner of a tract described as 5.000 acres in a conveyance recorded under Galveston County Clerk's File No. 2000041886, same being the most Southerly corner of said 489.39 acre tract,

**THENCE** N 42°40' 24" W, along the Northeasterly right-of-way line of said Interstate Highway No. 45 (380 feet wide), a distance of 2,352.90 feet to a point in the Southeasterly line of a canal right-of-way described as 175.00 feet wide at this point in a conveyance to the Galveston County Water Company and recorded in Volume 821, Page 490 of the Galveston County Deed Records for the most Westerly corner of the herein described tract and being located S 42°40' 24" E, 65.79 feet from a 5/8-inch iron rod with cap stamped "Hovis Surveying" found marking an angle point in said Northeasterly right-of-way line from which a found Broken TXDOT Monument bears N 52° 31' W, 1.19 feet and a 5/8-inch iron rod bears S 75° 18' W, 1.20 feet,

**THENCE** along and with Southeasterly line of said canal right-of-way the following courses and distances:

N 62° 07' 50" E, a distance of 383.91 feet to an angle point

N 27° 52' 10" W, a distance of 20.00 feet to an angle point (said canal right-of-way being 150.00 feet wide at this point);

N 62° 07' 50" E, a distance of 645.13 feet to the most Northerly corner of the herein described tract,

**THENCE** S 42° 40' 24" E, 1000.00 feet Northeasterly of (measured at right angles) and parallel to the Northeasterly right-of-way line of said Interstate Highway No. 45, a distance of 2,267.47 feet to a point in the Southeasterly line of said 489.39 acre tract for the most Easterly corner of the herein described tract and being located S 56° 18' 54" W, 11.93 feet from a 5/8-inch iron rod with cap stamped "Hovis Surveying" found marking the Southeast corner of said 489.39 acre tract,

THENCE S 56° 18' 54" W, along and with the Southeasterly line of said 489.39 acre tract, same being the Northwesterly line of said 5.000 acre tract, a distance of 1,012.43 feet to the **POINT OF BEGINNING** and containing 53.09 acres of land

Exhibit "D"

**METES & BOUNDS DESCRIPTION  
54.95 ACRES OF LAND  
GALVESTON COUNTY, TEXAS  
BPI – HOU JOB NO. R0100716-70002  
FEBRUARY 11, 2011**

BEING A 54.95 ACRE TRACT OF LAND LYING IN THE ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11, GALVESTON COUNTY, TEXAS, BEING OUT OF AND PART OF THAT CERTAIN 801.38 ACRE (CALLED) TRACT LISTED AS "TEXAS CITY POD 6" IN SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN GALVESTON COUNTY CLERK'S FILE NUMBER 2006002502, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, BEARINGS BASED ON THE TEXAS STATE COORDINATE SYSTEM SOUTH CENTRAL ZONE;

COMMENCING AT A TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) MONUMENT LOCATED AT THE SOUTH END OF A CURVE MARKING THE END OF THE RIGHT-OF-WAY TRANSITION FOR THE INTERSECTION OF THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45 (VARYING WIDTH) AND THE SOUTH RIGHT-OF-WAY OF HOLLAND ROAD (60' WIDE) AS RECORDED IN VOLUME 1199, PAGE 407 OF THE DEED RECORDS OF GALVESTON COUNTY, FROM WHICH POINT A 5/8-INCH IRON ROD (FOUND) LIES N 08°38' E – 2.55 FEET;

THENCE S 42°40'27" E, ALONG A NORTHEAST LINE OF SAID 801.38 ACRE TRACT AND THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45, 498.43 FEET TO A POINT FOR THE MOST EASTERLY NORTHEAST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE S 42° 40' 27" E, CONTINUING ALONG THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45, A NORTHEAST LINE OF SAID 801.38 ACRE TRACT AND OF THIS TRACT, 1,344.54 FEET TO A POINT FOR THE MOST EASTERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

DEPARTING SAID NORTHEAST LINE AND SAID SOUTHWEST RIGHT-OF-WAY LINE, OVER AND ACROSS SAID 801.38 ACRE TRACT THE FOLLOWING SIXTEEN (16) COURSES;

THENCE S 02°02'54" W, 28.14 FEET TO AN ANGLE POINT;

THENCE S 47°20'49" W, 69.79 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 800 FEET, A CENTRAL ANGLE OF 26°49'55", A CHORD BEARING AND DISTANCE OF S 33°55'52" W – 371.23 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 374.64 FEET TO THE POINT OF TANGENCY;

THENCE S 20°30'55" W, 100.00 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 700 FEET, A CENTRAL ANGLE OF 37°26'33", A CHORD BEARING AND DISTANCE OF S 39°14'11" W – 449.35 FEET;

THENCE ALONG THE ARC OF SAID CURVE 457.45 FEET TO THE POINT OF TANGENCY;

THENCE S 57°57'28" W, 528.48 FEET TO A POINT FOR THE MOST SOUTHERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 78°34'23" W, 29.07 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,050 FEET, A CENTRAL ANGLE OF 22°47'51", A CHORD BEARING AND DISTANCE OF N 46°47'49" W – 810.31 FEET, AND BEING THE MOST SOUTHERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE ALONG THE ARC OF SAID CURVE, 815.68 FEET TO THE POINT OF TANGENCY;

THENCE N 58°11'45" W, 140.21 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1,950 FEET, A CENTRAL ANGLE OF 14°55'21", A CHORD BEARING AND DISTANCE OF N 50°44'04" W – 506.44 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 507.87 FEET TO THE POINT OF TANGENCY;

THENCE N 43°16'23" W, 47.96 FEET TO A POINT FOR THE MOST WESTERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 04°01'01" E, 27.22 FEET TO A POINT FOR THE MOST WESTERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 51°18'25" E, 696.14 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,050 FEET, A CENTRAL ANGLE OF 3°57'35", A CHORD BEARING AND DISTANCE OF N 49°19'37" E – 141.65 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 141.68 FEET TO THE POINT OF TANGENCY;

THENCE N 47°20'49" E, 812.76 FEET TO A POINT FOR THE MOST NORTHERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 87°39'49" E, 28.29 FEET TO THE POINT OF BEGINNING AND CONTAINING 54.95 ACRES OF LAND MORE OR LESS.

**Exhibit "E"**

The Regional Retail Design Guidelines follow this page

## **CITY COMMISSION AGENDA**

**Item #: 4. (c.**

**Date:** 04/20/2011

### **Additional repairs to Bid # 2010-229**

**Submitted By:** Rita Williams, Purchasing

**Department:** Purchasing

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### **ACTION REQUEST (Brief Summary)**

Request approval of additional repair costs to Bid # 2010-229 Repairs & Painting of the 14th Street Elevated Storage Tank.

### **BACKGROUND**

On October 6, 2010, the City Commission awarded the contract for the Repairs & Painting of the 14th Street Elevated Tank to DMS Painting, Inc., for the total bid amount of \$134,900.00. In addition, the Commission approved change orders , not to exceed 25% (\$33,725.00) of the total contract price.

### **ANALYSIS**

In the process of preparing the tank for repairs the water was drained and significant damage was found. The additional work needed will result in a request of \$42,700.00, which is in excess of 25%. Therefore, I request the Commission approve the additional \$42,700.00 to cover the cost which is over the 25% change order amount. A list of the additional work is attached for your review. Funds are available in the Water Distribution Expense-Supplemental Request Detail Capital Outlay Account.

Thank you.

### **ALTERNATIVES CONSIDERED**

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### **Attachments**

Res 11-028

Exhibit A

**RESOLUTION NO. 11-028**

**A RESOLUTION APPROVING ADDITIONAL REPAIR COSTS IN EXCESS OF 25 PERCENT FOR REPAIRS TO THE 14<sup>TH</sup> STREET ELEVATED STORAGE TANK; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, on October 6, 2010, the City Commission awarded the contract for the repairs and painting of the 14<sup>th</sup> Street Elevated Storage Tank to DMS Painting, Inc., Bid No. 2010-229, for the total bid amount of \$134,900.00, which authorized change orders not to exceed 25% (\$33,725.00) of the total contract price; and

**WHEREAS**, water was drained from the tank for repairs and significant damage to the tank was found requiring a change order for \$42,700.00, which exceeds the 25% allowed for under the contract.

**WHEREAS**, funds are available in the Water Distribution Expense-Supplemental Request Detail Capital Outlay Account and the Purchasing Department requests approval of the change order in the amount of \$42,700.00 to cover costs of additional repairs.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the City Commission of the City of Texas City, Texas, hereby approves the change order for additional repairs to the 14<sup>th</sup> Street Elevated Storage tank in the amount of \$42,700.00, as set out on Exhibit "A", attached hereto and made a part hereof for all intents and purposes.

**SECTION 2:** That the Mayor is authorized to execute any documentation necessary to approve this change to the contract awarded to DMS Painting, Inc.

**SECTION 3:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20th day of April, 2011.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

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Nicholas J. Finan  
City Secretary

APPROVED AS TO FORM:

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Ronald F. Plackemeier  
City Attorney

DMS Painting Inc.

5327 Pine Avenue  
Pasadena, TX 77503

## Estimate

| Date    | Estimate # |
|---------|------------|
| 4/12/11 | 1          |

|                                                                                          |
|------------------------------------------------------------------------------------------|
| Name / Address                                                                           |
| City of Texas City<br>Attn: Accounts Payable<br>P.O. Drawer 2608<br>Texas City, TX 77592 |

Repair estimate for the 14<sup>th</sup> Street Elevated Water Storage Tank  
Original bid : \$ 134,900. P.O. No. 21100025-00  
Additional Interior / Exterior Repairs to Contract

| Description                                                                                                                                                      | Qty | Cost                     | Total       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------|-------------|
| 1. Interior Blast to SSPC-SP10, install zinc prime, epoxyPW, & epoxyPW finish coat                                                                               | 1   | 36,000.00                | 36,000.00   |
| 2. Pit Welding per each pit (Sweep blast and repair) Estimated Amount *                                                                                          | 100 | 8.50                     | 850.00      |
| 3. Install 1/4" x 6" x 6" steel bowl patch plates per Estimated Amount*                                                                                          | 4   | 60.00                    | 240.00      |
| 4. Replace Roof Vent Neck Per DSR Standard Neck                                                                                                                  | 1   | 750.00                   | 750.00      |
| 5. Replace Roof Hatch w/30" standard base and hatch                                                                                                              | 1   | 1,400.00                 | 1,400.00    |
| 6. Replace Interior Compartment ladder per foot 37'                                                                                                              | 37  | 55.00                    | 2,035.00    |
| 7. Remove & Replace 4" drain line in botom of riser lump sum                                                                                                     | 1   | 600.00                   | 600.00      |
| 8. Replace 2" Couplings Underneath belly welded inside/out (3 ea)                                                                                                | 3   | 150.00                   | 450.00      |
| 9. Replace 1" Couplings at 3 holes in belly that have corroded off (3 ea)                                                                                        | 3   | 125.00                   | 375.00      |
|                                                                                                                                                                  |     | 0.00                     | 0.00        |
| Request for extension of 45 Days to original contract to complete the above for fabrication, installation-welding, and interior coatings blast/install coatings. |     |                          |             |
| The above recommended interior coatings/repairs will keep this tank in service for the next 8 to 10 years, (excludes valves, or ground piping)                   |     |                          |             |
|                                                                                                                                                                  |     | <b>Subtotal</b>          | \$42,700.00 |
|                                                                                                                                                                  |     | <b>Sales Tax (8.25%)</b> | \$0.00      |
|                                                                                                                                                                  |     | <b>Total</b>             | \$42,700.00 |

## **CITY COMMISSION AGENDA**

**Item #: 4. (d.**

**Date:** 04/20/2011

### **EMS Billing Renewal Contract - ABS Billing Service**

**Submitted For:** Joseph Gorman      **Submitted By:** Jane Tull, Fire Department

**Department:** Fire Department

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### **ACTION REQUEST (Brief Summary)**

Requesting 3 year renewal contract for EMS Billing with current vendor - ABS Billing Service

### **BACKGROUND**

Ambulance Billing Service has been the City's billing agent for the department's EMS calls since 2007.

### **ANALYSIS**

### **ALTERNATIVES CONSIDERED**

none

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### **Attachments**

Res 11-029

EMS Billing Contract

**RESOLUTION NO. 11-029**

**A RESOLUTION AUTHORIZING THE MAYOR TO RENEW CONTRACT WITH AMBULANCE BILLING SYSTEMS, INC. TO BILL AND RECOVER FEES FOR PATIENT TRANSPORTS PROVIDED BY THE TEXAS CITY FIRE DEPARTMENT OR EMS DEPARTMENT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, the Texas City Fire Department or EMS Department provide ambulance transportation services to the people of the City of Texas City; and

**WHEREAS**, Ambulance Billing Systems, Inc. has provided the City's billing service for ambulance service since 2007;

**WHEREAS**, it is recommended that the City renew a three-year contract for EMS billing with the current vendor, Ambulance Billing Service, Inc.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:**

**SECTION 1:** That the City Commission of the City of Texas City, Texas, hereby approves renewal of a three-year contract with Ambulance Billing Systems, Inc. to bill and recover fees for patient transports provided by the Texas City Fire Department or EMS Department.

**SECTION 2:** That the Mayor is authorized to execute an agreement in substantially the same form attached hereto as Exhibit "A" and made a part hereof.

**SECTION 3:** That this Resolution shall be in full force and effect from and after its passage and adoption.

**PASSED AND ADOPTED this 20<sup>th</sup> day of April, 2011.**

---

Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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Nicholas J. Finan  
City Secretary

---

Ronald F. Plackemeier  
City Attorney

# **Ambulance Billing Systems, Inc.**

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement is made and entered into, by and between

### **City Of Texas City Fire Department**

hereinafter referred to as "Provider" and **Ambulance Billing Systems, Inc.**, hereinafter referred to as "ABS, Inc." and is effective as of the date last signed below.

The terms of this Agreement are as follows:

1. This Professional Services Agreement will authorize ABS, Inc. to use its expertise and knowledge to process and follow-up on one hundred (100) percent of Provider's future claims relating to medical transportation services for Provider's patients; and during the term hereof, Provider will not perform any processing for said transportation services. ABS, Inc. will receive, from Provider, all of said claims, for processing and follow-up. ABS, Inc. shall effect and perform all necessary functions as may be required by first, second or third party insurers and governmental agencies for the submission of proper claim forms and data to obtain payment of claims on behalf of Provider. The process shall begin with transports/runs date as of April 7<sup>th</sup> 2011 or such other date agreed by both parties in writing.

This contract agreement is for ABS to provide full billing and accounts receivable management to Provider for all transports the Provider will complete during the term of the agreement. This shall include any and all "contracted" services that the provider may service or sell up to and including: the provider becoming a contracted provider of services to another city or county for which the Provider receives a yearly retainer fee. These "Contracted" transports in their entirety shall be billed by ABS, shall be managed in concert with all other Provider transports and their respective accounts receivable, and upon retained fee payment to Provider will be billed by ABS to Provider at a rate of 25, twenty-five percent of the negotiated fee between Provider and ABS.

e.g.

1. If the rate in item # 8 for billing services to the Provider is 8%, then these contract trips retained fee will be billed to Provider at a rate of 2%.
  2. In the case of a retained fee for servicing a population, the annualized transports will be divided by the retained fee, and then the example above shall be employed.
2. ABS, Inc. will advise Provider as to the status of their accounts receivable by submitting to Provider, on a monthly basis, the following written reports: (i) Cash Receipts Report, (ii) Gross Revenue Report, (iii) Detailed Aged Accounts Receivable Report, and (iv) Call Report.
  3. Provider will forward to ABS, Inc., in a timely manner, all pertinent patient information; i.e., medical information, insurance information, transport record, cover sheets, and any other information required to carry out the comprehensive claims processing function in accordance with HIPAA regulations and the attached **Business Associates Agreement in Addendum A**. ABS, Inc. will process Provider's patient transports in a timely manner with the exception of accounts, which have incomplete or missing information such as patient name, insurance documentation, medical and any other missing information required for processing. Provider will obtain and include the patient's signature on information forwarded to ABS, Inc., with the exception of patients physically unable to sign; i.e., emergency transports.

Provider Initials \_\_\_\_\_

ABS, Inc. Initials \_\_\_\_\_

## ***Ambulance Billing Systems, Inc.***

4. Provider will exercise due diligence in complying with applicable laws and regulations regarding medical transports and medical necessity for the transport, and ABS, Inc. will not be held liable for Provider's actions. ABS, Inc. will exercise due diligence in complying with applicable laws and regulations regarding claims processing; and Provider will not be held liable for ABS, Inc.'s actions. If any provision of this agreement becomes prohibited under the rules, regulations or reimbursement policies of any third-party reimbursement program, any federal or state statute, rule or regulation, or administrative or judicial decision, the parties shall alter the terms of this agreement to the minimum extent necessary to eliminate the violation. (See **Addendum B regarding Compliance**). Provider may access Ambulance Billing Systems' records for auditing purposes by scheduling a mutually feasible time to do so. This may be accomplished by sending electronic zipped files or by sending files via modem, by on-site inspections, or mailing, faxing, or e-mailing requested files.
5. All reimbursement payments for Provider services processed by ABS, Inc. from all payor sources (Medicare, Medicaid, private insurance, private pay and any other) shall be mailed directly to (address)

\_\_\_\_\_  
Same as current  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

6. Provider shall submit to ABS, Inc. within five (5) business days of receipt copies of any Explanations of Benefits (EOB's), claims correspondence, denials, remittance status reports, and copies of checks from all payor sources that are received by Provider. Should it be determined during the normal follow up process by ABS Inc, that a payment has been made to the Provider, for which the provider has not by that time submitted to ABS, Inc for posting and management, ABS, Inc will use the notification from the payor, via fax or email means, as proof of payment, and post those monies to the appropriate Providers' transport account, and include these receipts within the end of month accounting to the Provider for invoice, and payment for services rendered.
- Claims Filing: ABS will make every effort within its power to file insurance claims timely and within the known filing deadlines as set by payors. It is the responsibility of the provider to inform ABS as and when the provider has knowledge of claims filing timelines for any payor that contacts the provider with this information. It is understood that ABS will not be held liable for any claims filed after filing deadlines due to reasons beyond ABS control. Examples of such include but are not limited too (this is not an exhaustive list): Additional documentation/information required by payor not obtained by provider; Further explanation or documentation of medical necessity by provider or requestor of services; Further documentation determining medical necessity of the type of transport; Further documentation of proof of member/beneficiary benefits.
- Conversely ABS will not hold provider liable for percentage payments on unrealized receipts due to claims unable to meet timely filing deadlines due to the above examples and/or any other not listed herein, and therefore not paid by payor, or other guarantor.
7. Situations regarding refund accounts. Every effort will be made by ABS, Inc. to bill each payor only the appropriate number of times necessary to obtain appropriate payment amounts. Provider agrees however, that refund liabilities can be incurred due to those same payors or associated payors sending multiple payments on a single account. Provider further agrees that due to the potential for refunds occurring during the regular, normal and lawful course of business ABS, Inc. will not be held liable for any amounts owed to any payor, party, or guarantor, that may be due said refund.

Provider Initials \_\_\_\_\_

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ABS, Inc. Initials \_\_\_\_\_

## ***Ambulance Billing Systems, Inc.***

8. As compensation for ABS, Inc.'s services, Provider will pay ABS, Inc. a fee of 6.5 % of all payments collected for claims processed for and on behalf of Provider that have dates of service on or after the date described in Item 1 of this agreement. Collected payments will include (i) cash/reimbursement received by Provider during the month for which remittance documentation described in Item 6 has been submitted to ABS, Inc., and (ii) cash received by Provider in prior months for which remittance documentation had not been previously submitted to ABS, Inc. ABS, Inc.'s fee, including any applicable taxes, is due and payable upon receipt of invoice. **If the fee is not received within 10 days of the invoice date, a late charge of 1.5% of that monthly invoiced fee may be assessed. ABS, Inc. has the option of stopping all services and processing until fees are received in full.** Once the fee is received in full, then ABS, if having stopped services, will resume all processing activities as defined in this agreement. This temporary stoppage of processing activities does not in any way constitute cancellation or termination of this contract. The only way this contract may be cancelled is by the terms in Item #13 of this Agreement.
9. Provider may engage the professional services of ABS, Inc. for special projects. Representatives of both parties will authorize the terms of agreement for such special projects in advance by written agreement. The fee will be based on an hourly rate, a negotiated (flat) fee, or such other terms agreed by both parties.
10. Provider hereby authorizes ABS, Inc., if and when necessary, to obtain credit information of any patient. ABS, Inc. will submit to Provider a list of all delinquent accounts being recommended for referral to a collection agency and/or credit bureau. ABS, Inc. will report patients to the collection agency/credit bureau upon approval by the Provider.
11. Provider hereby authorizes ABS, Inc. to settle any dispute of payment for services rendered directly with payors as follows: ABS, Inc. is authorized to settle any and all accounts as deemed appropriate by ABS, Inc. up to, and inclusive of, writing off of accounts that fall within underinsured and or non-insured patients. While ABS will use all efforts available by law and ethics regarding patients' healthcare billing practices, both provider and ABS, recognize that certain accounts will fall to the bad debt category. ABS, Inc. will not be responsible for any remaining unpaid balance from such settled patient accounts.
12. This Agreement shall be for a term of three ( 3 ) year(s) beginning on April 7<sup>th</sup> 2011 and automatically renew for two (2) additional twelve (12) month periods. If Provider or ABS Inc., is not satisfied with the performance of the other party, either party must give the other written notice of the dissatisfaction and the reason(s) for dissatisfaction along with written expectations of desired results or outcomes. The recipient of said notice will have 60 days to improve ("Opportunity to Cure.") in the area(s) of deficiency. Deficiencies must be substantiated. If the recipient has not cured the deficiency to satisfaction as indicated within the written notice referenced above by the end of the 60-day period, the offended party may give the other a 30 day written Notice of Cancellation. This 'Opportunity to Cure' may be exercised any time after the first six (6) months of the initial term of this Agreement. The opportunity to cure does not authorize provider to withhold payments due and payable to ABS. Provider will continue to pay for services rendered, as and when due and payable.
- All invoices are due and payable at time of receipt. Any dispute of any type must be managed within the language of this contract item as prescribed above. It shall be a breach of agreement for the Provider to withhold payments for any reason, including prior to or after the execution of written request of opportunity to cure as mentioned above. Should the Provider be found withholding payments ABS will have full authority to stop all work on providers' account, up to and including exercising the immediate payment option as Provider has elected in Item # 9 and requesting all non-government payors to remit all outstanding and future payments to ABS until further notice.

Provider Initials \_\_\_\_\_

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ABS, Inc. Initials \_\_\_\_\_

## ***Ambulance Billing Systems, Inc.***

- 13.** After cancellation (end of 30-day "Notice of Cancellation" period in Item 12 above) of this agreement, ABS, Inc. will not process and/or follow-up and will not be obligated for any new claims that might become outstanding after the date of cancellation unless both parties agree in writing. ABS, Inc. will continue to process claims for transports made through the cancellation date for a period of no more than six months (all terms and conditions herein remain intact). Subsequent to the cancellation date, payments will be received for claims that were processed prior to the termination date. Provider will continue to send copies of EOB's and other documentation of reimbursement/payments to ABS, Inc. for all medical transports with dates of service prior to the cancellation date. During this period the percentage rate for collection services shall be one and one half times the rate set forth in item 8 above. (E.g. If Item eight is set at 10% then the receipts collected during the six month period will be due and payable at the rate of 15%). ABS, Inc. will continue to bill Provider monthly based on cash receipts received by Provider during the post-cancellation period for payments received for claims processed prior to the cancellation date. ABS, Inc. will also continue to provide monthly financial reports. **If Provider notifies ABS, Inc. in writing that Provider requests that ABS, Inc. discontinue follow-up on accounts with dates of service prior to the effective date of cancellation, ABS, Inc. is entitled to payment for processing services previously provided that will generate cash receipts. Using the average cash receipts from the previous three months, a settlement will be paid. The settlement shall be equal to the average cash receipts for the previous three (3) months multiplied by three (3), multiplied by ten percent (10%). For example, if the previous three (3) months' cash receipts were \$30,000, \$20,000, and \$25,000, the average would be \$25,000. Three (3) times \$25,000 is \$75,000 times 10% is \$7,500. The settlement amount would be \$7,500. Upon payment of the settlement, all records relating to Provider's claims will be returned to Provider.**
- 14.** Legacy Service Agreement: Further, upon expiration of this Professional Services Agreement, and in the absence of a new agreement for continuation of services, Provider may elect in writing or by action, to have ABS, Inc. continue processing and follow-up efforts on outstanding accounts and all new accounts as though the original contract were in place, with all agreements and promises intact. The fee for this service shall be equivalent to Item 8 plus 2% of all cash receipts. Once Provider has negotiated a new agreement with ABS, Inc., the Legacy Term is ended upon the effective date of that new contract. Should Provider elect to not negotiate a subsequent contract with ABS, Inc., Provider must inform ABS, Inc. in writing of this intent. As of the 1st day of the month following the Provider informing ABS, Inc. in writing of their decision to not negotiate a subsequent contract, the payment terms of the above Cancellation Agreement (item #14) shall be adopted. If ABS, Inc. is monitoring any collection agency results those fees associated with the administration will continue until the completion of indefinite assignment described in Addendum C. (Item 6 under "Provider and ABS, Inc. agree to the following:")
- 15.** Notwithstanding items 12, 13, and 14 above, either party may elect to exercise a 30 day written notification of request to cancel the contract in its entirety without fault or prejudice to either party, and by signature below, both parties agree to stated terms for such a 30 day cancellation option herein. Should a 30 day cancellation be forthcoming, the terms of items 13 and 14 remain intact, with the exception of an opportunity to cure.
- 16.** This Agreement supersedes all prior oral or written agreements between the parties and contains the entire agreement of the parties with respect to the subject matter hereof. This agreement may not be amended or revised by the parties except by written agreement signed by both parties.

Provider Initials \_\_\_\_\_

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ABS, Inc. Initials \_\_\_\_\_

## ***Ambulance Billing Systems, Inc.***

- 17.** In the event Provider sells, merges or otherwise transfers EMS operations to another entity, the terms of this Agreement will remain in effect and be assigned to the new operator and/or owner. **In the absence of assignment of this agreement, a buyout option must be exercised by paying to ABS, Inc. a one-time lump sum payment equal to 10% of the average cash receipts for the previous six (6) months times six (6).** For example, if the previous six (6) months' cash receipts were \$30,000, \$20,000, \$25,000, \$30,000, \$20,000 and \$25,000 the average would be \$25,000. Six (6) times \$25,000 is \$150,000 times 10% is \$15,000. The settlement amount would be \$15,000. The buyout fee covers the processing services for outstanding accounts previously processed by ABS, Inc. at the time of operations/ownership change and supersedes the fee for payments outlined in Item Numbers 8, 13 and or 14 of this Professional Services Agreement. Upon receipt of the buyout payment to ABS, Inc. and any and all outstanding monthly invoice fees, this Professional Services Agreement will be cancelled and Provider will be released from all financial responsibility related to payment of professional services to ABS, Inc. It is the responsibility of Provider to include the requirements of this paragraph in any agreement for the transfer of operations or ownership.
- 18.** If a dispute arises out of this contract and such dispute cannot be settled through direct negotiations between the parties, the parties agree to endeavor to resolve the dispute through mediation. If the parties cannot agree upon the selection of a mediator, the parties will each furnish a list of three (3) members of the American Health Lawyers Association with offices within 50 miles of San Antonio and experienced in contract law within five (5) business days of failure to agree. The first matching name that appears on both lists will be the mediator. In the event there are no matching names, each party will have the right within five (5) business days to strike one name from the others list. One of the remaining four (4) names will be drawn by lot by an impartial party to select the mediator. The mediation shall take place in Bexar County, Texas within thirty (30) calendar days from the date such mediator is selected. In the event that such dispute cannot be resolved by mediation, the parties agree to submit the matter to arbitration, in Bexar County, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). If the parties cannot agree upon the selection of an arbitrator, a member of the AAA shall be selected using the same process as used in selecting the mediator. It is further agreed that such arbitration shall be final and binding.
- 19.** ABS, Inc. shall indemnify Provider for, and hold Provider harmless from, all damages assessed against Provider by any person or entity which damages were caused solely by ABS, Inc.'s grossly negligent acts or omissions in ABS, Inc.'s performance hereunder. Provider shall indemnify ABS, Inc. for, and hold ABS, Inc. harmless from, all damages assessed against ABS, Inc. by any person or entity which damages were caused solely by Provider's grossly negligent acts or omissions in Provider's performance hereunder. This hold harmless agreement does not and will not be applicable to any claim of adjustment or request for reimbursement made by any insurance company or any servicing agency or governmental agencies that may be made as the result of audits or denials of claims made as provided by those companies' policies or governmental regulations or laws.

Provider Initials \_\_\_\_\_

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ABS, Inc. Initials \_\_\_\_\_

## ***Ambulance Billing Systems, Inc.***

20. The nature of this agreement requires the exchange of confidential medical records that may be regulated by law. ABS, Inc. agrees and acknowledges the importance of keeping its records confidential, and shall not act or be the custodian of any records except those as are necessary for the submission of claims and processing purposes. Any request or subpoena for the release of Provider's processing records shall be addressed or forwarded to ABS, Inc. and ABS, Inc. shall be responsible therefore, and any request for any other related records shall be addressed or forwarded to Provider and Provider shall be responsible therefore. ABS, Inc. has developed and owns equipment, computer hardware and software as well as processing data, profiles, statistics, fees and codes for its claims processing. Such data and information as well as the processing systems and related functions are the property and trade secrets of ABS, Inc.; and Provider shall not release any such information relating to ABS, Inc.'s claims processing data, processes and or procedures. All files and records received by ABS, Inc. for claim processing and ABS, Inc.'s other records shall remain in the possession of ABS, Inc. during the term of this agreement. Any hard copies of records in our possession will be returned to Provider within six (6) months of completion of this agreement, unless otherwise agreed to in writing by and between the parties. All electronic media will be copied and sent to the provider and subsequently deleted from any and all systems, and affirmed with notarized witness affidavit to follow. The invalidity or unenforceability of any particular provision of this agreement shall not affect the provisions hereof, and this agreement shall be construed in all respect as if such invalid or unenforceable provisions were deleted.

Provider Initials\_\_\_\_\_

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ABS, Inc. Initials\_\_\_\_\_

# ***Ambulance Billing Systems, Inc.***

21. This agreement shall be interpreted according to the laws of the State of Texas, with venue lying solely in Galveston County, Texas.
22. Any notice required or desired to be given to a party under the terms and conditions set forth herein, shall be properly given if personally delivered or deposited in the United States Mail, postage prepaid, certified or registered, and addressed to the party at the address set forth below the party's signature to this agreement.

\_\_\_\_\_  
(Provider/Signature) (Date)

\_\_\_\_\_  
Printed Name of Provider Representative (Date)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip.

  
\_\_\_\_\_  
(ABS, Inc./Signature) (Date)

**04/06/2011**

**Steve McCormick**\_\_\_\_\_  
Printed Name of Authorized Representative  
Stephen R. McCormick, President - CEO  
Ambulance Billing Systems, Inc.  
P.O. Box 290189  
San Antonio, TX 78280-1589

Provider Initials\_\_\_\_\_

ABS, Inc. Initials\_\_\_\_\_

# ***Ambulance Billing Systems, Inc.***

## **ADDENDUM A (1) BUSINESS ASSOCIATE CONFIDENTIALITY AGREEMENT**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires "Business Associates" of healthcare entities to provide assurances of following the Privacy Rules contained within the Act. This is normally done by contract. (See 45 CFR Section 164.50[e][2]).

In consideration of being given access to highly confidential patient information, as a contracted agent for Provider, Ambulance Billing Systems, Inc. agrees as follows:

1. Ambulance Billing Systems, Inc. shall not use or disclose Protected Health Information (PHI) except as provided in their Professional Services Agreement or as required by law.
2. Ambulance Billing Systems, Inc. shall implement and maintain appropriate safeguards to prevent the use or disclosure of PHI other than as provided in their Professional Services Agreement.
3. Ambulance Billing Systems, Inc. shall report to Provider any use or disclosure of PHI in violation of this agreement of which Ambulance Billing Systems, Inc. becomes aware.
4. Ambulance Billing Systems, Inc. shall ensure that any subcontractors or agents to whom it provides PHI received from the Provider agree to the same restrictions and conditions that apply to Ambulance Billing Systems, Inc. with respect to such information.
5. Ambulance Billing Systems, Inc. shall make PHI available to the individual subjects of such information in accordance with applicable law.
6. Ambulance Billing Systems, Inc. shall incorporate any amendments or corrections to PHI when so notified by Provider.
7. Ambulance Billing Systems, Inc. shall provide for an accounting of uses and disclosures of PHI for purposes not related to treatment, payment and healthcare operations, as requested by Provider.
8. Ambulance Billing Systems, Inc. shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the Provider available to the Secretary of the Department of Health and Human Services (HHS) for purposes of determining Provider's compliance with the HIPAA Privacy Rule and other applicable law.
9. At termination of their Professional Services Agreement and after final payment settlement, if feasible, Ambulance Billing Systems, Inc. shall return or destroy all PHI received from Provider that Ambulance Billing Systems, Inc. still maintains in any form and retain no copies of such information.
10. In the event the Provider knows of a pattern of activity or practice of Ambulance Billing Systems, Inc. that constitutes a material breach or violation of this Confidentiality Agreement, reasonable steps must be taken to cure the breach or end the violation. If such steps are unsuccessful, the Provider may terminate their Professional Services Agreement.

\_\_\_\_\_  
(Provider)

\_\_\_\_\_  
(Date)



Ambulance Billing Systems, Inc.

**04/06/2011**

\_\_\_\_\_  
(Date)

Provider Initials \_\_\_\_\_

ABS, Inc. Initials \_\_\_\_\_

# Ambulance Billing Systems, Inc.

## ADDENDUM A (2) AMENDMENT TO BUSINESS ASSOCIATE AGREEMENT

This Amendment ("Amendment") to the Business Associate Agreement ("Agreement") is between \_\_\_\_\_ ("Covered Entity") and Ambulance Billing Systems, Inc. ("Business Associate"). This Amendment supplements and is made a part of the original Agreement between the parties. The Agreement is a supplement to a Services Agreement between the parties. This Amendment shall be effective on April 20, 2005, if the Services Agreement between the parties is in effect as of that date.

In exchange for appropriate consideration, the sufficiency of which is hereby acknowledged, Business Associate agrees to assume the following obligations regarding electronic Protected Health Information (e-PHI):

- (a) Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the e-PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity in accordance with 45 CFR 164 (the HIPAA Security Rule).
- (b) Business Associate will ensure that any agent, including a subcontractor, to whom it provides e-PHI that was created, received, maintained or transmitted on behalf of the Covered Entity agrees to implement reasonable and appropriate safeguards to protect the e-PHI.
- (c) Business Associate agrees to alert Covered Entity of any security incident (as defined in the HIPAA Security Rule) of which it becomes aware.
- (d) Business Associate authorizes termination of the Services Agreement if the Covered Entity reasonably determines that Business Associate has violated a material term of this Amendment.

AGREED TO:

\_\_\_\_\_  
(Provider)

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

\_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_

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

AGREED TO:

\_\_\_\_\_  
Ambulance Billing Systems, Inc.  
(Provider)

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

\_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_ Owner-President

Date: 04/06/2011

Provider Initials \_\_\_\_\_

ABS, Inc. Initials \_\_\_\_\_

# ***Ambulance Billing Systems, Inc.***

## **ADDENDUM B COMPLIANCE**

Responsibilities of ABS, Inc.:

1. ABS, Inc. will implement and maintain an effective health care billing compliance program that includes the seven (7) elements for effective compliance programs as outlined in the U. S. Sentencing Commission Guidelines and Health and Human Services Inspector General's Compliance Guidance for Third-Party Medical Billing Companies.
2. ABS, Inc. will ensure that all consulting company coders receive specific annual coding training and that coders have readily accessible and available current coding and billing reference material.
3. ABS, Inc.'s employees will refrain from the submission of questionable claims and notify the Provider in writing within thirty (30) days of determining credible evidence of a pattern of misconduct (e.g., false documentation) on the part of the Provider. If Provider fails to cure the pattern of potentially fraudulent or abusive conduct, the ABS, Inc. may terminate this professional services agreement with written notice.
4. ABS, Inc. will conduct regular and periodic audits of credit balances (overpayments) and promptly notify the Provider in writing of the status of such credit balances and recommend, as appropriate and necessary, that the Provider promptly return overpayments obtained from federal and/or state health care programs.
5. ABS, Inc. will take all reasonable steps to ensure data integrity in computer systems used for electronic data transfer.
6. ABS, Inc. will promptly investigate and correct, as appropriate and necessary, reported credible evidence of misconduct on the part of ABS, Inc.'s employees and or Providers employees.

Provider Initials\_\_\_\_\_

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ABS, Inc. Initials\_\_\_\_\_

# ***Ambulance Billing Systems, Inc.***

## Responsibilities of Provider:

1. Provider is to implement and maintain appropriate compliance standards; training and education; and to audit and monitor its compliance duties.
2. Provider is to document accurately and completely the medical services provided for which reimbursement is sought.
3. Provider is to be aware of and follow proper documentation and medical necessity requirements for federal and state programs.
4. Provider will refrain from submitting false or inaccurate information, documentation or records to ABS, Inc.
5. Provider will expeditiously correct identified false or inaccurate information, documentation and/or records.
6. Provider will notify ABS, Inc. in writing within 30 days of determining credible evidence of misconduct on the part of the ABS, Inc. (e.g., improper submission of claims).
7. Provider will take all reasonable steps to ensure data integrity in computer systems used for electronic data transfer.
8. Provider will promptly investigate and correct, as appropriate and necessary, reported credible evidence of misconduct on the part of Provider and or ABS, Inc.

## Responsibilities of both Provider and ABS, Inc.:

1. Provide open, frequent and regular communications between Provider and ABS, Inc.; i.e., ABS, Inc. providing written monthly billing reports.

\_\_\_\_\_  
(Provider)

\_\_\_\_\_  
(Date)

 04/06/2011  
\_\_\_\_\_  
Ambulance Billing Systems, Inc. (Date)

Provider Initials \_\_\_\_\_

ABS, Inc. Initials \_\_\_\_\_

## **CITY COMMISSION AGENDA**

**Item #: 5. (a.**

**Date:** 04/20/2011

### **Amend Chapter 94 Article II - Junk Dealers**

**Submitted For:** Robert  
Burby

**Submitted By:** Carla Costello, Police  
Department

**Department:** Police Department

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### **ACTION REQUEST (Brief Summary)**

Request Ordinance amending Chapter 94 Second Hand Goods, Article II, Junk Dealers, Division 1. Generally. Section 94-31. Definitions and Division 2. License. The current Ordinance requires approval by the City Commission for all second hand goods permits. The revised Ordinance clarifies that the Chief of Police can authorize issuance of a permit. In the event the Chief disapproves the permit, the applicant may then seek approval through the City Commission. Additionally, items of clothing and household goods have been added to the list of items defining second-hand goods. (Police Department)

### **BACKGROUND**

### **ANALYSIS**

### **ALTERNATIVES CONSIDERED**

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### **Attachments**

Ord.No. 11-11

## ORDINANCE NO. 11-11

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TEXAS CITY, CHAPTER 94 SECOND HAND GOODS, ARTICLE II. JUNK DEALERS, DIVISION 1. GENERALLY. SECTION 94-31, DEFINITIONS AND DIVISION 2. LICENSE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.**

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**WHEREAS**, the City of Texas City, Texas, is a home-rule city; and

**WHEREAS**, the City of Texas City, Texas, seeks to amend The Code of Ordinances of the City of Texas City, Chapter 94 Second Hand Goods, Article II, Junk Dealers, Division 1. Generally. Section 94-31. Definitions and Division 2. License.

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

**SECTION 1:** That **The Code of Ordinances of the City of Texas City, Texas**, Chapter 94 Second Hand Goods, Article II, Junk Dealers, Division 1. Generally. Section 94-31. Definitions and Division 2. License, are amended as follows:

**“ARTICLE II. JUNK DEALERS**

**DIVISION 1. GENERALLY**

**Sec. 94-31. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: Junk means and includes clothing, household items, scrap iron, tin, brass, copper, lead, zinc and all metallic substances, secondhand watches, knives, guns, cameras, jewelry, fishing equipment and similar items, handled, purchased, received or offered for sale by dealers in junk, and shall mean and include secondhand plumbing and electric fixtures, wires, globes, brass pipe, lead pipe and pipe of other metals, melted metals of any kind, parts of machinery or machines that may be identified as such, any fixture pertaining to a residence, business house or other house of any kind, automobile accessories, including horns, hubcaps, prestolite tanks, tires and all detached and detachable parts of any automobile, motorcycle, bicycle or motor vehicle of any kind or any vehicle of any kind, hydrants, faucets, lawn hose, lawn sprinklers, gas fixtures, fittings and appliances, garden tools, mechanical tools of every description, harness, rags, rubber, rope, bottles and utensils of every description. The enumeration of the articles in this subsection shall not be held to exclude other articles that may be reasonably included under the general definition of junk when given its usual trade meaning.

Junk dealer means any person primarily engaged in collecting, handling, buying or selling any of

the articles defined as junk or otherwise engaged in the business of buying or selling secondhand articles or as a trading post.

(Code 1986, § 18-16)

Cross references: Definitions generally, § 1-2.

## DIVISION 2. LICENSE\*

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\*Cross references: Compliance with certain statutes prerequisite to license denial, suspension or revocation, § 2-1.

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### Sec. 94-61. Required.

No person shall transact or engage in business as a junk dealer within the corporate limits of the city until he shall have secured an annual license therefor, issued by the ~~city secretary~~ Police Department.

(Code 1986, § 18-36)

### Sec. 94-62. Filing and contents of application.

(a) An applicant for a junk dealer's license shall make request therefor in writing, addressed to the chief of police, which application shall contain the name, residence and street number of the applicant. In the case of a firm or partnership, the application shall show the individual members of the firm or partnership, and if a corporation the names of the officers thereof. The application shall contain the following words: "The license hereby applied for shall be subject to all the provisions and regulations of the ordinances of the City of Texas City relating to junk and junk dealers."

(b) The application for a junk dealer's license shall be signed and sworn to by the person applying therefor, before some officer authorized by law to administer oaths, or in the case of a partnership or corporation by one member of the firm or officer or agent of the corporation. The application shall be filed with the chief of police.

(Code 1986, § 18-37)

### Sec. 94-63. Approval of application.

(a) *Action by chief of police.* Upon receipt of an application for a license required by this division, the chief of police shall carefully examine the facts of the application and approve or disapprove the application. Grounds for denial shall include the following:

- (1) The application contains a materially false or fraudulent statement; and
- (2) The applicant, or an officer, partner or employee thereof, has been convicted of a felony or of a misdemeanor involving moral turpitude within the five years immediately preceding the date of the application.

(b) *Action by city commission.* ~~If whether the chief of police shall approve or disapproves the application, applicant may request that the application shall be referred by him~~ the chief of police to the city commission. The commission shall then either approve or disapprove the application; provided that, before a disapproval, the commission shall give the applicant an opportunity to be heard and give him written notice of the time and place of the hearing at least five days prior thereto, at which time the applicant may appear and be heard. After the hearing, if the city commission finds the applicant to be an unsafe and improper person to engage in

business as a junk dealer, it may, in its discretion, disapprove the application.

(Code 1986, § 18-38)

Sec. 94-64. Fee.

Before issuing the license, the ~~city secretary~~ Police Department shall collect from the applicant an annual license fee in the amount of \$200.00.

(Code 1986, § 18-39)

Sec. 94-65. Issuance; numbering.

Upon compliance with the provisions of this article and upon the approval of the application by the city commission or the Police Department, the Police Department shall issue the license provided for in this division and shall number all licenses consecutively.

(Code 1986, § 18-40)

Sec. 94-66. Display.

Every junk dealer who is issued a license by the city shall display the license in a conspicuous place at his business location.

(Code 1986, § 18-41)

Sec. 94-67. Duration.

Every license issued under this division shall expire on December 31 next after its issuance.

(Code 1986, § 18-42)

Sec. 94-68. Cancellation.

Conviction of any person licensed under this division for violating any of the provisions of this article shall be sufficient cause for the cancellation of the license, within the discretion of the city commission.

(Code 1986, § 18-43)

Cross references: Compliance with certain statutes prerequisite to license revocation, § 2-1.

Chapters 95--97 RESERVED”

**SECTION 2:** It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable.

**SECTION 3:** That it is further provided that, in the event any section, clause, sentence, paragraph or part of this Ordinance shall be for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, invalidate, or impair the remainder of this Ordinance.

**SECTION 4:** That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 5:** That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of the City Commission.

**SECTION 6:** That the City Secretary is hereby directed, in accordance with Article III of the City Charter, to publish this ordinance, by caption only, in one issue of the official paper, and obtain proof of such publication made by the printer or publisher of such paper. An affidavit made by said printer or publisher before some officer authorized by law to administer oaths, and filed with the person performing the duties of City Secretary shall be prima facie evidence of

such publication and promulgation of such ordinance in courts of the state. The ordinance so published shall take effect, and be in force, from and after ten days after publication thereof, unless otherwise expressly provided.

**PASSED AND ADOPTED this 20th day of April, 2011.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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Nicholas J. Finan  
City Secretary

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Ronald F. Plackemeier  
City Attorney

## **CITY COMMISSION AGENDA**

**Item #: 5. (b.**

**Date:** 04/20/2011

### **Amend Chapter 14 Article II - Coin-Operated Machines**

**Submitted For:** Robert  
Burby

**Submitted By:** Carla Costello, Police  
Department

**Department:** Police Department

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### **ACTION REQUEST (Brief Summary)**

Request Ordinance amending Chapter 14 Amusements and Entertainments, Article II, Coin-Operated Machines, Sections 14-33, 14-36 and 14-37. The amendment is necessary to clarify which department will issue occupation taxes, permits and licenses and requirements for the amusement redemption machines. This amendment in no way changes the present moratorium. (Police Department)

### **BACKGROUND**

### **ANALYSIS**

### **ALTERNATIVES CONSIDERED**

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### **Attachments**

Ord.No. 11-12

## ORDINANCE NO. 11-12

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TEXAS CITY, CHAPTER 14 AMUSEMENTS AND ENTERTAINMENTS, ARTICLE II, COIN-OPERATED MACHINES, SECTIONS 14-33, 14-36 AND 14-37; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SEVERABILITY CLAUSE; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

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**WHEREAS**, the City of Texas City, Texas, is a home-rule city; and

**WHEREAS**, the City of Texas City, Texas, seeks to amend The Code of Ordinances of the City of Texas City, Chapter 14 Amusements and Entertainments, Article II, Coin-Operated Machines, Sections 14-33, 14-36 and 14-37.

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

**SECTION 1:** That **The Code of Ordinances of the City of Texas City, Texas**, Chapter 14 Amusements and Entertainments, Article II, Coin-Operated Machines, Section 14-33, is amended as follows:

“Sec. 14-33. – Payment of occupation tax; receipt to be attached to machine.

(a) The occupation tax levied by this article, with the exception of amusement redemption machines, shall be paid to the ~~city secretary~~ City Finance Department, who shall issue an occupation tax receipt.

(b) The occupation tax levied on amusement redemption machines in the amount of \$15.00 per machine shall be paid to the Chief of Police, or his designee, who shall issue an occupation tax receipt.

(c) The occupation tax receipt shall be attached to the coin-operated machine mentioned in the receipt and shall bear the serial number of the particular machine.

(d) It shall be unlawful for any person to operate, exhibit or display any coin-operated machine in the city without having attached thereto an occupation tax receipt, and no occupation tax receipt issued for a certain coin-operated machine shall be transferred to any other machine.

(Code 1986, § 29-18)”

Section 14-36 is amended as follows:

“Sec. 14-36. Skill or pleasure coin-operated machines and amusement redemption machines prohibited near schools.

No skill or pleasure coin-operated machine or amusement redemption machine shall be permitted within 300 feet of any school ~~building~~ property in this city.

(Code 1986, § 29-22)

Cross references: Minors, § 78-31 et seq.”

Section 14-37, is amended as follows:

“Sec. 14-37. Amusement redemption machines and game rooms.

**(a)** *Licensing and permitting.*

**(1)**

*License.* No person shall operate an amusement redemption machine game room in the city without first obtaining a license from the chief of police, or his designee, as required by this section. ~~No license shall be issued until the occupation tax has been paid by the operator for each machine within the premises, as required by~~ section 14-33.

**(2)**

*Permit.* No person shall operate an amusement redemption machine in the city without first obtaining a permit from the chief of police, or his designee, as required by this section. ~~No permit shall be issued until the occupation tax has been paid by the operator, as required by~~ section 14-33. The permit shall be ~~attached to the amusement redemption machine.~~ The current State of Texas and County of Galveston tax stamps as well as the City of Texas City permit will be attached to the front of the amusement redemption machine. All expired tax stamps and permit stickers will be removed from the machine by the owner/operator. Only current, valid official stamps may be displayed. The annual permit fee shall be \$100.00 per machine. The permit fee shall apply to all amusement redemption machines, regardless if located in an amusement redemption machine game room. Permits shall automatically expire on the 31st day of December following date of issuance.

**(b)**

*Definitions.*

**(1)**

*Amusement redemption machine game room* means any establishment where five or more amusement redemption machines, with the exception of excluded machines, are displayed or exhibited for public use.

**(2)**

*Amusement redemption machine* means (1) a skill or pleasure coin-operated machine that is designed, made and adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill and chance affords the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items; (2) any electronic, electromechanical, or mechanical contrivance designed, made and adapted solely for bona fide

amusement purposes if the contrivance rewards the player exclusively with non cash merchandise, prizes, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more ~~that~~ than ten times the amount charged to play the game or device once or \$5.00, whichever is less.

(3)

*Coin-operated machine* means a machine or device operated by the payment or insertion of paper currency or any other consideration.

(4)

*Conviction* means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated or pardoned.

(5)

*Convicted sex offender* means a person that has received a rendition of an order by a court imposing a punishment of incarceration, probation or fine for a crime of: aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual assault 65 years or older, aggravated kidnapping (violate/abuse victim sexually), indecency with child sexual-contact, sexual assault, sexual assault of a child, sexual performance of child, prohibited sexual conduct, compelling prostitution, possession/promotion of child pornography, indecency with child-exposure, kidnapping with victim under 17 years of age, unlawful restraint with victim under 17 years of age, aggravated kidnapping (with no sexual intent and victim under 17 years of age), indecent exposure—second conviction, preparatory offense—attempt, conspiracy and solicitation to commit any sexual offense. Also included herein is a conviction involving the violations of any statute from another state regardless of title, that the elements of which meet the above offenses.

(6)

*Employee* describes and pertains to any person who performs any service or entertainment upon the premises of an amusement redemption machine game room business, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and regardless of whether the person paid is paid a salary, wage, or other compensation by the owner or operator of the business. The term "employee" does not include a person exclusively on the premises for any of the following:

a.

The repair or maintenance of the premises;

b.

The delivery of goods to the premises; or

c.

The delivery of services, such as legal, accounting, insurance, or other similar services provided to businesses generally.

- (7) *Knowingly* means with actual knowledge of a specific fact or, with reasonable inquiry, a reasonable person should have known a specific fact.
- (8) *Operator* means and includes any person who is both present on and in charge of any amusement redemption machine game room business premises.
- (9) *Owner* means the legal owner of an amusement redemption machine game room business and includes the following:
- a. The owner of a sole proprietorship;
  - b. Each member of a firm, association, LLC or general partnership;
  - c. Each general partner in a limited partnership; or
  - d. Each officer, director, and owner of 50 percent or more of the stock of a corporation.
- (10) *Representation of value* means cash paid under authority of sweepstakes contests as provided in the V.T.C.A., Texas Business and Commerce Code, ch. 43(B), or a gift certificate or gift card that is presented to a merchant in exchange for merchandise.
- (11) *Excluded machines*: An amusement redemption machine game room does not include:
- a. A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and direct from the machine, including claw, crane, or similar machines; nor
  - b. A machine from which the opportunity to receive non-cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, varies depending upon the user's ability to throw, roll, flip, toss, hit or drop a ball or other physical object into the machine or a part thereof, including basketball, skeet ball, golf, bowling, pusher, or similar machines; nor
  - c. A machine or any device defined in V.T.C.A., Penal Code, § 47.01, as a gambling device, or any activity prohibited or described in V.T.C.A., Penal Code, ch. 47.

(c)

*Local license fee for amusement redemption machine game room required.*

(1)

*Payment of fee and issuance of license:* An owner, operator, or lessee of an amusement redemption machine game room shall be required to secure a license annually. An amusement redemption machine game room shall be required to secure a license by paying to the city an annual inspection and amusement redemption machine game room license fee of \$1,000.00. Upon payment of fee and compliance with all licensing requirements, the license shall be issued by the chief of police, or designee.

(2)

*Any person submitting an application for an amusement redemption machine game room license shall not have been convicted of any of the following:*

a.

Felony offense in the preceding five years;

b

Class A or B misdemeanor in the past two years, for which:

1.

Less than two years have elapsed since the date of conviction, the date of release from confinement imposed for the conviction, or termination of probation whichever is the later date, if the applicant was convicted of a misdemeanor offense;

2.

Less than five years have elapsed since the date of conviction, the date of release from confinement for the conviction, or the termination of probation or parole whichever is the later date, if the applicant was convicted of a felony offense; or

3.

A convicted sex offender.

(3)

*Application:* An applicant for a license or permit shall file with the chief of police a written application on a form provided for that purpose, which shall be signed by the applicant, who shall be the owner, operator, or lessee of the amusement redemption machine game room. Should an applicant maintain an amusement redemption machine game room at more than one location, a separate application must be filed for each location. The following information is required in the application:

a.

Name, address, telephone number and driver's license number of the applicant if a natural person; name, address, telephone number and driver's license number of all persons who own 25 percent or more interest in the amusement redemption machine game room; name, address, telephone number and driver's license of all corporate officers, if

any, of the such business; name, address, and telephone number of the business; if incorporated, the name of the business registered with the secretary of state; if a partnership, the name, address, telephone number, and drivers license of each of the general and limited partners; a copy of the applicant's d/b/a, if applicable. If applicant is not the owner of the premises, the applicant shall furnish the name, address and telephone number of the property owner.

**b.**

The previous occupation(s) of the applicant and, if applicable, all corporate officers and partners of the applicant within the preceding five years;

**c.**

Whether a previous license or permit of applicant, or, if applicable, corporate officer or partner of applicant, has been revoked within two years of filing of the application;

**d.**

Number of amusement redemption machines in the amusement redemption machine game room;

**e.**

A statement that (i) the amusement redemption machines are not and will not be used as gambling devices; (ii) that all the facts contained in the application are true and correct; (iii) the location and operation of the amusement redemption machine game room will not violate any applicable deed restrictions; and (iv) the amusement redemption machine game room will be operated in accordance with all laws; and

**f.**

Name, address and telephone number of an emergency contact person who can be reached after hours.

**(d)**

*Expiration and renewal:*

**(1)**

*Expiration.* An annual amusement redemption machine game room license issued by the city shall automatically expire on the 31st day of December following its issuance, except as otherwise stated herein. Such license shall automatically expire if the Licensee thereof sells the property or the business, transfers equity to accomplish same, or otherwise disposes of such devices. An amusement redemption machine game room license is not assignable or transferable. The city shall not refund any portion of a license after the license is issued, nor shall it prorate or reduce in amount any fee due to the city.

**(2)**

*Late penalty.* Upon the expiration of a license, the licensee shall obtain a renewal if the licensee wishes to continue operating an amusement redemption machine game room. Failure to obtain the renewal within 30 days after

expiration will require such person to pay an additional late fee in an amount equal to 20 percent of the fee actually due or 20 percent of the previous year's fee, whichever is greater in order to obtain reinstatement of his license. Nothing herein authorizes the licensee to operate after the expiration of a license and before a renewal is effective.

(e)

*Sealing.* The city shall have the authority to seal any coin-operated machine located at any amusement redemption machine game room for which a license fee has not been secured. A \$5.00 fee will be charged for the release of any machine sealed for non-payment of said license fee.

(f)

*Posting of license.* The license shall be conspicuously posted inside the building.

(g)

*Restrictions, regulations, controls and limitations.* The following restrictions, regulations, controls and limitations shall apply to all amusement redemption machine game rooms:

(1)

*Condition of premises.* All building and fire code standards must be met. Inspection by building official and certificate of occupancy shall be obtained before license is issued. Game room must be located in area zoned for that activity;

(2)

*Methods of conduction of business.* No alcoholic beverages shall be served or allowed on premises. No activities allowed outdoors;

(3)

*Hours of operation.* May only be operated between the hours of 7:00 a.m. and 2:00 a.m.;

(4)

*Parking requirements.* One space for each two machines (exclusive of handicapped), plus one space per employee per shift. The area utilized for parking shall be form poured concrete or asphalt. The spaces will be striped with a minimum of ten feet in width for each space;

(5)

*Location requirements.* Premises shall not operate within 300 feet of an established church, school, day care or hospital;

(6)

The owner, operator or manager of the premises must be present to supervise the operation of the machines. The machines shall not be left unattended;

(7)

Machines must be so situated within the premises as to be in full and open public view, which entails being visible to all patrons of the establishment;

- (8) Minors may not operate machines during school hours on days when school is in session;
- (9) A game room operator must be a person who is at least 18 years of age;
- (10) Total number of machines in one establishment shall be limited to 50; and
- (11) All game rooms shall be open to the public and no "private game rooms" or private "members-only" establishments shall be permitted.
- (h) *Employees qualification.* A person may not be an employee/operator of an amusement redemption machine game room if he/she does not meet the requirements set forth in [section 14-37\(c\)\(2\)](#). The owner of a amusement redemption machine game room who knowingly employs an employee/operator who is in violation of [section 14-37\(c\)\(2\)](#) will be in violation of this article.
- (i) *Termination of license.* The chief of police may terminate any license to maintain and operate an amusement redemption machine game room when the licensee is in violation of any provision of this article, any other ordinance of the city or any applicable state or federal law on regulation, or licensee was found to have submitted false information in licensee's application. Such termination shall be upon the decision of the chief of police which shall be final no less than ten calendar days after receipt of written notice sent by certified mail, return receipt requested and addressed to the licensee at the premises, specifying the particular violation or violations. If requested before the ten-day period has expired, the licensee may request a hearing before the chief of police to contest the termination. Any decision of the chief thereon shall be final and nonappealable.
- (j) *Suspension and/or termination.* An amusement redemption machine game room license holder can have his/her license suspended and/or terminated if at any time the police chief or designee determines that an amusement redemption machine game room license holder is not qualified under [section 14-37](#), and/or is under indictment, and/or has charges pending for any offense involving a class A or B misdemeanor or a felony offense. The police chief or designee shall suspend or terminate the license holder's license until the chief of police or designee determines that the license holder is qualified or that the charges against the license holder have been finally adjudicated.
- (k) *Re-application.* If a license is terminated pursuant to [section 14-37\(i\)](#) or [14-37\(j\)](#), the licensee shall not be eligible to re-apply until two years after the date of termination.

(l)

*Audit.* The books and records of the amusement redemption machine game room shall be open for inspection and copying during regular business hours by the chief of police or designee. Application and receipt of a license shall constitute implied consent for the chief of police or designee to inspect the premises and obtain any video/audio surveillance tapes of the premises.

(m)

*Disclaimer.* By issuing the required license, the city is not certifying the installation or use of the amusement redemption machines applying for a license, the applicant shall acknowledge that the city is not certifying or sanctioning the installation or use of such machines.

(Ord. No. 03-58, § 1, 12-10-2003; Ord. No. 04-12, § 1, 14-37 ; Ord. No. 08-21, § 1, 5-21-2008)

**Secs. 14-38—14-60. - Reserved.”**

**SECTION 2:** It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable.

**SECTION 3:** That it is further provided that, in the event any section, clause, sentence, paragraph or part of this Ordinance shall be for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, invalidate, or impair the remainder of this Ordinance.

**SECTION 4:** That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 5:** That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of the City Commission.

**SECTION 6:** That the City Secretary is hereby directed, in accordance with Article III of the City Charter, to publish this ordinance, by caption only, in one issue of the official paper, and obtain proof of such publication made by the printer or publisher of such paper. An affidavit made by said printer or publisher before some officer authorized by law to administer oaths, and filed with the person performing the duties of City Secretary shall be prima facie evidence of such publication and promulgation of such ordinance in courts of the state. The ordinance so published shall take effect, and be in force, from and after ten days after publication thereof, unless otherwise expressly provided.

**PASSED AND ADOPTED this 20th day of April, 2011.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

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Nicholas J. Finan  
City Secretary

APPROVED AS TO FORM:

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Ronald F. Plackemeier  
City Attorney

## **CITY COMMISSION AGENDA**

**Item #: 5. (c.**

**Date:** 04/20/2011

### **Permanent Rezoning - Premium Outlet Mall**

**Submitted For:** Don Carroll **Submitted By:** Edna Patterson,  
Transportation and  
Planning

**Department:** Transportation and Planning

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### **ACTION REQUEST (Brief Summary)**

Permanent rezoning for the pending Premium Outlet Mall.

### **BACKGROUND**

As the Commission will recall this commercial retail component for the mall is in association with the Land Tejas Special District / PUD which was approved by the Commission in 2007.

This approximately 71 acres of land is now ready to be permanently rezoned as a component of the Land Tejas PUD.

### **ANALYSIS**

### **ALTERNATIVES CONSIDERED**

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#### **Attachments**

Ord.No. 11-13

Property Description

Outlet Mall Site Plan

Lago Mar Overall

## **ORDINANCE NO. 11-13**

**AN ORDINANCE AMENDING CHAPTER 40 OF THE CODE OF ORDINANCES OF THE CITY OF TEXAS CITY, GALVESTON COUNTY, TEXAS, ALSO KNOWN AS THE ZONING ORDINANCE, BY REZONING FROM DISTRICT “O”, OPEN SPACE, TO DISTRICT “I”, PLANNED UNIT DEVELOPMENT, FOR THE CONSTRUCTION OF A REGIONAL OUTLET MALL ON 54.95 ACRES, DESCRIBED IN EXHIBIT ‘A’, SOUTH OF FM 517, TEXAS CITY, GALVESTON COUNTY, TEXAS; ORDERING SAID CHANGES MADE ON THE CITY ZONING MAP; CONTAINING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH; DISPENSING WITH THE CHARTER REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION AND PUBLICATION BY CAPTION ONLY IN THE OFFICIAL NEWSPAPER OF THE CITY.**

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**WHEREAS**, due and proper notice has been given and public hearing held and all other required actions taken to amend the Zoning Ordinance for the City of Texas City, Texas, and it is the considered opinion of the City Commission that said Ordinance be amended and changed as follows for the public welfare, good, economy, and enjoyment; and

**WHEREAS**, this property was previously granted preliminary rezoning approval by both the Zoning Commission and the City Commission;

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

**SECTION 1:** That certain property located within the City of Texas City, being part of the Alexander Farmer League and the W. K. Wilson Survey in Texas City, Galveston County, Texas, currently zoned as District “O” (Open Space), is hereby rezoned and classified as District “I” (Planned Unit Development), for the construction of a mixed use development.

**SECTION 2:** That the City Engineer shall designate said changes from District “O”, Open Space, to District “I”, Planned Unit Development, as hereinabove provided on the original zoning map, as amended, and on the duplicate copy thereof kept in the Office of the City Planning Board.

**SECTION 3:** That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. In the event any section, clause, sentence, paragraph, or part of this Ordinance shall be for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, invalidate, or impair the remainder of this Ordinance.

**SECTION 4:** That the property hereby rezoned shall be developed generally in accordance with the “Lago Mar Proposed Planned Unit Development” guidelines attached hereto as Exhibit “B”, subject to the authority of the Director of Transportation and Planning, Mayor, or their

designated representatives to authorize minor modifications of these guidelines pursuant to Section 40-48 of the Texas City Zoning Ordinance for any portion of the Property herein rezoned.

**SECTION 5:** That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of the City Commission.

**SECTION 6:** That this Ordinance shall be finally passed upon the date of its introduction and shall become effective from and after its passage and adoption and publication by caption only in the official newspaper of the City.

**PASSED AND ADOPTED the 20th day of April, 2011.**

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Matthew T. Doyle, Mayor  
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

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Nicholas J. Finan  
City Secretary

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Ronald F. Plackemeier  
City Attorney

**EXHIBIT "A"**  
**METES & BOUNDS DESCRIPTION**  
**54.95 ACRES OF LAND**  
**GALVESTON COUNTY, TEXAS**  
**BPI - HOU JOB NO. R0100716-70002**  
**FEBRUARY 11, 2011**

BEING A 54.95 ACRE TRACT OF LAND LYING IN THE ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11, GALVESTON COUNTY, TEXAS, BEING OUT OF AND PART OF THAT CERTAIN 801.38 ACRE (CALLED) TRACT LISTED AS "TEXAS CITY POD 6" IN SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN GALVESTON COUNTY CLERK'S FILE NUMBER 2008002502, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, BEARINGS BASED ON THE TEXAS STATE COORDINATE SYSTEM SOUTH CENTRAL ZONE;

COMMENCING AT A TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) MONUMENT LOCATED AT THE SOUTH END OF A CURVE MARKING THE END OF THE RIGHT-OF-WAY TRANSITION FOR THE INTERSECTION OF THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45 (VARYING WIDTH) AND THE SOUTH RIGHT-OF-WAY OF HOLLAND ROAD (80' WIDE) AS RECORDED IN VOLUME 1199, PAGE 407 OF THE DEED RECORDS OF GALVESTON COUNTY, FROM WHICH POINT A 5/8-INCH IRON ROD (FOUND) LIES N 08°38' E - 2.55 FEET;

THENCE S 42°40'27" E, ALONG A NORTHEAST LINE OF SAID 801.38 ACRE TRACT AND THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45, 498.43 FEET TO A POINT FOR THE MOST EASTERLY NORTHEAST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE S 42° 40' 27" E, CONTINUING ALONG THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45, A NORTHEAST LINE OF SAID 801.38 ACRE TRACT AND OF THIS TRACT, 1,344.54 FEET TO A POINT FOR THE MOST EASTERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

DEPARTING SAID NORTHEAST LINE AND SAID SOUTHWEST RIGHT-OF-WAY LINE, OVER AND ACROSS SAID 801.38 ACRE TRACT THE FOLLOWING SIXTEEN (16) COURSES;

THENCE S 02°02'54" W, 28.14 FEET TO AN ANGLE POINT;

THENCE S 47°20'49" W, 69.79 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 800 FEET, A CENTRAL ANGLE OF 26°49'55", A CHORD BEARING AND DISTANCE OF S 33°55'52" W - 371.23 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 374.84 FEET TO THE POINT OF TANGENCY;

THENCE S 20°30'55" W, 100.00 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 700 FEET, A CENTRAL ANGLE OF 37°26'33", A CHORD BEARING AND DISTANCE OF S 39°14'11" W - 449.35 FEET;

THENCE ALONG THE ARC OF SAID CURVE 457.45 FEET TO THE POINT OF TANGENCY;

THENCE S 57°57'28" W, 528.48 FEET TO A POINT FOR THE MOST SOUTHERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

EXHIBIT "A"

THENCE N 78°34'23" W, 29.07 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,050 FEET, A CENTRAL ANGLE OF 22°47'51", A CHORD BEARING AND DISTANCE OF N 48°47'49" W - 810.31 FEET, AND BEING THE MOST SOUTHERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE ALONG THE ARC OF SAID CURVE, 815.68 FEET TO THE POINT OF TANGENCY;

THENCE N 58°11'45" W, 140.21 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1,950 FEET, A CENTRAL ANGLE OF 14°55'21", A CHORD BEARING AND DISTANCE OF N 50°44'04" W - 508.44 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 507.87 FEET TO THE POINT OF TANGENCY;

THENCE N 43°16'23" W, 47.98 FEET TO A POINT FOR THE MOST WESTERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 04°01'01" E, 27.22 FEET TO A POINT FOR THE MOST WESTERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 51°18'25" E, 698.14 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,050 FEET, A CENTRAL ANGLE OF 3°57'35", A CHORD BEARING AND DISTANCE OF N 49°19'37" E - 141.65 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 141.68 FEET TO THE POINT OF TANGENCY;

THENCE N 47°20'49" E, 812.78 FEET TO A POINT FOR THE MOST NORTHERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 87°39'49" E, 28.29 FEET TO THE POINT OF BEGINNING AND CONTAINING 54.95 ACRES OF LAND MORE OR LESS.

## **EXHIBIT A**

### **Regional Retail**

#### **(a) Purpose of District:**

The term "Regional Retail" means a group of structures and related facilities designed for commercial retail purposes (along with accessory uses) that when completed will contain in the aggregate at least 350,000 square feet of gross building area on the tract more specifically described on Exhibit A hereto, and that are planned and developed as an integrated project.

#### **(b) Principal uses may include:**

1. Retail
2. Restaurant
3. Uses Customarily included within a regional outlet mall

#### **(c) Accessory uses may include:**

1. Surface and structured parking
2. Other uses which are incidental to the principal uses

#### **(d) Development Standards**

1. Developer's land use covenants and design guidelines do not apply to a Regional Retail project.

#### **2. Site Planning**

##### **a. Open Space**

Open space is defined as land not covered by building structures or used for automobile circulation and/or parking. However, open space may include landscape reserves, interior courtyards within the center and pedestrian areas within a landscape area. All open space must be landscaped and irrigated, unless it remains as undisturbed forest, wetland, or other natural area. Open space does not include street rights-of-way.

5% of the overall acreage of a Regional Retail project as a whole must be open space. It is recognized that the site may be subdivided into separately owned parcels. Open space requirements are with respect to the whole of the Regional Retail project and not to any individual component parcel(s) or phase(s).

**b. Setbacks**

Setback areas, including easements, must be landscaped and irrigated unless they remain as forest, wetland, or other natural area.

|     |                                                               |                                                                                                                                       |
|-----|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | The minimum lot area                                          | none                                                                                                                                  |
| 2.  | The minimum lot width                                         | none                                                                                                                                  |
| 3.  | The minimum lot depth                                         | none                                                                                                                                  |
| 4.  | The minimum front yard setback                                | 50 feet from Interstate 45, 25 feet from any major thoroughfare or collector street, 18 feet from any other public or private street. |
| 5.  | The minimum rear yard setback                                 | 30 feet if adjacent to any Residential Zone                                                                                           |
| 6.  | The minimum side yard setback                                 | 50 feet from Interstate 45, 25 feet from any other public street, 30 feet if adjacent to any Residential Zone.                        |
| 7.  | The minimum distance between detached structures              | 12 feet                                                                                                                               |
| 8.  | The maximum lot coverage by structures                        | 65 percent                                                                                                                            |
| 9.  | The maximum lot coverage by structures, driveways and parking | 90 percent                                                                                                                            |
| 10. | The maximum height                                            | No requirements                                                                                                                       |

**c. Landscape Requirements**

**(1) Landscape Plan**

A landscape plan meeting at least the below standards shall be provided at time of permit. The general landscaping provisions of the Lago Mar PUD do not apply to a Regional Retail project.

**(2) Setbacks**

All setbacks in non-forested areas should be landscaped with a combination of low growing shrubs and trees. Berms may be used in lieu of low growing vegetation. Tree clustering is encouraged but not required. All berms should be kept to a maximum slope of 3:1 with a 3 foot maximum height.

**(3) Parking Lots**

Turf grass and the planting of shade trees for sun screening is required in parking lots and along pedestrian walkways. Parking lots are required to have landscaped "end islands".

One tree is required for every "end island". Trees should be shade and ornamental varieties at least two and one-half (2-1/2) inches in caliper at time of planting.

**(4) Plant Species**

Plant species for all landscaped islands should be carefully selected for tolerance to exhaust fumes and pavement heat. Trees that drop sap are to be avoided as are trees that drop large amounts of blossoms, seeds, and pods that may clog drains. Additionally, the use of trees that are susceptible to insects and disease, as well as trees with expansive root systems that could disrupt paving and underground lines, should be avoided. Those species of trees listed on the overall tree exhibit, entitled Landscape Plan L1.00 are permitted.

**d. Building Orientation**

When orienting and locating the building(s) on a site, visibility and privacy issues from adjacent roads, location of existing trees, parking lot circulation, any pedestrian connections to adjacent buildings or parcels, energy conservation, and impacts to adjacent buildings, existing or future, should be considered by the Developer.

**e. Vehicular Access**

Location of ingress and egress will be controlled and traffic circulation impacts must be carefully evaluated. The developer is responsible for meeting all applicable Texas City traffic standards.

Vehicular access should be designed to:

- Minimize auto/pedestrian conflicts;
- Minimize curb-cuts; and
- Maximize curb cut distance to a major intersection in an effort to minimize automobile conflicts.

Shared curb-cuts between two parcels are encouraged. Driveways or curb-cuts along the curved portion of a frontage road at the intersection of a highway and a major thoroughfare are strongly discouraged.

**f. Service Access and Service Areas**

Service drives and service areas should not materially interfere with parking, driveways or walkways. Service drives and service areas must be screened from properties outside the Regional Retail project and all public rights-of-ways. Service areas should be paved and internally drained. In all cases, screening must use building materials reasonably architecturally compatible with the Regional Retail project.

**g. Outside Storage Operations**

Outside overnight storage of automobiles or motorized vehicles is prohibited, except as incidental to the operations of the Regional Retail development and as is typical in the operation of retail shopping centers found in Texas City, Texas. Outside storage should be screened from public view from properties outside the Regional Retail project and all public rights-of-ways using building materials reasonably architecturally compatible with the Regional Retail project. Towers, tanks, and other roof-top structures or special equipment must be effectively screened from public view.

**h. Minimum Parking Requirements**

The number of parking spaces for employees, customers/visitors, and the handicapped prescribed by the Texas City standards is required for the Regional Retail development as a whole. All parking spaces required to meet parking ratios must be located off street. Parking lots should not be used by delivery or service vehicles either for parking or as the primary means of reaching service areas. At a minimum, the Regional Retail project must meet the minimum parking ratios of Texas City or other applicable local ordinance in effect. Areas for outdoor and sidewalk dining do not generate parking requirements.

**i. Parking Lot Design Standards**

All parking lots shall be designed in accordance with Texas City standard stormwater runoff curves. All driveway connections must be built to the applicable Texas City standards with a minimum turning radius of fifteen feet (15') off of local streets and twenty-five feet (25') off of major thoroughfares. Expansion and construction joints shall be located in accordance with current engineering design principles and sound construction practices. Parking may be developed on grade, below grade, or in multi-level structures above grade. Parking lots must be constructed of concrete.

All parking lots should be separated from service areas and should be designed to discourage use by delivery vehicles for parking, or as the primary means of reaching service areas.

**j. Drainage**

Surface drainage to adjacent tracts is prohibited without the express written consent of the owner of such adjacent tract. The Municipal Utility District and the Water Control and Improvement District in which the project is located, plus the appropriate County Flood Control District, and any and all other appropriate agencies, must inspect and approve connections to their systems when applicable. Surface drainage and roof run-off shall be diverted away from the building foundations, either directly to storm detention areas, storm sewers or their inlets. Drainage from open space of a building may be sheet-drained across a sidewalk to parking lot drainage points. All drainage must be designed by a licensed professional engineer.

**k. Easements**

All recorded easements and rights-of-way must be observed. Any use within the easements must have approval from the easement owner.

**3. Site Elements**

Site elements are improvements to the site which can affect the aesthetics and visual integrity of the site as a whole.

**a. Utility Areas and Communication Equipment**

All utility areas located outside the building must be screened from adjacent public streets. Location of utilities inside the building is preferred. Banks of electric meters shall not be visible from public roadways. All transformers must be pad-mounted and screened by a wall, fence, or landscaping, and/or painted to coordinate with the adjacent building. All transformer electrical drops and utilities must be underground, including secondary power, unless specifically approved by Texas City.

**b. Trash Receptacles and Enclosures**

Trash receptacles must be oriented to the building service areas and screened. The enclosure must be constructed of materials compatible with the building. The enclosure must be two feet (2') taller than the height of the receptacle and a minimum of eight feet (8') in height. Masonry construction is preferred. Gates should be constructed of metal and be opaque. Wood gates supported by a structure of tubular metal are acceptable.

**c. Lighting**

Site lighting fixtures must be installed. Spill-over onto properties other than those within the Regional Retail project must be avoided and is prohibited where such adjacent property is residential. All public street lighting will be installed by the local power company.

For parking lots, the light fixture luminaries should be a basic box shape with light cut-off, such as Kim EKG model or equal, mounted on a metal pole not to exceed forty feet (40') in height. The light color should be warm and consistent with surrounding light sources. Parking lots should be illuminated to a minimum of one (1.0) footcandles (11 lux). Any lighting used to illuminate off-street parking areas shall be located, shielded, and directed upon the parking area in such a manner that it does not reflect or cause glare onto properties other than those within the Regional Retail project or interfere with street traffic.

The light fixture open-space and walkway fixtures should be compatible with the building or other site lighting.

The use of low level lighting, landscape accent lighting and architectural lighting is encouraged. The illumination source should be a "warm light".

**d. Site Furnishings / Play Equipment**

Site furnishings and site architectural elements are encouraged and should be compatible in material and color with the building. Outdoor seating and gathering areas are highly encouraged. Trees in grates and planters located in and near facilities can provide a visual amenity and incorporate seating areas. All paving and tree grates should provide safe footing for pedestrians.

Exterior playground equipment shall not exceed twelve feet (12') in height. Multi-colored canopies are strongly discouraged. Play equipment should be substantially screened from adjacent residential uses.

**4. Structures**

**a. Building Design and Character**

Restaurants, retail, banks, and other retail or commercial business with nationally or regionally recognized brands shall be allowed to implement their standard prototypical design, colors and building features, anything herein to the contrary notwithstanding. It is recommended (but not required) that where possible, such uses should use complementary trim colors or materials similar to the design and theme of the overall Regional Retail project.

Design codes of the appropriate jurisdiction must be met and in all cases, shall meet or exceed the requirements of the Texas City Building Code or the International Building Code.

Building locations should reflect consideration for roadway visibility, arcades, and parking lot circulation. Buildings on corner sites should be positioned close to roadways with landscaping between the building and the adjacent street pavement.

Buildings should be finished in the same materials on all sides. Building-mounted signage, or sign bands, where necessary, should be integrated into the elevation design.

Multi-tenant buildings should be constructed with compatible materials and design characteristics in order to present the identity of an organized building cluster. There should be a compatible family of design elements in building form and materials, roof lines, colors, and landscaping.

**b. Energy Conservation**

Energy-conscious design may include building siting, exterior building envelopes, energy-efficient heating, ventilating, air conditioning, water heating, illuminating systems, and other equipment for effective use of energy where effectively possible and economical.

c. Exterior Materials and Colors

Acceptable materials are concrete, concrete block, glass, glass block, brick, split face concrete block, stone, wood and metal (limited to accent features), stucco and stucco-like materials. Use of energy-conserving glass should be considered in construction material selections. Earth-tones are permitted for dominant wall colors for building materials. An accent color may be applied.

d. Roof Design and Materials

Roof forms and roof materials on all buildings within a Regional Retail project should be architecturally compatible with one another. Pedestrian arcades, canopies, and overhangs may be integrated with the roof form. Roof color should be uniform and integral to the materials. Acceptable materials include asphalt shingle, wood simulated composition, slate, metal, and built-up or single-ply membrane.

e. Roof-top Equipment

Roof-top penetrations and mechanical equipment must be completely screened from view (from a height of 6'-0" above ground level within the parking lot area for the building on which such equipment is located) and predominantly screened from observation at distances greater than approximately 100 feet from a building by a parapet wall. The parapet wall must be compatible with building materials. Where partially visible, roof-top equipment shall be of a regimented pattern and of consistent color.

f. Pedestrian Arcades

Pedestrian arcades and covered walkways are encouraged and may be incorporated to link adjacent buildings. Arcades and canopies create identity and provide shade.

g. Awnings

Awnings that serve a functional purpose and are compatible with the building forms are acceptable. Awnings may be installed over openings such as doorways, windows, recessed openings and archways. The use of angled or "lean-to" type awnings are preferred over other configurations. Awnings are recommended to be one solid color. Multicolor and/or striped awnings are discouraged.

Awnings may be constructed of canvas and metal. The frame must be securely attached to the building and finished in a non-corroding surface.

5. Signage

Except as more particularly described below, signage must comply with the applicable Regulations of On-premise Signs in Texas City (the "City Sign Regulations"). The following signage is allowed for Regional Retail projects subject to the conditions enumerated below.

a. Location

Signs are prohibited in public utility easements unless expressly authorized by such public utility. Signs shall be located so as not to, in the reasonable opinion of the Texas City Traffic Engineer, adversely restrict the vision of drivers entering or leaving the Property.

b. Sign Types:

(1) Primary Project Identification Sign #1

For the purpose of identifying the name and project logo/icon of a Regional Retail project in a manner visible from I-45, one (1) monument sign meeting the following criteria (the "Primary Project Identification Sign #1") may be installed for each Regional Retail project that fronts I-45.

The Primary Project Identification Sign #1 shall not exceed 35 feet in height.

The face or sign area of the Primary Project Identification Sign #1 (not including any support or structural area) shall not exceed 725 square feet each face. The project logo/icon may extend beyond the face of the sign, provided it does not cause the total sign area to exceed 725 square feet each face. Letter height shall be limited to 5 feet.

The Primary Project Identification Sign #1 shall contain only the project name and project logo/icon and shall not identify any specific occupants of the Property.

The Primary Project Identification Sign #1 shall be illuminated by individual internally-illuminated letters with reverse channel, halo, plex face or routed panel with push through letters.

(2) Project Identification Monuments

For the purpose of identifying the name and project logo/icon of a Regional Retail project, one (1) monument sign meeting the following criteria (each a "Project Identification Monument") may be installed near each vehicular entrance to a Regional Retail project.

Each Project Identification Monument shall not exceed 12 feet in height and 25 feet in length.

The face or sign area of each Project Identification Monument shall not exceed 120 square feet each face.

Each Project Identification Monument may contain the project name, project logo/icon, and Tenant Panels.

Project Identification Monuments shall be illuminated either by: (i) ground-mounted fixtures, or (ii) internally illuminated channel letters with reverse channel, plex face or routed panel with push-through letters. Only the Tenant Panels may be plex face.

(3) Specialty Project Identification Signage

For the purpose of identifying the name of a Regional Retail project in a decorative manner, individual letters ("Specialty Project Identification Signage") may be proposed by the developer.

(4) Pad Tenant Identification Monuments

For the purpose of identifying the name and logo/icon of occupants of pad sites within a Regional Retail project, one (1) monument sign meeting the following criteria (each a "Pad Tenant Identification Monument") may be installed at each pad site that has frontage on a publicly dedicated street.

Each Pad Tenant Identification Monument shall not exceed 6 feet in height and 10 feet in length.

The face or sign area of each Pad Tenant Identification Monument shall not exceed 60 square feet each face.

Each Pad Tenant Identification Monument shall be illuminated either by: (i) ground-mounted fixtures, or (ii) with internally illuminated channel letters with reverse channel, halo, plex face or routed panel with push-through letters. Only the tenant symbol/logo may be plex face.

Each pad site occupant may use its prototypical color, logos and script.

(5) Tenant Identification Berm Wall Signs

For the purpose of identifying the name and logo/icon of primary tenants / anchors within a Regional Retail project in a manner visible from I-45, a maximum of five (5) berm wall signs (each a "Tenant Identification Berm Wall Sign") may be installed within each Regional Retail project that fronts I-45.

Each Tenant Identification Berm Wall Sign shall not exceed 6 feet in height. The lettering on the signs shall not exceed 2 feet in height.

Each Tenant Identification Berm Wall Sign shall be illuminated either by: (i) ground-mounted fixtures, (ii) with internally illuminated reverse channel letters, or (iii) routed panel with push through letters.

(6) Project Identification Building Signs

For the purpose of identifying the name and project logo/icon of a Regional Retail project, signs (each a "Project Identification Building Sign") may be installed within each Regional Retail project on the towers or other architectural features of buildings.

The height of each Project Identification Building Sign shall not exceed the height of the tower or architectural feature upon which it is located.

The face or sign area of each Project Identification Building Sign shall not exceed 250 square feet.

Each Project Identification Building Sign shall be illuminated by individual internally-illuminated letters, reverse channel with shallow return and clear lexan backs. The face of the sign shall be opaque. The project symbol/logo may be internally-illuminated channel letter with a plex face.

#### **(7) Auto Directional Signs**

For the purpose of facilitating circulation and parking within a Regional Retail project, signs (each an "Auto Directional Sign") may be installed within a Regional Retail project.

Auto Directional Signs shall not include traffic control devices. Nothing shall limit the number or location of traffic control devices installed within a Regional Retail project in accordance with Texas Manual on Uniform Traffic Control Devices published from time to time by the Texas Department of Transportation.

Auto Directional Signs shall not exceed 6 feet in height.

The face or sign area of each Auto Directional Sign shall not exceed 15 square feet each face.

The letters on each Auto Directional Signs shall not exceed 4 inches in height.

No Auto Directional Sign shall be illuminated. The letters shall consist of reflective vinyl, or similar material.

#### **(8) Parking Area/Aisle Identification Signs**

For the purpose of differentiating parking areas and aisles within a Regional Retail project, signs (each a "Parking Area/Aisle Identification Sign") may be installed on parking lot light poles or fixtures within a Regional Retail project.

No Parking Area/Aisle Identification Signs shall exceed 15 feet in height and will consist of 3 individual face panels at each light pole location.

The face panel or sign area of each Parking Area/Aisle Identification Sign shall not exceed 8 square feet each face.

No Parking Area/Aisle Identification Signs shall be illuminated other than that provided by parking lot lighting.

**(9) Plaza Zone Entry Identifiers**

For the purpose of identifying entries and assisting shoppers in locating shopping area zones, Spires (each a "Plaza Zone Entry Identifier") may be installed in entry plaza areas within a Regional Retail project.

Project Plaza Zone Entry Identifiers shall be free standing structures to display each regional icon and name. Spires shall be illuminated either by: (i) ground-mounted fixtures, or (ii) with internally illuminated channel letters with reverse channel, halo, plex face or routed panel with push-through letters. Only the gallery icon may be plex face.

**(10) Project Directory Signs**

For the purpose of identifying the location of businesses on the interior portion of a Regional Retail project, signs (each a "Project Directory Sign") may be installed within the pedestrian areas of a Regional Retail project.

Project Directory Signs shall be internally illuminated with concealed lamps at the perimeter of the cabinet holding the map and business names.

**(11) Project Pathfinder/Gallery Zone Identifiers**

For the purpose of assisting shoppers locate retailers and shopping area zones, signs (each a "Project Pathfinder/Gallery Zone Identifier") may be installed in courtyard areas within a Regional Retail project.

No Project Pathfinder/Gallery Zone Identifier shall be illuminated. Each sign shall consist of silk-screened graphics on an aluminum panel with a reflective vinyl copy.

**(12) Gallery Zone Identifiers**

For the purpose of identifying shopping area zones, signs (each a "Gallery Zone Identifier") may be installed at the entrance to each shopping area zone within a Regional Retail project.

Each Gallery Zone Identifier shall be building-mounted at a height compatible with the surrounding architectural motif.

The face or sign area of each Gallery Zone Identifier shall not exceed 10 square feet each face.

**(13) Tenant Peripheral Building Signage**

For identifying the name and logo/icon of businesses within a Regional Retail project, building signs (each a "Tenant Peripheral Building Sign") may be installed on the

peripheral facade of buildings and on screening walls within a Regional Retail project. Tenant peripheral signage that is located on the rear of the buildings shall not be required to be located on the premises of such tenants.

(a) Form

Tenant Peripheral Building Signs consist of a message area in either a graphic band or band integrated into the facade of the building or individual fascia-mounted signs extending along the facade of the building. Building-mounted identification must be individual letters and logos. Individual dimensional, halo-lit letters are permitted on top of a curved raceway, acrylic punch thru letter within the face of the raceway may be used for the secondary line of text. Each of the following are permitted:

- (i) Internally illuminated individual channel letters with opaque metal sides and opaque or acrylic plastic faces;
- (ii) Reverse channel letters with halo illumination and opaque letter sides and faces;
- (iii) Dimensional wood, metal, glass or other material with a permanent appearance indirectly illuminated; and
- (iv) Incised signing cast into or carved out of an opaque material, indirectly illuminated.

Signs shall have a 3 foot side separation between adjacent tenant signs or projecting architectural element. Tenant Peripheral Building Signs facing residential areas within the Regional Retail project may not be plex-face illuminated, signs that are halo-lit shall be allowed.

(b) Quantity

Multi-tenant retail and commercial centers will be allowed one (1) Tenant Peripheral Building Sign for each retail tenant with an exposed facade. For retail tenants with two or more major exposures, such as at building ends facing major thoroughfares, one (1) additional sign is permitted for each such tenant.

With respect to each exterior wall of every building within a Regional Retail project, the sum of the horizontal lengths of all Tenant Peripheral Building Signs located on a wall shall not exceed 66% of the total horizontal length of such wall.

(c) Dimensions

No Tenant Peripheral Building Sign located adjacent to the exterior of a tenant's premises shall exceed 75% of the length of such tenant's storefront or be closer than eighteen (18) inches from the end of such tenant's demised premises.

If a graphic band is used on a multi-tenant retail or commercial building, such band shall not exceed forty-eight (48) inches in height. Textual Tenant Peripheral Building Signs located within such sign band shall not exceed forty-two (42) inches in height.

Textual Tenant Peripheral Building Signs located on building towers shall not exceed forty-eight (48) inches in height on elevations fronting a freeway and thirty-six (36) inches in height on all other building tower elevations.

Any tenant with a demised premises larger than 10,000 square feet may increase the maximum height of any single letter within its textual Tenant Peripheral Building Sign to sixty (60) inches.

Notwithstanding the foregoing, any Tenant Peripheral Building Sign that uses a tenant symbol or logo in lieu of text may exceed the foregoing height limits by up to twelve (12) inches. Additionally, on a limited basis specific locations identified in the applicant's submittal may be used for large tenant symbols or logos that are in excess of the foregoing limits.

#### (14) Pad Tenant Wall Signage

For the purpose of identifying the name and logo/icon of occupants of pad sites within a Regional Retail project, signs meeting the following criteria (each a "Pad Tenant Wall Sign") may be installed on walls of buildings located on pad sites within a Regional Retail project. Each Pad Tenant Wall Sign shall be illuminated by internally-illuminated letters, reverse channel with a shallow return. The face of the sign shall be opaque. The symbol/logo may be internally illuminated channel letter with a plex face. No Pad Tenant Wall Sign may be painted directly on the wall of a building.

#### (15) Construction Phase Signs

For the purpose of setting forth information concerning a building or other structure under construction (including the name of planned occupant(s), opening date, contractors, engineers and/or architects), up to two (2) signs (each a "Construction Phase Sign") may be temporarily installed at each such construction site within a Regional Retail project.

Each Construction Phase Sign shall be a minimum of 20 feet from the property line.

No Construction Phase Sign shall exceed 20 feet in height.

The face or sign area of each Construction Phase Sign shall not exceed one hundred thirty (130) square feet each face.

No Construction Phase Sign shall be illuminated.

Each Construction Phase Sign shall be removed prior to the issuance of a Certificate of Occupancy for the building or other structure associated with such sign.

Banner signs advertising the opening of a business shall be permitted for a period of 60 days following the issuance of a Certificate of Occupancy for such building or other structure.

(16) Promotions

(a) Promotional Special Events

Temporary signs and other temporary structures may be installed within outdoor portions of a Regional Retail project up to four (4) times per calendar year for a period of up to thirty (30) days each in association with promotional campaigns or other special events. Such temporary signs and structures may be utilized for the promotional period only.

Service Station promotional graphics and merchandise displays are strongly discouraged. When they are used, however, they must be contained under the canopy area or against one designated building wall.

(b) Banner Signs

Promotional:

Banners may be used during a promotion/special event once per year for a period of sixteen (16) consecutive days.

Banners used for temporary identification must be securely fastened on all four (4) corners to the fascia. If the banner meets these conditions it will be permitted for a period not to exceed thirty (30) days. The banners will be permitted for identification purposes only and should display the name of the facility or an abbreviation of that name.

Banners intended for advertising purposes such as Grand Opening, Open Now sales and advertising slogans are allowed.

Community Identity:

Street banners are special graphic elements that depend on good design. Banners may be displayed only in specially designated town center or community center areas. This type of banner may be displayed from street light standards or special free standing banner standards only.

6. Street and Sidewalk Design

(a) Street Sections

For any street or sidewalk within or abutting a Regional Retail project, design and construction must be in accordance with the street sections attached hereto in Exhibit B.

**EXHIBIT "A"**  
**METES & BOUNDS DESCRIPTION**  
**54.95 ACRES OF LAND**  
**GALVESTON COUNTY, TEXAS**  
**BPI - HOU JOB NO. R0100716-70002**  
**FEBRUARY 11, 2011**

BEING A 54.95 ACRE TRACT OF LAND LYING IN THE ALEXANDER FARMER LEAGUE, ABSTRACT NUMBER 11, GALVESTON COUNTY, TEXAS, BEING OUT OF AND PART OF THAT CERTAIN 801.38 ACRE (CALLED) TRACT LISTED AS "TEXAS CITY POD 6" IN SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN GALVESTON COUNTY CLERK'S FILE NUMBER 2006002502, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, BEARINGS BASED ON THE TEXAS STATE COORDINATE SYSTEM SOUTH CENTRAL ZONE;

COMMENCING AT A TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) MONUMENT LOCATED AT THE SOUTH END OF A CURVE MARKING THE END OF THE RIGHT-OF-WAY TRANSITION FOR THE INTERSECTION OF THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45 (VARYING WIDTH) AND THE SOUTH RIGHT-OF-WAY OF HOLLAND ROAD (60' WIDE) AS RECORDED IN VOLUME 1199, PAGE 407 OF THE DEED RECORDS OF GALVESTON COUNTY, FROM WHICH POINT A 5/8-INCH IRON ROD (FOUND) LIES N 08°38' E - 2.55 FEET;

THENCE S 42°40'27" E, ALONG A NORTHEAST LINE OF SAID 801.38 ACRE TRACT AND THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45, 498.43 FEET TO A POINT FOR THE MOST EASTERLY NORTHEAST CORNER AND POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE S 42°40'27" E, CONTINUING ALONG THE SOUTHWEST RIGHT-OF-WAY OF INTERSTATE HIGHWAY NO. 45, A NORTHEAST LINE OF SAID 801.38 ACRE TRACT AND OF THIS TRACT, 1,344.54 FEET TO A POINT FOR THE MOST EASTERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

DEPARTING SAID NORTHEAST LINE AND SAID SOUTHWEST RIGHT-OF-WAY LINE, OVER AND ACROSS SAID 801.38 ACRE TRACT THE FOLLOWING SIXTEEN (16) COURSES;

THENCE S 02°02'54" W, 28.14 FEET TO AN ANGLE POINT;

THENCE S 47°20'48" W, 69.79 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 800 FEET, A CENTRAL ANGLE OF 26°48'55", A CHORD BEARING AND DISTANCE OF S 33°55'52" W - 371.23 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 374.64 FEET TO THE POINT OF TANGENCY;

THENCE S 20°30'55" W, 100.00 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 700 FEET, A CENTRAL ANGLE OF 37°26'33", A CHORD BEARING AND DISTANCE OF S 39°14'11" W - 449.35 FEET;

THENCE ALONG THE ARC OF SAID CURVE 457.45 FEET TO THE POINT OF TANGENCY;

THENCE S 57°57'28" W, 528.48 FEET TO A POINT FOR THE MOST SOUTHERLY SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 78°34'23" W, 29.07 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,050 FEET, A CENTRAL ANGLE OF 22°47'51", A CHORD BEARING AND DISTANCE OF N 46°47'49" W - 810.31 FEET, AND BEING THE MOST SOUTHERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE ALONG THE ARC OF SAID CURVE, 815.68 FEET TO THE POINT OF TANGENCY;

THENCE N 58°11'45" W, 140.21 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1,950 FEET, A CENTRAL ANGLE OF 14°55'21", A CHORD BEARING AND DISTANCE OF N 50°44'04" W - 506.44 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 507.87 FEET TO THE POINT OF TANGENCY;

THENCE N 43°16'23" W, 47.96 FEET TO A POINT FOR THE MOST WESTERLY SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 04°01'01" E, 27.22 FEET TO A POINT FOR THE MOST WESTERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 51°18'25" E, 696.14 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,050 FEET, A CENTRAL ANGLE OF 3°57'35", A CHORD BEARING AND DISTANCE OF N 49°19'37" E - 141.65 FEET;

THENCE ALONG THE ARC OF SAID CURVE, 141.68 FEET TO THE POINT OF TANGENCY;

THENCE N 47°20'49" E, 812.76 FEET TO A POINT FOR THE MOST NORTHERLY NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 87°39'49" E, 28.29 FEET TO THE POINT OF BEGINNING AND CONTAINING 54.95 ACRES OF LAND MORE OR LESS.

[illegible]

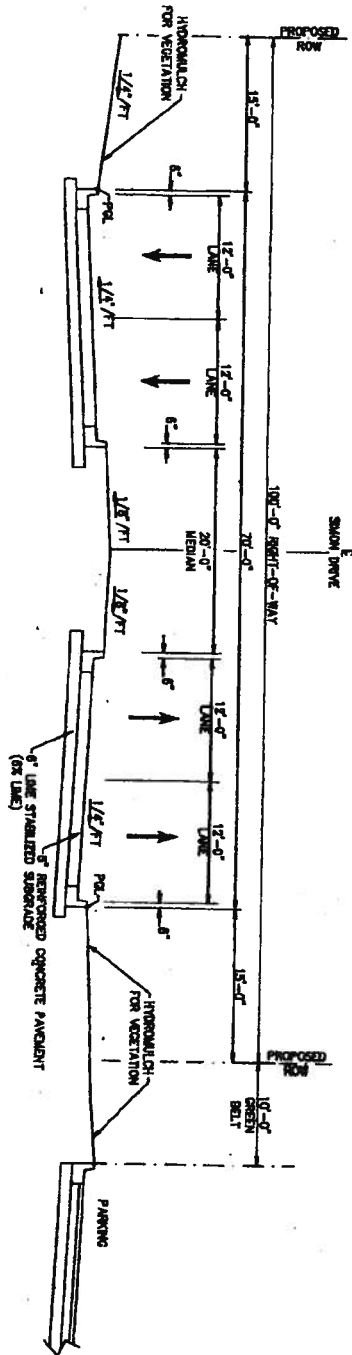
PROPOSED TYPICAL HALF-SECTION  
ADJACENT TO MAIL SITE  
NOT TO SCALE

|  |                                                                                         |                                                                     |  |
|--|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------|--|
|  | <b>ROADWAY IMPROVEMENTS<br/>IN THE LAGO MAR PLD</b>                                     | <b>PROPOSED<br/>LAGO MAR BOULEVARD<br/>ROADWAY TYPICAL SECTIONS</b> |  |
|  | <b>GALVESTON PREMIUM OUTLETS, LLC. FOR<br/>TAX INCENTIVIZED REINVESTMENT ZONE NO. 4</b> |                                                                     |  |

# EXHIBIT B

## PREMIUM OUTLET BOULEVARD AND SIMON DRIVE PROPOSED ROADWAY TYPICAL SECTIONS PRELIMINARY - SUBJECT TO CHANGE

PREMIUM OUTLET BOULEVARD AND SIMON DRIVE TYPICAL SECTION  
NOT TO SCALE



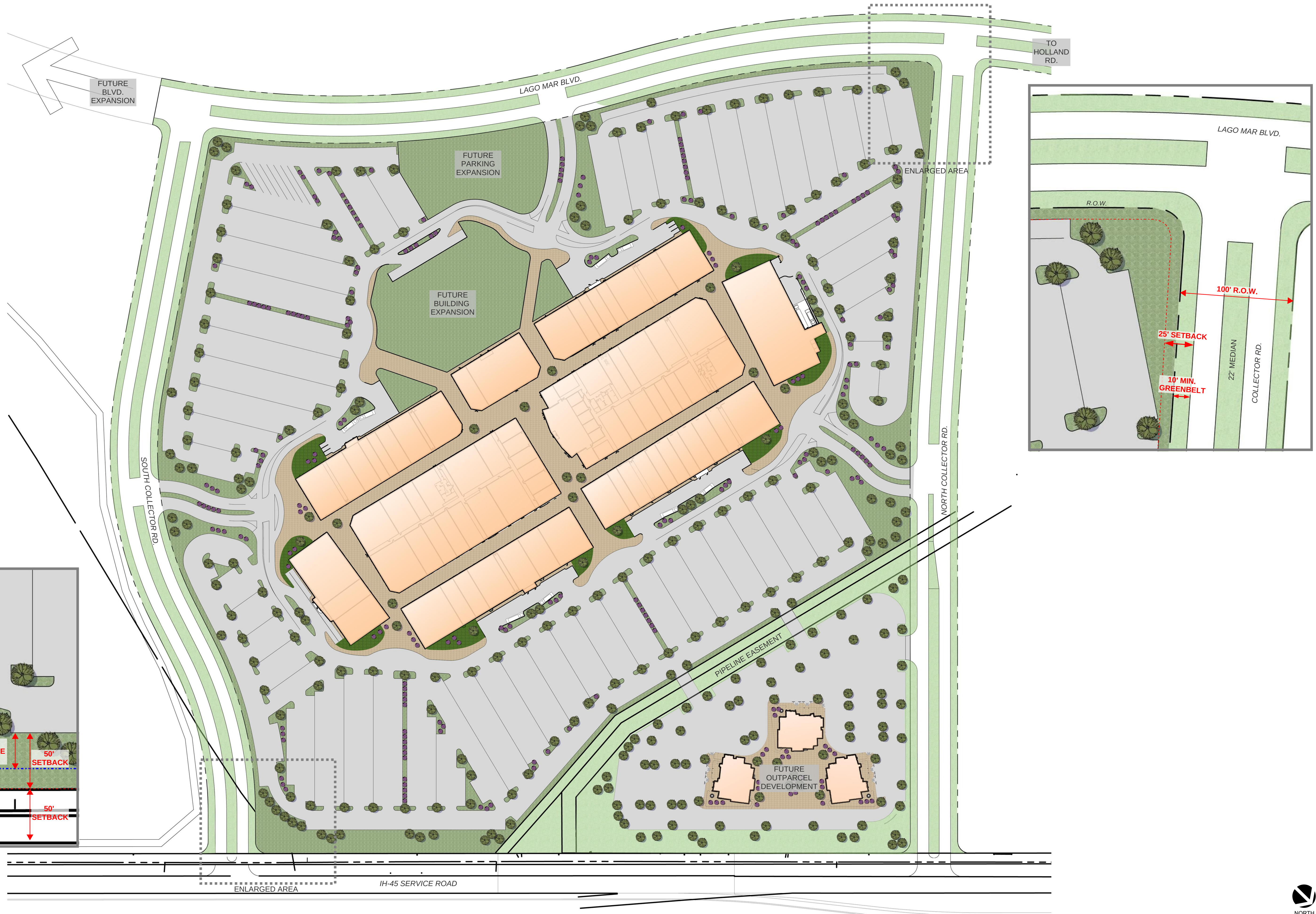
NOTED  
1. DIMENSIONS ARE TO BACK OF CURB

|         |          |          |
|---------|----------|----------|
| DATE    | BY       | REVISION |
| 10/1/00 | J. H. H. | 1.0      |
| 10/1/00 | J. H. H. | 1.1      |
| 10/1/00 | J. H. H. | 1.2      |
| 10/1/00 | J. H. H. | 1.3      |
| 10/1/00 | J. H. H. | 1.4      |
| 10/1/00 | J. H. H. | 1.5      |
| 10/1/00 | J. H. H. | 1.6      |
| 10/1/00 | J. H. H. | 1.7      |
| 10/1/00 | J. H. H. | 1.8      |
| 10/1/00 | J. H. H. | 1.9      |
| 10/1/00 | J. H. H. | 2.0      |

ROADWAY IMPROVEMENTS  
IN THE LAGO MAR FID  
GULFVIEW PREMIUM OUTLETS, L.L.C. FOR  
TAX INCREMENT REINVESTMENT ZONE NO. 1

PROPOSED PREMIUM OUTLET BOULEVARD  
AND SIMON ROAD TYPICAL SECTION

**Bury Partners**  
CONSULTING ENGINEERS  
10000 BURY PARTNERS DRIVE  
SUITE 100  
HOUSTON, TEXAS 77055  
713.861.1000  
www.burypartners.com



# LAGO MAR

## A GENERAL DEVELOPMENT PLAN

OF ± 3350 ACRES IN TEXAS CITY,  
GALVESTON COUNTY

Prepared for: LAND TEXAS COMPANIES, LTD.

-  C - INDICATES COMMERCIAL
-  MU - INDICATES MIXED USE
-  SFE - SINGLE FAMILY EAST
-  SPW - SINGLE FAMILY WEST
-  S. - INDICATES PROPOSED SCHOOL SITE
-  INDICATES NEIGHBORHOOD PARK
-  INDICATES RECREATION AMENITY
-  INDICATES LAKE
-  INDICATES LANDSCAPE BUFFER / PEDESTRIAN WALK

SINGLE FAMILY EAST  
3,212 LOTS  
MAXIMUM

SINGLE FAMILY WEST  
4,320 LOTS  
MAXIMUM

WALKWAY  
SUPERSEDES  
GULF GREYHOUND  
PARK  
DOG TRACK



NOV 2009  
DEC 2009